

Presidents, Prosecutions, and the Rule of Law

June 15, 2023

Visit our media library at constitutioncenter.org/medialibrary to see a list of resources mentioned throughout this program, listen to previous episodes, and more.

[00:00:00] Jeffrey Rosen: Last week, former President Donald Trump was indicted by the federal government for alleged retention and concealment of classified documents after he left office. On this week's We The People, we break down the legal and constitutional significance of the historic indictment.

[00:00:17] Jeffrey Rosen: Hello, friends, I'm Jeffrey Rosen, president and CEO of the National Constitution Center, and welcome to We The People, a weekly show of constitutional debate. The National Constitution Center is a nonpartisan nonprofit chartered by Congress to increase awareness and understanding of the Constitution among the American people. Joining us to help understand the charges against former President Trump are two of America's leading scholars of national security law. Jameel Jaffer is the founder and executive director of the National Security Institute at the Antonin Scalia Law School at George Mason University. He's served in the legislative and executive branches, including as counsel to the Senate Foreign Relations Committee, the White House, and the Department of Justice. Jameel, welcome back to we the people.

[00:01:04] Jameel Jaffer: Thanks, Jeff, great to be here.

[00:01:05] Jeffrey Rosen: And Oona Hathaway is the Gerard C. and Bernice Latrobe Smith Professor of International Law at Yale Law School. She's served as counsel to the Department of Defense, and she recently wrote an op-ed on the Trump indictment for the New York Times. Her most recent book is *The Internationalists: How a Radical Plan to Outlaw War Remade the World*. Oona, it's wonderful to welcome you back to We The People.

[00:01:26] Oona Hathaway: Thanks so much for having me, Jeff.

[00:01:28] Jeffrey Rosen: Let's start with the indictment itself. Jameel, what are the major charges of the indictment and how strong are they?

[00:01:38] Jameel Jaffer: Sure. Well, look, the biggest muscle movement as I see it in this indictment is the 31 count charge against President Trump for

willful retention of national defense information. That requires the government to prove that he unlawfully had possession of national defense documents that he willfully retained them and that the facts prove that. Beyond that, there are additional charges relating to conspiracy, obstruction of justice, false statements to federal officials, and those largely revolve around conversations that President Trump had with his lawyers we should talk about the attorney client privilege at some point and the crime fraud exception but conversations that he had with his lawyers and with his staff about the documents themselves, whether he had them, whether he didn't have them, where they were.

[00:02:22] Jameel Jaffer: At one point the indictment alleges that President Trump engaged in an effort with one of his aides, who's also charged to move boxes out of the room that his own attorneys were going to search, [laughs], to produce the documents, in an effort to frustrate his own attorneys' search for documents and therefore frustrates the government's ability to get some of these documents back. So those are the major charges that, you know, high level, 37 counts, 31 of them relating to this willful retention of documents relating to the national defense. To me, that's the one that is most dangerous for him from a legal perspective and has the most purchase because, as we know after the FBI showed up, they found 102 classified documents of which 31 of them were at various levels, including top secret sensitive compartmented information special access programs. So, that's sort of the way I see it, Jeffrey.

[00:03:09] Jeffrey Rosen: Thanks so much. So that's the subsection of the Espionage Act 793[e], and I'll just read it and ask Oona about it. "Whoever, having unauthorized possession of documents relating to the national defense, which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, or transmits the information to a person not entitled to receive it, or," and here's the language you were flagging, "Willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it." Oona, what is the significance of that language and how strong is the charge against President Trump?

[00:03:53] Oona Hathaway: Yeah, I mean, the significance is well, that this really, what they have to show is that he retained, he willfully retained, national defense information, that's really the key language. And in there, one of the, I think, the hurdles going in was this idea of willfully, right? Because it requires some proof of intent. And I think that has been the challenge, I suspect, all along in building the case is showing that he knew he was retaining classified information, he understood that it was classified information that he was retaining, because there were these various arguments sort of circulating around

that, you know, he thought that he had declassified it, that by simply choosing to remove it that he had declassified these documents in some way, even though he had not notified anyone or there was no information out there as to their having been declassified.

[00:04:43] Oona Hathaway: But then this tape that was recently leaked and that is mentioned in the indictment specifically quotes President Trump saying that he was holding onto a classified document, apparently waving it around in this meeting with people not cleared to see it, of course he was among the people not cleared to see it at that time and basically saying, "This is still classified and I could have declassified it when I was President but I didn't, I should have," and it remains secret. So, he's effectively admitting to the intent portion of the charge, which I think was probably going to be among the harder elements to prove. But he sort of delivered up almost a kind of taped confession and that's quoted at some length in the indictment, because it's so important to really proving that 793[e] provision is actually met.

[00:05:35] Jeffrey Rosen: Thanks for flagging that part of the indictment and I'll just read from it. In July, 2021, at the Bedminster Golf Club during an audio recorded session, Trump described the plan of attack he said was prepared by the Department of Defense and he also said, "As President, I could have declassified it, now I can't, but this is still a secret." And then later he showed a representative of his political action committee who didn't possess a security clearance a classified map and told the representatives he should not be showing it to the representative, the representative should not get too close. Jameel, what's the significance of those alleged facts and what will President Trump's defense likely be on the charge of willfully retaining?

[00:06:17] Jameel Jaffer: Well, you know, I mean, I think this is going to be a real tough one for him to confront, as Oona correctly lays out. I mean, they have him on tape saying, "These documents are classified, they're sensitive, you can't look at them." in the case of the individual from his political action committee, he actually says, "Don't get too close to this map that I'm showing you," you know, "It's still secret." and in both cases, he described the documents as having been classified. In one case, he specifically says, "I could have but didn't," as Oona lays out "Didn't declassify it," "So, it's still secret." and that is, you know, sort of a level of knowledge that I think we didn't know for sure that he necessarily had, particularly given as Oona points out, his arguments that he thought he declassified them by just thinking about it.

[00:06:57] Jameel Jaffer: Let me just say, to be clear, that is not an acceptable way to declassify information. The President has broad authority when he's

President to declassify, he can do it by executing a formal document, that's the normal way. But as we know, the Trump administration didn't always do things the normal way, [laughs]. And so, you know, he could also do it by speaking about it publicly, he can tell somebody he intends to declassify something, he can, as he, as President Trump himself actually did, take a photograph on his iPhone, [laughs], of a highly classified satellite image from a US spy satellite of an Iranian ballistic missile and Tweet it out. I mean, that may be a crazy way to declassify but it happened.

[00:07:35] Jameel Jaffer: Nobody thinks any of that's inappropriate or unacceptable because the President has broad declassification authority. But simply by thinking about it, without embodying that in some way, makes it impossible to actually know and therefore can't really be a way to declassify. And this other evidence that's now coming in, if it comes in, and, again, this is critical, right? Remember, as we all know, in our system you're innocent until proven guilty, the government has the burden of proof to show the facts as alleged in the indictment are as they say they are, and they have to prove that beyond a reasonable doubt. If they do, however, as Oona has correctly laid out, and if these documents that are being talked about on these tapes are in the 31 documents that are listed in the indictment, we don't know for sure, it's fair to assume they are but we don't know for sure then I think the President has an uphill battle in putting down these charges.

[00:08:20] Jameel Jaffer: And if he's convicted, that's up to 20 years in prison per count, up to a \$250,000 fine per count, so this could be very expensive and subject him to a significant amount of jail time.

[00:08:33] Oona Hathaway: I might add one more thing to what Jameel just said, and to your question about sort of 793[e] and what has to be proven. So, I mentioned the willfully point earlier, it's also this question of what is information relating to the national defense and that is key. I mean, what's so interesting about the Espionage Act is that it was passed in 1917. That was actually before the US government even had a formal classification system. So it doesn't actually mention anywhere in 793[e] or in this Espionage Act the system of classification the government has since developed, since that law was originally passed.

[00:09:11] Oona Hathaway: It uses instead this term, "Information relating to the national defense." Now, courts often treat them as classification and information relating to national defense, as though they are one and the same, but it is not enough necessarily to just show that these are top secret, and as Jameel said, like, among them were classified documents the US government

has, even some of the names of the programs are codeword programs and they've redacted them because the actual name of the program is itself classified. So, the government is going to have a real challenge here they're going to have to show that these documents include information relating to the national defense, but these remain classified documents.

[00:09:51] Oona Hathaway: So, they're going to have to figure out how to explain to a jury that this is information relating to the national defense and describe these documents in enough generality that the jury can come to that conclusion. But the jury's not going to be cleared into these programs and so they're not going to be actually able to read these documents unless the government decides to declassify it. But the government is in this kind of catch 22 in a sense, because if it declassifies the documents then this question as to whether it really is information related to the national defense, it's just, well, maybe they're not that important after all, 'cause we can let the whole world know about them.

[00:10:24] Oona Hathaway: And if they remain classified, then they really have a challenge of sort of showing what's in them, and saying enough about them to get the jury to make that conclusion. So, it really is challenging, and we get a little bit of a flavor of how they think they're going to try to go about that through the brief description of these documents in the indictment, where they lay out, you know if these are true descriptions of these documents, pretty stunning, you know, information that's information relating to, you know, nuclear capabilities of a foreign country, you know various military capabilities of foreign allies and other countries, you know, the US government's own foreign capabilities, particular plans and response. But that is going to be a challenge, proving the 793[e] charge.

[00:11:08] Jeffrey Rosen: Jameel, tell us more about how that challenge might play out, what are some of the evidentiary objections that might be raised, and given the fact that the indictment says that they are related to nuclear defense is the jury likely to be persuaded or not?

[00:11:23] Jameel Jaffer: Yeah, you know, this is one of the hard parts for the government because, you know, these are highly classified documents. Of the 31 charged, 10 are top secret sensitive compartmented information, that means that the release of these documents just classified at the top secret level alone would cause extraordinarily grave harm to US national security, right? SCI, sensitive compartmented information, means that it comes from a collection methodology, you know, sometimes signals intelligence, overhead surveillance human intelligence that's particularly sensitive, right?

[00:11:55] Jameel Jaffer: And then beyond that, that's 10 of those documents are TS SCI, top secret sensitive compartmented information, another eight are top secret special access programs, or SAPs. These are programs that are even more sensitive, either collection capabilities, specific assets, you know defectors and the like and so these are even more sensitive. So, 18 of the 31 documents involve not just extraordinarily grave harm to American national security but require clearances beyond that even. And so bringing these documents into evidence will be difficult, there is the Classified Information Procedures Act that allows the government to publish documents to the court and to the jury without making it public, and to the defense as necessary.

[00:12:34] Jameel Jaffer: And so there's a variety of methodologies by which you might do this, but of course, remember, part of President Trump's defense against these charges is not just a legal defense, it's a political defense, and you can be assured that in addition to saying what he's already said, which is that he's being pursued by the deep state, that the FBI and the Justice Department are being weaponized against him, he's going to say, "Oh, now look, secret evidence, they won't even tell you, the American public, what I've done and what's..." You know, "If this is so, so bad, why can't they describe it? Why can't they talk about it? These descriptions don't mean anything, and by the way, I've seen the documents, there's nothing classified in there, I'm the President of the United States, I can tell you."

[00:13:08] Jameel Jaffer: And so, we're going to see a lot of that, right? So, there'll be no doubt in my mind that they'll litigate the ability of the government to present these documents and the like, and the Trump team may very well try to seek interlocutory review up to the 11th Circuit and the Supreme Court on a variety of grounds, not just evidentiary, and so this case could be years before it goes to trial. And, by the way, if that's true, this case in a lot of ways really benefits President Trump politically because it solidifies his view of himself and his view of the world amongst in amongst his base. And so in a primary it could actually benefit him, and going even to the general it may benefit him with turnout for his voters.

[00:13:48] Jameel Jaffer: And then of course if he's elected before being convicted, or even after being convicted, 'cause he said he's going to continue to run, right? The question is can he, can he ask the Justice Department to not prosecute? Will they agree to that? And if not, can he pardon himself? And so these are very tough questions, you know, that are going to all be in play now that the Justice Department has brought these charges against a former President who's running for reelection.

[00:14:11] Jeffrey Rosen: Thanks for that, we'll-maybe talk in a bit about self pardons and other things that might happen if Trump is actually elected. But, Oona, walk us through the timing for the trial, and including the complexity of the obstruction charges, and do you agree with Jameel or not that 'cause of interlocutory appeals, it might take a whole long time?

[00:14:32] Oona Hathaway: Yeah, I do. You know, I think that experts... You know, I have not myself tried one of these cases, so, but I understand from those who have that they can go quickly but only if the defendant and defendant's counsel is really cooperative. And we have lots of reasons to believe that that's not going to be the case here. So, you know, first of all, a normal person facing these kinds of charges would not go to trial. That's... But Trump, of course, is not a normal person, [laughs], and so he's going to fight it every step of the way, and he's going to fight it tooth and nail every step of the way, and he's going to make every effort to slow things down I think for all the reasons that Jameel suggests.

[00:15:14] Oona Hathaway: I mean, so I think he is holding out hope that he will, will in fact be elected and then he'll have various ways to try and either hit pause on the prosecution or maybe even prevent it altogether, you know, pardoning himself, taking advantage of an Office of Legal Counsel memo which says that an indictment and criminal prosecution of a President is unconstitutional, so once he's President, he could rely on that memo to require the Justice Department to cease prosecuting him, and I think it likely would do so because an Office of Legal Counsel memo issued in October 2000 remains executive branch precedent binding on the Department of Justice, and Mueller when he was previously looking into indicting the President, had concluded that that was binding on him even as special counsel.

[00:16:03] Oona Hathaway: So, it would be difficult for Jack Smith to come to a different conclusion in this case though many have thought that Mueller probably made the wrong decision on that. So his game is going to be trying to delay this as long as he can, to fight every step of the way, to make it as hard as possible for the prosecution. Now, you know, the prosecution has signaled that they're trying to streamline it and move it quickly and that they are going to try to move along. I think, you know, there were many more documents than are listed in this indictment, and they probably chose these documents to try and streamline the prosecution they didn't try to throw every possible thing they could have at the President. What they tried to do is really hone in on the things I think, I suspect, that they felt like they could pretty easily prove with a relatively small number of witnesses.

[00:16:51] Oona Hathaway: So, you know, they are taking steps, they understand that that's going to be President Trump's effort is going to be to delay this, and I think they've tried to structure the indictment to move it along. But they don't have complete control over that obviously and, you know, even in the best of times, this kind of a trial could take years and I think, you know, given who we're dealing with and his incentives, I think the chances are very good that this will end up being drawn out and then if he is elected, we're going to be facing all of these unprecedented questions.

[00:17:24] Jeffrey Rosen: Let's talk now about the decision to indict to begin with Jameel James Comey, when he decided not to prosecute Hillary Clinton said that all cases involving classified documents prosecuted by the Justice Department before involved clearly intentional or willful mishandling of classified information or vast quantities of material exposed in way to support the implication of disloyalty to the US or efforts to obstruct justice. Was that, Comey's standard, met in this case? And do you think, on balance, the decision to indict President Trump was correct or not?

[00:18:01] Jameel Jaffer: Well, look you know the Comey standard you know, in large part, not necessarily material, because it's, you know, what applies is the law and the statute and on that basis, and frankly under the Comey standard in either scenario, if the standard is met, I think it is impossible and would be very hard for the Justice Department not to bring a prosecution in this case, given the facts as alleged in the indictment and the facts as we've at least heard them through media reporting.

[00:18:26] Jameel Jaffer: Now, again, the government has the burden of proof to prove those facts beyond a reasonable doubt and oftentimes reporting in the press, as we know can be inaccurate. But based on what we now know today, I don't see a world in which the Justice Department shouldn't and could avoid bringing a prosecution like this given what we know. All that being said, we can't deny the politically fraught nature of a sitting President for whom the Attorney General works ultimately, and for whom the Special Prosecutor works ultimately 'cause we don't have an Independent Counsel Statute anymore who is himself running for reelection prosecuting the former holder of that office, unprecedented, who is also running for reelection, unprecedented, a year out or a year and a half out from an election.

[00:19:11] Jameel Jaffer: I mean, this is so politically dangerous and difficult and toxic and President Trump and his team recognize that and are taking every step to take advantage of that fraughtness and that toxicity. And I'm sure that was in the mind of the Justice Department when they brought this case, but I

just can't see a world in which, given the facts as we know them, they have any other real option. So, it's a really, you know... You talk about a rock and a hard place, this is the ultimate rock and a hard place, and we'll see how it plays out going forward.

[00:19:39] Jameel Jaffer: But, look, I mean, I think on the question of these documents and the charges being brought, the President you know... There's two statutes that could have brought this there are two parts of the Espionage Act they could have brought this under. They could have brought this under the having lawful access, right? Somebody who has lawful access has documents, documents related to the national defense, willfully retains them and refuses to respond to a demand for them back, they can be prosecuted just as much as somebody who has unauthorized access, which is what was charged here and simply doesn't return them, somebody will receive them, right?

[00:20:10] Jameel Jaffer: And so in both scenarios, they only charge one of them, they have it I think as a backup plan, potentially they could charge 793[d] but in any event, look, the President didn't have security clearance. This argument that these are presidential records or there are personal records even, none of which is true at the most, presidential records means NARA has to have them, and NARA didn't have them you know, there's... He doesn't have a leg to stand on I don't think, and we'll see, I mean, this is going to be litigated, right? But from my perspective, he doesn't have a leg to stand on, the claims he's made about declassification, he doesn't have a leg to stand on the presidential records argument, he should never have had these documents, as Vice President Mike Pence correctly laid out.

[00:20:45] Jameel Jaffer: And you know, he held onto them knowing he had them, so, you know, I just don't see how in the long run, President Trump is able to get out from under this indictment and not be convicted in the long run. That being said, none of this may matter because if politically the analysis is as we say it is and it benefits him, and he's elected, as Oona lays out, this all could go away almost instantaneously. And that is the interesting thing about our system and one of the very, very challenges that I'm sure the Justice Department right now is grappling with actively.

[00:21:21] Jeffrey Rosen: Oona, share with us, please, your thoughts about the decision to indict. You wrote in the New York Times, "What do Donald Trump and Reality Winner have in common?" describe the Reality Winner case and why you think that an ordinary person facing these charges would almost certainly have been indicted, and then talk us through the Comey standard and

the arguments of some that the standards for indicting former presidents should be even higher?

[00:21:48] Oona Hathaway: Yeah. So Reality Winner is a young woman who was working as a contractor and she saw a document that she thought showed that there had been interference in the 2016 election as she tells it, you know, she was motivated by sort of a desire to get this information out into the public. She printed it out she took it home and then she mailed it to the intercept. It was one document classified at top secret level. She didn't do a very good job of hiding her tracks because there were I think only six people who have printed out this document, they were able to figure out, and she had sent an email or somehow corresponded with the intercept from her government computer, so they pretty quickly figured out it was her.

[00:22:29] Oona Hathaway: She was prosecuted and she was sentenced to over five years in prison for this one document. Now, legally, she is a little different because she actually had lawful access to the document so she was cleared into the program. She had lawful access. But then she transmitted the document, she took it home, which she wasn't lawfully permitted to do, and she transmitted the document to someone who wasn't permitted to see it so she was prosecuted for that reason. Now, Trump just to emphasize, and your listeners may not fully understand this because they may be thinking, "Well, he's a former president, he was read into these programs, like, he had access," you know, so, like, is it really that big of a deal?

[00:23:06] Oona Hathaway: And the answer is, yes, it really is that big of a deal because he as former president, no longer had access to those programs. I, when I worked for the Department of Defense had top secret special compartmented access, Jameel had access at the top secret SCI level. I was read in to a number of covert programs, and if someone was to try to show those to me today, that would be illegal. And if I was to have access to those documents today, I could be prosecuted because even though documents that I read or even documents I wrote when I was working for the government, right? So, I can't see those documents, [laughs], anymore. I'm not legally allowed to see them because I'm no longer cleared into these programs.

[00:23:50] Oona Hathaway: And so that is the reality of anyone who has worked in government who has access to these top secret programs, that's why he no longer has authorized access, that's why he's being charged for the unauthorized access, and I think that relates, Jameel's right, that they potentially could have focused on the fact of his removal, you know, so when he had authorized access, he made the decision to remove these documents and take

them with him, you know, so that would have been unauthorized removal. I think they decided to just make it simple and focus on the retention, because that makes it a kind of more straightforward case so they could potentially have said when he had lawful access that he kind of made these plans to remove them illegally. I think that would have been a much harder case to make.

[00:24:31] Oona Hathaway: So, you know, what's striking and what really, you know, part of what led me to write this New York Times op-ed was just, you know, this claim that somehow he's being unfairly targeted. And I just said, you know, let's look at some of the people that his own Justice Department prosecuted. Reality Winner is one of them, one document that she removed. Another person that I speak to is Nghia Pho, who worked for the National Security Agency, decided, unlawfully, to take work home at night and work on it at home. The Russian hackers hacked into his computer and got access to the information, it's believed. And, never transmitted it, he just brought it home to try and get work done in the evenings and weekends. And he was charged and sentenced to more than five years in prison as well, by President Trump's Department of Justice.

[00:25:25] Oona Hathaway: So, this idea that somehow, you know, he's being treated unfairly, if anybody else did what he's charged with doing, they would probably already be in jail. So, you know he is actually getting a much more generous treatment as is appropriate for a former president, this is much more politically fraught. But as Jameel said, these types of charges just... DOJ couldn't fail to bring the case once they knew that these things had happened. You know, this is just so overwhelmingly a violation of the law and with the most top secret documents that are important to US national security. I don't see how they had a choice, honestly.

[00:26:05] Jeffrey Rosen: Jameel, both you and Oona have argued that on the law there was no choice but to indict, and yet many Republicans disagree. Senator Josh Hawley said after the indictment came down, "This is not about Donald Trump, it's about the United States of America, it's about whether the Constitution is still real. This is about if any American can expect due process of law." many other elected Republicans have also criticized the indictment, and other scholars, like John Yoo have argued that this, although there was grounds to indict, the standards for indicting former presidents should be even higher than other citizens in this polarized age, and you should have to meet a standard of impeachability before you indict. What are your responses to both of those arguments?

[00:26:46] Jameel Jaffer: Well, look even on the John Yoo standard, a standard of impeachability, I think that if any president were to do what President Trump has done, knowingly take highly classified documents out, store them in an insecure manner, potentially show them after he lacks the clearance and to people that lack clearances and describe them and discuss them, to me, if he was in office, it wouldn't matter because he obviously has the right to do it, but if once he's out of office, if you're looking at the standard of impeachability, those type of things are the kind of things that, to me, reach the level of high crimes of misdemeanors.

[00:27:19] Jameel Jaffer: It's literally taking information that the government believes would cause extraordinarily grave harm if released to people not authorized to have it, and then you have a former president doing exactly that, releasing it to people not authorized to have it, [laughs], storing it in ways where foreign nationals could have had access to it, I mean, this... If there's anything that constitutes a high crime and misdemeanor, Jeffrey, this is it, right? We're there. And so even the John Yoo standard, in my view, is met, whether or not that's the right standard. And, look, I do think part of this though is you're going to hear soon, you haven't heard it yet, but you're going to hear soon I predict the Trump team looking back to Chelsea Manning, right?

[00:27:55] Jameel Jaffer: Who was convicted of releasing classified information unlawfully, sentenced to 35 years in prison, and after seven years her sentence was commuted by President Obama, who you know, for whatever reason, made... And we can debate whether that was smart or not, I think it was a terrible idea, I think it set the wrong standard, I think it's why you see Reality Winner happening, it's why you see things like the latest individual who's been charged with leaking stuff on Discord you erode the importance of protecting classified information when you engage in such commutations. I guarantee you the Trump administration will say, "Barack Obama gave clemency to Chelsea Manning, who knowingly leaked classified information, how can you prosecute?" and, Joe Biden was the vice president when that happened, "How can you prosecute a former president? How can you try and convict him?"

[00:28:40] Jameel Jaffer: "And then if convicted, why shouldn't receive clemency? Why shouldn't he receive a pardon when Chelsea Manning got that same treatment?" and you will see that argument made, and, frankly, you know, this is what happens when, you know, you try to have it both ways. You can't say you want to really protect classified information, you want to really defend it, and then have bad things happen like the vice president, Vice President Pence, the former president, the current president and former vice president, Joe

Biden having classified information at their homes. Yes, the cases are very different, they turned them over, they found they had it, they turned them over.

[00:29:11] Jameel Jaffer: But you've got this case for Hillary Clinton too, which you have already heard President Trump talking about having classified information being transmitted by email and the like over a private server which she and all her team knew was not acceptable under the Federal Records Act and the like. And so, you know, I mean, they're going to throw a lot of sand in the gears to conflate the Hillary Clinton situation, the Biden situation, the Pence situation, and the Chelsea Manning commutation. And the problem is, like with everything, there is some merit to those arguments. At the end of the day, the president should not have done what he did, what he did was illegal, he should be prosecuted, he should be convicted, but there's a lot of stuff to point to which is team is very good at and will, and remember, this is the Teflon Don.

[00:29:51] Jameel Jaffer: He has skated out from under charges that people have thought were successful before. And so we're likely to see a lot of sand in the gears, a long effort, and, at the end of the day, real political benefit to former President Trump that may ultimately result in him getting the Republican nomination and him being reelected.

[00:30:13] Oona Hathaway: I agree with all of that. I just want to say a couple of brief words. You know, I mean, he's absolutely using that as a strategy, but if you go, like, point by point through each of these, like, they're all wildly different, right? But the difficulty is that he makes these claims, and then you have to, like, give a thoughtful, considered, you know, response to explain why they're different. You know, like, with Hillary Clinton for instance, you know, she first of all had lawful access to all of that information, right? This all happened while she was still Secretary of State. And the investigation found that basically none of it was marked classified.

[00:30:49] Oona Hathaway: So you know, they retroactively determined that some of the information that had been provided in these emails was classified. But it wasn't like there were, like, documents that were top secret, you know, that were marked in the proper ways that are being transmitted over email. That is just not what happened not to defend this decision to create a private email server, I think there's actually more issues around the Presidential Records Act than... I don't think it was... I think it was clearly not an Espionage Act violation.

[00:31:19] Oona Hathaway: So anyway, the difficulty is with each of these claims, you know, a lawyer can go through and explain why they're different,

[laughs]. But they're very good at sort of throwing these things at the wall and kind of trying to see what might stick, you know, this idea that somehow what Pence and Biden did is just the same is also quite laughable, you know, it seems quite clear that that was inadvertent, that almost certainly in both cases, junior staffers packed up their offices, they were sort of packed away for some time and then when it got opened by lawyers and staffers, they realized, oh, my God, there's documents in here and they called the federal government immediately.

[00:31:53] Oona Hathaway: So, it was... It's very different, and we don't know exactly what was in those documents, but from what we can tell from what has been shared thus far, nothing even approaching the level of importance to national security of the documents that are detailed in the indictment. But it takes you a lot of words to make those arguments, right? It takes you a lot of words to go through and explain why each of these is not the same as what President Trump is being accused of in this indictment. And I think he will exploit that and, you know, unfortunately it's going to take hopefully, you know, people like us trying to explain that these are different these really are very different, and that's part of, again, what I was trying to do in my New York Times oped is to say, like, there are all these claims that he's being treated specially and differently and, you know, treated worse.

[00:32:38] Oona Hathaway: But, actually, you know, nothing could be further from the truth. He's basically getting what he deserves, which is, you know, a Espionage Act indictment for crimes that if he had committed them, his own Department of Justice would have prosecuted anybody else who'd done anything remotely like this.

[00:32:58] Jeffrey Rosen: Jameel what do you say to your conservative and Republican friends when they claim that this is a political prosecution? How do you argue otherwise?

[00:33:08] Jameel Jaffer: Yeah, I mean, look, I don't doubt that there is a claim to be made that it's problematic when a sitting president who's running for reelection seeks to prosecute the former holder of that office who's also running for reelection. It's massively problematic, and frankly, the best thing that Joe Biden can do to take the air out of that balloon is to not run for reelection. There's a lot of reasons why Joe Biden shouldn't run for reelection, [laughs], that's probably amongst them probably one of the lesser ones frankly, but, look, at the end of the day, I think it's very hard to push back on that claim other than to say look at the facts.

[00:33:41] Jameel Jaffer: Look at what President Trump did, right?

Particularly for national security Republicans. I mean, you know, for a long time, national security was at the heart of the conservative story about why we should be elected office, why our people should be elected to Congress, to the Senate, to the Presidency, we're better, we're "Better defenders of national security," right? And in this case, you see conservatives running from what is clearly, [laughs], the obvious national security position here which is nobody that doesn't have a clearance should have highly classified information, president or not should have highly classified information in their possession.

[00:34:14] Jameel Jaffer: No one should store it in a ballroom, [laughs], or a bathroom, I mean, it's laughable, laughable Jeff, to have a Republican leader saying, "Oh, well, the bathrooms have locks on them," I mean, it's crazy town that that's where we're at as conservatives and as national security hawks. I mean, yet you hear these arguments being made on the Hill in a silly manner. And so I think that's what I'd point to, I'd say look at the facts. No one should get away with this, not a president, not a Secretary of State, not a Secretary of Defense. If this had been Hillary Clinton, we'd be railing against her, and we did rail against her, [laughs] transmission of government materials and classified information you know, admittedly, like, as Oona says, later determined later after the fact, over email systems.

[00:34:58] Jameel Jaffer: And yet President Trump has boxes of classified documents labeled, marked as such, above top secret, SCI, S- SAT material sitting in a ballroom at Mar-a-Lago, [laughs], in a storage room with people having access to it and we're going to defend that and we're going to argue that this is all political? There is a political aspect to it that has to be discussed and debated and talked about but claiming it's purely political and that there's not a national security rationale here for what's going on is ridiculous on its face, and Republicans, conservative, folks in my party should really look at ourselves and say what is- what are we really talking about when it comes to national security?

[00:35:32] Jameel Jaffer: Is this not really just about a president who mishandled it and mishandled the situation, did something wrong, and frankly, is was not fit for office when he was in it, is not fit for office today, and should not be the nominee of this party going forward.

[00:35:47] Jeffrey Rosen: And, Oona, what do you say to your conservative and Republican students along the same lines and why is this case in your view a clear case for prosecution?

[00:35:59] Oona Hathaway: Yeah, I mean, I agree with everything that Jameel said, and I think part of what we have to say is, you know, I think in general there is this tendency to think about the law in a different way when you're looking at your, you know, a political actor on your own side. And in general when I try to teach my students, I try to teach them to hold everyone to the same legal standard. You know, if we're going to hold someone to legal standard on the Republican side, we should hold them to the same standard on the Democratic side, that you should not be changing your view of the law depending on the political party of the person that- that you're talking about prosecuting.

[00:36:34] Oona Hathaway: And I feel like you know, I've tried to teach that generally, you know this is a question that comes up in a lot of contexts, right? So you know, people's views of the stringency of War Powers often vacillates depending on whether it's their own president in power, right? You know, all of a sudden Democrats are, you know, not big fans of the War Powers Resolution when there's a Democratic president in office and they're big fans of it when there's a Republican president in office. And, you know, in general, I think we ought to be thinking about applying the same law to people in the same position regardless of the party that they hold. And I think that holds here.

[00:37:10] Oona Hathaway: You know, I would be saying the same thing regardless of whether this is a Democratic or a Republican president former president that we're talking about because, you know, this is really dangerous to national security. I mean, those of us who care about national security, those of us who've worked in the national security establishment, I mean, this is gobsmacking. I mean, the kind of information that... You know, people, you know, put their lives at risk to gather this information and to defend this information and people's lives are at risk if this information gets out.

[00:37:38] Oona Hathaway: And it's the credibility of the United States is very much on the line as well. I mean, the ability to cooperate with allies, to get information from allies, to share intelligence with allies is compromised, and that compromises US national security, and that compromises our ability to defend ourselves. So, I think we should be holding presidents to account, former presidents to account, or anyone to account who really puts US national security at risk in this way, no matter their party, and I try to make that argument with my students across the board, not just when it comes to Espionage Act violations, [laughs], but when it comes to law as a, as a general matter. And I think there's a temptation to try to view the law differently depending on the party of the person, but I really think that you know, that's a tendency that needs to be fought.

[00:38:25] Jeffrey Rosen: Jameel the US now joins other countries that have prosecuted former heads of state including France South Korea, and Italy, where Silvio Berlusconi just died this week. The New York Times had a interesting comparative piece recently that quoted an Italian political scientist who said, "I don't think you can get it right in prosecuting former heads of state, but that's not the same as advising against it. If you think, legally speaking, there is a crime, you have to proceed, you just do it, but there's a justice story and a politics story and you have to keep them separate."

[00:38:58] Jeffrey Rosen: And the story of Berlusconi who was prosecuted several times, convicted of tax fraud, had other verdicts overturned on appeal and only escaped other charges by having the law changed, was a cautionary tale. The conclusion of that political scientist was, "Looking at the Berlusconi cases, I'd say it was right to do it, even if it made no difference and prolonged his political life." Kind of a complicated precedent, but what can we learn from other countries that have prosecuted former heads of state moving forward?

[00:39:24] Jameel Jaffer: Yeah, you know, that's a great question and a very hard one. You know, it's hard to know what the lesson is because, unfortunately the lesson has political and legal consequences, right? You have laws that may change over time, you have precedents that might change over time. Our decision or our ability to avoid having prosecuted a sitting or former president in the past and the OLC opinion that Oona refers to that suggests that the prosecution of a sitting president may be unconstitutional, that the only remedy for a sitting president is impeachment, which of course was tried twice with Donald Trump and failed twice with Donald Trump and play into his story about, "Look, they tried to impeach me twice, now they're trying to prosecute me in State Court with a Democrat Attorney General."

[00:40:07] Jameel Jaffer: "They're trying to prosecute me in Federal Court with a Democrat president and a political appointee as Attorney General, and a Special Prosecutor who reports to that Attorney General." And then Georgia, and all these things, you know it paints a story that plays into a number of dynamics that Donald Trump has been talking about for a long time, this idea of the deep state, this idea of a federal government that is being weaponized this idea that the rule of law is not strong, that the rule of law is being undermined, while at the same time these very arguments themselves, Jeffrey, undermine the rule of law, undermine the Constitution, undermine our trust and our faith in the FBI and the Justice Department.

[00:40:47] Jameel Jaffer: And so, you know, look, if Donald Trump either escapes prosecution or is convicted and is ultimately pardoned or not pardoned

or the like, you know, sentence commuted, you can be sure that bringing this prosecution and its successful or unsuccessful completion will almost certainly result in not just changes to the precedent of what we do but changes in the law itself, when whoever's party takes power, that I'm not sure are going to be positive for the rule of law in this country. And so it just... that's why when I say that the justice department and the Biden administration are between a rock and a hard place, they're between a constitutional rock and a legal hard place that is... and a rule of law hard place that is impossible to work your way out of.

[00:41:37] Jameel Jaffer: And the reason we're here, Jeff, to be really clear, the reason we are here is that Donald Trump, when he was in office, did not behave appropriately as a president should, and when he left office, did not behave appropriately as a president should. The responsibility for why we are where we are today is not the Biden administration, it's not the FBI, it's not the Justice Department, it is Donald J. Trump.

[00:42:02] Jeffrey Rosen: Oona, what do you think we can learn from other countries that have prosecuted former presidents? And if we are between a constitutional rock and a legal hard place, how can we get out of it?

[00:42:15] Oona Hathaway: Yeah, I mean, I think it's, I would think about it this way. What is the alternative? You know, the alternative would be letting this go unprosecuted, and I think the message that that would send would be really dangerous, because it suggests that, you know, there's one law for the Reality Winners and Nghia Phos of the world, and there's another law for former presidents who, you know, commit crimes far worse and are not held responsible for them. And I think in democracy committed to rule of law, one can't have that position.

[00:42:50] Oona Hathaway: I would say I think one thing that's really interesting is that Jack Smith, the Special Counsel appointed to lead the prosecution, has experience in international war crimes tribunals. He has experience of course prosecuting US officials as well, but he also has gone to The Hague and convicted high ranking officials in Kosovo for their engagement in war crimes. And I think that experience is sort of instructive, because the idea of international criminal justice is that there are leading government figures who commit crimes and ought to be held to account and if they're not held to account by their domestic systems, in this case they can be held to account internationally.

[00:43:31] Oona Hathaway: And I think that that experience is probably going to come in handy here, because the set of questions that you face in

international criminal trials is not so distant from the kinds of challenges that you face here. Remember, for instance, that Putin has been indicted by the International Criminal Court for his crimes that he's committing in the course of the war in Ukraine, and the US and US officials have generally celebrated that. And they've done so because he has committed horrific crimes, and those crimes are crimes for which he should be held responsible. So, you know, I think I am aware of and I am concerned about the sort of political challenges, but I also think that we can't, you know...

[00:44:12] Oona Hathaway: One has to be aware of that, but one can't let that stop you from enforcing the law when really egregious violations are taking place. And you have to be careful, you have to be thoughtful about making sure that it isn't politically motivated and you have to really make the case to the American public, in this case, that that's true. But I also don't think that the alternative story is a plausible one, which is that we should just sort of let him get away with whatever he wants, because you know, that's not acceptable in a democracy committed to effective functioning of the law.

[00:44:41] Jeffrey Rosen: Jameel, what lessons does history teach about what the founders thought about the prosecution, of presidents and elected leaders? We have Alexander Hamilton expressing confidence that presidents who were impeached would still be liable to prosecution and punishment in the ordinary courts of law, we have the prosecution of Vice President Aaron Burr as well as presidential candidate, Eugene V. Debs. What can we learn from history?

[00:45:09] Jameel Jaffer: Well, unfortunately, the Debs precedent is one that we might not want to learn, which is Debs claimed and did run for election from jail and receiving millions of votes, asserted that if elected, he would pardon himself. And so in a lot of ways in the 1920s, not that that long ago, 100 years ago but an era that people still can sort of somewhat relate to and so of course Eugene Debs was a socialist, [laughs], so, you know, interesting situation for Donald J. Trump citing the Debs case.

[00:45:40] Jameel Jaffer: But, look, I think that as a general matter, and this is where I think John Yoo has it right, which is as a general matter our founders thought about the remedy for senior elected officials, the president and the like, that there is sort of a different standard and a different approach, to Oona's point on that question and that impeachment is the primary remedy and having tried and failed twice, even after January 6th, right? An insurrection at the Capitol fomented in part, significant part, by the then sitting president, the fact that the house could not bring charges and that the Senate could not convict, well, the House did bring charges but the Senate couldn't convict is hugely problematic

for the political environment around this prosecution and around what you do with former presidents.

[00:46:24] Jameel Jaffer: I think there's a lot of reasons why January 6th did not go down the impeachment around January 6th didn't go down the way it should have. Frankly, I think if Speaker Pelosi had brought those charges immediately, after January 6th, in the days and weeks after it, where it would have mattered, I actually think you would have seen a rapid impeachment and a rapid conviction in the Senate. But too much time passed, too many things went past, it didn't matter because the president was out of office, and I think that gave time and space and I think it was a politically poor decision and frankly a constitutionally poor decision.

[00:46:54] Jameel Jaffer: But here we are. And, again, I do think there are ways that can take some of the steam out of this argument about the political prosecution of Donald Trump, but those go to Joe Biden's decision to pursue office, and I'm sure those that support him say he shouldn't have to make that choice, but the truth of the matter is that he has a choice to make and by choosing to run for reelection and prosecute a former president, even on potentially meritorious charges, it is making the situation worse for our democracy, for the rule of law, and playing more into Donald Trump's hands politically, and I think that's a mistake.

[00:47:28] Jeffrey Rosen: Oona, we may see a prosecution of President Trump related to January 6th, the Special Counsel is still considering that, how strong might those charges be and how might that play into the very complicated mix of law and politics moving forward?

[00:47:45] Oona Hathaway: Yeah, I mean, I think that this indictment may be the first of many. You know, in fact there's been speculation that this is not the only indictment that could come out of the unlawful retention of classified documents there could potentially be charges brought in New Jersey for instance where his Bedminster property is and where some of the crimes that are described have been committed and maybe others but weren't appropriate to be charged in Florida. So, yeah, there could be lots more coming you know, and we know of some, but there might be others we don't know of.

[00:48:16] Oona Hathaway: You know, this is a former president who is going to be battling legal cases for the rest of his life that's clear. And, you know, any number of them could send him to jail potentially and, you know, this, unfortunately, is lending fuel to his fire to run for office. You know, it obviously ought to go the other direction now, to make him a totally

unacceptable candidate for holding office, but it's creating, you know, fuel for him because obviously he has a personal incentive to run because then he has a chance of being able to sort of half these charges, maybe even prevent them from going forward.

[00:48:57] Oona Hathaway: And he's able to sort of engage in his grievance politics and, you know, make this part of his general set of arguments against the federal government, against you know, institutional authorities, against the, you know the bureaucracy, against the deep state, you know, and it's kind of part of the narrative that he's tried to build throughout his time in office and throughout you know, his political career and it sort of fuels that. So, yeah, I mean, there's going to be a number of cases going forward I suspect this is not going to be the only one and I suspect he's going to deal with them in the same way, which is by trying to attack the prosecutors by trying to delegitimize the system, by trying to delegitimize the law and, you know, that's going to work with a number of Americans.

[00:49:43] Oona Hathaway: And that's really sad frankly, because this is not only about what harm it does to our political system to have a former president being indicted, but what harm does the attack that he and other Republicans are waging against our legal system to try and respond to these charges, what harm does that do to our sense of, you know, shared commitment and belief in legal institutions in this country? And the undermining of a sense of, you know, that rule of law matters and that courts can be not just political tools but actually instruments of justice, and that people are held equally to account, are given an opportunity to defend themselves equally in court.

[00:50:23] Oona Hathaway: You know, he is just lobbing one grenade after another at the system, and, you know, that's in some ways I think the greater damage that's likely to be done is the harm that he's doing by- by attacking the system that's trying to hold him to account and the people who are engaged in it. But, you know, that said, I don't know that... I wouldn't have advised them doing otherwise, because, frankly, the other choice, the choice of not indicting, if there are clear crimes, which this indictment lays out pretty clear crimes if they're able to prove them, not indicting would have been equally corrosive, if not more corrosive, to the legal system.

[00:51:03] Oona Hathaway: It's just that it is going to be the subject of massive attacks and that's really, I think, you know, for those of us who care about the law, who care about rule of law, who care about legal institutions, I think we're in for a really tough ride these next several years because there's going to be a segment in the American population that's going to come away

from this believing that the court system is just a political instrument, believing this you know, rhetoric of the Department of Injustice, as Trump likes to call it. You know, they're going to believe that and that does further harm and corrodes our sense of community and our belief in institutions that govern us, and, you know, that I think is a sad consequence of this.

[00:51:44] Jeffrey Rosen: A commitment to the rule of law and the institutions that defend it is of course part of the National Constitution Center's mission statement. Jameel for citizens of all perspectives who are committed to the rule of law on a nonpartisan basis what's the right way to think about the Trump indictment? Do, officials of both parties have an obligation to defend the courts as they evaluate these charges, and what can politicians and institutions like the NCC do to defend the nonpartisan adjudication of the rule of law moving forward?

[00:52:18] Jameel Jaffer: Yeah, it's a great question and a really important one. We all as Americans have a responsibility to defend the rule of law and to preserve it and protect it, and to raise up our institutions that are there to protect and defend it. That doesn't mean and in fact to the contrary, that means that po-and politicians, our politicians have more of a responsibility. They're the ones we elect to do exactly that, they have the opportunity to lead us, they should lead us in a direction that defends and supports the rule of law, not undermines it, as we've seen done time and again.

[00:52:47] Jameel Jaffer: That being said, you know Jeff, I think that there's a lot to be said on both sides of the aisle when it comes to rule of law and failing to defend it, right? I don't think it's helpful for President Biden to run for reelection when he's prosecuting a former president, I don't think it's helpful for President Obama to have commuted Chelsea Manning's sentence when she was convicted clearly of a crime and sentenced to 35 years by a jury of her peers. I don't think it's helpful when Democrats defend Hillary Clinton's use of these email servers and say, "Well, that was okay, right, that wasn't that bad because she at the time, they didn't know anybody that had access to classified information, has a responsibility to protect it and protect it effectively, and not transmit it in ways that violate the Federal Records Act."

[00:53:25] Jameel Jaffer: So, you know, I think, I think there's... This isn't about Republicans and Democrats, at the end of the day, this is about the importance of the rule of law, and by the way, it's critical that when people fail to uphold the rule of law and you have FBI lawyers lying in pleadings to the FISA Court, that they are prosecuted to the fullest extent of the law and made to serve jail time, not simply let off with a slap on the wrist and keeping their bar

license, which to me is outrageous that FBI lawyer that lied in the investigation I forget the name of it now but look, at the end of the day, right, if we're to uphold the rule of law, we have to bring the nation together. The divisive politics that we've seen over the last, you know, seven, eight, 10 years are unhelpful. The way that politicians talk about our institutions, our Constitution, about the Justice Department, about the FBI, about the like. Those things are not helpful. It's not helpful when you have a President of the United States stand up in front of the world and say, "I believe Vladimir Putin over my intelligence community," as Donald Trump did. That is not the kind of man who should hold office again, it is incumbent upon conservatives and Republicans to stand up and say, "This is not the person we want to bear the standard of our party, particularly someone who fomented insurrection on January 6th, and who's behaving the way he did with classified information."

[00:54:35] Jameel Jaffer: At the same time, Democrats have to recognize that running a candidate for office who's currently in office and seeking to prosecute that former president is also unhelpful. There's a lot to be done, and frankly, it comes down to the American people, it comes down to these elections that are coming up, we have elections in this country, they are free, they are fair. Don't believe the hype about elections not being free and fair in this country, that's not true. And Americans have a choice at the polls, they have a choice in primaries and they have a choice at the general election. That choice may determine whether the rule of law survives in this country and both parties have a responsibility to uphold that, and politicians of all stripes have a responsibility to uphold that. And we should hold our politicians... As voters, we should hold our politicians accountable as we have the right to do and other people in the world fight to have the right to do.

[00:55:17] Jeffrey Rosen: Oona, the last word in this important discussion is to you, what can elected officials, Democratic and Republican, as well as nonpartisan institutions like the NCC do to inspire citizens to defend the rule of law moving forward?

[00:55:31] Oona Hathaway: Well, I think academic institutions and institutions who are engaged in educating the public can try to do things like this, which is actually unpack the reality of the situation and try to go through some of the untruths that are being spoken and try to explain, you know, what the truth of the matter is. I do think that that is part of our job as academics, I think that's part of our education mission, I think that's part of... You know, we shouldn't just be talking to each other and not even just to our students, but talking to the general public as a whole to try and explain this.

[00:56:01] Oona Hathaway: Cause this stuff is complicated, you know, frankly, and it is, you know, challenging to understand why it is that a president that had a person who had access to this information as president, like, why can't he just keep it, [laughs], in his ballroom at Mar-a-Lago? Like, you know, it does require some explanation. So I think that that is part of our role. As to politicians, you know, I really would call on politicians and in particular I'm concerned with the way in which some Republican politicians have jumped on this bandwagon of suggesting that this is merely a political prosecution.

[00:56:35] Oona Hathaway: I think that if they look at the reality of the charges as some have, to be clear, like, a number of Republican politicians have said, "Look, if these charges are proven, this is really damaging, and he's not fit to be president." There have been plenty of Republicans who've said that, and that I think is what they should all should be saying. Those who are suggesting that this is politically motivated, those who are suggesting that this is unjustified, I think they should read the indictment for themselves, and I think they should come to a recognition that, you know, those kinds of arguments are really damaging to our democracy.

[00:57:13] Oona Hathaway: And that their loyalty to a former president should not outweigh their loyalty to the United States and to its institutions and to its national security. And if they come to that conclusion, I think that their rhetoric will be tempered and they ought to, as we all should, wait and see what is proven in court and, you know, let the court process unfold. But don't fuel this idea of a Department of Injustice, don't fuel this idea that this is merely politically motivated, don't fuel this idea that somehow Trump should be entitled to hold these very, you know, important national security secrets unlawfully and then play this kind of crazy shell game with his own lawyers and with the FBI and refusing to turn these documents over. Don't fuel that cause that is amplifying his very corrosive message.

[00:58:06] Jeffrey Rosen: In these challenging times, the National Constitution Center will play the role of convening discussions like this so that we can indeed thoughtfully evaluate the charges on all sides and citizens will make up their own minds. I'm reading now from Justice Robert Jackson's definition of the rule of law in his statement to the Nuremberg prosecutions, and he said, "All else will fail unless we can devise instruments of adjudication and conciliation so reasonable and acceptable to the masses of people that future governments will always have an honorable alternative to war. Thank you so much, Oona Hathaway and Jameel Jaffer, for a thoughtful considered, and urgently important discussion about the future of the rule of law in America. Thank you both so much.

[00:58:55] Oona Hathaway: Thank you so much for having us.

[00:58:56] Jameel Jaffer: Thanks, Jeff.

[00:59:01] Jeffrey Rosen: This episode was produced by Lana Ulrich, Bill Pollock, and Sam Desai. It was engineered by Greg Scheckler. Research was provided by Connor Rust, Tomas Vallejo, and Lana Ulrich. Please recommend the show to friends, colleagues, or anyone anywhere who's eager for a weekly dose of Constitutional debate. Sign up for the newsletter at constitutioncenter.org/connect. And, friends, remember, in these challenging times, the National Constitution Center is a private nonprofit. We rely on the generosity, passion, engagement, and the dedication to the rule of law from people from across the country who are inspired by our nonpartisan mission of Constitutional education and debate.

[00:59:39] Jeffrey Rosen: Support the mission by becoming a member at constitutioncenter.org/membership, or give a donation of any amount to support our work, including the podcast, at constitutioncenter.org/donate. On behalf of the National Constitution Center, I'm Jeffrey Rosen.