

Melissa Murray:

And I, someone who watched Clash of the Titans religiously in my childhood, could not help but be intrigued by the prospect of the Kraken actually being unleashed.

INTRO:

She spoke, not elegantly but with unmistakable clarity. She said, "I ask no favor for my sex. All I ask of our brethren is that they take their feet off our necks."

Melissa Murray:

Welcome back. This is a very special episode of Strict Scrutiny. I'm one of your hosts, Melissa Murray.

Leah Litman:

I'm Leah Litman.

Melissa Murray:

And we are joined today by a returning guest, perhaps our first returning guest if memory serves, and that of course is the indomitable Elie Mystal from The Nation. Hello, Elie.

Elie Mystal:

Oh, thank you. That's such a nice introduction. I feel pretty dominated, quite frankly, as we're just starting out, between COVID restrictions and homeschooling. Yeah, I think I have been overtopped by 2020.

Melissa Murray:

Well, 2020 will do that to you. She is uncompromising in what she has required of us. But she is slowly on her way out, I guess. Question is what's she going to do before she leaves? Because she's not going to go quietly.

Elie Mystal:

My five-year-old yesterday had a meltdown because he saw snow in some other part of the country. He was like, "It's never going to snow here again." I wanted to be like, "Of course it's going to snow here again." But global warming, who knows? I don't want to make promises I can't keep. But having fun about it, I think the last thing that we need is a real, just straight up northeaster blizzard type situation on the Northeast to just shut everything down. That's how 2020 goes out, I think. Like Shiva.

Melissa Murray:

So, Elie, I don't know if you listen to the show. If you heard our last episode, we did a deep dive with Rhode Island Senator Sheldon Whitehouse, who as you saw-

Leah Litman:

Sheldon "Whiteboard" Whitehouse.

Melissa Murray:

I'm sorry, let me get his street name right. Sheldon "Whiteboard" Whitehouse. And, as he did in the Barrett confirmation hearings, really tried to link the network of different interests that have really been aligned in creating a conservative legal movement that is not just one that is theoretical or abstract, but has definitely moved into the courts. So he laid all of those pieces out.

Melissa Murray:

You recently wrote a story for The Nation that talked about the judiciary and name-checked Senator Sheldon "Whiteboard" Whitehouse, and you talked about it in terms of what the Democrats have to do if they're going to counteract the transformation of the court. So can you tell us a little bit about your article?

Elie Mystal:

Yeah, so the impetus for that article is that right now, as far as we know, there's a bit of a leadership internessing squabble among the Democrats about who is going to lead the judiciary committee, regardless of whether the Democrats were in the majority or in the minority. Dianne Feinstein has been leading that committee. She has agreed to step aside from leadership position in that committee.

Elie Mystal:

The next person up by seniority, which is how Democrats do it, is Senator Dick Durbin. He is the Senate Minority Whip at this point. He's already part of the Democratic leadership team. He's been on the committee for 22 years. He's never been a committee chair, I found out in the course of writing this article, so he feels like it's his turn to sit in the big boy chair. That's not how the Republicans do it.

Leah Litman:

No.

Elie Mystal:

Republicans pick the person that they think is best situated to be the attack dog on the particular committee that they're up for. The person on the Democratic side behind Durbin in terms of seniority and who also, apocryphally speaking, wants the job, is Senator Whitehouse.

Elie Mystal:

So that's the backstory. The reason why I wrote the article is because the difference between a Senator Whitehouse judiciary committee and a Senator Durbin judiciary committee could not be more stark in my mind.

Elie Mystal:

Now I say this with no shade intended at Senator Dick Durbin, who's a great senator and a really high-quality questioner. I've watched most of the judiciary committee hearings ... Not most of the hearings. I watched most of this judicial nomination hearings that they have. He's a great questioner.

Elie Mystal:

But Dick Durbin is an entirely traditional Democrat, which means that he questions the nominees about their legal philosophy and their credentials for the job. Then the nominees say, "Yo, I'm a Republican,"

and the Democrats say, like, "Wow! You seem to be very Republican." They're like, "Yeah." Then they get confirmed. That's how the Democrats ... Right?

Elie Mystal:

Sheldon Whitehouse, as you explained on your last episodes, he explained for his damn self on your last episode, has a completely different approach to how to do this. That's because he understands that there's an entire conservative infrastructure and ecosystem that is designed to produce not just conservative judges, but conservative outcomes for conservative interests. He sees the whole board. So he doesn't get distracted by, like, "Oh, your queen seems to be moving all around the board." He understands where your rooks are, where your knights are, and how you're using the pawns.

Elie Mystal:

And so, his way of attacking the system is just completely different than what we have traditionally seen from Democrats. That's what my article was about.

Leah Litman:

So he's actually playing three-dimensional chess, unlike, say, some other people who the media hypothesizes as playing three-dimensional chess.

Elie Mystal:

He at least understands that there's a chess game going on. Most of the rest of the Democrats, it's not just this chess versus checkers thing. It's like they don't think it's a game.

Melissa Murray:

I actually did not take your article to necessarily be advocating in favor of a particular person, but rather to be advocating in favor of a particular strategy. The strategy that you outline is whoever it is, whether it's Durbin or Whitehouse or someone else, the strategy has to be an attack dog.

Elie Mystal:

Well, it's not just be an attack dog. It's be an attack dog against the system. Be an attack dog against the person holding the leash, not the dog. At some point, I go into my Cesar Dog Whisperer mode. There are no bad dogs. There are just bad owners.

Elie Mystal:

At some point, we need Leonard Leo, the former head of the Federalist Society. He needs to be the star in one of these confirmation hearings, not the dumb nominee that's doing his bidding. Leo is the person who is orchestrating all of this from behind the scenes. The Federalist Society needs to be put on trial in one of these hearings, the Heritage Foundation needs to be put on trial, the Judicial Crisis Network needs to be put on trial in one of these hearings, because that's how we get these nominees. They don't fall out of the sky.

Elie Mystal:

I think Whitehouse does a good job of this. There are others, I think you're right to point it out, Professor Murray, that do this as well.

Elie Mystal:

These people are not ... What's the word I'm looking for? They're not naturally occurring phenomena. It's not like you go to law school and just like, "Well, I happen to think that original jurisdiction means that ... " That's not how it works. These people are trained, are built to think a certain way, and to produce a certain kind of judicial outcome.

Elie Mystal:

It's that training, that entire infrastructure and ecosystem that needs to be, at first, just acknowledged by the liberals, then exposed by the liberals. Then finally fought and attacked by the liberals, because if we don't attack that training, if we don't attack that ecosystem, all we're going to do is get this endless flood of originalist judges making originalist decisions so that Republican interests can continue to benefit.

Leah Litman:

I'm also a big Cesar Milan fan, and I hope we can get one of his dogs on the show at one point. But I think the differences between Senator Whitehouse, or the approach exemplified by Senator Whitehouse and Senator Durbin, are even ... There are more besides just wanting to identify and challenge the system. It's also the attitude that they bring to how to deal with Republicans on judges.

Leah Litman:

Senator Durbin is very much of this old-school civility model, which is he assumes we are still living in a world in which both parties are just evaluating each other's nominees based on their credentials. And so, he's still voting for a lot of the nominees offered up by the Trump administration, even when they're challenged by pro-choice organizations and others, simply on the ground that, well, kind of like Senator Collins maintains, he's just evaluating them based on their qualifications, which, again, that's not the model that Republicans are operating under.

Leah Litman:

And so, to just unilaterally adopt that model when the other party is doing something different is another one of my concerns with making someone with that vision leader for the Democrats on this committee.

Elie Mystal:

The civility that you speak of, Professor Litman, is inherent in the problem that we've seen from Democrats on that committee up to this point, exemplified by Senator Dianne Feinstein hugging Lindsey Graham after the Amy Coney Barrett hearing, where he was responsible for shoving down a justice over the objection of a woman who had just died after an election to pick Donald Trump's replacement had already started. That was the hearing that Dianne Feinstein said, "I just think these are some of the best hearings that we've had ever conducted," and hugged the man.

Elie Mystal:

That has to stop. That just has to stop. We have to stop treating these people like they are the other sides of our coin and start understanding and attacking these people as the true kryptonite to democracy that the originalist judges and the conservative legal infrastructure represents.

Elie Mystal:

There's another thing, though, professors, that I think people like Whitehouse do extremely well and traditional Democrats do not, and that is, a, understanding what the word ethics is supposed to mean and be applying what that word is supposed to mean to not only the confirmation process, but the federal judiciary in general.

Elie Mystal:

So one of the stories that I wrote, this is back in my Above the Law days, that I was so angry didn't get more traction, was that during the arguments for Bostock, which is the case about gay rights, whether or not LGBTQ people will be included in the understanding of Title VII of the Civil Rights Act.

Elie Mystal:

Justice Alito and Brett Kavanaugh took a meeting with a person who filed an amicus brief in that case, some kind of pro-man-and-woman-marriage person, took a meeting with that person, posed for pictures with that person and his organization, and a priest, I think it was, while the court was still deliberating the Bostock case.

Elie Mystal:

Again, these people were not random. They had filed amici in the Bostock case. They took this meeting while they were still deliberating that case.

Elie Mystal:

That is ethically wrong. That's just wrong. And I shouldn't have to jump up and down and scream and set my hair on fire to get normal people to understand that this is unethical behavior, like point-and-click unethical behavior. Conservatives engage in it all the time.

Elie Mystal:

We can talk about the actual speech, but why the hell is Samuel Alito even giving a speech at a fundraising event for The Federalist Society while he is a sitting Supreme Court judge? Why did Brett Kavanaugh do the same thing a year earlier? Why does Clarence Thomas do it every freaking Tuesday? How is that okay?

Melissa Murray:

So let me paraphrase a little bit of what Elie is saying. So I think one response to the idea that Democrats need to give up the guise of civility and really start mixing it up is this is the Senate. It's supposed to be more courtly. Again, civility is the kind of coin of the realm.

Melissa Murray:

I think what you're saying is we abandoned civility a long time ago and what we really need is for someone to shine a light on all of the ways in which civility has gone out the window. The kind of ethics/civility that we have expected to guide our deliberations have also gone out the window, as you see these relationships that appear quite cozy coming to the fore. We need to understand how those work and we need the senators to actually surface those in the way they do their job. Is that a fair assessment, that paraphrase?

Elie Mystal:

That is. In researching that particular piece, I noticed that Whitehouse had made a big stink about the financial disclosure forms from the Supreme Court justices, pointing out how even their financial disclosures are less robust and complete than what we expect from random congressmen. How is it that somebody from the Third District on Long Island in New York has to make a more full financial disclosure than a lifetime appointed Supreme Court justice about the gifts that they've received, the travel, the trips that they've been paid for. How is that a thing? How is that okay?

Elie Mystal:

It goes to this deeper point that, again, I don't think Democrats are ready to fight this game. The Supreme Court is the only court in the land that sets its own ethics rules. Every other court has some kind of statutory ... That means congressionally passed requirement that, whether they follow it or not, they're supposed to.

Elie Mystal:

But the Supreme Court claims authority to set its own rules about what is and is not ethical for its own justices. The Supreme Court sets its own rules about when a justice has to or doesn't have to recuse. And that rule is whenever the justice feels or doesn't feel like it. That's not okay.

Elie Mystal:

Roberts and Elena Kagan will occasionally get on the television and talk some bull crap about how, oh, they're totally thinking of issuing formal ethics rules for the court, but they never do it. It never happens.

Elie Mystal:

So the thought that we are sitting here in this year, 2020, and we are coming out of the backend of the most corrupt executive office in the history of the United States, and I do not think that is close ... I mean you can tell me all you want about grant. I do not think the corruption that we've seen from Donald Trump is on a scale of anything we've ever seen before.

Elie Mystal:

How is that we have a congress that is willing to try, at least the Democratic side, that is willing to try to produce ethics rules to constrain both itself and the executive branch, but the Supreme Court still gets off scot-free? That's not okay. Again, there are senators who understand that and there are senators who are ...

Elie Mystal:

And this is the rug that ties the room together. Sheldon Whitehouse and a few other Democrats understand that the Supreme Court is a political body. They should be treated like a political body. They should be talked to like a political body. They should be understood as a political body.

Elie Mystal:

Most of the Democrats still hold tight to a legal fiction, because it's not true in practice, a complete legal fiction that the court is somehow apolitical, above politics, and removed from the political fray. That is the heart of the fight. Are we going to treat the court like the political institution that it has become, or

are we going to continue to pretend that it's not and let Republicans stuff our heads down the toilet and flush continually?

Leah Litman:

I do not want to go back to the days of flushies. But Senator Whitehouse gets it on several different levels, and repeatedly on our episode he mentioned that grievance was the tone of the movement. It's as if the President wanted to prove him correct, because, of course, at a recent speech, the President literally told the entire crowd-

Melissa Murray:

Well. It wasn't a speech. It was a full-on rally in the middle of a surging pandemic in Georgia. So it's not an ordinary speech. It's an actual rally.

Leah Litman:

At a rally-

Melissa Murray:

Proceed.

Leah Litman:

... in the midst of a pandemic surge, the President told the entire crowd-

Donald Trump:

Because we're all victims. Everybody here, all these thousands of people here tonight, they're all victims, every one of you.

Leah Litman:

I mean there it is. Again, Senator Whitehouse gets this. It was exciting for me to talk to someone who I could learn things from the courts about and who gave me some ideas for things to do. Again, nothing against Senator Durbin or other senators on the committee. I know Senator Durbin co-sponsored the DREAM Act before that was cool.

Leah Litman:

But the Democrats have been losing on courts for decades, and it feels like they should abandon this seniority model for giving out power, which has hurt them so often, including on the courts where they elevate nominees who are way older and not as into the progressive mix as Republicans do with their conservative nominees. So Democrats need to abandon that, need to recognize the game, and Senator "Whiteboard" Whitehouse, he's the game.

Elie Mystal:

Look, the Democrats have been losing for so long that I think they've forgotten why. I mean they think that losing is the natural state of things. They don't even know why they fail at this point.

Melissa Murray:

I'm going to step in and defend some of the Democratic senators because I feel like I'm closer to their demographic in terms of age, I feel like as a nod to those of us in the older generation. I think they have, and I'm not sure it's wrong, a sense of the court that, as you say Elie, is perhaps aspirational right now.

Melissa Murray:

I think it's very hard to give that up and to succumb to the knowledge, whether it is reality, and it feels like it is reality right now, that the courts have become more political. I think these are a group of people who, whether rightly or not, have been trained to think of the court as above the fray. Admitting that it's not, I think, worries them and worries that we will never recover the opportunity for the judiciary to be above the fray if we go down this path. I think that's hard.

Leah Litman:

Yeah.

Elie Mystal:

If I may be a little bit more cynical than that, I think there's also, I think, just a tactical failure. The Democrats are fundamentally running the same strategy that worked against Robert Bork. I hate to bring up Bork because I know that makes concern. "Well, you see, it all started with Bork." Like, shut up. I don't want to hear it.

Melissa Murray:

Yeah, that's actually really interesting. That was a moment where they played hardball and were successful at it. But the thing was the Republicans took the Bork strategy and made it even better.

Leah Litman:

Right.

Elie Mystal:

Right? And so, having lost Bork, the Republicans updated their playbook. I mean I could do a thing that basically explains The Federalist Society through the example of, well, we got screwed with Bork. What are we doing now? There is 30 or 40 years of Republican effort to make sure that Robert Bork never happens again to them.

Elie Mystal:

Then you could add, in addition, to make sure basically that David Souter never happens to them again either. Those two factors, you put that into a pot and you bake it for 40 years. What you end up with is Federalist Society soup, to be reductive about the whole thing.

Elie Mystal:

But the Democrats never updated their strategy from '87, because it worked in '87. Some of these older Democrats that you're talking about remember '87 and remember it working for Bork. Just like the Democrats are always sitting there waiting for white working-class people in the upper Midwest to come back to them to realize that actually ... They're always waiting for the downtrodden white person in Georgia to come back to the Democratic Party.

Elie Mystal:

They're also always waiting for Republicans to come back to the world where the fact that a potential nominee is racist, like Bork was, an extreme racist, is enough to make at least half of them say, "Oh, maybe we shouldn't have that person on the Supreme Court." They're waiting for that to happen, and it ain't never going to happen again. That ship has sailed. That is gone.

Elie Mystal:

That's a big reason why I advocate for an aggressive rethink, reimagination of our judicial nominee strategy, because the Republicans have been doing that since they lost Bork, and the Democrats have just never caught up to the Republican update.

Leah Litman:

Now in order to get the Democrats back, or maybe just teach them a lesson about how they treated Robert Bork, Republicans are now trying to overturn the results of the 2020 election. So we wanted to find some levity in the insanity that is the suits to overturn the election by doing a selection of dramatic readings/commentary/clips/reenactments from some of our favorite moments of these Trump legal filings.

Melissa Murray:

But before we do that, we should talk a little bit about some of the memes. So if you've been following the election-related litigation at home, you'll know that there has been no shortage of memeable moments going on here. So the memes really got started when Sidney Powell, who was but is no longer an official lawyer for the Trump campaign, but when she was, she vowed on air, on the Lou Dobbs show-

Sidney Powell:

I'm going to release the kraken.

Melissa Murray:

... to overturn the election. And I, someone who watched Clash of the Titans religiously in my childhood, could not help but be intrigued by the prospect of the kraken actually being unleashed.

Leah Litman:

So the kraken is a mythical Scandinavian sea monster that springs up out of the ocean and devours its enemies, signaling that perhaps we are not the only ones who know how to make analogies to classical characters.

Melissa Murray:

I appreciated this mythological detour. I was here for it.

Elie Mystal:

You know what the Trump team is doing here, though, right? I mean they're basically trying to hold up a mirror so they can figure out where she is so they can get her. That's how they're trying to get rid of her.

Leah Litman:

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It turns out she's a hydra, though, because she will not stop filing these lawsuits.

Melissa Murray:

You guys, I love this big Percy Jackson energy from you all. This is amazing. The memes continued when still Trump campaign advisor Jenna Ellis said-

Jenna Ellis:

This is an elite strike force team that is working on behalf of the President and the campaign to make sure that our Constitution is protected.

Melissa Murray:

Who is the strike force? Leah, can you give us a rundown of the strike force members?

Leah Litman:

It was Sidney Powell, who, of course, in addition to all of the insanity we'll cover in a second, is a lawyer to Michael Flynn. It is Jenna Ellis who had previously said constitutional law was one of her worst courses in law school. It also includes Lin Wood, who is the attorney for Kyle Rittenhouse, the person who shot protesters at the racial justice protest this past summer. So that's the team, or at least a significant portion of it.

Elie Mystal:

Aren't you forgetting the team captain?

Leah Litman:

Which one?

Elie Mystal:

I think he's most famous for his role in the Borat movie?

Leah Litman:

My man, Rudy Giuliani. Now that's a perfect transition to the start of these hearings, because we will get to the filings themselves, because they're already insane. But Rudy just gave us a lot of material to work with from the arguments where he actually appeared. So in the oral argument-

Melissa Murray:

That's a \$20,000 a day lawyer for hire. \$20,000 is the billing rate.

Leah Litman:

So in the oral argument in the Pennsylvania District Court litigation in which Rudy Giuliani appeared, he failed to appreciate what strict scrutiny is.

Speker 8:

What standard of reviews should I apply in this case?

Rudy Giuliani:

On a motion to dismiss? Well, I mean I think the normal one.

Speker 8:

Well, let me ask you this, are you arguing then that strict scrutiny should apply here?

Rudy Giuliani:

No, that normal scrutiny should apply with-

Melissa Murray:

This was like a dagger to the heart.

Leah Litman:

I mean I took it as both a personal offense, but also I think a sign that maybe we're doing well if he's not listening to the podcast. He's maybe not our intended audience.

Elie Mystal:

There are two things going on with Rudy. One, and I say this as a Harvard grad, there's a bit of a there but for the grace of God go I, because when you go to certain elite law schools, one of the things that you're supposed to learn is that you ain't got no business in an actual courtroom. You don't want that smoke. No, maybe if you take a clinic and whatever. But most of us who end up going into a big law type situation, I went to Debevoise of London, like I shouldn't be within 30 yards of a court.

Melissa Murray:

Okay. That is a different thing, because I'm just going to say Rudy Giuliani is a graduate of NYU Law School. I currently teach at NYU Law School. I will literally bet \$100 if you ask my com law students, they could tell you the difference between strict scrutiny, rational basis, and the elusive normal scrutiny category that does not exist.

Elie Mystal:

There's a part that's there before. Now obviously he's screwing up in ways that literally most 1Ls would not. I can't explain it to a non-lawyer because it's so basic, but it's like imagine being a tort lawyer and not being able to define tort. It's a basic thing that you're supposed to know before you open your mouth as a lawyer of any description. His inability to ... Normal scrutiny is just...

Leah Litman:

This is like you walk up to a stoplight and you expect the stoplight to be red or green, and all of a sudden it starts spewing zebras and unicorns. That's how Rudy flubbed this. And that, of course, wasn't the only moment from this argument. There was also when he shouted-

Rudy Giuliani:

So this the real controversy. This is a case and it's a controversy. I don't know. Since I went to law school, that's always been the simple test for whether you have standing or not.

Leah Litman:

Jenna Ellis, campaign advisor, thought those of us mocking the hearings, as I will confess I was, were totally off. She tweeted out, "You media morons are all laughing at @RudyGiuliani, but he appears to have already established a great rapport with the judge, who is currently offering recommendations on martini bars for Team Trump in open court," maybe giving them a place to drown their sorrows, but-

Elie Mystal:

The grift is real. The grift is real.

Melissa Murray:

As many commentators noted, there were a string of legal defeats in the courts for the Trump campaign. Then things escalated because the campaign took their show on the road, holding hearings before Republican-controlled state legislatures. In one very memeable hearing in Michigan, there was this exchange with Rudy's key witness, Melissa Carone, who was reportedly an IT contractor for Dominion Contracting System, and that's the system that operates the voting machines that were used in the Michigan election. So here's a little clip of Melissa.

Melissa Carone:

The poll book is completely off. Completely off.

Speaker 11:

Off by 30,000?

Melissa Carone:

I'd say that poll book is off by over 100,000.

Speaker 11:

[crosstalk 00:29:28].

Melissa Carone:

That poll book ... Why don't you look at the registered voters on there?

Speaker 11:

So my question then is if the-

Melissa Carone:

That's how many ... Wait, what about the turnout rate? 120%?

Speaker 11:

Let's let Representative Johnson ask his question.

Melissa Carone:

My question is we're not seeing the poll book off by 30,000 votes. That's not the case.

Speaker 11:

What'd you guys do? Take it and do something crazy to it?

Leah Litman:

We should note, Kristen Johnston from 3rd Rock from the Sun has already claimed playing her in a movie when that happens.

Melissa Murray:

She will have to fight Cecily Strong, who had a very, very, no pun intended, strong presentation on Saturday Night Live last weekend.

Elie Mystal:

Yeah. I mean everybody was saying Kate McKinnon was going to do it, but if you had been watching SNL, Cecily Strong already had that character.

Leah Litman:

Yes. Of course there were other hearings as well. And so, for this particular excerpt from the Michigan hearing, I think we're actually going to provide you with a reenactment. Now Elie is our guest. You actually claimed playing the Trump lawyer, right?

Elie Mystal:

Yes.

Melissa Murray:

Okay. So-

Elie Mystal:

I want to play Mark Hearne because Mark Hearne is nicknamed Thor. When I say he's nicknamed Thor, I mean this dude writes Thor in his ... Like signs his name Thor Hearne. On his Martindale-Hubbell, Google it, kids, it says Mark "Thor" Hearne. So, all right, let's just know that.

Melissa Murray:

I'll be Stephens.

Leah Litman:

You want to be judge? Okay.

Melissa Murray:

I'll be Stephens.

Melissa Murray:

All right, cool.

Melissa Murray:

So I want to make sure I understand you. The affiant is not the person who had knowledge of this. Is that correct?

Elie Mystal:

The affiant had a direct firsthand knowledge of the communication with the elections inspector and the document they provided them.

Melissa Murray:

Okay, which is generally known as hearsay, right?

Elie Mystal:

I would have not thinkest thou as hearsay, your honor. That's firsthand personal knowledge by the affiant of what she physically observed. We included an exhibit which is a physical copy of what she was provided by some random ... I mean that she was provided for.

Melissa Murray:

So I'm just trying to understand why this isn't hearsay.

Elie Mystal:

Well, it's ... I ...

Melissa Murray:

Okay. I absolutely understand what the affiant says she heard someone say to her, but the truth of the matter that you're going for was that there was an illegal act occurring. Because other than that, I don't know what the relevancy is.

Elie Mystal:

Latest, I would say, your honor, in terms of the hearsay point, this is a firsthand factual statement made by Miss Carone, that she made the statement based on her own firsthand physical evidence and knowledge that was given to her.

Melissa Murray:

She said, "I heard somebody else say something." That's what she said. Tell me why that's not hearsay. Come on now.

Elie Mystal:

It is a firsthand statement of her, I would say, physical-

Melissa Murray:

It's an out of court statement offered for the truth of the matter asserted, right?

Elie Mystal:

Look, that's a rabbit who's flying a spaceship.

Melissa Murray:

Okay, that was [crosstalk 00:32:42].

Leah Litman:

That was creative license from Thor. But-

Melissa Murray:

But it was also from Stephens an actual factual definition of hearsay.

Leah Litman:

Which of course Thor was offering.

Melissa Murray:

An out-of-court statement offered for the truth of the matter asserted.

Elie Mystal:

The hearsay thing always gets me, because I have these bad flashbacks from the bar exam where, for whatever reason, I could not make my brain remember the exceptions to hearsay. And so, I kept getting the hearsay question wrong because I kept forgetting that a statement against interest or ... All I could remember was dying declaration.

Elie Mystal:

So unless the bar exam's like, "But he said this while dying," I was going to get the question wrong. And it bugged me. So I still don't know all the ... Well, there are 13. I still don't know all of them, but this is an important part of evidence. It's seared into my brain.

Leah Litman:

Those are some of the hearings, but maybe now we can get to some of the filings themselves. So we're going to alternate kind of dramatic readings/interspersed commentary, so bear with us. But before we do that, I just briefly wanted to note some interesting citations that the elite legal strike team-

Melissa Murray:

Strike force. Strike force.

Leah Litman:

Strike force. Elite strike force team was deploying in their briefs to back up the idea that candidates have standing to challenge election laws, and that is they cite *Drake vs. Obama* for the proposition that competitive standing exists based on the potential loss of an election. There are literally a million cases you could cite for that proposition. They chose the birther one because of course.

Leah Litman:

All right. So now we have this bit from one of the Trump campaign's briefs. This is in the Pennsylvania case seeking a temporary restraining order preventing certification of the state's election results. So this was in the reply brief. So, Elie, do you want to read this little snippet?

Elie Mystal:

A short stay does not risk the December 8th safe harbor date. Come on, guys. Alternatively, if the court were not to grant leave now, the case is not moot, because it could revoke certification of the order, of the Barack Obama order, to certify Trump as the winner and require the allocation of Pennsylvania's electors to Trump before December 8th. See?

Melissa Murray:

Leah, why is that not going to happen?

Leah Litman:

So, one, is this is essentially them conceding that their temporary restraining order isn't necessary, given that the court could award relief later. Of course, you need to demonstrate why a TRO is necessary in order to get one. So this is them losing their case in the brief even before the argument.

Leah Litman:

Another goodie from that brief is as follows. Serious lawyer voice. "Finally, the public interest is served by a short stay, which harms no-one," that's hyphenated, no-one, "while this court determines whether plaintiffs have made cognizable claims." This is them literally saying that blocking certifying the will of millions of Pennsylvanians harms no one, which is just insane in its own right.

Elie Mystal:

Well, but it's mainly black Pennsylvanians, though. So are they people?

Leah Litman:

Our listeners can't see this. Elie is raising his hands as if to suggest the answer to this is somehow unknown.

Elie Mystal:

I mean if I just go from an originalist understanding of the ... Sorry, sorry. I'm not going to do that. As Professor Murray said, this is the holiday season.

Leah Litman:

This is the holidays. So the next holiday gift-

Melissa Murray:

Season of giving, of giving.

Leah Litman:

[crosstalk 00:36:42].

Elie Mystal:

You get personhood, you get personhood, you ...

Leah Litman:

The next holiday gift for our listeners is from the amended motion for expedited review in the Third Circuit. The fifth paragraph of which reads: "However, appellants," and this would be the Trump campaign, "do not believe this is a 'case' or controversy." This is an interesting concession to make, after Rudy was loudly proclaiming in the district court that this is in fact a case or controversy, and also because if it's not a case or controversy, you lose and you don't have standing.

Elie Mystal:

There are people, and by people I mean Republicans, who don't seem to understand that the courts are not there to give advisory opinions. They're not there to help you out. They can only deal with live issues. And so, as you've pointed out, there've been a couple of times where the Trump legal team has argued that its issue is not a live one, which is just ... The level of insanity, the level of ... It goes beyond bad lawyering. Their propositions are insane.

Elie Mystal:

That's why they keep getting smacked down so hard, in some cases by judges Trump has appointed, by judges that I could easily spend the rest of my life criticizing and pointing out their bad faith legal reasoning and legal arguments. Even these Trump judges are having to smack down some of these filings, because they're not law.

Melissa Murray:

So these are obviously not playing well in legal courts, and maybe that's the point. Maybe they're not pitched at a judicial audience, or not pitched at a court, but rather they're being pitched at the court of public opinion. That, I think, is a different question. Are they successful in convincing the Trump base that there is a reason to be aggrieved here? Going back to the grievance.

Elie Mystal:

Yes, but I don't think they needed it. I think the Trump base was going to feel aggrieved and like Trump really won it. They were going to feel that way regardless. As I keep saying-

Melissa Murray:

So there was no need to wreck your professional reputation to do it.

Elie Mystal:

Right. You were already going to be able to convince them that the election is rigged, that Trump is still the real president, that Obama's from Kenya, that you were already going to be able to do all the things. You didn't need to drag this out through 50-odd lawsuits and embarrass yourselves in front of the court. Really, what they have accomplished more, I think, than winning their base, which they were going to win anyway, is to force the courts to, in the most strenuous terms, say that Biden won fairly. Have you guys seen A Few Good Men?

Melissa Murray:

Oh, yeah. Yes, yeah.

Elie Mystal:

There's that bit where Demi Moore says, "I strenuously object," and the judge says, "The man's an expert." It's like by strenuously objecting, all they're doing is making the courts have to pound the table and be like, "Biden won the damn election. Shut up." That didn't actually have to happen.

Elie Mystal:

So I think in the history, this is backfiring. In real time and getting MAGA people willing to shoot other people and kidnap people, sure, it's working. Great, good job. They were going to do that anyway.

Leah Litman:

So speaking of not really knowing what they are doing, like admitting this isn't a case or controversy, they attempted to file one of their lawsuits challenging Michigan's rules actually in the Court of Federal Claims in DC. The Court of Federal Claims in DC, as Elie's reaction indicates, is not the appropriate place to file these lawsuits because that court only has jurisdiction over suits against the United States.

Elie Mystal:

Can I just say I didn't know this until I saw your notes here? I didn't know they did this.

Leah Litman:

While, metaphorically speaking, this suit is, in a lot of ways, against the United States democracy, that still doesn't make it proper to file in the Court of Federal Claims. Later, they attempted to say this was the fault of PACER, the electronic filing system for the federal courts, that PACER made them do it.

Leah Litman:

But identifying the incorrect court is not they only that they get wrong. On geography, they also make a litany of geographical errors in these lawsuits. They identified one county in Michigan that allegedly voted for Biden overwhelmingly that is not in fact a county in Michigan. They included a bunch of appendices of, again, counties or townships that they thought went too far for Biden to be real. All of those counties were not in Michigan. They were in Minnesota.

Leah Litman:

In their suit in Wisconsin, they demanded that the judge order immediate production of the voting processes at the TCF Center. The TCF Center is in Detroit. From their Arizona filing, they argued that the election law rules were not in compliance with the manner prescribed by the Georgia legislature. They're not so great at maps, copy/paste, PACER, or other kind of-

Melissa Murray:

I loved when they blamed this on PACER, because it reminded me of Harry Potter when the Malfoys tried to blame everything on Dobby the house-elf.

Melissa Murray:

Now PACER is a free service. Someone gave PACER clothes and now PACER is free. That just happened. So I felt it was like all full circle.

Melissa Murray:

Anyway ...

Elie Mystal:

No, this is the equivalent of showing up to the county water commissioner and being like, "I'd like to report a fire. "Well, you're the water commissioner, aren't you?" They're like, "You really don't understand what's happening, do you?" The PACER thing, that's just whoo.

Leah Litman:

So to Elie's point, they recognized, after many people noted, that this was inappropriately filed in the Court of Federal Claims, and they made a motion to withdraw the complaint. In that motion to withdraw that complaint, it was noted that plaintiffs represented by Thor Hearne and True North Law, LLC, filed the complaint, blah, blah, blah. As a result of an electronic error in the PACER electronic filing system, this matter was also filed in this court.

Melissa Murray:

Whoopsies! Thor, too many strike forces going on, just pew, pew, pew, pew, pew all over the place.

Leah Litman:

Again, respectively submitted, signed Mark F. (Thor) Hearne II. I didn't realize he signed it that way. Elie, you're exactly right. Wow!

Elie Mystal:

You don't have to parody these people. They just do it themselves.

Melissa Murray:

I want a Norse mythology nickname, like Loki.

Leah Litman:

You don't want to be Loki.

Melissa Murray:

What's a Loki? That's the only other one I know. Are there others? That's the only-

Leah Litman:

Listeners, feel free to submit a recommendation for Melissa's Norse-

Melissa Murray:

Norse mythology nickname.

Leah Litman:

Nickname, right.

Melissa Murray:

I don't want to be Loki, but it is the only other one I know offhand.

Elie Mystal:

I called my first car [Whoadin] for a time.

Melissa Murray:

Well, that's like ... Whoadin. Whoadin. I like that.

Elie Mystal:

It was a powder blue Cadillac.

Melissa Murray:

Of course it was.

Elie Mystal:

Yeah. From like the ... I found it at a gas station.

Melissa Murray:

A DeVille. A DeVille. I like it.

Elie Mystal:

It was awesome.

Leah Litman:

So few other places they tried to file lawsuits, as indicated in the papers that they filed, were the district court, that's district with two Cs, of Georgia and the District, or that's ... District, I don't know. D-I-S-T-R-I-C-T Court, were-

Melissa Murray:

So to be fair, people can make mistakes. I think one of things that we try to train in our students and to have them understand is part of professionalism, as a legal professional, is spell-checking your work and making sure that these obviously avoidable errors are not present in your legal filings, particularly when you are representing the President of the United States.

Leah Litman:

Yeah. It was just the frequency of these errors, which was really quite striking. Of course, filings will inevitably contain errors, but when the filing has at least 10 errors on each page, I think, is notable.

Elie Mystal:

I think there's also just the lack of humility. People make errors all the time, and they are mortified. They feel bad about it. They apologize for errors and mistakes. These people, there's a temperamental thing going on here as well. I mean I don't want to get philosophical about it, but it's like they honestly think that the words do not matter. The words don't matter, the law doesn't matter, the proper procedures don't matter.

Elie Mystal:

The only things that matters is that their hero must see them on the fields of battle. It's really reductant. It's really sickening is the word I was going for.

Melissa Murray:

That's really just trivia, administrivia, in some degree. So those were technical errors. There were actually some real substantive claims that were made here that I think verge into the territory of conspiracy theory. So, Leah, let's highlight some of those.

Leah Litman:

Okay. So, again, in my serious lawyer voice. "The fraud was executed by many means, but the most fundamentally troubling, insidious, and egregious in the systemic adaptation of old-fashioned "ballot-stuffing". It has now been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose."

Leah Litman:

This is like the Hugo Chavez conspiracy that Sidney Powell had spun out, where she was alleging that Hugo Chavez from the dead had somehow become reincarnated as Brian Kemp in Georgia, and had used that in order to turn the election to Joe Biden. These allegations, of course, were repeated in complaints in Michigan and elsewhere.

Melissa Murray:

And the especially egregious conduct that was called out in these sections of the complaints typically were associated with counties where there were large representation of minority voters.

Leah Litman:

Yes, that was also a staple in all of these complaints.

Elie Mystal:

The right Phil Hartman character for this is Unfrozen Caveman Lawyer. I mean this is that part of their shtick. "I'm just a caveman. I was unfrozen by your scientists. I don't understand your voting machines and your Dominion software. I just know that Donald Trump won this election." That's where we are in this section, right?

Leah Litman:

Yes, except they tried to give that caveman slightly more international spy vibes. So they would include these shagalicious, baby. They would include these affidavits from "a former electronic intelligence analyst under 305th military intelligence" and insist that these exhibits had to be sealed because if we disclose their identities, these individuals would be subject to harm because they have worked as spies

across the globe. So these were the individuals that they were claiming knew that all of this voting software was rigged for Joe Biden.

Elie Mystal:

You know what you haven't read, Professor Litman, because there's nothing to read, from this bucket? Evidence. You haven't read one ... Not just one pleading of evidence. You haven't read one theory of where the evidence might be through discovery. They haven't even outlined a plan. Not just that they don't have evidence. They have not outlined a plan to get the evidence that they allege exists.

Leah Litman:

Well, I'm so glad you brought that up, because actually in their filings, they also included some declarations and affidavits, and those were pretty good, too. So in one, the declaration of redacted, the next sentence of which reads, "I, Seth [Kessel] make the following declaration." They literally redact the name of the person in the title of the declaration and then the next sentence has his name. But here's Seth Kessel's super secret evidence that proves Democrats didn't actually win Georgia. Are you ready?

Elie Mystal:

I'm ready.

Leah Litman:

And I quote: "Georgia has not been won by a Democratic presidential candidate since 1992. This strong performance casts substantial doubt on improvement for Joe Biden." There you have it. Because Democrats lost the state before, they did not win it this time. The suspicious evidence is more people voted for Democrats.

Elie Mystal:

It defies explanation, right?

Leah Litman:

Yeah. They also have affidavits that were submitted by not professional spies, but volunteer spies, who in their declarations say, "I answered the call from Lin Wood, which he put out on Twitter, in order to-

Melissa Murray:

As all good intelligence operators do.

Leah Litman:

"Which he put out on Twitter to surveil the Georgia ballot counting." This individual's affidavit is several pages long and includes the following very suspicious allegation. "There's more than 50 dumpsters here and it, the trash truck, only picked one. This would indicate a special pickup."

Leah Litman:

So this person is like, "I was just like watching the trash pickup around the ballot center," and they thought this was really suspicious. Then they detail how their friends and them were following the

trucks. It's truly nuts. But perhaps the best part of this declaration is that it is dated November 11th, 2020. Of course, it concerns events that happened on November 30th. Very suspicious.

Elie Mystal:

Came back from the future to see the trash pickup. Can you imagine if this is what we had against like the tobacco industry?

Melissa Murray:

This is literally like I got in the DeLorean, a bolt of lightning hit a clock tower. I was able to record this.

Elie Mystal:

My client has never been dead before. I rest my case, your honor. Like [inaudible 00:52:19].

Leah Litman:

I mean the ending of this declaration reads like a bad spy novel. So it says, "After all that, we settled in for a cold, snowy, uneventful night. I left at 5:40 AM and have not returned." That's their evidence. These are the declarations, and they're truly next level.

Melissa Murray:

I mean spies like us, right?

Leah Litman:

Right.

Elie Mystal:

Rule 11, man. I've written an article about this in The Nation about how the only way to stop these people is to punish this people. And we have a rule to punish these people. It's called Rule 11. We have sanctions that are supposed to be imposed when lawyers make a completely off-the-wall arguments that are not corroborable, that couldn't possibly hold up.

Elie Mystal:

We have a mechanism to stop these people. Even though the courts have the authority to impose Rule 11 sanctions on their own, they don't like to do that, especially, I imagine, in politically charged cases such as this. They won't want to be seen as piling on Trump lawyers. But that's what needs to happen. That's the way to make them stop.

Melissa Murray:

It's important, I think, to say for the listeners here that we've been recounting this and we've been making fun of it, because some of it actually is so ludicrous, it's funny. But it's also deadly serious. I mean this is about a set of court cases that were lodged in courts throughout the country. If judges are taking up these emergency litigations, they're not taking up other things.

Melissa Murray:

There've already been serious access to courts issues because of the pandemic. This exacerbates the limitations on access to the courts that we've currently experienced. Then there's just the general casting doubt on the outcome of an election that by all accounts was appropriately conducted.

Melissa Murray:

And so, just to be very clear here, we're not just reenacting this because we want to be funny and we want to poke fun at this, this was a real problem. The fact that this happened was a real problem. No one is saying that if there were legitimate claims that needed to be litigated, that someone on the losing end of elections should not pursue that. But no one could produce any evidence that that kind of malfeasance had actually occurred.

Elie Mystal:

Part of the problem also, Professor Murray, is that there are two other things. One, now going forward, people with legitimate issues about elections will be laughed at, will be assumed to be part of this kind of conspiracy theory cabal, even if they have legitimate issues.

Elie Mystal:

Now that's unlikely to happen in a presidential election in any legitimate way, but at a state-level election, at a congressional-level election, a state senate-level election where sometimes these races are decided by a matter of hundreds or even tens of votes, there could be legitimate issues about was this ballot counted fairly or unfairly, whatever? Now all of those cases will be painted with the brush of this one for 50 lunacy, which is bad.

Elie Mystal:

Then, obviously, your first point is perhaps the most dangerous, that they are trying to cast doubt on this election in part so they can cast out on the next one. The reason why we're able to take this lightheartedly and make fun of them is that they've lost. Joe Biden's going to be the president. This is no longer a serious threat. They have lost this battle, I believe. But the next one?

Elie Mystal:

What their efforts have shown is that if we are ever in another 2000 situation, where it is legitimately close and it does legitimately come down to one state, we will never get to know who the president is. We will never get to know who actually won.

Leah Litman:

What you just said reminds me of one good take, I see it in one bad take. The good take is Alexandra Petri's Washington Post column, the title of which is Don't worry, the people trying to steal the election are really bad at it. The bad take is the Nate Silver one, which is he was saying, "Look, all of you liberals were freaking out that the Supreme Court was going to throw the election to Donald Trump and you were totally wrong."

Leah Litman:

But what he misses is that the margin of victory here was so large, there was nothing for the court to do. Those predictions came before the election actually happened and we saw any of the numbers. There's

nothing that we've seen that might suggest that wouldn't happen in an election that you were imagining, Elie, where the margin of victory is not coup-proof.

Elie Mystal:

Yeah.

Melissa Murray:

So we should talk a little bit about the Supreme Court, because ultimately President/candidate Trump insinuated repeatedly during this election cycle that the Supreme Court was in the bag for him in some way. We saw some activity at the Supreme Court just over the course of the last week. So, Leah, do you want to highlight some of the activity there?

Leah Litman:

Sure. So not to be outdone with all of this insanity, Texas filed a truly next-level insane suit in the Supreme Court against Georgia, Pennsylvania, Michigan, and Wisconsin because those states had changed their voting laws in response to the pandemic in ways that the Texas attorney general did not like.

Melissa Murray:

It was reprise of that Bush v. Gore argument, that concurrence argument, that we've highlighted in other episodes, this idea that unless a change is made through the state legislature, it is invalid and violates the constitution.

Leah Litman:

Right. Of course, in all of those other lawsuits, they would buy candidates or people in the state, this is now another state, which is part of what makes it so insane. Some choice excerpts from that filing are: "The probability of former Vice-President Biden winning the popular vote in the four defendant states independently, given President Trump's early lead in those states, is less than one in a quadrillion."

Leah Litman:

That was verbatim from the expert affidavit they included. That expert affidavit is essentially the same method that we mocked from the Powell lawsuit, namely they didn't think Biden could win more votes than Hilary Clinton did from 2016. This is their lawsuit.

Leah Litman:

This is insane for any number of reasons. The theory itself is insane. As we've talked about, their evidence for it is insane. But they filed this-

Elie Mystal:

Standing.

Leah Litman:

Exactly. Why did they think one state can sue another state because they're not complying with their state legislative rules for the election? This theory has no stopping point. Could Texas sue the governor of Michigan for his mask mandate because they think she's exceeding her statutorily delegated power?

Leah Litman:

The suits in the Supreme Court's original jurisdiction are only supposed to be there when there is no other possible vehicle for these issues to arise. But all the issues that Texas is raising haven't risen in all these other insane lawsuits that we've been covering. The President, on Twitter, said, "We will be intervening in the Texas, plus many other states, case. This is the big one. Our country needs a victory."

Leah Litman:

I don't know if he meant the solicitor general or the campaign or some combination. Well, unfortunately, we don't yet have that filing, so we can't read from it.

Elie Mystal:

Also, if they intervene, don't they automatically lose original jurisdiction?

Melissa Murray:

Yes. All of this is right. This suit is next-level off the wall, but maybe it's on the wall in this way. So yesterday, one of the commentators that I was watching yesterday, when this was filed, noted that Ken Paxton, who is the Texas attorney general responsible for filing this suit, has been indicted on securities fraud and has been accused by many of his aides of bribery and abusive office and other potentially criminal offenses.

Melissa Murray:

So my question is, and this commentator surfaced this issue, maybe this is just a bid for a pardon as opposed to something that's actually supposed to have legal legs.

Leah Litman:

I mean part of the evidence for how insane this lawsuit is, is the Texas solicitor general, who's a lawyer in charge of representing Texas in the Supreme Court, didn't actually sign his name to this lawsuit, but was willing to sign his name to the lawsuit seeking to invalidate the entire Affordable Care Act, also an insane legal theory that was still orders in magnitude less insane than this one.

Elie Mystal:

I think the other thing that's going on here, this week, Trump tweeted out a meme of Amy Coney Barrett with laser beams shooting out of her eyes somehow.

Melissa Murray:

Right.

Elie Mystal:

I think that was supposed to be suggesting that ... And the theory that Republicans have, if you talk to them, is that there are Republicans who believe that the conservative judges on the Supreme Court,

especially the ones handpicked by Trump, are actually waiting to save him and just need the thinnest excuse to be able to parachute in and save Trump and re-elect him to a second term in office. They think that Amy Coney Barrett, with the laser beams shooting out of her eyes, this is what she's been waiting for. As if.

Elie Mystal:

I will say anything horrible about Amy Coney Barrett you want me to, I will say anything horrible about Brett Kavanaugh that you want me to, but these people have 30 to 40 years of career ahead of them. They would scuttle it all to give Trump this temporary victory when they probably don't even got five votes because they probably don't got Gorsuch for any of this crap, that they would scuttle their entire reputation-

Melissa Murray:

Risk it all. Risk it all.

Elie Mystal:

... for Donald Trump, who they will outlive in a biological sense, who they will outlive, is just insane. It's insane-making, it's an insane theory. It's not going to happen.

Melissa Murray:

Well, we saw at least a glimmer of what the court might be inclined to do on Tuesday, when the court refused a request from Pennsylvania Republicans to overturn Biden's victory in the state. That was seen by many as a pretty clear rebuke to the Trump campaign in a major forum where he has very clearly pinned many of his hopes.

Elie Mystal:

It was a one-sentence denial. There were no dissents that were included in the ... It's just Roberts saying, "Get out of my face." Again, John Roberts hates Black people voting. Let's be clear. John Roberts hates Black people voting. It's not his preferred method of democracy. Even he is just like, "Get out of my face with this." Sorry, that last bit might've been a bit of an opinion. Sorry, I didn't.

Leah Litman:

I was about to say maybe we end on that note?

Elie Mystal:

Can I do Judge Brann?

Leah Litman:

Oh, yeah, yeah, yeah. Of course.

Melissa Murray:

Yeah, yeah. Okay. Okay.

Leah Litman:

Bring us home with Judge Brann.

Elie Mystal:

So this is the introduction to the order in Pennsylvania throwing out the Boockvar lawsuit. It's two paragraphs and it's one of the best explanations of how stupid this all is and how little legal validity any of this has. So I will do my dramatic reading of Judge Brann as if Lewis Black was doing it.

Elie Mystal:

"In this action, the Trump campaign and the individual plaintiffs, collectively the plaintiffs, seek to discard millions of votes legally cast by Pennsylvanians from all corners, from Greene County to Pike County, and everywhere in between. In other words, the plaintiffs ask this court to disenfranchise almost seven million voters.

Elie Mystal:

This Court has been unable to find any case in which a plaintiff has sought such a drastic remedy in the contest of an election, in terms of the sheer volume of votes asked to be invalidated. One might expect that when seeking such a startling outcome, a plaintiff would come formidably armed with compelling legal arguments and factual proof of rampant corruption, such that this court would have no option but to regrettably grant the proposed injunctive relief despite the impact it would have on such a large group of citizens.

Elie Mystal:

That has not happened. Instead, this Court has been presented with strained legal arguments without merit and speculative accusations, upheld upheld in the operative complaint and unsupported by the evidence. In the United States of America, this cannot justify the disenfranchisement of a single voter, let alone all the voters of its sixth most populous state. Our people, our laws, and our institutions demand more.

Elie Mystal:

At bottom, the plaintiffs have failed to meet their burden to state a claim upon which relief may be granted. Therefore, I grant defendants' motions and dismiss the plaintiffs' action with prejudice."

Leah Litman:

I love that song. I was just about to say I feel like this has the makings of the next Hamilton musical, like Judge Brann to music. I think this could be good. Anyway, just my two cents.

Elie Mystal:

That says all the things about all 50 of these lawsuits.

Leah Litman:

That's probably all we have time for. Thank you so much to our wonderful guest, Elie Mystal, who is our first repeat guest. We hope to have him back soon.

Leah Litman:

This transcript was exported on Dec 18, 2020 - view latest version [here](#).

If you would like to hear more, Elie is going to be participating in a wonderful event at the American Constitution Society, it's running, where he's going to be moderating a book talk with Andrew Weissmann about his book *Where the Law Ends* on the Mueller investigation on January 26th from 4:00 to 6:00, Eastern. So stay tuned for more details from the American Constitution Society for that event.

Leah Litman:

Thank you all for listening. Thank you to our producer, Melody Rowell. Thanks to Eddie Cooper for making our music. If you'd like to support the show, please feel free to get your Normal Scrutiny merchandise at our website, strictscrutinypodcast.com, or become a Glow subscriber at glow.fm/strictscrutiny. Thanks, all.

Elie Mystal:

Thank you for having me and thank you for my coffee mugs.

Leah Litman:

Of course.