

#1516 The Clean-Up Crew (The System of Activist Judges Defending Trump)

[00:00:00] Intro 9-24-22

JAY TOMLINSON - HOST, BEST OF THE LEFT: Welcome to this episode of the award-winning *Best of the Left* podcast, in which we shall take a look at the decades-long scheme to funnel conservative activist judges into the judiciary to support Republican policy goals, and the resulting legal bulwark defending Trump against prosecution and supporting his future election efforts.

Clips today are from *The Mehdi Hasan Show*, *Late Night with Seth Meyers*, *Amicus*, *All In with Chris Hayes*, *Democracy Now!*, and a speech from Senator Sheldon Whitehouse, with additional members-only clips from *All In with Chris Hayes* and *On The Media*. And stay tuned to the end for my take on the importance of not getting entirely distracted by the Trump investigations.

About half the world has prosecuted a former leader, so why doesn't the U.S.? - The Mehdi Hasan Show - Air Date 9-4-22

MEHDI HASAN - HOST, THE MEHDI HASAN SHOW: It's called the most exclusive club in the world. And as a Marvel fan, I was always tickled by how Saturday Night Live used to portray the ex-presidents as actual cartoon superheroes. Because speaking as a relatively new citizen to this country, one thing that is uniquely American [00:01:00] about it is that no form of president of the United States has ever been charged with a criminal offense.

While that may seem normal to you, it is not normal everywhere else in the world. Former leaders in countries across the globe are being prosecuted and imprisoned, all the time. No, really. In Israel, the ex-prime minister, Benjamin Netanyahu, is getting ready to launch a run for his old job, even as his corruption trial is underway. Poor Bebe says he's the victim of a witch hunt. Hmm. Where have I heard that before?

And speaking of things that sound familiar, former president Nicolas Sarkozy of France had his home raided after he left office in a campaign finance

investigation that led to two convictions. He's currently appealing them in an effort to avoid prison. Peru, as Axios reports, has even prosecuted every president since 1985. Imagine if every president since Ronald Reagan had faced trial in the US. So you could understand why I chuckled when one [00:02:00] reporter asked this question at a recent White House press briefing:

REPORTER: Is the White House at all concerned, given the domestic political climate, but also the signal that it sends to the rest of the world, that the Department of Justice carried out this sort of operation on a former president that could even be, create the appearance of politically motivated prosecutors?

MEHDI HASAN - HOST, THE MEHDI HASAN SHOW: The rest of the world is probably wondering why he hasn't been prosecuted yet, why we are a weird global outlier when it comes to giving former leaders some kind of blanket immunity from prosecution.

Now many media pundits and Trump loyalists keep saying that the search of Trump's home slash wedding venue was unprecedented. His teenage son lives there. His wife lives there. Prosecuting Trump would be unprecedented, they say. They leave out the fact that what Trump did to prompt that search and a possible prosecution was also unprecedented. And don't take my word for it. Listen to one form of Trump enabler. [00:03:00]

BILL BARR: People say this was unprecedented, well it's also unprecedented for a president to take all this classified information and put it in a country club. Okay?

MEHDI HASAN - HOST, THE MEHDI HASAN SHOW: When Trump's former attorney general Bill Barr is the one saying it's unprecedented for a president to take home classified documents, like they are a few office supplies, when it's the guy who in effect rewarded Trump for obstructing justice in Robert Mueller's Russia probe. That can't be good for Donald Trump or the GOP defensive narrative.

Over the weekend the former guy still seemed to be treating the classified documents investigation as more of PR problem than a legal one, lashing out at the FBI before a crowd of supporters in northeastern Pennsylvania, claiming the raid was "one of the most shocking abuses of power by any administration in American history." And 665 days after the election was called for president Joe Biden, nearly two entire years later, Donald Trump was again falsely declaring the big lie that he had actually won in [00:04:00] the Keystone state. That wasn't all. Take a listen to just some of the deranged stuff that came out of his mouth:

FORMER PRESIDENT DONALD TRUMP: Well, you did listen to me because I won Pennsylvania by a lot. You did.

If you wanna see a dead bird cemetery, go under a windmill sometime. It's not a pretty sight. It's also the single most expensive form of energy you can get.

We're gonna have the country set up properly, like it was before the COVID came in, before the China dust came in. [cheers]

I'm calling for the death penalty for drug dealers, which will upon its passing reduce drug distribution in our country on day one by 75%.

MEHDI HASAN - HOST, THE MEHDI HASAN SHOW: The Republican party has a leader that wants to overturn election results and, Duterte style, execute drug dealers. But don't you dare call them fascists.

[00:05:00] Adam, you write in your recent piece in the Atlantic that for Trump defenders, the law is meant to be enforced only against certain categories of people among whom Trump is not included. And you are right, of course, it's a great line. But it's not just Trump defenders is it? America as a whole hasn't done what other liberal democracies have done and prosecuted a former president, ever.

ADAM SERWER: No, I mean, America has not done that. And it's one reason why America's ex-presidents have tended not to commit brazen crimes out of office. It was sort of surreal to hear Bill Barr talk in this way, about a man who he advised and who he enabled throughout the entire administration when he was in there.

But he was right. The reason why this has never happened before is that no president has committed or appeared to commit an offense that was so clearly apolitical and related to something as apolitical as national security. I don't mean national security is generally [00:06:00] apolitical, but the handling of classified information is one of those things it's not a highly ideological or political issue in the same way that a number of other things might be. And so what Trump did was not only put himself in a situation where the FBI would think that they had to do something like that, the Justice Department would think that they had to do something like that urgently in order to protect classified information, but it's also ironic because it's exactly the thing that he was demanding Hillary Clinton be locked up for when he ran in 2016. So it puts both Trump and his supporters in the position of making it clear that "lock her up" was not about protecting classified information. It was about the thing that

they're accusing Joe Biden of doing, which is about prosecuting your political rivals using a pretext, which is exactly why they're making that accusation now, because they assume that people are acting for the same reasons that they were acting in 2016.

MEHDI HASAN - HOST, THE MEHDI HASAN SHOW: With the Republican party, Adam, it's always a projection and we did get some "lock her up" chants in Pennsylvania last night.

Melissa, there are multiple legal cases [00:07:00] against Trump, both criminal and civil, from the DOJ 1/6 investigation to the Manhattan DA to the Fulton County DA in Georgia to this classified document scandal. You're a law professor. How big a legal undertaking is it to indict and then successfully prosecute a former president of the United States?

MELISSA MURRAY: Well, Mehdi, it is a significant undertaking, simply because, as Adam says, it's unprecedented for the United States to actually prosecute a former president. We've never done so. And it's not just that this is a former president. It is also someone who may be in the future a presidential candidate. So there's a degree of prudential concerns that come in here that I think is unlike any other person. But again, the fact that this is a former president, someone who may again be a candidate for the presidency, makes this even more urgent.

The idea that someone is above the law, simply because they have sat at the helm of this country, or may sit at the helm of this country in the future, is actually untenable to the idea that no [00:08:00] man is above the law. And we've seen in other advanced democracies like Italy and France, that former presidents and former prime ministers have been subjected to criminal prosecution and have been held accountable. And in most of those cases, it's been situations that involve corruption, not necessarily political concerns like an insurrection or the overthrowing of a lawful government. So the fact that the DOJ is investigating what has happened at Mar-a-Lago and the recovery of these stolen documents as a crime, suggests that this may well be the kind of thing that will have more legs in terms of holding Trump accountable, ultimately.

FBI Seizes Mike Lindell's Phone at Hardee's, DOJ Issues 40 Trump

Subpoenas: A Closer Look - Late Night with Seth Meyers - Air Date 9-14-22

ALEX WAGNER: Blockbuster reporting from the New York Times that the Justice Department's January 6th investigation is expanding. "A federal grand jury has issued subpoenas seeking information about Save America PAC, which was formed as former president Trump promoted baseless assertions about election fraud." As a reminder, Trump created the Save America PAC [00:09:00] after he lost the 2020 election. He raised millions of dollars by falsely claiming that there was a rampant voter fraud that had to be stopped, and according to the January 6th committee Trump and his surrogates misled donors about what their PAC donations would ultimately be used for.

SETH MEYERS - HOST, LATE NIGHT: You mean to tell me, Donald Trump has amassed a giant pile of money and it might not entirely be above board? Next you're gonna tell me Chris Pine, wasn't thrilled to be at the Venice Film Festival. And in particular, what seems to have attracted the attention to the feds in Trump's case is that he seems, and I know this will come as a shock, to have lied to his supporters, to get their money.

Much of the money Trump is amassed was raised in the days and weeks after the 2020 election. That's when Trump's supporters were bombarded with a nonstop stream of emails and texts, many containing all caps lettering and blatant lies about a stolen 2020 election soliciting cash for an election defense fund, but no such fund ever existed. Instead, Trump has dedicated the money to other uses. He's financed dozens of rallies, paid staff, and used the money to travel, [00:10:00] as he's teased in expected 2024 presidential run. Although let me stress, I think most people who donate money to Trump would do it no matter what he said it was for. I don't know why he opened himself up to criminal liability by lying and saying it was for a legal fund when he could have just raised as much from telling his supporters, "I'm upset, and the only thing that cheers me up is money, or going on a fancy plane ride tomorrow, wanna pay for it?"

So those are just a few of the newest revelations we've learned about recently. And as I said earlier, it's getting hard to keep track of all of Trump's criminal investigations. I mean, I don't even think I could list them all here if I tried, which is a shame because people should know about all of them, given that the Republican party and so many of its midterm candidates are standing firmly behind Trump. I just wish someone would put all the Trump scandals into, I don't know, one giant list so we could get a sense of Trump's corruption. Maybe

some young hotshot journalist dead set on taken down the former president, the whole conservative establishment, maybe someone like this man. [00:11:00]

SEAN HANNITY: First, it was the Russia hoax. Then it was Comey's crossfire hurricane, Mueller's witch hunt, the emoluments clause investigation from the House Oversight Committee, a House Ways and Means investigation into Trump's taxes. Another House investigation into Trump's hotel lease. Another House investigation into foreign gift disclosures. A DC probe into Trump's inauguration fundraising. Another similar investigation from the Southern District of New York and the Eastern District of New York. And from new Jersey's attorney general. One impeachment investigation into a regular phone call with Ukraine. A second impeachment investigation into January 6th. Yet another House Committee investigation into January 6th that is still ongoing with more hearings to come. And then there's the Southern District of new York's investigation into pardons. A DOJ probe into Trump's political action committee. Another House investigation into the Trump administration's security clearance process. Other investigations into [00:12:00] Trump's property valuations. And of course the social media Truth social, the Trump foundation, as well as a variety of other tax investigations. And, of course, the national archives investigation that led to the Mar-a-Lago. You got all that?

SETH MEYERS - HOST, LATE NIGHT: Mar-a-Lago raid. I do now! I got it all now. Also those weren't his hats.

Seriously was that list supposed to make anyone other than Donald Trump look bad? It's like a reverse resume where you list all the reasons you've been fired from previous jobs," special skills. Let's see; I'm often late. I steal office supplies. I ask coworkers on dates and won't take no for an answer. I treat every day like casual Friday and every Friday, like underpants Sunday. And, when I'm given feedback on my work, I have been known to pull a knife and. I have a question for you. Oh, when do I start?"

Trump's Remaking Of Judiciary Appears To Pay Off In Mar-A-Lago Case - The Mehdi Hasan Show - Air Date 9-6-22

MEHDI HASAN - HOST, THE MEHDI HASAN SHOW: On November the 12th, [00:13:00] 2020, the Senate confirmed Trump nominee Aileen Cannon to be a federal judge in south Florida. She was one of almost two dozen judges to get lifetime federal appointments after election day. Cannon was the kind of

pick you might expect from Trump and the GOP: an assistant US attorney in Florida and a long-time member of the right-wing Federalist Society, of course. Over the first two years of her lifetime appointment, you might not have heard much about judge Cannon. But you certainly are now.

After the FBI search of Mar-a-Lago that turned up hundreds of classified documents, including top secret ones that were not supposed to be there, Trump and his lawyers responded with a strategy that seemed to be throw everything at the wall and see what sticks. One of those strategies was to claim that documents contained privileged information and calling for the 11,000 pieces of evidence to be taken from DOJ investigators and given to a special master, a third party to review the documents for privileged information.[00:14:00]

But Trump's lawyers didn't file this request with judge Bruce Reinhardt, the nearby magistrate who reviewed and originally approved the government search warrant of Mar-a-Lago. No. Instead, they filed with a federal civil court, 70 miles and two counties away. A court presided over by Aileen Cannon, Trump's 2020 appointee.

Last week, before even hearing the federal government's arguments, judge Cannon publicly said she was inclined to give Trump what he wanted, an unusual move move to be sure. And then on Monday, on Labor Day, the federal holiday, she issued her ruling in favor of a special master, delaying and blocking some critical parts of the FBI investigation of Trump and those documents at Mar-a-Lago. It was a shock to many legal experts, some called it flatly ridiculous. Cannon said the move was necessary to protect executive privilege. But she ignored the fact that the Justice Department is part of the executive branch, and no former [00:15:00] president has ever before been allowed to invoke that privilege against the executive branch.

And at the same time that she barred the FBI from keeping or seeing any of the evidence it collected, she did allow the US intelligence community to review it for security breaches, which kind of makes no sense. As law professor and former acting US Solicitor General Neal Katyal put it in a long Twitter thread taking apart the Cannon ruling, "She says that because some tiny percentage of materials might be privileged, the entire investigation over all the materials has to stop. That's a bazooka when one needs at most a scalpel."

So is justice blind or is she blindly partisan? On one hand, this is the American system of government at work. This is American exceptionalism, and not of the good kind. Most other Western democracies don't allow politicians to appoint judges, it's done via an independent process. And yet here in the US since the

beginning of the republic, presidents with Senate majorities get to name and confirm federal judges. [00:16:00] And it's always been a politically fraught, a sensitive process, but like with everything else, Donald Trump took judicial partisanship to self-serving extremes. And he didn't hide it.

FORMER PRESIDENT DONALD TRUMP: You know how many cases I've lost and then we win. So I've, I've had a great, I've had a great track record. And right now, within a couple of weeks, we will have 160 judges. And within a couple of months, we'll have 182 federal judges.

Repeat nine justices. You need that with the unsolicited millions of ballots that they're sending, it's a scam.

I think it's very important. I think this will end up in the Supreme Court, and I think it's very important that we have nine justices.

REPORTER: You said that you hoped federal judges were watching what was going on with mail-in ballots. Do you hope that Amy Coney Barrett is watching as well?

FORMER PRESIDENT DONALD TRUMP: I do. I'm sure she is.

REPORTER: Are you counting on the Supreme Court, including a [00:17:00] justice Barrett, to settle in a dispute?

FORMER PRESIDENT DONALD TRUMP: Yeah, I, I think I'm counting on them to look at the ballots. Definitely.

MEHDI HASAN - HOST, THE MEHDI HASAN SHOW: Take it from Trump himself. He said it out loud. He expects his appointees to rule in his favor. So when a quote unquote Trump judge comes along, comes out with a ruling in his favor, a ruling that alarms the legal community, a ruling that is internally contradictory, all I can hear are those words from Trump talking about what he expects from his judges in return for appointing them.

We'll discuss the politics of this case in a moment, and this whole issue of judicial appointments, which I find crazy with reporter Mark Joseph Stern, that's coming up. But first let's discuss the legal ruling itself with Neal Katyal, Georgetown law professor and former Acting Solicitor General of the United States under president Barack Obama.

Neal, thanks so much for coming on the show. How bad is this decision? How bad is it? And if you're Merrick Garland's DOJ, do you appeal it straightaway?

NEAL KATYAL: I don't have enough adjectives, honestly, to tell you how bad it is. I mean, [00:18:00] just think about it. This is the most important professional thing this judge has ever done in her lifetime.

You'd expect an A game. And this opinion is riddled with errors in silliness. I mean, it's kind of like someone playing in the NBA finals and they miss 20 free throws and they don't just miss the shots, they miss the net, they miss the backboard. They miss the hoop.

Just to start, I mean, every defendant would love a special master. Of course, every defendant says they're being unfairly targeted and set up. Every defendant says their reputation would be bullied. None of them get special masters, and especially you can't get a special master when you forum shop for a particular federal judge, just because someone asserts privilege.

And I'm so glad you started with the whole question of lame duck presidents, because Donald Trump doesn't think he's a lame duck. He thinks he is sitting president still. I mean, he's invoking executive privilege now. That's what this judge rules on. The idea that there's some presidential [00:19:00] prerogative, that belongs to the current president. Donald Trump is not the current president. The whole thing is shoddy start to finish.

The Law v Lawless Edition - Amicus With Dahlia Lithwick | Law, justice, and the courts - Air Date 9-10-22

DAHLIA LITHWICK - HOST, AMICUS: Why isn't Donald Trump in jail, Mary?

MARY TRUMP: That is the question of our times. Well, he never has been. I think that is the foundational reason. This is a man who should have been imprisoned decades ago. He certainly should have been indicted for something, and this is just what happens, I think, when there's no accountability, which leaves the room for these countervailing forces to get momentum and to change the subject.

We see in this most recent ruling by this hack of a judge, Eileen Cannon, she by postponing what should have happened, she gives room for Donald's enablers and supporters to act as if everything's fine. If it were that bad right, then [00:20:00] nobody could possibly have made that ruling. Clearly, he must have some right to these documents. And this is the same thing that happens time after time. If it were that bad, then something would have happened already. Wouldn't it have? And I think it just underscores that the real problem is the system, which is, you Dahlia have said recently, is working exactly as it was designed to, but for those of us who have a problem with that, it's incredibly demoralizing.

DAHLIA LITHWICK - HOST, AMICUS: Mary, there's something so profound actually buried in what you just said, which is people look at what Judge Cannon does and say, "Well, there must be both sides here. There must be two legitimate sides, because, after all, a federal judge has just issued a stay," but then Judge Cannon in her order, says, essentially, people are upset and alarmed and this seems worrisome, so let's pump the brakes. So in a way, [00:21:00] you've got a feedback loop of normalizing, where she is relying on the fact that people are horrified to justify stopping this process. People who are horrified are saying, well, if she stops the process, we must be right. So there is an almost perfect circle of reinforcement there.

MARY TRUMP: Yeah, absolutely. And then to clarify, the people she and others like her are catering to are those who are inclined to want to get Donald off the hook. And unfortunately, there is still a significant minority of those people in America at large, and 100% of elected Republicans, specifically, are eager for Donald to continue for their various reasons. It suits their purposes to have Donald above the law.

NORM ORSTIEN: Dahlia, I want to follow on that in a couple of ways. What struck me over the course of Trump's life, Donald Trump's life, and Mary's book reflects this, as do others, is it's a lifetime of grifting. And he [00:22:00] has managed to, and partly this is the culture of New York, but it's also broader, he's managed to pay off judges and prosecutors, to intimidate people—Michael Cohen, the enforcer, and in other ways—and one of the stories that struck me the most, it's a minor part of the grifting, was that he used to buy jewelry at the Bulgari shop in Trump Tower, and did this scam of having them certify that it was actually being sent from the Florida store so he wouldn't have to pay sales tax. It got uncovered, was his scheme, he basically pushed the employees there to do it. They got punished and he didn't. And that's the history of his life.

And I think we see with his increasingly hysterical missives on Truth Social and elsewhere, that he is now actually frightened that this long time, lifetime pattern of getting off from his schemes, criminal [00:23:00] schemes, may be coming to an end, but what we also see with Judge Cannon is that he finds enablers in the judiciary everywhere. Here you have a woman who manifestly does not belong on the bench, who was jammed through days after he lost the election, put in place because she was a long time member of the Federalist Society and was barely 40 or actually under 40 when she was there. Never should have taken this case in the first place. It was the most blatant example of shopping for the right judge that we've seen in a long time.

Interestingly, when this first came up, she actually mentioned that asking what gave us a little bit of hope, the pointed question, why are we here instead of with the magistrate judge? And then not only took the case, but issued this execrable ruling. But it's not likely to [00:24:00] stand, and I think the noose is tightening in so many venues, in New York, in Georgia, and with this federal case, and we're now seeing a level of criminality that is just shocking beyond even what we might have imagined.

DAHLIA LITHWICK - HOST, AMICUS: I want to come back to you on one point, Norm, and then I do want to ask Mary, because I think Mary knows the life of grifting and somehow untouchableness, that story better than the rest of us. But I do want to say on the structural question, because it does feel and I felt it so acutely this summer, and we've talked about it on Mary's show, but there's the highs of the net closing and then the lows of something intervening, and that sense of inevitability that you're just reflecting, and then that sense of it being arrested. But it's always arrested because of antidemocratic structures.

And as you just said, somebody tweeted, I think on [00:25:00] Thursday night that the only publication that Judge Cannon listed in her judicial application was an interview she did about her wedding announcement. She had never published an interview. This is the most shoddily inappropriate person to be deciding major questions of national security, but as you just said, and I just want you to pull on it a bit, Norm, this is a structures problem.

We are in thrall to a federal judiciary that can simply leap in. The DOJ has the president dead to rights. He has taken classified documents. They are not his. They belong to the executive branch. He has refused to return them after painstaking efforts for the National Archives to save face and then lied about all of it. He's likely compromised national security in ways we will never know about, but it's so bad, and a single judge strolls onto the stage, takes it away

from both the magistrate judge and the judge in D.C., where [00:26:00] this appropriately resides, and then just sticks a fork in the whole thing

and I guess my question for you is, as somebody who's been writing about all the ways in which democracy is thwarted, this rule by juristocracy is crippling, and it is something that I don't think, and I say this as somebody who's been writing about the inviolable juristocracy for a long time, I don't think we're having serious conversations about fixing that structural problem at all.

NORM ORSTIEN: I couldn't agree more. There was another interesting development along similar lines. Judge Reed O'Connor, who infamously had ruled that the Affordable Care Act was unconstitutional, just issued a ruling that said that PrEP, these are the drugs that prevent HIV transmission, cannot be forced as part of the Affordable Care Act's formulary for [00:27:00] religious reasons, because people think that it's only for homosexuals and homosexuality is immoral, and therefore they don't have to prescribe it.

And it gets to a larger point that you've made, which is, it is insane that a single district court judge can enjoin the entire country in an important action or can rule in the way that Judge O'Connor has. And this is in Congress's purview. We have a lot of discussion about enlarging the court, and we have some discussion about term limits for Supreme Court justices. Nobody has effectively talked about the jurisdiction of the courts, which is totally in, with a very few exceptions, the original jurisdiction given in the Constitution to the Supreme Court. Congress can determine what appellate jurisdiction is. They can, by legislation, say, no, we're not going to let some [00:28:00] insane district court judge, who is ruling only because of forum shopping by extremists, to basically rule over the entire country. And they can take away some of the Supreme Court's jurisdiction as well.

We are now in a world where the bias that exists in all of our institutions and anti-democratic bias, some of it built in, but it was kept in check by the norms and the system. The norms have disappeared, and now you have a sizable share of the country willing to use these structural anomalies to rule over the rest of the country, even though it goes against what the vast majority of Americans want or against what we would view as the rule of law. This is a crisis point, and I can only hope that we will get a Congress that will be willing to address some of this.

I'll just make one other point while we're on this subject. [00:29:00] We know that the Supreme Court is going to rule on one part of this independent state legislatures theory, this obscure whacko theory, which was first applied to

electors, but now it's very possible, maybe even likely, that they're going to apply it to state legislatures and Congress. That, in effect, state courts or state constitutions are irrelevant if the state legislature, narrowly defined as that legislature, takes an action and that action can be unconstitutional, it doesn't matter. What it ignores and we've seen this play out multiple times, and there's now a brief in this case that basically says Congress can do nothing about this, ignoring the explicit language of the Constitution.

State legislatures can regulate state elections, except Congress can overrule them. Congress has the ultimate power over the time and replace of federal elections, and [00:30:00] if this Supreme Court takes this extreme position, I would say as a Congress, okay, what you're basically saying is no courts, including the Supreme Court, can overrule what Congress does on elections and voting. Therefore, Citizens United, Shelby County, and all their progeny are no longer in effect because you have no role to overrule what we have done in Congress.

I'd like to see a Congress with the guts to do this, but I think the court is pushing such a radical agenda, and we've seen Justice Alito do his victory dance in Rome, basically saying, screw the rest of you, we've got the votes, that we've got a crisis that can only be resolved if you have a Congress with the guts to do something about it.

Leonard Leo, The Most Powerful Person In America You've Never Heard Of - All In w/ Chris Hayes - Air Date 8-22-22

CHRIS HAYES - HOST, ALL IN: Leonard Leo: he's possibly the most powerful person in America who almost no one knows about. If I were to draw a Venn diagram of who's the most powerful [00:31:00] person with the least name recognition, the person in the middle of those circles is Leonard Leo. Now, maybe you've heard of him. He is the longtime vice president of the conservative legal organization, the Federalist Society, whose mission was once described as creating a kind of conservative pipeline to take over the courts.

Leo has referred to himself as a "leader" of a conservative legal movement, and he is not wrong. He's played a key role in putting all six of the current conservative justices on the Supreme Court: Clarence Thomas, John Roberts, Samuel Alito, Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett.

In 1990, Leo began his career as a clerk for a judge on the US Court of Appeals in Washington, DC, where he met and became close friends with then-appellate judge Clarence Thomas.

The following year, Leo was hired as one of the first paid employees of the Federalist Society, although he delayed his start there to help Thomas through his Supreme Court confirmation. As the Washington Post puts it in a 2019 investigative piece, "At [00:32:00] the Federalist Society, Leo took a leading role in the conservative legal movement, part of a burgeoning effort to counter the influence of the 1960s in liberals on education law, and politics.

That effort ramped up when George W. Bush was elected. Leo became an outside advisor to the Bush White House on judicial nominations. He organized the campaigns around John Roberts and Samuel Alito's nominations to the court, both of which of course were successful. They landed up on the court.

During the Bush years, Leonard Leo also developed a reputation, a well earned one, as a conservative money man, as the Post reports. And he expanded that role even after President Obama took office. Especially in the wake of the 2010 Citizens United ruling, which opened the door for unlimited corporate spending in politics. Of course, the irony being that Leonard Leo himself helped bring about that awful ruling by putting several conservatives who voted for it on the court itself. He was then in position to reap the rewards by doing a lot of fundraising through these new channels [00:33:00] that the court had just signed onto.

He's ultimately a big part of why we are now seeing enormous unprecedented sums of nearly untraceable money sloshing through our politics. But that's not his only aim. He wants the court to roll back all sorts of key rights. He is largely responsible, for instance, for the destruction of the Voting Rights Act in the 2013 Shelby County versus Holder ruling.

And if there's one single man -- I really mean this, sort of aside, I would say, from Donald Trump -- one single man most responsible for Roe v. Wade being overturned, it's him. It is Leonard Leo. It was his six justices whose vetting and nominations and confirmations he all shepherded, who all voted to gut reproductive rights.

When you see the news about a 10-year-old forced to flee her state to terminate her pregnancy from a rapist, think about Leonard Leo as the man who brought that state of affairs about. He is the guy pulling the strings in [00:34:00] the background. And yet, no one really even knows his name.

Months before Donald Trump was elected, Leo was already shaping Trump's Supreme Court nominations. Listen to how he describes this meeting with Trump in March of 2016:

LEONARD LEO: He had an idea he wanted to float, which was, what do you think of having me put out a list of people who I would pick from, for the US Supreme Court. Now this was a little bit of a radical idea. No candidate had ever tried it before. I set about to suggest to him names of people who would be appropriate for that kind of a list.

CHRIS HAYES - HOST, ALL IN: Right. You think about how all this works, right? Scalia's dead. The vacancy is not being filled by Mitch McConnell, who says under no circumstance would they fill it. So there's this opening. And everyone knows if Donald Trump becomes the president, conservatives will get a nominee on the court. And he says to Leonard Leo, I should do a list. And Leo says, I'll give you the list. He then went on to become [00:35:00] President Trump's judicial advisor. He got lifetime Supreme Court nominations for three people on his list: Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett. They have already eliminated the constitutional right to an abortion. They have tried to kneecap the EPA's climate regulation, radically expanded gun access, and on and on. We can only imagine what they may do in the years to come. This last term was the most consequential right-wing term, many say, in 70 or 80 years, perhaps ever.

Again, I know it sounds a little weird to ascribe this one basically anonymous dude, all this power, but it really is true. And don't take it from me. Two of Leonard Leo's longtime close friends, justice Clarence Thomas, and his wife, Ginny Thomas, have spoken publicly about his vast influence.

GINNI THOMAS: Leonard Leo has single-handedly changed the face of the judiciary under the auspices of Ed Meese and many of the [00:36:00] people who started the Federalist Society.

He has many hats. That isn't even all he does. He doesn't really tell all that he does, but I know enough to know the man is a force of nature.

LEONARD LEO: It's great to have you here today.

CLARENCE THOMAS: Well, thank you. Now, Leonard, since you're the number three most powerful person in the world, we have to...

LEONARD LEO: Right. [laughter] God help us. God help us.

CHRIS HAYES - HOST, ALL IN: Now, in context, that's a tongue-in-cheek joke, but only a half joke.

Now get this: this same guy, Leonard Leo, who is one of the most powerful people in the world, who operates largely out of the spotlight, he has now been handed \$1.6 billion in one of the largest single political donations in recorded history to further his right-wing vision.

The details of this story just unearthed today are shocking.

Elie Mystal on the Four Investigations into Trump & Why Progressives Should Push to Expand the Court - Democracy Now! - Air Date 9-7-22

JUAN GONÁZLEZ - HOST, DEMOCRACY NOW!: Speaking of a nation under the rule of law, in your book, *Allow Me [00:37:00] to Retort*, you write about the structural problems of our Constitution that, to you, raise serious questions about the ability of our nation to function as a democracy. I'm wondering if you could talk about some of those structural issues.

ELIE MYSTAL: Well, I think, look at what the Trump judge did in the espionage case. Look at Aileen Cannon. The idea that judges are apolitical, impartial arbiters is wrong. It's always been wrong. It's always been a legal fiction. We know that judges are political actors. If they weren't, you wouldn't have wildly different judges nominated by each of the different political parties. We know they're not impartial. We just haven't been told that, because, for the most part, their bias and their prejudice has been towards white, cis, hetero, male people. And so we act like that's not a bias, but that is a bias, and that's baked into the system.

And these people are [00:38:00] also careerists. People keep saying, "Oh, the point of lifetime appointments is that once a judge is in, they don't have to concern themselves with the political machinations of the country." We know that not to be true. Judge Aileen Cannon is a district court judge now. Does she want to be a circuit court judge someday? Does she want to be on the 11th Circuit Court of Appeals someday? Does she want to go on the Supreme Court someday? Well, if she does, which wouldn't be surprising to me, making decisions in concert with the Republican agenda, especially given Trump's, again, Svengali-like hold over the Republican Party, seems to make sense.

So, when you look at the structure of our judicial system, it is still primarily based on people, and those people can be biased. Those people can be prejudiced. Those people can be wrong. And we don't do nearly enough within our system to hold our judges accountable. They're appointed for life. There's no way to remove them, absent [00:39:00] impeachment. These are real problems that we have, when you run into clear cases of bias or unethical behavior, as I believe we're seeing with Judge Cannon.

And look, Juan, let's remember this. I am suggesting that Cannon is biased and corrupt based on her opinion, which has no basis in law. The other option is that she has no idea what she's doing. And I tend to give her the benefit of the doubt that she actually knows what she's doing and has decided to help Trump, as opposed to me, what's worse, that she truly, honestly doesn't understand how law works. Don't think she's dumb. I think she is biased and prejudiced towards Trump, and the reason why I think that is that she said it in her opinion. She literally wrote that she was treating Trump differently because he was the former president, which is a legal jargonny way of [00:40:00] saying, look, Juan, if you and I or Amy goes into the National Archives and steals documents, I promise you Judge Aileen Cannon is not slowing down the investigation against us for criminal liability in violations of the Espionage Act.

AMY GOODMAN - HOST, DEMOCRACY NOW!: So, let's talk about the latest news that NBC is reporting, that among those very classified documents are perhaps nuclear secrets of another nuclear-armed country, just among the classified documents. But The New York Times reports, in her Senate questionnaire—this is Judge Cannon—described herself as having been a member of the conservative Federalist Society since 2005. And you've done a lot of investigation into this and the power of Leonard Leo, now getting \$1.6 billion to start a new organization, and how they have populated the courts, not just her court, but if the Department of Justice appeals this to the 11th Court of Appeals, that [00:41:00] court, and then, of course, to the Supreme Court. Trump alone got three Federalist Society justices on the Supreme Court. And in that answer, Elie, if you can talk about your call for adding more people to the Supreme Court?

ELIE MYSTAL: Yeah. So, let's start with Leo. If you're keeping tabs on what the new \$1.6 billion man is doing, one of the first things he's done with the money is file an amicus brief for the upcoming Supreme Court case, advancing this bonkers theory of an independent state legislature that is allowed to change election laws without regard to their own state constitution. It's the biggest upcoming case in the Supreme Court docket this year, because it, essentially, could allow state legislatures, red state legislatures, to simply throw away votes

they don't like. That's what Leonard Leo is doing with his money. That's what the Federalist Society is about. That's their kind of modus operandi, [00:42:00] to infect democracy and to take it away from the people and put it behind closed doors.

Aileen Cannon, obviously a part of that from her whole career. She wouldn't have been appointed by Trump, who doesn't know a lot about judges, he outsourced his judicial picks to the Federalist Society. She wouldn't have been appointed by Trump without Federalist Society approval. So, that's on the one hand.

As you say, Amy, if the Department of Justice appeals this ruling, which they should, because, again, there's no basis in law for it, you go to the 11th Circuit, which is stacked with Trump judges. Then you go back to the Supreme Court, which also is stacked with Republican justices. We've seen what they've been willing to do to precedent and the rule of law, just last term. So there are no good options there. And that's something that I think liberals and progressives need to understand more generally.

There is nothing that you can do to get around six conservative justices on the Supreme Court and a Republican judges stacked up and down through the judicial [00:43:00] system. We've already seen, with the Biden administration, they will block executive orders. They will issue stays and injunctions against moves made by Biden and this Congress. And they will seek to overturn laws passed by this Congress.

So, we saw last term, the Clean Air Act, yeah, that doesn't really matter to the conservatives on the Supreme Court when it comes to regulating the environmental pollutants in our air. The Supreme Court just basically ignored the Clean Air Act. And that's what they're going to do again if, by some miracle, Democrats hold onto the House—they'll probably keep the Senate, because the Republicans have nominated some terrible candidates—and they pass a nationwide abortion rights protection, the Supreme Court will overturn that before breakfast. As long as you let the Republicans control the Supreme Court, there is no progressive agenda. There is no Democratic agenda that gets through these conservatives on the Supreme Court.

The [00:44:00] only rational play—this is beyond politics, this is beyond reform—the only rational play for any Democratic administration, for any Democratic candidate who wants to get anything done for the next 30 years, is to add justices to the Supreme Court. Now, I have a lot of actual reform reasons why we should add justices. In my book, I talk about how, beyond the politics

of it, more justices are better. It leads to more moderate decisions, because it's harder to get a majority when you have more people. It leads to more diversity, more diversity of thought, and to say nothing of racial, ethnic and gender diversity.

There are lots of good reform reasons to add more justices to the Supreme Court, but as a practical political matter, if Democrats want their agenda to be upheld, they need to counteract the power of conservative justices that have been sent in there specifically to put a stop to progress, not just the [00:45:00] progressive agenda in terms of left-right, a stop to progress, to bring us back to, as Sam Alito did in the Dobbs decision overturning Roe v. Wade, bring us back to a time when women were not considered full citizens and full people. That is the goal of the conservatives on the Supreme Court, and as long as we let them have power, that is what they will be doing.

JUAN GONÁZLEZ - HOST, DEMOCRACY NOW!: Elie, I wanted to ask you—we only have about a minute or two, but voting rights. Considering all of the state efforts in the past few years to limit and restrict voting across the country, your concerns about what's going to happen in the upcoming election and, of course, in the presidential election in a couple of years, in terms of the ability of the majority of the American people to elect representatives that represent them?

ELIE MYSTAL: Yeah. So, this goes back to Chief Justice John Roberts on the Supreme Court. John Roberts has been an enemy of voting rights, and specifically an enemy of [00:46:00] Black people voting, for his entire career. His first real job out of school was to work against the 1982 amendments to the Voting Rights Act. He gutted Section 5 of the Voting Rights Act in 2013's Shelby County v. Holder, and he was part of the majority that gutted Section 2 of the Voting Rights Act in 2021's Brnovich v. Arizona. John Roberts is the real bad guy here when it comes to voting.

Now, how does that play out on the ground? Well, one thing that I have learned—my mother was born in 1950 in Mississippi, so my people go back a long way on this. One thing I've learned in my travels is that when you tell people they can't vote, that makes them want to vote more. And so there is the opportunity, the possibility, that all of the efforts to suppress the vote backfire on people who have been historically challenged in their ability to vote. It could lead to more dedication to go out and [00:47:00] have that right, that Republicans are so desperately trying to take away.

But that's where this critical Supreme Court case, *Moore v. Harper*, that I've been talking about, comes into play, this independent state legislature theory, this Leonard Leo ploy. That would allow states to throw away votes that have already been duly cast and counted. So, Republicans are both trying to suppress the vote and, if that doesn't work, trying to put themselves in a position where they can overturn the vote and throw away votes they don't like. We are in a crisis of democracy. We are not approaching a constitutional crisis; the crisis is upon us. And the question is: What do we do about it?

The Scheme Speech 1: The Powell Report - Senator Sheldon Whitehouse - Air Date 5- 27-21

SENATOR SHELDON WHITEHOUSE: Madam President, there is a scheme afoot, a scheme I will be talking about in weeks ahead – a long-running, right-wing scheme to capture the Supreme Court.

Special interests [00:48:00] are behind the scheme. They control it through dark money – hundreds of millions of dollars in anonymous, hidden spending. We will dwell in later speeches on how the scheme operates. This first speech seeks its origins. The scheme is secret, and because of its secrecy, it is hard to know exactly where the story should begin.

The one place you could begin is with a corporate lawyer – the Virginian Lewis Powell. An authorized biography of Lewis Powell by his fellow Virginian, renowned UVA law professor John Jeffries, reveals Powell to be a tough and incisive lawyer, [00:49:00] willing and able to make sharp, even harsh, decisions, but a man of courtly and decent matters, well-settled in the White male social and corporate elite of Richmond, Virginia. There he developed his legal and business career through the 1950s and 1960s.

A successful corporate law practice often entailed joining corporate boards. Richmond was a home to Big Tobacco, and Powell's legal career led him on to Richmond's tobacco and other corporate boards. Richmond was Virginia's sibling rival to Charlottesville, which could boast of Thomas Jefferson's nearby Monticello, his renowned University of Virginia, and all the cultural and academic vibrancy bubbling around that great university. Richmond – Richmond was the working sibling, [00:50:00] hosting the State's capitol and its political offices and serving as its corporate center.

Powell was an ambitious Richmond corporate lawyer, and the turbulence of the 1960s was broadly distressing to America's corporate elite. The civil rights movement disrupted Jim Crow across the South, drawing out and exposing to the nation the racist violence that had long enforced the social and legal norm of segregation and upsetting America's all-White corporate suites and boardrooms.

Anti-war protesters derided Dow Chemical Company's manufacture of napalm and scorned the entire military-industrial complex. Women's rights protesters challenged all-male [00:51:00] corporate management structures. The environmental movement protested chemical leaks, toxic products, and the poisons belching from corporate smokestacks. Public health groups began linking the tobacco industry to deadly illnesses, and lead paint companies to brain damage in children.

Ralph Nader criticized America's car companies for making automobiles that were “Unsafe at Any Speed” and causing carnage on America's highways. America's anxious corporate elite saw Congress respond with new and unwelcome laws and saw courts respond with big and unwelcome verdicts. Something had to be done.

Powell's prominence in Virginia's civic, legal, social, and corporate [00:52:00] circles had brought him attention in Washington, DC. A new client of his, the Washington, DC-based U.S. Chamber of Commerce, asked Powell for his help. The Chamber commissioned from Powell a secret report, a strategic plan for reasserting corporate authority over the political arena.

The secret Powell report, titled “Attack on American Free Enterprise System,” was telling. It was telling, first, for the apocalyptic certainty of its tone. Powell's opening sentence was: “No thoughtful person can question that the American system is under broad attack.” By that, he meant the American economic [00:53:00] system, but that assertion was footnoted with the parallel assertion that – and I am quoting him again – “The American political system of democracy under the rule of law is also under attack.”

This was, Powell asserted, “quite new in [American history] .” “Business and the enterprise system are in deep trouble,” he wrote, “and the hour is late.”

The secret Powell report was an alarm. The report is populated with liberal bogeymen: the bombastic lawyer William Kunstler; the popular author of “The Greening of America,” Charles Reich; the consumer advocate Ralph Nader, whom Powell said there should be, and I am quoting here, “no hesitation to attack.” Against [00:54:00] them, Powell set establishment defenders like

columnist Stewart Alsop and conservative economist Milton Friedman. Powell cloaked the concerns of corporate America as concerns of “individual freedom,” a rhetorical framework for corporate political power that persists to this day.

The battle lines were drawn. Indeed, the language in the Powell report is the language of battle: “attack,” “frontal assault,” “rifle shots,” “warfare.” The recommendations are to end compromise and appeasement – his words: “compromise” and “appeasement”— to understand [00:55:00] that, as he said, “the ultimate issue may be survival”— and he underlined the word “survival” in his report – and to call for “the wisdom, ingenuity and resources of American business to be marshaled against those who would destroy it.”

Well, for this, you had to have a plan, and the Powell plan was to go big. Here is what he said:

“Strength lies in organization, in careful long-range planning and implementation, in consistency of action over an indefinite period of years, in the scale of financing available only through joint effort, and in the political power available only through united action and national organizations.”

Powell [00:56:00] recommended a propaganda effort staffed with scholars and speakers, a propaganda effort to which American business should devote “10 percent of its total advertising budget,” including an effort to review and critique textbooks, especially in economics, political science, and sociology.

“National television networks should be monitored in the same way that textbooks should be kept under constant surveillance,” he said. Corporate America should aggressively insist on the right to be heard, on “equal time,” and corporate America should be ready to deploy, and I am quoting him here, “whatever degree of pressure — publicly and privately — may be necessary.” [00:57:00] This would be “a long road,” Powell warned, “and not for the fainthearted.”

In his section entitled “The Neglected Political Arena,” Powell recommended using political influence to stem “the stampedes by politicians to support any legislation related to 'consumerism' or to the 'environment.’” And, yes, Powell put the word “environment” in derogatory quote marks in the original.

“Political power,” Powell wrote, “is necessary; ... [it] must be assiduously cultivated; and ... when necessary ... must be used aggressively and with determination.” He concluded that “it is essential [to] be far more aggressive than in the past,” with “no [00:58:00] hesitation to attack,” “not the slightest

hesitation to press vigorously in all political arenas,” and no “reluctance to penalize politically those who oppose” this corporate effort. In a nutshell, no holds barred.

And then came, then came the section of the secret report that may have launched the scheme to capture the court. It is called “Neglected Opportunity in the Courts.” This section focused on what Powell called “exploiting judicial action.” He called it an “area of vast opportunity.”

He wrote, “Under our constitutional [00:59:00] system, especially with an activist-minded Supreme Court” – I will intervene to say, of course, we have today, as a result of the scheme, the most activist-minded Supreme Court in American history, but back to his quote – “especially with an activist-minded Supreme Court, the judiciary may be the most important instrument for social, economic and political change.”

Powell urged that the Chamber of Commerce become the voice of American business in the courts, with a “highly competent staff of lawyers,” if “business is willing to provide the funds.” He concludes: “The opportunity merits the necessary effort.” The secret report may well have been the single most consequential piece of [01:00:00] writing that Lewis Powell ever did in a long career of consequential writings. The tone and content of the report actually explain a lot of decisions in his future career. Yet this secret report received no attention – not even a passing mention – in Professor Jeffries' detailed, authoritative, and authorized Powell biography.

The secret Chamber report was not disclosed to the United States Senate in Senate confirmation proceedings when, shortly after delivering his secret report to the U.S. Chamber of Commerce, Lewis Powell was [01:01:00] nominated to the U.S. Supreme Court by President Richard Nixon.

The secret report was dated August 23, 1971. Two months later, on October 22, Nixon nominated Powell to the Supreme Court. Lewis Powell was sworn in as an Associate Justice of the Supreme Court on January 7, 1972, less than 6 months after this secret report was delivered to the Chamber.

To be continued. I yield the floor.

Right-Wing Dark Money Gets \$1.6 Billion Donation From One Donor - All In w/ Chris Hayes - Air Date 8-22-22

CHRIS HAYES - HOST, ALL IN: It's sometimes been hard to tell if the amount of danger our democracy is in has gotten through to the public at large. We're seeing new evidence Americans understand that they are, and they are rightly concerned. As we mentioned, that new NBC [01:02:00] news poll released over the weekend found that voters ranked threats to democracy as the number one most important issue facing the country. And while all this attention now focused on safeguarding American democracy, it's perhaps more important than ever to know who is working to, well, undermine it. Leonard Leo is one of those people, I think it's fair to say. He's the most powerful person in the country you have likely never heard of.

LEONARD LEO: The idea was really to create a pipeline, to create a pipeline that started in law school and then glided into the legal profession by building a network or infrastructure of people around the country who could influence the major power centers of our, of our legal culture.

CHRIS HAYES - HOST, ALL IN: And they've been very successful. And the world we have today is partly born of their success, largely born of his success. As the *New York Times* reports, that guy who's creating that pipeline now has 1.6 billion dollars at his disposal to use however he likes.

Ken Vogel's a reporter from *New York Times*. One of the reporters who broke that story and he joins me now. Ken, I read this story two or three times when it [01:03:00] was published this morning because I just never encountered anything like it. Um, so just describe to us who donated this money and how.

KEN VOGEL: Yeah, it was a very unusual transaction, Chris, the likes of which I have not seen in my years of covering money in politics, wherein this donor, his name is Barre Seid, he was the owner, complete owner, of a, uh, electrical device manufacturing company. He donated 100% of the shares of that company to a new nonprofit, a dark money nonprofit that Leonard Leo set up, which then took custody of the company, essentially, and sold the company to another company, the proceeds of which were about 1.6 billion dollars. And so the, uh, nonprofit was able to, uh, get, you know, essentially, reap the proceeds of that without paying capital gains taxes, which he would've had to have paid if he would've sold the company directly and then tried to donate the

money to this new [01:04:00] nonprofit. So it gave them this really huge and unprecedented kitty to an unknown nonprofit group, but that is part of a network, a larger network of groups that Leonard Leo has formed and cultivated in the last few years to try to influence, not just the judiciary, but, uh, politics in a broader way, pushing for, uh, conservative issues on things, pushing for the conservative stance on issues like voting rules, abortion rights, you know, fighting efforts to combat climate change. So really puts him at the center, a king maker, as we termed it, uh, in our story.

CHRIS HAYES - HOST, ALL IN: Just to be clear this, so this, have you ever encountered a transaction of this nature before?

KEN VOGEL: So, we have seen instances where major donors have given shares of companies, not usually companies they own, but companies where they own a lot of money worth of shares and then the nonprofit can do with it what it wants. And, and some of the same tax implications are in play there, but never a company, a full company, large company, [01:05:00] being donated to a nonprofit. No.

CHRIS HAYES - HOST, ALL IN: And this happened in March of 2021, right? Like, how did you, would this have been public if you and other reporters didn't sniff this out? Like, how, how do you find out about it? How do we know about it?

KEN VOGEL: No, it would not have been public. These groups, you know, they're dark money groups. They're called that for a reason. They don't have to report a lot of money, a lot of information about their, don't have to report any information about their donors. They don't have to report much information about their finances, including how they spend the money. And so what this group did report on its, uh, mandatory tax filings, all nonprofits have to release public tax filings, it reported that it received a hundred percent of the shares of a company. Didn't identify what the company was. And then that it reached 1.6 billion dollars from selling the shares of the company. And so we, through our reporting, were able to determine what that company was and who the owner was and a little bit more about Leonard Leo's relationship with this donor, the owner of the company.

CHRIS HAYES - HOST, ALL IN: [01:06:00] And just to be clear again, now this money is sitting there presumably, and can be used, again, thanks to basically the jurisprudence that came from out of *Citizens United* and subsequent holdings by this court, to do whatever you want in any kind of political campaign or in an essentially entirely unregulated fashion.

KEN VOGEL: Yeah, I mean, there are some rules that say that these nonprofit groups have to be engaged primarily in social welfare activities, but what that means - both what social welfare activities means and what, uh, primarily means - are very much open to interpretation and smart political lawyers, including those that are paid by this group, uh, who Leonard Leo works with closely, these lawyers have found ways to spend a lot of money on things that look to, you know, from the lay perspective, like they're just political advertising or political advocacy.

CHRIS HAYES - HOST, ALL IN: And it is all, we should say, essentially tax subsidized, right? I mean, there's an enormous tax savings here, [01:07:00] but these are essentially subsidized by the federal government, which does not tax them. They are tax exempt organizations.

KEN VOGEL: Yeah, that's right. And there are certainly criticisms of, which we include in our story, of transactions like this as allowing wealthy folks to, uh, save money on taxes and spend more money influencing the political process. I should also say that that is one of the real strengths of Leonard Leo, is that it's not just that he has been so sophisticated in shaping the federal judiciary and other aspects of the conservative movement, it's that he, over the years, because of his effectiveness, has cultivated this network of donors like this Barre Seid guy who are willing to give him huge sums of money as we see in this, uh, transaction that further enhances power.

CHRIS HAYES - HOST, ALL IN: Well, I would just say from a small-d democratic perspective, 1.6 billion dollars should buy a tremendous amount of scrutiny.

Lock Him Up? - On The Media - Air Date 9-9-22

ILYA MARRITZ, HOST, ON THE MEDIA: Let's start with France. Two former presidents there have been charged with crimes, one of them Nicholas Sarkozy was investigated in 2014.

REPORTER: Nicholas Sarkozy, the former president of France, has been [01:08:00] found guilty in a corruption and influence peddling trial here in Paris.

ILYA MARRITZ, HOST, ON THE MEDIA: He was tried twice on a variety of different charges. What's been the effect on the cohesion of the country as a democracy?

JAMES D. LONG: Democracy is as stable in France, probably as stable as it was before the allegations against Sarkozy, and there's no indication that the investigation against him and its prosecution and even, being found guilty, it's gonna destabilize democracy at the system level.

ILYA MARRITZ, HOST, ON THE MEDIA: How about South Korea?

REPORTER: Today a court in Seoul will deliver its verdict on the disgraced former president Park Geun-hye over the massive corruption and power abuse scandal that led to her ouster last year.

ILYA MARRITZ, HOST, ON THE MEDIA: Five former leaders have been charged with crimes there since the 1990s. That's an extraordinary number.

JAMES D. LONG: You think that that would really lead people to not believe in democracy or want to try something else, or just think that democracies are hopelessly corrupt and there's no way around that, but South Korea has [01:09:00] actually survived it very well and continues to be a democracy. The most recent leaders that it's had have not been investigated for corruption, so you could say actually going after former leaders had a deterrent effect and rather than lead to disaffection or disengagement among the public, what it actually led to were leaders that were less likely to commit crimes or corrupt acts going forward.

ILYA MARRITZ, HOST, ON THE MEDIA: Let's talk about Brazil. Tell me about the case of the former president there Luiz Inácio Lula da Silva. He was jailed in 2018 for accepting bribes, now he is a leading contender for president of Brazil.

JAMES D. LONG: Yeah, I believe his conviction was overturned by the courts. One of the things you could say is, unlike South Korea, where prosecuting leaders really showed the ability for the rule of law and the judiciary to flex its muscle and keep legislators and executives in control, I think what's happening in Brazil is the investigations revealed so much corruption that then [01:10:00] that tainted as well, the prosecutors and the judges that were involved. Then they were seen as also playing a lot of political games simply in terms of the prosecutions. It's led to this cycling of when a certain type of judge is in power, a certain president, the light is shined on them,

then it's somebody else, then it's somebody else, and everyone's kind of been tainted by it. And now you can sort of imagine Lula da Silva who just a few years ago, it seemed like he didn't have a future in politics, he was in jail, is now the leading contender to be elected president again.

Brazilians probably either believe that there's gonna be allegations of corruption against every elected official and public official no matter what, no matter whether it's true, or they really are all corrupt and that's what's true, and so they look the same to the common person just looking at the situation, but they could reveal two different things about a political system.

ILYA MARRITZ, HOST, ON THE MEDIA: Now there are a number of countries that have taken the opposite of the Brazilian approach, and basically said for the sake of [01:11:00] continuity and stability, we're not gonna do prosecutions. Mexico, for many years, was one of those where one party dominated politics and presidents were not charged with crimes—that's changed a little bit recently. Also South Africa, when they transitioned away from apartheid, prioritized continuity and stability over accountability or justice.

JAMES D. LONG: One of the distinguishing features that we wanna make on our piece is precisely this question of older democracies, like France and South Korea and the United States that have had robust judiciaries and procedures around prosecutions for many, many years, versus those that are just beginning to democratize or at those early stages, because you can imagine the human rights abuses and all of the corruption that goes around a dictator, if they were to democratize, they reasonably fear that that new system is going to prosecute them for their previous crimes.

The social science evidence shows that actually it is better for the [01:12:00] long term prospects of democratization to not have overzealous prosecutions in that transition moment, and rather to allow there to be, for lack of a better word, some level of impunity or forgiveness, depending on how you look at it.

ILYA MARRITZ, HOST, ON THE MEDIA: And I should say that former south African president, Jacob Zuma is expected to be tried for money laundering next year. So maybe that's a sign that South Africa's democracy has matured to the point where a trial like that would not be massively disruptive to the body politic.

JAMES D. LONG: The judiciary is famously independent in South Africa. They have definitely not just rolled over for Zuma, up until this point and

they've tried to exercise a lot of independence from the other branches of government.

And I do think that, regardless of what you think about the specifics of the allegations against Zuma, the way the process is playing itself out does suggest that only 25 years later, south Africa is showing a lot of democratic muscle [01:13:00] in its ability to competently investigate and potentially prosecute an ex leader.

ILYA MARRITZ, HOST, ON THE MEDIA: What surprised you when you started looking at all these other democracies that have tried their leaders?

JAMES D. LONG: Well, I think one thing that did surprise me, or I didn't realize it until we put two and two together, which is how common it is now. And I think the fact that it's happening in young and old democracies, it's happening in African and Asian and European and Latin American democracies, I think is a good thing, because it sets a demonstration effect and says that this is the type of thing that countries with democracy as new as South Africa can pursue, as well as democracies that are older, like France. It's good in a democracy to occasionally kick the tires and try to figure out, okay, well, where are there weaknesses?

Final comments on defeating authoritarianism with action, not news following

JAY TOMLINSON - HOST, BEST OF THE LEFT: We've just heard clips today, starting with the *Mehdi Hasan Show* pointing out that it's actually quite normal to prosecute former presidents. *Late Night with Seth Meyers* handed off to Sean Hannity of all people to list Trump's many [01:14:00] investig crimes and other wrongdoings. The *Mehdi Hasan Show* also started the discussion on activist conservative judges as relates to Trump's stolen documents. *Amicus* looked at Trump's long history of avoiding prosecution and the structural problem with our judiciary. *All In with Chris Hayes* looked into the history of the Federalist Society. *Democracy Now!* spoke with Ellie Mystal about fixing the problem of biased judges. And Senator Sheldon white house gave a speech explaining the impact of the Lewis Powell memo.

That's what everyone heard, but members also heard bonus clips from *All In with Chris Hayes* explaining the \$1.6 billion donation, just given to the

Federalist Society. and *On the Media*, looking into the impact of prosecuting former leaders in countries around the world. To hear that and have all of our bonus content delivered seamlessly to the new members-only podcast feed that you'll receive, sign up to support the show at bestoftheleft.com/support or shoot me an email requesting a [01:15:00] financial hardship membership, because we don't let a lack of funds stand in the way of hearing more information.

And now, just a really quick thought to close out, producer Deon and I were talking while prepping this episode, and this was his idea, so credit wear due. It feels, again, like we are in a similar phase as when the Mueller investigation was really heating up. When huge swaths of the left seemed to simply pin their hopes on this one guy coming through with an investigation that would sweep in and make all the badness stop, which was a nice idea, but the big problem is, A, things are never that easy so it was always a bit of a false hope and B, that false hope becomes a distraction. When it seems like someone else may come along and save the day for you, it reduces the sense of urgency for each of us to get active. And authoritarianism doesn't get defeated without mass mobilization and participation, and we need all hands on deck, [01:16:00] not passive observers, following every detail of the investigations against Trump, but then never thinking to get involved in the, get out the vote effort in your local area or doing phone banking or volunteering at your local polling station. So follow the investigations to stay informed, but it's only action. That's gonna save us in the long run.

As always, keep the comments coming in at (202) 999-3991 or by emailing me to jay@bestoftheleft.com. That is gonna be it for today. Thanks to everyone for listening. Thanks to Deon Clark and Erin Clayton for their research work for the show and participation in our bonus episodes. Thanks to the Monosyllabic Transcriptionist Trio, Ben, Ken, and Brian for their volunteer work, helping put our transcripts together. And thanks to Amanda Hoffman for all of her work on our social media outlets, activism segments, graphic designing, web mastering, and bonus show co-hosting. And thanks to those who support the show by becoming a member or purchasing gift memberships at bestoftheleft.com/support, through our [01:17:00] Patreon page, or from right inside the Apple Podcast app.

Membership is how you get instant access to our incredibly good bonus episodes, in addition to there being extra content and no ads in all of our regular episodes, all through your regular podcast player. And if you wanna continue the discussion, join our Best of the Left Discord community to discuss the show, or the news, or the Trump investigations, if you insist. Links to join are in the show notes.

So coming to you from far outside, the conventional wisdom of Washington, DC, my name is Jay!, and this has been the Best of the Left podcast coming to you twice weekly thanks entirely to the members and donors to the show from bestoftheleft.com.