Speaker 1:

Mr. Chief justice, may it please the Court. It's an old joke, but when a man argues against two beautiful ladies like this, they're going to have the last word.

Speaker 2:

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."

Kate Shaw:

Welcome back to Strict Scrutiny, your podcast about the Supreme Court, and the legal culture that surrounds it. This is another lightning fast response episode, so we reserve the right to refine our takes as they mature, like fine wines. We're coming to you just a couple of hours after the court issued four big opinions. But first, we're your hosts, I'm Kate Shaw.

Leah Litman:

And I'm Leah Litman.

Kate Shaw:

So, as I said, we got four opinions today, which means we have eight to go before the end of the term, so we're going to try to take through all of them. So, maybe, Leah, let's take them in the order in which they came down this morning.

Leah Litman:

Sure. So, the first opinion is Lange v. California. And for those of you who don't know, when the court releases opinions, it releases opinions in the reverse order of seniority of the justices. So, it will first release any opinions by the most junior justices, and then release subsequent opinions that are written by more senior justices. So, the first opinion we got is Lange v. California, this was written by Justice Kagan.

Leah Litman:

The facts of the case were that Mr. Lange drove by a police officer while he was playing loud music and honking his horn. The officer followed him and later turned on his lights close to Mr. Lange's home, Mr. Lange, however, pulled into his driveway, and entered the garage, and the officer followed him in there. Generally, the Fourth Amendment requires officers to obtain a warrant before entering someone's home, but there is an established exception for so-called exigencies. Officers can go into your home without a warrant in order to prevent loss of life, or destruction of evidence, or something of similar concern.

Leah Litman:

The California court below held that an exigency exists and that officers can follow you into your home without a warrant if you are suspected of a misdemeanor. The Supreme court rejected that rule unanimously. Justice Kagan, as I noted, wrote the majority opinion saying that the court's Fourth Amendment cases kind of issue rigid rules along the lines of what the California court had adopted. But the court also noted that, in most cases, warrantless entry of people suspected of misdemeanors,

fleeing the police probably would be justified. In fact, the court said, "That approach will, in many, if not most cases, allow a warrantless home entry."

Leah Litman:

Justice Kavanaugh made the same point with something that struck me as like kind of an awkward tip of the hat. So, he said, "As Lange's able counsel forthrightly acknowledged at oral argument, the approach adopted by the court would still allow police to make warrantless entry into a home nine times out of 10, or more." It kind of makes me wonder the value of taking these cases, or what the court is doing here, given that there's just very little practical daylight between the rule adopted below, and the rule that the Supreme Court adopts.

Leah Litman:

And the able-counsel line, I don't know why it just struck me as odd, because the court does often refer to statements that council made at argument, and now, if you just say, "Counsel," are you nagging them? It's kind of weird, and it creates this insular Supreme Court [inaudible 00:03:29], I know this person, we're cool, kind of thing, but I don't know, I don't love.

Kate Shaw:

I think that's right. When the court appoints an amicus, there's always this very pro forma thank you that issues, right? So, that we appointed X to take Y position, he or she has ably discharged his responsibilities, and I always wonder whether there's going to be some slight deviation from that formula, but it's good there isn't, because it would create this negative inference if you just went back to the kind of ordinary kind of bloodless thank you that you typically issue. So, I think it's right, it is strange when they single out for praise. It's one thing to focus on a concession that is substantive-

Leah Litman:

Yes, exactly.

Kate Shaw:

Or an argument that's substantive, that's of course fine. But I agree, there was something very weird about that line.

Leah Litman:

Yeah. So, that was one separate writing, the Kavanaugh concurrence. There were some others, and I'll talk more about the Kavanaugh concurrence in a second. So, Justice Thomas concurred, first, he noted that there might actually be some historically grounded rule like exceptions for when warrantless entry is permitted, despite the court saying that most Fourth Amendment doctrine is case contexts, facts specific, and not rule like. And in the course of that discussion, he said, "There is an exception for someone who is arrested and escapes." And for that exception, he invoked the court's prior opinion and Torres v. Madrid, which we talked about, and that was the case in which the court held that an officer had seized an individual when they shot her, but she was able to escape.

Leah Litman:

Justice Thomas sites that case for the proposition that quote, "An arrest occurs whenever an officer applies physical force to the body with intent to restrain." If you read Torres, however, the court

describes it as a seizure, maybe there's no distinction between them, but it was just a little bit odd to me to hear that the conduct described in that case as an arrest rather than a seizure.

Kate Shaw:

Right. Arrest affects the seizure, but are all seizures arrests?

Leah Litman:

Right. Exactly.

Kate Shaw:

So, I think the answer is no, or at least I thought it was.

Leah Litman:

Right.

Kate Shaw:

But yeah, you're right. That sort of throws that into question maybe.

Leah Litman:

Right. And then, second, after noting that the common law history did contain some rule like exceptions permitting warrantless entry into a home, he then had some interesting observations about remedies for criminal procedure violations. That is what happens when an officer violates this rule. On this point, he's joined by Justice Kavanaugh, and he wrote that quote, "The federal exclusionary rule does not require suppressing any evidence seized in violation of this rule." He also takes some knocks against the exclusionary rule, calling it judicially invented, and says, "The court should further limit the exclusionary rule." That justice Kavanaugh joined him, is I think an important indication that this new court is going to be even more aggressive about limiting criminal procedure remedies than the previous court was.

Leah Litman:

But then, Justice Thomas has this interesting observation, which I think is correct, where he says that, "If an officer can't do something under the court's precedence, but nothing happens as a result of that violation, [inaudible 00:06:25] there's no remedy, then the behavior actually isn't prohibited." And he closes this passage by saying, "Criminal defendants must rely on other remedies." But the reality is, there are no other remedies. The courts qualified immunity, jurisprudence, insulates officers from civil liability for damages, there is no other remedy. And by insisting on continuing to narrow the exclusionary rule, the court is just again doing this dual track system that makes no sense, insisting that it's expanding and preserving rights, maybe in name only, as we were explaining, and then undoing the remedies at the same time.

Kate Shaw:

Can I ask you about the Chief Justice Roberts concurrence, or ostensible concurrence? So, you have to confess... So, maybe you should describe it, but this is a writing that his styled as a concurrence, and I genuinely don't quite understand why it is not styled as a dissent.

Leah Litman:

Yeah. So, he says that he thinks there is an absolute rule justifying warrantless entry in cases of flight. He says, quote, "It is the flight that has always been understood to justify the general rule. Police officers may enter premises without a warrant when they are in hot pursuit." And here, ostensibly, Mr. Lange was fleeing. He continued into his garage, despite the police officer turning on his lights. I think one reason why it might be a concurrence instead of a dissent is, there's some uncertainty and inconsistency in the court's cases about when you can and should affirm on alternative grounds besides the ones that the court below gave, that is when the court can say, "The result was right, but for the wrong reasons."

Kate Shaw:

Right. Which is what Roberts is saying here, right? He does think that this was a valid entry, just not for the reasons that the lower court gave, right?

Leah Litman:

I think, maybe there's also a difficult question about whether you think this is truly flight, that is, did Mr. Lange know the police officer was pursuing him? There's some question about, when the officer turned on his lights, whether Mr. Lange thought he was being stopped, or whether he was just not sure really what was happening.

Kate Shaw:

And didn't notice, maybe.

Leah Litman:

Yeah. It's not like he's running into his garage, or there's any indication that he saw the police officer, thought the police officer was after him, and is trying to evade. I think there's also some uncertainty about whether that argument was encompassed within the question presented, which was focused on whether the categorical rule of the California Court of Criminal Appeals was correct, and that rule was, all misdemeanors categorically justify warrantless entry. So, perhaps all of these reasons, some of them in combination, unclear. Another point about the concurrence is that the chief was joined by our boy, Sam, which made me wonder whether the two were maybe mending fences after Justice Alito's angry tirade directed at the chief in the ACA case.

Kate Shaw:

But not by name, but definitely directed at the chief.

Leah Litman:

No. Oh, yeah, no. Yeah, not so subtle there.

Kate Shaw:

Leah, so I wasn't on the Monday show, but I was so glad that our listeners got a chance to hear something that you said, kind of when the recording was off during our live show at Yale, which this podcast is in some ways, a long process of you working through, having lived through the ACA as a law clerk for Justice Kennedy. It was not yet, you had not yet said it publicly, and I'm so glad you did, and I love that. And Sam too is working through many feelings.

Leah Litman:

Wait, exactly. Exactly. And he's accumulated more feelings after King v. Burwell, and California v. Texas, but-

Kate Shaw:

Oh my God, can you imagine the next one if they ever take one again?

Leah Litman:

Oh.

Kate Shaw:

you didn't see that Leah's eyes just go enormous. It's actually terrifying to contemplate.

Leah Litman:

It really is.

Kate Shaw:

But, at least right now, there seems to be some fences mended, bridges built between Roberts and Alito.

Leah Litman:

Yeah. And the chief concurrence had some real peaklito vibes of identifying alternative grounds on which the criminal defendant would lose. So, again, maybe they're recognizing some previously overlooked common ground. Anyways, I mentioned the Kavanaugh concurrence, he kind of responds to the Robert's concurrence and says he doesn't see any difference between the chief justice's approach and the court's approach, given that in most cases of flight, the majority opinion seems to imply that warrantless entry would be fine. Justice Kavanaugh's concurrence in his Kavanaugh way also went out of it's way to be like, "In his thoughtful opinion, the chief justice concludes..." It's just like, "Okay."

Leah Litman:

There was actually a fair amount of that from several justices, which made me wonder if they had read the Joan Biskupic story about the rise of the justices pointing fingers at one another, and accusing each other of being nasty, or unprofessional, or not following the law, and wanting to kind of avoid another such story, or avoid that perception.

Kate Shaw:

/sort of overcompensated in kind of awkward ways.

Leah Litman:

Exactly. So, one open question after this opinion is whether there is a categorical rule allowing warrantless entry where police are in pursuit of fleeing felons, that is person suspected of committing a felony. Justice Kavanaugh insists there is such a rule, the majority suggest that the common law had such a rule, but in its discussion of precedent says, "We've never adopted such a rule and leave some uncertainty about that." So, kind of one question that remains. And then, in light of this opinion, coming

from justice Kagan, I have arrived at a new theory of opinion assignments that I wanted to float, which is, does the court assign opinions to the justice who selected the amicus appointment in a case?

Leah Litman:

So, that happened here, Justice Kagan selected her former clerk, Amanda Rice, to argue this case. That happened in Terry, the First Step Act case, where Justice Thomas selected his former clerk, Adam Mortara, and wrote the opinion. And this happened in another opinion , Collins, where justice Alito wrote the opinion after selecting his former clerk, Aaron Nielson as amicus. So, I just wonder if there's something going on there.

Kate Shaw:

It's such an interesting theory. We could easily figure out based on the most recent couple dozen amicus appointments, if in fact that holds statement for the findings. But I think you're right, certainly, this term seems to be a theory that really holds. So, you, I know, Leah, really track the sittings and the assignments growing out of each sitting. So, do we know anything?

Leah Litman:

Just a little bit more. It's harder to do this year because there are fewer cases that were argued, but that means Brnovich, the Arizona Voting Rights Act case is most likely going to be written by either Justice Thomas, Justice Alito, Justice Pryor, or Justice Kavanaugh, which given the difference in those justices, hard to make a lot of predictions about how the case will come out. Although I think it is very likely that the plaintiffs are going to lose. The question is just, how bad will it be for Voting Rights.

Kate Shaw:

Right. Yeah. A Thomas or Alito opinion there could be pretty devastating. We will find out either Friday, or Monday, or maybe into next week. But before we move on, actually, I just wanted to add a couple of additional thoughts kind of just about the structure of the opinion in the Fourth Amendment case we were just talking about. So, one, I have to say, that I appreciated the way that Justice Kagan led with precedent. She sort of says, "Look, let's start with what the court has said about the Fourth Amendment, about the core purposes and values that underlie the Fourth Amendment, and not with common law practices at the time of the framing of the constitution." And that's meaningful, right? Those were really central to the argument in the case.

Kate Shaw:

And she talks about the common law, but she talks about it in a way that makes clear that what is more important is kind of getting the kind of core principles and values of the Fourth Amendment and the court's own Fourth Amendment cases. And I just think that's really good for stability in the law, really good for a general kind of story, besides this culture, to say, "We start with what we've said," and then we kind of peek at history. And that she gets, well, either a unanimous court, or... Dahlia Lithwick has referred to faux-animity, right? Or opinions being faux-animous, which is kind of what this case is, right? Because Roberts so vehemently disagrees, and yet, does technically concur.

Kate Shaw:

But Gorsuch doesn't see fit to write separately about how the court really should start with a common law, which I'd actually thought was kind of significant. So, she then after, kind of talking about the

court's precedence, asks about kind of framing error common law, and also her discussion makes really clear that that history is inconclusive, right? She says, "The common law at the constitution's founding leads to the same conclusion that law may be instructive in determining what the framers of the Fourth Amendment regarded as reasonable. But sometimes, she says it doesn't reveal a clear legal rule. She says, "We find it challenging to map every particular common law's treatment of warrantless home entries."

Kate Shaw:

So, I think it's refreshing in its acknowledgement of how inconclusive the history is, and it's refreshing, I think, in the kind of secondary status that it accords to the history. But she takes it seriously, and so I think it's just kind of a very well executed opinion that keeps this very kind of originalist court together for the result that she reaches. And, again, there's just a lot of qualifiers that I think are important about sort of the limits of what kind of the common law both tell us.

Leah Litman:

Yeah.

Kate Shaw:

Okay. So, maybe let's move on to Mahanoy Area School District v. B.L., the second opinion that we got this morning. This was a big win for the salty cheerleader, another big majority opinion for our boy, Steve. So, this is a case just as a reminder about the cheerleader, who, in this kind of peak of frustration after not making the varsity cheerleading squad, wrote and shared on Snapchat the sentiment, "F. cheer," along with "F. School," and a few other things. And during its brief ephemeral time on Snapchat, this message made its way back to the school administrators, and the school suspended her for a year from the cheerleading squad in response.

Leah Litman:

I just wanted to note on that, it making its way back to the school, the opinion by Justice Breyer kind of recounted what dirty little snitches a lot of high school students are. It was about how other students took screenshots of the Snapchat, and showed their parents-

Kate Shaw:

Yeah, I know I was kind of general. Right, no. It's actually like a little dishier than that, right? That sort of recounting of the facts, right? Perhaps it was like, yeah, another girl on the squad took a picture of the Snap, showed her mom who was the cheerleading coach, they were like really offended by it. It is an incredibly petty sequence of events. And the pettiness of the kind of response, this sort of overbearing response by the school, was a source of obvious frustration on the part of a number of justices during the oral argument, and that does kind of come through, I think, in the prior opinion.

Leah Litman:

Yes.

Kate Shaw:

She's suspended from the squad for a year, she brings this First Amendment challenge, she wins in the courts below. The Third Circuit finds that the school's actions violated her First Amendment rights, and

actually went on to find that schools actually can't discipline students at all for speech that occurs off campus, as this speech did. So, that really was the kind of larger question in this case, right? Whether this discipline violated the First Amendment rights of this young woman, but also what, if any, disciplinary authority schools have over student's speech that occurs off campus. So, the big Supreme Court precedent here is a 1969 case, Tinker vs Des Moines School District, which the court held that students do have speech rights at school, when they're attending public schools, that they don't leave their constitutional rights at the schoolhouse gate, in the words of the opinion.

Kate Shaw:

But Tinker also went on to say that schools could regulate student speech, if the speech created a substantial disruption, even if that disruption resulted from the content of the speech. But again, in this case, the Third Circuit said that the Tinker test didn't even apply, because the speech occurred off-campus. So, as I said, Justice Breyer had the majority opinion finding for the student, and giving some general guidance about how these cases need to be decided going forward. And I have to say, I thought it was honestly kind of a delight to read. And I say that... I'm going to guiltily confess here, that I haven't always felt that way about Justice Breyer's opinions. I think he's great, I don't always enjoy reading his opinions. This one, I've really, really enjoyed reading.

Kate Shaw:

So, basically, bottom line, the court [inaudible 00:18:08] Tinker and the other student's speech cases, right? All of which affirmed that students do have First Amendment rights, but that schools have substantial regulatory authority. And in those post Tinker cases, actually, the court invariably sides with the schools that are trying to discipline students for their speech. But those cases do apply here even though the speech technically occurs off campus. So, students obviously do retain their First Amendment rights off campus, but so, too, do schools retain some degree of disciplinary authority if they need to respond to off-campus student speech.

Kate Shaw:

And the court actually provides some detail regarding when schools might be justified in taking certain kinds of action to respond to student speech. So, the opinion mentions bullying, harassment, threats, cheating. And we talked about this when we previewed the case, it actually seemed to us important that the school both vindicate the student's speech rights, but also make clear that under certain circumstances, schools aren't totally disempowered from responding to student speech in the conduct of the kinds of issues that the court identifies here.

Kate Shaw:

So, the court says, "Look, we're not going to demarcate in any real detail the bounds of school authority in a spatial or temporal sense. We're not going to say, on the way to schools, schools can regulate if students are in transit, or if they're on field trips, but not otherwise, we're not going to try to draw those lines." Especially in the wake of this year of largely computer-based learning, those lines are impossible to draw anyway, and I just appreciated the kind of foresight the court had in not trying to draw those lines.

Kate Shaw:

So, Justice Breyer says, "We do not set forth a broad highly general First Amendment rule stating just what counts as off-campus speech, and whether, or how ordinary First Amendment standards must give

way off-campus to a school special need to prevent, for example, special disruption of learning related activities, or the protection of those who make up a school community." And there were kind of echoes there of him agonizing at the oral argument about having to write a First Amendment treatise about this area of law. But it does say, "Look, I'm going to give some general guidance." And I thought it was actually good sensible guidance, he says, "Look, a school in relation to off-campus speech is not like in local prentice, in the same way it is when a student is on campus."

Kate Shaw:

So, that means that off-campus speech will, generally speaking, happen within a zone of more parental than school-related responsibility. Parents will typically be in a position of responding to and controlling, I suppose, [inaudible 00:20:18] appropriate their children's speech as opposed to schools, or school administrators. Second he says, "From the student's speakers perspective, regulations of off-campus speech when coupled with regulations of on-campus speech include all the speech that student utter during the full 24 hour day." So, of course, I have to be more skeptical of a school's efforts to regulate off-campus speech, right? So, even though the opinion affirms that schools do have some regulatory authority, off-campus, it is significantly less robust than the regulatory authority with respect to on-campus speech.

Kate Shaw:

And third, he stakes out a position that I have to imagine developed in the context of some exchanges with his colleagues as his opinion evolved. But he says that school has an interest in protecting a student's unpopular expression, especially when the expression takes place off-campus. And then he goes on to say, "America's public schools are the nurseries of democracy, our representative democracy only works if we protect the marketplace of ideas, this free exchange facilitates an informed public opinion, which when transmitted to lawmakers, helps produce laws that reflect the people's will. There were sort of echoes of his National Constitution Center exchange. I thought he's so optimistic about the power of robust exchange of ideas.

Kate Shaw:

So, he then quotes, he says, "Schools have a strong interest in ensuring the future generations understand the workings and practice of the well-known aphorism, 'I disapprove of what you say, but I will defend to the death your right to say it.'" Breyer then goes on to say, although this quote is often attributed to Voltaire, it was likely coined by an English writer, Evelyn Beatrice Hall. Anyway, so taken together, basically, what this boils down to, is schools have authority off-campus, less authority than they do on-campus, but not no authority, which is essentially what the Third Circuit has said.

Kate Shaw:

And then, he goes on to kind of apply this and says, "Look, here, I don't know, what was the school's interest? An anti-vulgarity interest because she swore in the Snapchat? Ah, parents can worry about that. Any school interest in instilling good manners is outweighed by her interest in free expression. There was no evidence of substantial disruption, there was very little evidence of impact on team morale. And so, for all of these reasons, the lower courts were correct to find there had been a First Amendment violation."

Kate Shaw:

Briefly, there is an Alito concurrent that offers this kind of weird excursus on the origin of the in local prentice doctrine. There's this multi-page reminder of the primacy of the parent in matters of child rearing, which, as I said, I think the majority opinion actually totally agreed with, so I'm not sure why the need to spend a number of pages on it. And what I took to be, kind of, one of the core concerns of the Alito concurrence is that schools are going to try to punish unpopular student's speech which I presume Alito imagines to encompass advocacy of conservative causes, right? He has made clear, including at his Fed Soc speech that he thinks that that kind of speech is under threat.

Kate Shaw:

So, he wants to make clear that schools can't single that speech out again. I think that Breyer opinion made that crystal clear. And Thomas dissents arguing as he has elsewhere, that schools have near plenary authority to discipline students on campus, and less sweeping, but still quite broad authority over the sort of off-campus speech

Leah Litman:

So, I actually read the third principle that Justice Breyer announced, the one that you suggested he had adopted in exchanges with his colleagues, that America's public schools are the nurseries of democracy, to kind of be a response to the Alito concurrence, because Justice Alito's concurrence seems to say, "Well, look, parents have a choice about whether their kid's speech is regulated, because they can decide not to send their kids to public schools." But of course, one, that choice isn't really available to everyone. And so, I read, Justice Breyer's kind of celebration of public schools as in part a response to that.

Leah Litman:

And then, the closing of the Breyer opinion was... I really enjoyed, I also really enjoyed this Justice Breyer opinion was, "It might be tempting to dismiss B.L.'s words as unworthy of the robust First Amendment protections discussed herein, but sometimes, it is necessary to protect the superfluous in order to preserve the necessary." And he quotes, a Holmes dissent. So, tl;dr Justice Breyer save the cheerleader, save the world, but I really enjoyed this opinion. I think it was completely right not to adopt any kind of broad rule.

Leah Litman:

I think they nonetheless did a good job of articulating principles that should really guide this, and in some ways, might have, I think, as we suggested, when we previewed the case and discussed the argument, bolstered the Tinker test in saying like, "No, you actually have to find some real evidence of actual disruption in order to punish student's speech." It can't just be speculation about what students might think, or how they might respond. I do however feel like we are going to have to come back to this case, because our resident cheerleading expert isn't here. Also, I feel like if I tried to work in bringing on references, I'm not sure if you would just stare blankly at me.

Kate Shaw:

I know that that's a movie about cheerleading. Is that right?

Leah Litman:

Oh my gosh.

Leah Litman:

Okay. Justice Breyer worked some spirit fingers magic in, that was one thing I wanted to say. I feel like maybe you would've caught that.

Kate Shaw:

Yes. Yes.

Leah Litman:

Okay, great.

Kate Shaw:

Yeah. Got that.

Leah Litman:

Second. This is a cheerocracy.

Kate Shaw:

No.

Kate Shaw:

No idea. No.

Leah Litman:

Oh, my gosh, See, that's actually relevant, right? It's when Torrance says, "This is not a democracy, this is a cheerocracy."

Kate Shaw:

Cheerocracy. Okay. Good line. Yeah, no, just never heard.

Leah Litman:

Right. It's a good line, and it's apt here, right? Cheerleaders for democracy, right? Think about it. Anyways. I wasn't quite sure how to work in one of my favorite lines, which was, "You're a great cheerleader, Aaron, it's just that maybe you're not boyfriend material." But anyways. So, listeners-

Kate Shaw:

Justice Breyer is both, right?

Leah Litman:

He's a great cheerleader and-

Kate Shaw:

A boyfriend material.

Leah Litman:

... a great Supreme Court justice, although maybe not Supreme Court justice for perpetuity material. I don't know.

Kate Shaw:

Maybe not.

Leah Litman:

Yeah, anyways.

Kate Shaw:

Although he does seem to be enjoying himself, doesn't he?

Leah Litman:

Yes, no, absolutely. But maybe as we have suggested, going out at a high note, these are some great opinions, right?

Kate Shaw:

Yeah. These are great... Yeah.

Kate Shaw:

He's given us some great stuff, and still have a number to go.

Leah Litman:

And he overcame his greatest fear, writing a legal standard for this case.

Kate Shaw:

I mean, when you ask about... Sometimes you wonder why the court takes cases, and obviously, I don't want the court issuing unnecessarily sweeping broad constitutional holdings, I also do get frustrated, I think we all do, when the court is so sort of fact bound in its disposition to particular cases. This is, I think, a kind of perfect happy medium, in which it's responsive to the facts, it provides general guidance. I mean, I think I haven't spoken yet to any school administrator, so I guess we'll see on the ground sort of how this plays out, but it seems to me to do everything and opinion like this should do actually.

Leah Litman:

Yes. Yeah.

Kate Shaw:

So, let's move on to Collins v. Yellen, which has less riveting facts, but also a really interesting case. Collins v. Yellen is a case that involves most significantly the question of whether the structure of the Federal Housing Finance Agency, or FHFA, which has a single head, who's removable only for cause, is constitutional. The background of the case is actually pretty complicated, so we're going to simplify it because the structural constitutional question both kind of seem to be going into the case, and actually was once the opinion issued really the heart of the case.

Kate Shaw:

Briefly, the background is that the case grows out of the 2008 housing and financial crisis, and a provision of the 2008 Recovery Act that created this independent agency, the FHFA, which was tasked with regulating the mortgage giants, Fannie Mae and Freddie Mac, and also empowered the FHFA, if necessary, to step in as their conservator, or receiver. So, at the head of the agency, as I mentioned, is a single director removable only for cause, just like the Consumer Financial Protection Bureau, CFPB, whose structure the court invalidated last year and Seila Law.

Kate Shaw:

So, FHFA gets created, gets given these authorities, does then place Fannie and Freddie into conservatorship, negotiates agreements under which the treasury department gives these companies capital in exchange for preferred shares. And then, over several years, changes the terms of these agreements, culminating in basically a deal that is referred to in the case as the Third Amendment, comes up all the time. Came up all the time in the oral arguments, all the time, in the opinion. I can't not think about quartering of soldiers every time the Third Amendment comes up. In fact, that is not what this case is about, nothing to do with quartering of soldiers.

Kate Shaw:

But this Third Amendment is what the lawsuits at issue in this case kind of grow out of. So, some Fannie and Freddie shareholders challenged this agreement, the Third Amendment, and they brought both the statutory argument and a constitutional argument. We will briefly mention the statutory argument, but as I said, the constitutional argument is where the action in the case is. Okay. So, the court today, in an opinion by Justice Alito with different majorities for different parts of the holding, first rejects the statutory argument, that the agency exceeded its authority as conservator by approving this Third Amendment.

Kate Shaw:

The court basically says, "We conclude that under the terms of the Recovery Act, the FHFA did not exceed its authority as conservator. It's not necessary for us to decide, and we do not decide whether the FHFA made the best, or even a particularly good business decision when it adopted the Third Amendment, just that it didn't exceed its statutory authority when it did that." Okay. So, that part of the holding is unanimous. Onto the constitutional question. Okay. So, with 6-3 majority composed of the conservative justices on the court, holds that the structure of the FHFA is unconstitutional for the same reasons the structure of the CFPB and Seila Law was.

Kate Shaw:

The court said Seila Law is all but dispositive. And why, because this single member director structure where the single director has protections against presidential removal at will is a violation of a textual principle that some of the justices have found in the constitution, that the president must have basically unlimited control over executive branch officials, at least those performing kind of traditional executive functions, and that this for cause removal protection meaningfully encroaches on presidential power in a way that is inconsistent with constitutional design.

Kate Shaw:

So, the court declines the invitation to distinguish Seila Law, basically says, "Ah, the nature and the breadth of an agency's authority isn't dispositive in determining whether Congress may limit the president's power to remove its head." And goes on to kind of wax poetic, as it has in other such cases, including most recently, Seila Law, about the kind of centrality to constitutional design of the president's removal power.

Kate Shaw:

So, the court says, "The president's removal power serves vital purposes, even when the officer subject to removal is not the head of one of the largest and most powerful agencies. The removal power helps the president maintain a degree of control over the subordinates he needs to carry out his duties as the head of the executive branch. It works to ensure that these subordinates serve the people effectively, and in accordance with the policies that the people presumably elected the president to promote. In addition, because the president, unlike agency officials, is elected, this control is essential to subject executive branch actions to a degree of electoral accountability."

Kate Shaw:

So, I feel like we're a little bit of a broken record on this, but the court, I think, makes the same core error that it made in Seila Law, to fixate on this idea of the president as electorally accountable. And based on that conclusion, to find that any kind of constraints that Congress, with the signature of the president, might impose on the president's removal authority, is thereby unconstitutional, I think is just inconsistent with constitutional text structure history, all of it. And yet, the court essentially doubles down on kind of what it said in Seila Law. The court declines to take an off-ramp that we talked about when we previewed the case. So, this amendment was actually adopted when the FHFA was led by an acting director who was removable at will, and there was an argument that that mooted the constitutional question in this case.

Kate Shaw:

The court basically says... I think the court says... This part actually I find a little bit puzzling, but basically says that the alleged harm of this Third Amendment continued while the agency was led by several Senate confirmed directors, who were occupying this position that did have this removal limitation attached to it, and therefore, the fact that the original amendment was adopted by the acting director doesn't moot the constitutional question.

Leah Litman:

Yeah. They say, in addition to enactment, there's implementation.

Kate Shaw:

Right.

Leah Litman:

And if it was implemented by someone who was not removable at will, that is kind of like harm they're remedying.

Kate Shaw:

Exactly. And on the remedy question, so the court says, "The agency structure is unconstitutional," or at least this provision of it is, but it is pretty interesting on remedy. So, the court actually declines to throw out this Third Amendment in its entirety, instead remanding for the lower courts to determine what sort of relief these shareholders might be entitled to based, in part, on what we were just talking about, the fact that there was an acting director, there were then Senate confirmed directors, maybe the fact that they weren't appointed unlawfully... The court is clear to say that, but the positions they occupied had this constitutional defect. And so, maybe there's some harm, and that they were constrained in what they would do with respect to implementation by this... Or what the president could direct them to do by this limitation.

Kate Shaw:

It's totally unclear, and I would not want to be a lower court trying to figure out what, if any, remedy to award based on this guidance from the Supreme Court, but the court does essentially, completely dodge, at least, taking a first pass at fashioning a remedy, but it does make clear, it's not going to just throw the entire amendment out, which I think, some have suggested, would have had really kind of cataclysmic consequences for the housing market.

Leah Litman:

Yeah. And I think this remedial question is super interesting and important, and something that we will come back to, not on the same day that the opinion is released, in the same day that the Arthrex remedy on how to fix the constitutional problem with the appointment of administrative patent judges, is something that we will come back to, just because I think this suggestion that the remedy when some government action is either created by, or implemented by someone who is subject to unlawful removal restrictions is not to just vacate, or set aside the government action, is potentially quite interesting.

Leah Litman:

So, justice Gorsuch peels off, and he says, "I actually think the proper remedy is just vacatur of the agency action." But the majority of the court doesn't agree. And I think there's some interesting discussion in the case about whether this is a departure from the court's prior cases. I think the court says, "Well, we've always just taken as a premise that you can vacate the unlawful agency action, but we haven't said that you have to." I think this possibility that actually the party who is subject to the regulation that was implemented or created by the person who was unlawfully appointed, creates some potential interesting questions about [inaudible 00:35:00]. That is, how were they actually harmed by the removal restriction if they can't obtain a judicial decision setting aside action taken by the person who is subject to the unlawful removal restriction.

Leah Litman:

That is like, what exactly is their injury in a world in which the government action is allowed to stand? How would it be redressable by a judicial decision? Now, obviously, there is, and should be some conceptual space between standing and remedy, and here the court preserves the possibility that setting aside the government action might be required in some circumstances, if you conclude the president didn't have enough control over the implementation. But if you conclude the president had enough control over the implementation, when the implementation was by someone who is not removal for cause, doesn't that undermine your merits inquiry anyways? Because you're saying the president doesn't have enough control over someone who is not removable at will.

Leah Litman:

It's just, I think, a potentially jurisprudentially and conceptually super interesting question that could affect different areas of law ranging from [inaudible 00:36:02], to remedies, to severability, to the merits. And it's just, I think, worth some time thinking about exactly what the court is saying, whether it's new, what are the implications for these cases going forward? Justice Kagan enthusiastically embraces this proposition, because she's basically like, "This is a way to limit the damage of the court's insane removal jurisprudence." Because if we're never going to set aside any government action taken by people who are removable only for cause, then fine, right? What you're doing is just undoing-

Kate Shaw:

Like a tree falling in the forest, it doesn't actually-

Leah Litman:

Yeah.

Kate Shaw:

I'm sure she's offended by the incorrectness of the analysis, but certainly, it could blunt its impact. No, I totally agree. And this is one of those things that I was saying right before we started recording. I just feel like I need to kind of... And I think you feel the same way, Leah, we kind of just need to puzzle through this kind of remedial question more. And Thomas has this interesting concurrence that I also feel like I just need to spend some more time with, similarly suggesting that removal restrictions, even if unlawful, don't necessarily render agency action unlawful

Kate Shaw:

Alito, I think, seems to be sort of suggesting that maybe because this is, I think, just sort of... It's a retrospective kind of request. Anyway, there may be some way to try to figure out what damages may be, but Kagan, really, very much, as you said, seemed to suggest that like, no, there's no harm, and so there is no remedy, and that's... I read the court's opinion consistent with that. So, lower courts, please go ahead and feel free to find that. But it is all extremely interesting, and I think maybe a good topic for a summer episode to sort of spend some time with.

Kate Shaw:

Kagan, we talked about, before she gets to saying anything about remedy, she does, we should say, kind of grit her teeth and concur in at least the holding that Seila Law controls the outcome here. She does not join the court's analysis, she says, "It is mistaken. It is mistaken in its kind of political theory. It is mistaken in its extension of Seila Law." She says, "I will subscribe to decisions contrary to my view [inaudible 00:38:02], and there's no special justification for reversal, but I will not join the majority's mistaken musings about how to create a workable government." I mean, she's just ice cold.

Leah Litman:

She had some real digs at them here because... Not just that, so first, some big stare decisis is not for suckers energy-

Leah Litman:

... which is kind of her thing. It really is her thing. But interestingly, she says like, "Look, I dissented and dissented vehemently, in Seila Law, but I will accept the decision now." And then, she goes on to say, "Fidelity to precedent also places demands on the winners, not just the people who were on the losing side of the case." She says, "They, that is the winners, must apply the court's precedence, limits and all wherever they can, rather than widen them unnecessarily at the first opportunity."

Leah Litman:

And she's basically like, "Look, the court doesn't even bother to analyze whether the FHFA director exercises significant executive power, and just kind of minimizes that part of Seila Law." Anyway, it was kind of an interesting point that she made about, what is the obligation to precedent for people who are in the majority as well?

Kate Shaw:

Uh-huh (affirmative). Definitely. And then, [inaudible 00:39:14] disagree, I think a little bit more full-throatedly with the majority opinion, or at least express more full-throated disagreement. Kagan probably disagrees full-throatedly too. But she makes up, I think, a institutionally sound decision to go along in part with what the majority does, certainly, I think driven. It's a little bit like the remedial tail wagging the dog of the join, right? There's no way she joins as if the court decides to do something crazy with remedy. I just think that this decision is, in some ways, just a kind of extension, not just application. I agree with her extension of Seila Law, but just a little step down the same path the court has been on with respect to sort of this unitary executive idea.

Kate Shaw:

But I also think that there could be something potentially even more interesting afoot in terms of what the different opinions say about [inaudible 00:39:58]. Well, so then, what's the remedy?

Leah Litman:

On the remedial point, no, you said you don't envy the lower court who has to decide this remedial question. Justice Kagan lays out how she thinks they can and should resolve this based on what they've already said, basically saying like, "The implementation was done in conjunction with the treasury head, and that person is subject and was subject to presidential removal. So, there was an adequate amount of presidential control here."

Kate Shaw:

So, no relief.

Leah Litman:

Right. Yeah. No relief. I did want to flag one thing about the implications of this case, possible implications. So, as always, read the footnotes, and in Footnote 21 of the court's opinion, it notes that the court appointing amicus warned that if the court holds the removal restriction, violates the constitution, the decision will call into question many other aspects of the federal government, including the Social Security Administration, the office of special counsel, the comptroller, and others. The Social Security Administration in particular is led by a single officer who is not removable at will by the president. And the court says, "None of these agencies is before us, and we do not comment on the constitutionality of any removal restriction that applies to their officers."

Leah Litman:

Not exactly saying, "Those things might be different." And so, I think it's very fair to expect that there will be challenges there. And I think that there, the court's remedial discussion is even more important, because imagine if the court invalidates the removal of restrictions on the Social Security Administrator, are you really going to invalidate every single Social Security benefits determination taken by that person? That would be insane, that's not possible. So, that's where Justice Kagan basically saying like, "Look, this remedial discussion is basically saving us from utter insanity and blowing up the government." I think really comes into play.

Kate Shaw:

Yeah. And we should Flag that missing from that footnote list are independent agencies with multi-member heads, right?

Leah Litman:

Yes.

Kate Shaw:

So, the Fed-

Leah Litman:

The Fed.

Kate Shaw:

... is of course, the most important of these, but the FTC, the FTC, the SEC, all of these agencies, and the court... For reasons that I think don't actually totally hold up, but I am relieved from sort of a pragmatic perspective, the court has made clear that it's existing... Primarily, Humphreys is executor, precedent upholding the constitutionality of those kinds of independent agencies that are led not just by one individual, but a group unlike Seila Law, the court, again, for reasons I don't find totally convincing, but does reaffirm that principle. So, none of those, I don't think, are in the court's crosshairs just because you sort of mentioned chaos and stability.

Kate Shaw:

I don't think the court is in any danger in the short term of burning down the Fed, although Thomas and Gorsuch will probably do it. But I don't think anybody else would. Alito, I don't know. No, I don't think so.

Leah Litman:

Yeah. Hard to say. Hard to say.

Kate Shaw:

Hopefully, we're never going to have to find out.

Leah Litman:

It depends how angry he is at John Roberts on that day.

Leah Litman:

Right? Whether he's emoting all over the US Reports, or whether he's able to control his emotions. This is why we can't trust men-

Kate Shaw:

Exactly.

Leah Litman:

... to be Supreme Court justices, right?

Kate Shaw:

They're so emotional.

Leah Litman:

Just a little bit too erratic, too emotional, yeah, need to reign it in. Should we go onto the last one?

Kate Shaw:

All right. Last one. Let's do it.

Leah Litman:

Okay. So, the last opinion we got has real... It's a worker's party now energy/destroying unions, is necessary to enforce the Voting Rights Act energy. And that would be Cedar Point Nursery v. Hassid, in which the apparently extremely moderate Roberts Court digs another knife into unions. So, Cedar Point is an important case about a California labor regulation, and the reasoning that the court adopted to call into question/ require the government to pay for that regulation could embrace a big swath of other regulations. So, this case involves a Takings Clause challenge to a California regulation that granted labor organizations a right to access agricultural employer's property to solicit support for unionization.

Leah Litman:

They can access the property, one specific part of the property, where workers gather the hour before work, after work, or at lunch, that's a maximum of three hours per day, and only 120 days a year. The regulation grew out of a campaign, as we've noted before, by the United Farm Workers and Cesar Chavez. Farm workers were excluded from rights granted in the National Labor Relations Act, which dates back to the 1930s when Southern segregationists insisted that black farm workers need to be excluded from those protections. California maintained that its labor regulation involved nearly a regulatory taking that regulated the use, that is, limited the owner's use of the land, and therefore didn't require compensation under the Takings Clause.

Leah Litman:

The Takings Clause says, "When the government takes your property, it has to pay you just compensation." Generally, regulatory takings don't trigger the compensation requirement, the court balances factors like the economic impact of the regulation, the character of the action, interference with investment expectations, so on and so forth. A majority of the court, however, in a 6-3 opinion by Chief Justice Roberts says, "No, this California regulation is a per se physical taking because the

government physically acquired the property by giving other persons a right to invade the grower's property. It doesn't matter if the physical intrusion is permanent, temporary, continuous, or sporadic, physical invasions are physical invasions."

Leah Litman:

As I said, the opinion is 6-3 with the conservative justices in the majority. Justice Breyer wrote a dissent for the three liberals. Justice Kavanaugh concurred, and we're not going to talk about it, because [inaudible 00:45:15] it's a theory that he floated an argument that no one else was interested in. Anyway. So, this is a theory that the majority adopts. Basically, the government can't authorize people to enter private property, even for lawful activities, without compensating property owners. And it elevates one property right, the right to exclude, over another, the right to use one's property. Because basically, what it's saying is, "When the government is regulating the use of a land, that's regulatory taking, but when it involves the right to exclude, someone accessing the property, that's a per se taking."

Leah Litman:

And so, the opinion sites the court's previous opinion in Tahoe, which upheld the government's ability to prohibit building on land for three years, that's a use restriction, not an exclusion restrict. This is potentially a huge deal. How huge a deal it is will depend on two things. One, is how the court interprets its announced limits on this theory, and second, what the remedy would be for per se takings. So, the court announces several limits on the theory, that is, when, even though, there is a physical intrusion, it might not constitute a per se taking. Think for example of laws requiring inspections, or non-discrimination requirements, that require business owners to let certain people onto their land, and the question is, are those per se takings in light of the court's theory? And depending what the court says about these limits, they may or may not be.

Leah Litman:

So, the first limit the court announces is, "We're not undoing the distinction between trespass and taking." So, isolated physical invasions, those are trespasses, not takings. Maybe the court means unintentional, or not ex ante authorized takings, but anyways. The second limit is, the court says, "Many government authorized physical invasions will not amount to takings because they are consistent with quote, long standing background restrictions on property rights." And the court mentioned two, one is, cases of necessity, and second is, instances where the government is carrying out an arrest.

Leah Litman:

But of course, right here, the entire thing turns on, well, how do you define what background restrictions are, and which are long standing? Do they include statutes just to the common law? How long standing do they have to be? California law, for example, its trespass law excluded union activity. So, it's not actually trespass to conduct union activities under California's trespass law. Why wasn't that a background restriction on property rights that defined the scope of the relevant property rights? There are also common law cases that say, "It's not a trespass for state service workers to go onto property to help migrant workers." This was a famous property law case State v. Shack from New Jersey in 1971. So, that's the second limit.

Leah Litman:

And again, how sweeping the courts rule will depend on what it says count as long standing background restrictions that basically limit the scope of a property right, such that physical invasions don't end up violating that right. I think the third limit is going to be where all of the action is. So, the court says, "The government may require property owners to cede a right of access as a condition of receiving certain benefits without causing a taking." So, obviously, this kind of shifts the question from the previous question under the court's cases, which is, is this a physical taking, or appropriation? Or is it a regulatory taking? And now, the question is, well, what benefits can the government give to a landowner as a condition for access rights? Do they have to be benefits to the owner in particular? Can they be benefits to society writ large? Do they have to be property interest to the owner?

Leah Litman:

So, for example, you can actually have this land, or use this land in a particular way, if you agree to these conditions. On one hand, the court seems to say, "We're going to construe this narrowly." Because it says, "Everything could be reframed as a benefit." And in fact, this could be reframed as a benefit, right? It's a regulation designed to improve workers' conditions, sustain labor peace, and so on, [inaudible 00:49:43] to the benefit of the growers and society. But then, it also says, quote, "Under this framework, government health and safety inspection regimes will generally not constitute takings when the government conditions the grant of a benefit, such as a permit license, or registration on allowing access, that's fine."

Leah Litman:

But then, it also says, "While you consider the nexus and proportionality, that is, how severe the restriction is." And this made me wonder, could California turn around and turn this regulation into a licensing requirement? Basically, say, "You can only use land for agricultural purposes, or get a permit to use the land for these purposes, if you allow access to union organizers for these limited purposes." I mean, you can imagine different kinds of benefits or whatnot permits that the government conditions on these uses.

Kate Shaw:

Yeah. I don't think there's anything in the opinion that prevents California from trying, but I also just think that this discussion in the opinion sort of seems to misclassify kind of the nature of regulation. Lots of regulation isn't conditions attached to licenses or permits, they're outright directives that happen by virtue of rule makings, that are generally applicable, not the result of conditions attached to the grant of a particular license, or permit, or other kind of benefit. And so, it would just seem potentially... I don't know that this opinion suggests that, I hope the opinion does not suggest that only the government can only mandate access to physical space in the context of a regime like this, because there is this... Most health and safety regulations would generally not constitute takings.

Kate Shaw:

I would like to read that as a standalone sentence, and then as an illustrative example conditioning the grant of a benefit such as permit license, or registration on allowing access, as opposed to saying, "Only under those circumstances are government health and safety inspection regimes, not takings." I just don't quite know how to parse that language, and it's hugely important, as you say, just in a range of different areas.

Leah Litman:

Yeah. And the way I kind of think about this is, I agree, of course, most government safety and health inspections and other regulations, of course, should be perfectly constitutional, but the more that's true, that is, the less this court's opinion and reasoning actually calls into question other regulations, the more this just looks like union's bad, right? And any activity or any laws that protect unionization are takings, and not permissible, and don't supply any benefits, whereas all their regulations, fine. And so, yes, that's less sweeping, but it's also less principled, and I think exposes kind of the court's hostility to workers rights.

Leah Litman:

So, Justice Breyer, for example, in his opinion, lists a bunch of regulations that he thinks might be called into question by the majority's ruling, talking about meat inspections, workplace safety inspections, inspections of coastal wetlands, inspections of foster care facilities, you go on and on. And again, the majority seems to say, "Well, most of them are going to be fine." And then, I also wonder, what does this mean for the National Labor Relations Act kind of permissions that allowed for union access to an employer's property, where it's impractical to contact employees outside of work? Like employees on an oil rig, are those also now takings?

Leah Litman:

Also, what does this mean for Title VII, or the Civil Rights Act of 1964, which, as I was suggesting earlier, require business owners to open up their property to people that they would prefer to exclude on the basis of race, sex, religion, sexual orientation, or so on. What about fair housing laws that, again, prohibit evictions on the basis of certain characteristics? What about rent control laws? What about laws that require people to grant access to conservationists, or environmentalists, or environmental inspectors? And the court seems to say, "Well, look, in some cases, a business is open to the public, but whether that's true depends on what the businesses' policies are."

Leah Litman:

The reason why the business here isn't open to the public is because they say, "We don't want union organizers, and then we don't want other people." And why isn't that true in cases where a business wants to exclude people on the basis of certain characteristics? So, again, I don't think the court is going to invalidate the Civil Rights Act of 1964 on this theory, and say, "It constitutes a taking." But that they are not... Suggest to me, this is partially about anti-union hostility. And Justice Breyer basically points this out, why isn't labor peace a benefit that the government is offering here? And why isn't the condition that you get to use this land for agricultural purposes, and we are doing this as a benefit to you, to your employees, and so on?

Leah Litman:

Another thing I wonder about is tenant protections. What about laws that say you can't exclude a tenant based on a previous conviction? That uncertainty is what the court is creating, and it is moving all of that uncertainty into these new categories it has created, what's the benefit? What's the condition? What's the proportional condition? What are longstanding background regulations? All of that is going to create some uncertainty, and that uncertainty is going to be sorted out by this court, which, again, is not exactly welcoming of workers' rights, unions, organizing, all of that stuff.

Kate Shaw:

The line of cases that culminated in Janus was obviously a First Amendment line of cases here, the constitutional hook is the Takings Clause, but the cumulative effect of the court's cases, this is obviously, I think, the first, and there could be others in this area, and Janus was not the last First Amendment case involving union organizing rights. I think the court will have more, and the lower courts have had more since Janus. The cumulative effect has been devastating for organized labor.

Leah Litman:

Yeah. And Janus was obviously grounded in the First Amendment, and sometimes people say that Roberts Court is very protective of First Amendment rights. Here, however, it is not protective of First Amendment rights, it is property rights that are trumping the union organizers First Amendment rights. So, I think that frame needs to be rethought. And you can see the hostility to unions and workers in organizing in the court's opinions, the way the chief describes that union organizers here saying like, "At five o'clock, one morning, members of United Farm Workers entered property without prior notice, and they moved to the [inaudible 00:55:59] calling through bullhorns," describing this as if it's like some horrific-

Kate Shaw:

An assault.

Leah Litman:

You're right. Exactly. And it's like, "Okay." It's just evident where sympathies kind of lie-

Leah Litman:

... so on and so forth. I mentioned that the other possible way of limiting the suspicion is remedies. So, when there is a taking, the government has to supply just compensation. Well, what's the compensation here? That is, what are the damages to the landowner? Justice Breyer addresses this in his dissent, he says, "I touch briefly on remedies, which the majority does not address." But the employers didn't seek compensation, they only want an injunction. But under the Takings Clause, right? They can take your property as long as they pay you just compensation.

Leah Litman:

So, would nominal damages work? Historically, that was the remedy for trespass, where someone walking onto your lawn doesn't actually hurt your property, and they're not doing this during business hours, so it's not like your economic productivity is being undercut. And if all of the damages are just nominal damages, then the harm from this decision is relatively low. My guess is, that's not how the Roberts Court would see it, but hard to say.

Kate Shaw:

Yeah, that's really interesting. So, the lower courts will take a pass at that, presumably.

Leah Litman:

Yeah.

Kate Shaw:

All right. So, we will see whether this 6-3 breakdown is a harbinger of what's to come in the big remaining cases for the term. We've got eight more, we have two more decision days announced, and they could add more days next week. I don't know, you think they're going to finish by Monday, or add another day, or two?

Leah Litman:

I think they could, but June doesn't end until Wednesday, so there's also not a requirement that they finish on Monday. I don't really have an intuition one way or another. Four opinions on two days doesn't strike me as unworkable, but maybe the Reporter's Office wants kind of a break. Thanks everyone for listening, thanks to our producer, Melody Rowell, thanks to Eddie Cooper for making our music, and thanks to cheerleaders and spirit fingers everywhere.

Kate Shaw:

I'm going to try to watch Bring It On before we are together again, because I feel like that'll help the conversation.

Leah Litman:

That also gives you four and a half hours, or maybe just four hours to watch Bring It On, since we will be together again this evening for

Kate Shaw:

Oh, that's true.

Leah Litman:

Maybe set more modest citations. Maybe by the term review.

Kate Shaw:

Okay. That's my goal, term review.

Leah Litman:

"By the term review, you will attempt to transform your robotic movements into poetry with your body." You will understand that reference once you watch the movie.

Kate Shaw:

So, this actually, sounds like a good film. I feel like I now actually want to see it.

Leah Litman:

Yeah. "The movie is the poo, so take a big whiff." Again, another reference. Okay. On that note, you're a great podcaster, Kate, it's just that maybe you're not cheerleader material. Bye-bye.

Kate Shaw:

That's harsh but true.

Leah Litman:

And on that note, actually, bye-bye. So, we will see you next time.

Kate Shaw:

Bye, everyone.