

#1398 The Road to Justice Runs Through Accountability

JAY TOMLINSON - HOST, BEST OF THE LEFT: [00:00:00] Welcome to this episode of the award-winning Best of the Left Podcast in which we shall learn about the fallout from the January 6th insurrection, the case for impeachment and/or punishment for every single person involved and to discussions for why this process is so important to the stability of the country clips today are from the BradCast democracy. Now a speech from representative Cori Bush, *The Brian Lehrer Show*, *Start Making Sense*, *The United States of Anxiety*, *Citations Needed*, *Late Night with Seth Meyers*, *Past Present*, and *What Trump Can Teach Us About Con Law*.

AOC shares harrowing personal story from January 6th attack - The BradCast - Air Date 2-2-21

REP. ALEXANDRIA OCASIO-CORTEZ: [00:00:41] Five, six people have lost their lives. Many more have been traumatized. And yet, after all of that. After they perpetuated that lie, amplified that lie. Knowing that that violence needed that lie. After they told that lie. After they saw people lose their life on the steps of the Capitol. Afterwards, not even an I'm sorry. Not even a, I didn't know that me doing this would result or contribute to this violence. And if I had known, I wouldn't do it and I'm sorry. You know, if in the last three, four weeks we heard that, I'd be, my response would be a little different right now. But no. The response to the last three or four weeks is we did the right thing. I would do it again. I would do it again. I don't regret it at all. And so if that is your stance, for these insurrectionists and these people who incited the violence, if that's their stance, then that means they continue to be a danger to their colleagues. Because what they are saying is, given those same conditions, I will choose to endanger my colleagues again for political gain.

BRAD FRIEDMAN - HOST, THE BRADCAST: [00:02:14] That was New York, Congresswoman Alexandria Ocasio-Cortez speaking about her experience on January 6. She went on to say, again, it was an hour long conversation to her followers on Instagram, that they're trying to tell us to move on without any accountability, without any truth-telling or without confronting the extreme damage, loss of life, trauma. She says the reason I say this and the reason I'm getting emotional at one point she says is because they told us to move on, and that it's not a big deal, that we should forget what happened or even telling us to apologize. She says these are the tactics of abusers as she was on the verge of tears and explains that she is a survivor of sexual assault, adding that she hadn't told many people that in her life. But she said when we go through trauma, trauma compounds on each other.

So, with that in mind, just to give you a sense of, you know, if you're wondering why so many in the House and the Senate are still concerned and are still talking about and still wish to see justice and accountability for what happened on January 6, I think that that just gives you an idea of what one of the victims of the attack at the Capitol went through just to give you some color, as Republicans are busy trying to push all of this down the memory hole.

We Can't Just "Move On": AOC & Rashida Tlaib Demand Accountability for Deadly Capitol Attack - Democracy Now! - Air Date 2-5-21

AMY GOODMAN: [00:03:55] Congresswoman Alexandria Ocasio-Cortez of New York organized a special session to give lawmakers a chance to talk about what happened that day.

REP. ALEXANDRIA OCASIO-CORTEZ: [00:04:05] Twenty-nine days ago, on January 6th of 2021, insurrectionists attacked our Capitol seeking to overturn the results of our nation's election. Twenty-nine days ago, the glass in and around this very chamber was shattered by gunshots, clubs, by individuals seeking to restrain and murder members of Congress, duly elected to carry out the duties of their office. Twenty-nine days ago, officer Sicknick, who just laid in honor yesterday in our nation's Capitol, was murdered on the steps just outside this hallowed floor. Two Capitol Police officers have lost their lives since, in addition to the four other people who died on the events of January 6th. Twenty-nine days ago, food service workers, staffers, children ran or hid for their lives from violence deliberately incited by the former president of the United States.

Sadly, less than 29 days later, with little to no accountability for the bloodshed and trauma of the 6th, some are already demanding that we move on or, worse, attempting to minimize, discredit or belittle the accounts of survivors. In doing so, they not only further harm those who were there that day and provide cover for those responsible, but they also send a tremendously damaging message to survivors of trauma all across this country, that the way to deal with trauma, violence and targeting is to paper it over, minimize it and move on.

AMY GOODMAN: [00:05:54] That's New York Congressmember Alexandria Ocasio-Cortez speaking Thursday. Her sister Squad member, Congressmember Rashida Tlaib of Michigan, also spoke.

REP. RASHIDA TLAIB: [00:06:04] This is so hard, because, as many of my colleagues know, my closest colleagues know, on my very first day of orientation, I got my first death threat. It was a serious one. They took me aside. The FBI had to go to the gentleman's home. I didn't even get sworn in yet, and someone wanted me dead for just existing. More came later, uglier, more violent, one celebrating, in writing, the New Zealand massacre and hoping that more would come, another mentioning my dear son Adam — mentioning him by name. Each one paralyzed me each time.

So, what happened on January 6th, all I could do was thank Allah that I wasn't here. I felt overwhelming relief. And I feel bad for Alexandria, so many of my colleagues that were here. But as I saw it, I thought to myself, "Thank God I'm not there." I saw the images that they didn't get to see until later.

My team and I decided at that point we'd keep the death threats away. We try to report them, document them, to keep them away from me, because it just paralyzed me. And all I wanted to do was come here and serve the people that raised me; the people that told my mother, who only had eighth-grade education, that she deserves human dignity; people that

believed in me. And so it's hard. It's hard when my seven brothers and six sisters beg me to get protection, many urging me to get a gun for the first time.

And I have to tell you, the trauma from just being here, existing as a Muslim, is so hard, but imagine my team, which I lovingly just adore. They are diverse. I have LGBTQ staff. I have a beautiful Muslim that wears her hijab proudly in the halls. I have Black women that are so proud to be here to serve their country. And I worry every day for their lives because of this rhetoric. I never thought that they would feel unsafe here.

And so, I ask my colleagues to please try not to dehumanize what's happening. This is real. And you know many of our residents, from the shootings in Charlottesville to the massacre at the synagogue — all of it. All of it is led by hate rhetoric like this. And so I urge my colleagues to, please, please take what happened on January 6 seriously. It will lead to more death. and we can do better.

We must do better. Thank you

Rep. Cori Bush Denounces White Supremacist Violence from the Capitol Insurrection to Ferguson - Democracy Now! - Air Date 2-8-21

REP. CORI BUSH: [00:09:11] Madam Speaker, St. Louis and I rise with a message for our Republican colleagues. On January 6th, I thought about January 3rd, and I thought about how we all raised our right hands up and took an oath, each and every one of us. On this very floor, we swore that we would support and defend the Constitution of the United States against all enemies foreign and domestic, even though that Constitution wasn't written for people who look like me, even that Constitution wasn't written by people who look like me, and even though that Constitution cemented an unjust nation for people like me.

My team and I got to work, and we unveiled legislation to investigate and expel those who were responsible for inciting this attack, so that we could defend it, because we have a duty to fight for a more perfect union, because we cannot stand up to white supremacy in this — because if we cannot stand up to white supremacy in this moment as representatives, then why did you run for office in the first place?

No matter what district you represent, no matter where you live, no matter Democrat or Republican, you represent a district that is, on average, about 700,000 people, meaning you have to represent those who love you, those who despise you, those who voted for you, those who swear they'll never cast a vote for you, people who talk like you, and people who don't look like you.

Building better communities, building better lives, building a better society, it's not a Democratic or Republican issue. We can't build a better society if members are too scared to stand up and act to reject the white supremacist attack that happened right before our eyes. How can we trust that you will address the suffering that white supremacy causes on a day-to-day basis in the shadows, if you can't even address the white supremacy that happens right in front of you in your house? "Does your silence speak to your agreement?" is the question.

In St. Louis, the COVID-19 pandemic is disproportionately hospitalizing and killing Black and Brown people. Well, I've lived that. We have people dying from gun violence, a crisis that stems from decades of economic disinvestment and disruption, from an overreliance on policing, that this very chamber has continually voted to endorse. I've cried those tears. You don't know what that's like.

So I ask you today, take a moment to think about what it's like to live what we live through. If you cannot do what's right in the face of a blatant, heinous, vile white supremacist attack like the one we just saw, how will you do right by the Black and Brown people you represent who just want to know that our children will have safety, that our children will have life, and that they will have shelter, because you represent us, too?

So, on January 3rd, we stood together to swear our oath to office, to the Constitution. We swore to defend it against all enemies foreign and domestic. Well, it was attacked by a domestic enemy called white supremacy, and we must stand together now, today, to uphold that oath and hold every single person who helped incite it accountable.

Thank you. And I yield back.

Dem House Managers submit pre-Impeachment Trial briefs - The BradCast - Air Date 2-2-21

BRAD FRIEDMAN - HOST, THE BRADCAST: [00:12:26] Donald Trump endangered the lives of all members of Congress when he aimed a mob of supporters, "like a loaded cannon at the US Capitol," that according to House Democrats on Tuesday in making their most detailed case yet, in fact, an 80-page trial memorandum submitted in advance of Trump's second Senate impeachment trial set to begin next Tuesday detailing why the former president should be convicted and permanently barred from office. For his part, in a 14-page declaration by the two lawyers that Trump was able to hire at the last minute, after his entire five-person legal team left him over the weekend, Trump denied the allegations, all of them, and called the trial itself unconstitutional. The two filings offer the first public glimpse of the arguments that will be presented to the Senate beginning next week in response to the violence in the Capitol just last month, which the senators witnessed firsthand, the senators who will sit as jurors in this trial held in the very chamber where the insurrectionists stood on January 6. It will pit Democratic demands for a final measure of accountability against the desire of many Republicans to yes! Turn the page and yes! Move on with no accountability at all for the man that the Democrats charged with inciting the attempted insurrection.

It is hard to imagine, frankly, that any of this at all would have occurred without Donald Trump's encouragement. And yet, that is what his lawyers now appear to be arguing, along with the claim that the process itself is unconstitutional and it's a violation of Trump's First Amendment rights to free speech. The Democratic legal brief forcefully links Trump's baseless efforts to overturn the results of the presidential election to the deadly riot at the Capitol, as AP reports it, saying that he bears "unmistakable blame for actions that threatened the underpinnings of American democracy." It argued that he must be found guilty on a charge of inciting the siege and uses evocative language to conjure the day's chaos when "terrified members were trapped in the chamber" and called loved ones "for fear that they would not survive." Trump's attorneys did not dwell on the mayhem itself in

their telling of what happened whereas the Democratic managers invoke to dramatic imagery captured by cell phone footage and media reports of "terrified lawmakers" trapped inside the building. You just heard one of them who "prayed and tried to build makeshift defenses while rioters smashed the entryway."

In their brief, managers laid out a stark and disturbing compilation of what unfolded inside the Capitol that day: members donning gas masks and calling loved ones for fear that they would not survive the assault; Capitol police officers dragging furniture to barricade the House chamber; the staff of House Speaker Nancy Pelosi, another one that I suspect would be scared for her life, along with AOC and for good reason; staffers of hers hiding under a table with the lights out for hours as they listened to the rioters just outside their door. One member asked his chief of staff to protect his visiting daughter and son-in-law with her life, which she did by standing guard at the door, clutching a fire iron while his family hid under a table, the brief stated, in reference to Congressman Jamie Raskin, Democrat of Maryland, who is the lead impeachment manager.

DESI DOYAN - HOST, THE BRADCAST: [00:16:21] And had just buried his own son not a week before.

BRAD FRIEDMAN - HOST, THE BRADCAST: [00:16:25] This is precisely the sort of constitutional offense that warrants disqualification from federal office, the Democrats argue. Their filing makes clear their plan to associate Trump's words with the resulting violence, tracing his efforts to subvert democracy to when he first said last summer, long before election day itself, that he would not accept the election results if he was shown to be the loser. And then, all the way through the November contest and as many failed attempts thereafter to challenge the results in court in more than 60 different failed cases all across the country when those efforts failed, the Democrats write "he turned to improper and abusive means of staying in power."

Specifically, they detail his pressure campaign that he launched against state election officials, against the Justice Department and at Congress itself, basically at anybody and everybody who he thought he could strongarm somehow into somehow agreeing with him that, Oh, yeah! He won the election, which all available evidence shows that he did not. The Democrats cite the unsuccessful efforts, for example, to sway Georgia's Secretary of State Brad Raffensperger as we heard in that infamous recorded phone call haranguing and threatening Raffensperger to "find 11,000 votes" to flip the election. Of course Raffensperger was smart enough, or somebody in his office was smart enough, to tape record that call. There was also similar calls reportedly made to Brian Kemp, the Governor of Georgia, and to another election official in Georgia. He also tried to harangue even his own former Attorney General Bill Barr, who by and large left the DOJ early because of Trump's insistence that Barr find a way to steal the election for him, even if it meant bringing false voter fraud charges against people. Sure, put other people in jail so that I can stay in office. The Democrats write in their brief "the only honorable path at that point was for President Trump to accept the results and concede his electoral defeat. Instead, he summoned a mob to Washington, exhorted them into a frenzy and aimed them like a loaded cannon down Pennsylvania Avenue.

Hard to disagree with that loaded cannon metaphor even if one wants to argue that he may have loaded the cannon but well, he didn't personally fire it. The Democrats here are arguing

that yes, he did that as well. Trump became fixated on January 6th, the managers write. They note that many of Trump's supporters, including the Proud Boys, who Trump had told to "stand back and stand by" at a September debate, were already primed for the violence. They write, "given all of that, the crowd, which assembled on January 6th, unsurprisingly included many who were armed and angry and dangerous and poised on a hair-trigger for President Trump to confirm that they indeed had to "fight to save America" from an imagined conspiracy, according to the Democrats.

New Audio From The Insurrection And What It Could Mean For Impeachment - The Brian Lehrer Show - Air Date 2-11-21

BRIAN LEHRER - HOST, THE BRIAN LEHRER SHOW: [00:19:45] Some of the pro-Trump analysis that I saw from some of the guests on Fox yesterday. So let me throw three of their main arguments at you.

Number one is the house managers are trying to make a case that Trump is guilty of incitement, not because he ever explicitly asked anyone to break into the Capitol, but because some of those people interpreted him that way. He's not responsible for their interpretation of him using political language.

What do you think about that?

ELIE HONIG: [00:20:17] Yeah, that will be, I believe, impeachment defense 1A from Trump's lawyers. Okay.

First of all, a person does not have to stand up at a podium and say, "I hereby incite you to insurrection" in order to incite insurrection. We are allowed -- we as the American public, we as whether it's a jury in a criminal case, or we as our representatives in Congress will be deciding this case -- it is okay to use common sense. And this is why the Democrats have been focusing on the big picture. They talk about all the coded language, all of the -- over the years, all the times with Donald Trump gave a little wink and a nod to violence being perpetrated on his behalf, on Donald Trump's effort to anger, to whip this crowd, essentially into a frenzy to call them there, specifically on the date the votes are being counted, and then to set them off. And it also let's remember: this isn't the same as standing in front of any crowd. This is a crowd that had just heard Rudy Giuliani get behind the mic and shriek "trial by combat"; this crowd had just heard representative Mo Brooks say "it's time to kick ass and take names."

And also the crowd itself was a crowd that, as the caller just said, was armed. A lot of them had zip ties, stun guns. This was a crowd that had, we now know, many or several people who were part of these sort of extremist groups, Proud Boys and others. The crowd was waving Confederate flags. There was people in the crowd wearing anti-Semitic clothing, referencing the Holocaust and Auschwitz and that kind of thing. So this is not giving an address at the local YMCA. So I think that's gonna be the fundamental conflict here. Democrats are going to say, "It was obvious what he meant. Donald Trump knew his followers understood his language and he knew that they would do exactly what they ended

up doing" and the response is going to be, "But he never said anything that bad explicitly, and they got out of control and went beyond what he could

have foreseen.

BRIAN LEHRER - HOST, THE BRIAN LEHRER SHOW: [00:22:09] Their argument they made, the charge of course is incitement of insurrection. And they said insurrection would be an inappropriate word for what happened at the Capitol. Therefore, an inappropriate charge against Trump. It was a criminal riot, but an insurrection is more of an organized attempt, like with an army of overthrowing a government, broadly paraphrasing this argument that I heard from one of the pro-Trump lawyers.

So insurrection, no. Your reaction.

ELIE HONIG: [00:22:36] That's an interesting one. I hadn't heard that one yet. That's creative. I'm not buying that because look at the timing. Again, as I said before, January 6th was not a date they chose because the weather was going to be nice in Washington, DC; they chose January 6th because that is the statutory date, the legal date on which the votes are counted.

They even timed the rally itself to the actual counting of the votes. Look, people going into that building going, where's the -- they're looking for the ballots, they're looking for representatives. So no, this is not the same as if he had incited or if he went let's use another Washington, DC example, if the Wizards, the basketball team, was playing and he incited a riot there. No, this is politics specific. This is Congress specific. This is counting of the electoral votes, which is the "final step in the transfer of power" specific.

BRIAN LEHRER - HOST, THE BRIAN LEHRER SHOW: [00:23:23] And their argument number 3, and there may be others, but these are the ones that jumped out at me in this one Fox segment that I saw with a couple of lawyers making Trump's case -- number 3, when the Democrats argue that Trump didn't do much to restrain the rioters once the break-in began and therefore he's guilty of incitement, that might be negligence, one of them said, but negligence is not incitement. Your reaction.

ELIE HONIG: [00:23:48] So two things. First of all, I would argue the president has more of a duty than an average person. The president takes an oath to see that the laws are faithfully executed, to uphold the Constitution. And if you see the Constitution being trampled on and people interfering with this core constitutional function, then it's not okay as a president to say, "Huh! I don't have an affirmative duty to do anything. I'm just going to let it be." That is impeachable. We could argue about whether that's criminal, but that sure as heck is impeachable.

The second thing is the real or another relevant aspect of his reaction after the fact is that it sheds light on what his intent was all along, because all the evidence I've seen shows that Donald Trump was anywhere between indifferent at best and gleeful at worst for him about what had happened. I've not seen a single piece of evidence suggesting that in the immediate aftermath of this attack, he was horrified or upset about what had happened. And look at his tweet. And I've said this several times, that to me, the most compelling, single piece of evidence in this case about what Donald Trump meant and intended and wanted was a tweet that he sent at 6:01 PM that day, a couple hours after the insurrection

had ended, the riot ended where he calls the people who had just done that who had just torn the Capitol apart, and with death resulting, he called them great patriots. And he said, "Remember this day forever." Does that sound like somebody who's horrified or upset or offended by what they saw? Or does that sound like somebody who's quite pleased at what he just saw? I think it's obviously the latter. And to me, that shows that this is what he hoped they would do. This is what he wanted them to do. And this is what he intended them to do.

Prosecute the Insurrectionists—All of Them: Elie Mystal on Storming the Capitol - Start Making Sense - Air Date 2-3-21

ELIE MYSTAL: [00:25:26] Every single person who breached the Capitol is guilty of a criminal offense, of a federal criminal offense. Now, we can debate, we can talk kind of theoretically, nation of laws stuff about what should happen to people like Josh Hawley or Ted Cruz or even Donald Trump, the people who incited, to my view, this insurrection, but at a bare minimum, the 800 people who breached the Capitol, committed a crime and must be arrested and charged with that crime. Even if the crime is as simple as all of them committed criminal trespass. All of them committed disorderly conduct. All of them illegally went into a restricted area of a federal building. All of them, at the least, need to be charged and prosecuted for that. What is clear is that the people who, ya know, tried to overthrow the government violated some damn laws!

Jon remember, I'm a liberal, I'm anti-carceral. When I was a lawyer, I was fundamentally a defense side lawyer. I worried about over prosecution, I worry about over punishing people, so I want th Justice Department to do its due diligence and make sure that the people charged with the most serious crimes committed the most serious offenses. I'm all for that. I don't need the guy who just went along with the crowd, I don't need him in jail for 20 years on sedition of conspiracy, I don't think that that is justice. But it's also not justice for that guy to walk free.

So

JON WEINER - HOST, START MAKING SENSE: [00:27:11] let me ask you, as a former defense practitioner, about some of the defenses that have been put forward by some of the people who have been charged with lesser offenses. One of my favorites is the rabbi from Palm Harbor, Florida who's been charged with the crimes you listed, knowingly entering a restricted building, disorderly conduct in a restricted building, violent entry on Capitol grounds. His defense attorneys say, "he just followed the crowd over to the Capitol just intending to be nothing more than a spectator and ended up going into the Capitol after it was opened up." He just followed the crowd. Does that work for Black people?

ELIE MYSTAL: [00:27:58] It doesn't work for any people! What do you mean "ended up"? How are you just going to "end up" inside the Capitol? Look, there were people who were just following the crowd, who went to be spectators, that stayed outside the building. I'm not calling for us to go round up and arrest all of those people who went to a protest, protested, stayed outside, didn't hurt nobody, didn't beat anybody, and didn't violate federal law. They have positions that I disagree with, but I don't think that they should be arrested.

This guy went inside the Capitol. You don't, that doesn't just happen. This guy made an active decision to take steps inside a restricted area. Any body who did that, who was not protected by, whether it's Whiteness, whether it's MAGAness, anybody who did that that was not protected by what the Republican party exists to protect, would be arrested on the spot.

Jon, it's important to understand that if this had been a predominantly Black mob or predominantly Brown mob, everybody who went into the Capitol, they wouldn't of been allowed to go home. The police would have brung paddy wagons, literally buses. Remember everybody talks about the zip tie guy, the police would of had zip tie handcuffs on the scene and just rounded up people as they came out of the building. That is what would have happened to any other mob, so for this guy to say that he should somehow avoid prosecution and accountability for his actions, because he was just following along, that is not a valid legal defense.

JON WEINER - HOST, START MAKING SENSE: [00:29:42] Well, let me try another defense on you. There's another guy, a former Marine from Pennsylvania, photos show him inside the Capitol building, grabbing a police officer and shoving him against the wall. His defense is that he, "just got caught up in the moment." Does that work for Black people who grab and shove cops?

ELIE MYSTAL: [00:30:03] No. And quite frankly, there's there, there are very few Black people who could grab and shove a cop "caught up in the moment" and live to tell about it. Cause that's the other thing that we saw on the day of the riot, of the insurrection. We saw incredible permissiveness by law enforcement. One person was shot by law enforcement, shot and killed by law enforcement, but law enforcement did not open up a hail of gunfire. We didn't see the kind of police brutality that we see at protests against police brutality brought to bear on this White insurrectionist mob. So the fact that this man was able to put his hands on a police officer and A) live, B) not be arrested on the spot C) not get punched in the mouth on the spot. The fact that that was even allowed to happen is already an extreme example of White privilege. For him to think that he can roll that forward to escape prosecution, after the fact, for his crime it's a ridiculous argument that should not, and I don't believe will, hold up in any reasonable court of law.

JON WEINER - HOST, START MAKING SENSE: [00:31:17] The Washington Post reported recently that there's a debate going on inside the Justice Department about whether to charge people whose "only crime" was entering the Capitol building on January 6th. What's your opinion?

ELIE MYSTAL: [00:31:34] I don't like that argument at all. I can't accept that at all. Again, there's no, aside from the Black/White thing, like literally aside from the fact that this would never happen, they would never be having these discussions if it was a predominantly Black mob, there's also the simple issue here that, why do we prosecute anybody? Why do we have laws? Why do we have prosecutions? Why do we criminalize certain, otherwise petty offenses, like trespass, breaking and entering, and that kind of stuff, these crimes that are not rape, murder, robbery, that kind of stuff? Well, it's because we feel that letting people get away with these low level is permissive of other more serious crimes. It's not that we think that trespass is the most dangerous thing in the world, but we think that if we allow

trespassers to trespass, well then eventually some trespassers will rape, will murder, will steal, will arson or what have you.

So the argument for not prosecuting these people really would have to be something along the lines of their crimes were not that important. Yes, they technically violated the law, but the substance of what they were doing is not that important. The substance of what these people were doing was trying to overthrow a free and fair election. The substance of what these people were trying to do was to make a person who lost the election, the winner and the President of the United States. That was their plan. And while some of them executed that plan in the most violent matter, everybody who executed that plan, in a legal matter, must be held accountable and must be brought to justice.

Life After Fascism: A Brief History - The United States of Anxiety - Air Date 1-21-21

TIMOTHY SNYDER: [00:33:28] The big lie that I had in mind with Interwar Germany, is the idea of a stab in the back. Germany lost the first world war for simple reasons. It lost the first world war because it had to fight a war on two fronts because the Americans joined the war. Even though Germany basically won on the Eastern front, they got beat on the Western front in 1918 by the Americans supporting the French and the British, and a number of other allies. It's not that complicated. They lost a million men in the summer and fall of 1918, a million Americans were arriving at the same time, they were beaten.

The story that the German commanders told was, "We didn't lose. We never lost the war. We were betrayed on the home front by the left, we were betrayed on the home front by the Jews. This story, which became known as the stab in the back, starts in 1918. The reason, of course, it's troubling for me, and what I think about the American future, is that that story is still present 15 years on, when those commanders are no longer commanding a war, when we're in a different situation, when we're in a great depression, when the Nazis are rising to power, that stab in the back story is part of Hitler's antisemitism.

It's a part of an even bigger lie that Hitler tells about the Jews being responsible for everything, which is wrong for Germany. That's why I'm wondering about this, and it's why I think America is always at a crossroads for a lot of reasons, but also with respect to simple truth and lies. If Republicans, because they have a particular responsibility here, if Republican leaders succeed in keeping this lie going past the Trump era, then Republican politics can become a competition to see who gets to be the bearer of the story of martyrdom. This is what Mr. Cruz and Mr. Hawley are clearly trying to do.

Who gets to tell their voters that they were the martyrs, that they were the ones who were betrayed, they were the ones who were stabbed in the back, they were the ones who deserve revenge? This is what I worry about. Because history tells us that the person who invents the lie isn't necessarily the person who then later brings it to terrible fruition.

BRIAN LEHRER - HOST, THE UNITED STATES OF ANXIETY: [00:35:34] to follow up on what you've just said, on the model of the gamers versus the breakers in the Republican Party, do you think people like Senator Josh Hawley, who you name, really want to break democracy?

TIMOTHY SNYDER: [00:35:50] It seems to me that there's a pattern here, and the pattern, not just today with Hawley and Cruz and McConnell and so on, but the pattern going back to Reagan, really, is that you have this tension in the Republican Party between people who are angry at the system, so-called, and the fact that the Republican Party basically exists by managing the system. That's a tension.

The tension has been overcome by various kinds of ideological maneuvers by saying, "We're governing against the government," or "We're governing against the elites," or "We're going to go work for government to make government smaller." The tension is always there. Inherently, the Republican Party is a managing party. It manages elections, it manages a good part of the economy, but a lot of its voter base, and some of its leaders, are interested in some kind of revolution or some kind of dramatic change.

I think what Mr. Trump's big lie did was make this fissure visible and more real. Because the people who are basically gamblers, like Senator McConnell, they went with it for a while thinking that it would peter out. They were with Trump so long as they could get things out of Trump. Then you have people like Mr. Cruz or Mr. Hawley, who of course, just like Mr. McConnell, and for that matter, Mr. Trump, know that the whole thing is a lie. They know the whole thing is a scam and a grift, of course, but they see potential in the lie itself in for the future.

Of course, if you take a big lie like this into the future, what you're saying is, we, not just Mr. Trump, should be allowed to win when he loses, but I should be allowed to win when I lose. When I run for president in 2024, I want to see this same scenario. If I don't win the electoral college, I'm going to cry fraud, and I'm going to expect that Congress is going to appoint me, assuming that there were enough Republicans in Congress to do that.

I want to explain it, but the short answer to your question is yes. I think that anybody who voted against the confirmation of the electoral college vote should probably be considered someone who is not really in favor of American representative democracy. I think the people who led that charge, who opportunistically led that charge, knowing that they were telling a lie or repeating one, namely Sanders, Hawley, and Cruz are most clearly suspect of being people who would be happy to take power amidst the ruins.

The "Healing" Con: How Warm and Fuzzy Appeals for "Unity" Are Used to Protect Power - Citations Needed - Air Date 1-20-21

NIMA SHIRAZI - HOST, CITATIONS NEEDED: [00:38:18] The New York Times on January 9, 2021, offered an example of how Biden's efforts will -- to appease Republicans, e.g. Higher Republicans or centrist will, is done to sort of unify the country, right? So this happened with Obama in 2009 as well, that he was told to unify by centrist media. And the way you do that is by staffing your administration with Republicans. The fact that that creates what the wealthy donor class wants -- and we'll get into this later -- but the donor class of people who funded the Lincoln Project is they basically want a steady-state, pro-capitalist government that doesn't have the unpredictability and gross veneer of Trump, but basically keeps things as they are, that is conservative. That doesn't really change things. And so New York Times

wrote, quote, "So far, Mr. Biden has not taken a position on impeachment, let alone the broader agenda of launching criminal investigations. He has said he would leave any decision about it to his justice department, which he has promised will return to pre-Trump norm of maintaining independence from the White House" -- definitely was not a pre-Trump norm, especially under Bush -- "his choice of Merrick Garland, a centrist judge, as his nominee for attorney general is another indication of his more measured approach to pursuing investigations and indictments. His stance reflects not only his politics, but a natural inclination to not settle scores. Much like Mr. Obama, who Mr. Biden served for eight years as vice president. Mr. Obama said shortly from his own inauguration that he believed the nation needed to ,quote, 'look forward, as opposed to looking backwards.'" The article notes that others across the Democratic party are calling for accountability and action specifically from the progressive wing, because they believe, you know, maybe fall asleep, but they believe that if you want to prevent future Trumps and future excesses of, well, you know, let's just start with basic denying of election results, which of course is an incitement to violence, which is of course would happen the most predictable thing of all time. That that should be something you hold to account. So other people don't try to do that. Other people don't try to rile up fascist mobs to go kill legislators. And that the reason why you have punishment, at least in theory, is to prevent future people from doing that, not just to punish people in the present, but to create a standard.

ADAM JOHNSON - HOST, CITATIONS NEEDED: [00:40:16] So holding people to account for, you know, incitement to violence, for acts of insurrection against the government that they themselves work within, this is somehow framed so often in the media and also our political discourse of course, but like really, it finds itself into so many articles, this idea of settling scores, right? That accountability is really just petty kind of grievance politics, as opposed to justice, any sort of idea of actually holding people to account.

Now, of course, these articles were written before Trump was successfully impeached for the second time, but you can kind of see how this rhetoric works to frame up what the conversation is even going to be about. If you look back at the fall of last year, right around the election, there was so much of this as well.

So for instance, there's a column by a conservative writer, Henry Olsen, columnist for the Washington Post published November 9th, 2020. So written shortly after the election. It's headlined "Talk is cheap. Here's what Biden needs to do to be a unity president." And so in this piece, Olsen writes this: "Democrats may disagree strongly with many of them" -- he's talking about conservatives -- "that's what makes them Democrats. But genuine unity means taking a hard look at what conservatives and Republicans believe and finding out what elements of those can be accepted or tolerated." He goes on to say this: "Building real unity requires hard work and compromise. It will mean not pressing progressive concerns too far and too fast in touchy cultural areas. It will mean avoiding the temptation to bypass a Republican-controlled Senate via executive actions of dubious constitutionality. It will mean acting less like Bush and Obama, and more like Ronald Reagan and Bill Clinton, whose genuine bipartisanship address serious problems such as social security solvency, and the perennial budget deficit. Partisan differences will and should remain. But common ground can be found if Republicans are treated with understanding and respect." End quote. Now of course, this is when Olsen thought that Georgia would not flip, so the Republicans would maintain control of the Senate. Obviously that did not come to pass. But so much of this is all about Biden, just basically doing whatever Republicans want. One of my favorite lines in

there is "not pressing progressive concerns in touchy cultural areas." I wonder what that means.

NIMA SHIRAZI - HOST, CITATIONS NEEDED: [00:42:55] Yeah. Cultural areas, otherwise known as basic rights of LGBTQ and Black people wanting equality, otherwise known as trivial cultural issues. Whereas privatizing social security is an urgent moral necessity. Yeah. I mean, there's sort of too many of these to count. Time magazine, after Biden won the election, put the title of his speech, his acceptance speech, "A time to heal" on the cover. In the article about the speech they said, quote, "Our cover this week an image from the event where Biden and Harris delivered victory speeches on November 7th, includes the phrase from Biden's remarks and from Ecclesiastes, 'a time to heal.' It's reminiscent of a long-ago Time cover following another season of division and pain on the 1974 issue, featuring newly-inaugurated president Gerald Ford, with the line, 'The healing begins.'"

Now, what is Gerald Ford known for? He's known for pardoning Nixon for all of his crimes. Right? So healing is a lead immunity. And this is -- trust me when I tell you this -- is going to apply to Trump, because even though I think Trump is not like Nixon, where he is more overtly despised by elites in both Republican and Democratic parties is a big fucking pain in the ass and a nuisance, they still don't want to violate the precedent of going after the president. And this can't be, this has to be understood. So the impeachment it's the sort of say you did it doesn't really mean anything. So instead of saying, wow, Gerald Ford, just pardon Nixon. And he's going to let everybody go. And we're just going to kind of act like nothing happened and we need to maintain the brand of the Republican party, right? That's what Lincoln Project was about this, but of all of the shit we're going to talk about today is it's about making sure that Trump doesn't sully the Republican brand because of the wealthy, the super wealthy need equally powerful two-party pro-corporate parties, because that's how you make sure nothing progressive ever happens.

And this is why Biden repeatedly says we need a strong Republican party. Pelosi says we need a strong Republican party. This is a Pete Peterson, centrist dogma. It's a signal to the donors really more than anything, of saying that, Oh, don't worry, we're not actually gonna do anything serious because we don't really take politics seriously. Our job is to maintain the general order and make sure that things run well.

These are the kinds of things that I think more than anything sew cynicism. When I see Trump do illegal thing after illegal thing, after illegal thing, and then he gets away with it or Bush does illegal thing and gets away with it, as we talked about in our previous episode about looking forward, not backwards, then why would I, you know, meanwhile, I'm getting hit up by the IRS or I get pulled over for speeding, or I get some bullshit or my son gets caught with drugs. Like that double standard of course it makes people bitter towards politics.

And so what is basically just a gentleman's agreement to not meaningfully punish those in power, high positions of power, not some bullshit Louisiana legislator who got stung by the FBI, but like real elites, right? It's framed as a positive thing. It's framed as a warm and fuzzy thing is you're actually healing. Right?

GOP Senators Want to "Move On" from Trump's Second Impeachment Trial - Late Night with Seth Meyers - Air Date 2-8-21

SETH MEYERS - HOST, LATE NIGHT: [00:45:38] Twelve years ago, Barack Obama was set to take office in a very similar situation to the one Joe Biden is facing today. A deeply unpopular Republican President who first entered office despite losing the popular vote had just overseen a series of unprecedented calamities that caused misery and suffering for millions of people.

Every time Democrats win the presidency, it's like a long lost uncle left them a mansion in their will. Then they open the front door and find out he was a hoarder who made his own cheese. Oh, dear God, what am I supposed to do with this? It smells like the inside of a mummy. And on top of all of that, the Bush era was also rife with corruption and abuse of power, including torture, warrantless wiretapping, CIA black sites, and the destruction of evidence. And while Obama set to work rolling back some of the damage done by the Bush administration while also shepherding through historic achievements like healthcare and financial reform, he made one early decision before he even became president that has had consequences to this day.

unidentified interviewer: [00:46:29] Will you appoint a special prosecutor, ideally Patrick Fitzgerald, to independently investigate the greatest crimes of the Bush administration, including torture and warrantless wiretapping?

Barack Obama: [00:46:40] We're still evaluating how we are going to approach the whole issue of interrogations, detentions and so forth, and obviously we're going to be looking at past practices. I don't believe that anybody is above the law. On the other hand, I also have a belief that we need to look forward as opposed to looking backwards.

SETH MEYERS - HOST, LATE NIGHT: [00:47:05] I appreciate Obama's optimism, but looking forward, not backwards, didn't work. The people responsible for the catastrophes of the Bush era stuck around because they never faced any consequences. Karl Rove, Ari Fleischer, and John, you were regular guests on Fox. John Bolton worked for Trump, Neil Gorsuch and Brett Kavanaugh are on the Supreme Court, and a bunch of other Bush acolytes started the Lincoln Project to rehab their reputations.

Anyway, the point is if we don't hold accountable the people responsible for eroding our democracy, they'll just remain a part of public life and commit the same crimes again, if given the chance. That was true in the Bush era, and it's true now with the Trump administration as we enter a second impeachment trial. That's a point Congresswoman Alexandria Ocasio-Cortez made during a powerful live stream last week.

REP. ALEXANDRIA OCASIO-CORTEZ: [00:47:42] In these past three weeks, I felt like it was important to give a window of opportunity, right? Maybe in some world, Senators Josh Hawley or Senator Ted Cruz or Representative Moe Brooks would say, you know what? I was mistaken, and now in retrospect, I see that it incited something that I never wanted to incite. And for that, I am sorry. But no! They've had almost a month, and they haven't said that. They have doubled down. What that tells me is that when given another window of political

opportunity for themselves, even if they know that it means that it will endanger their colleagues, they will do it again.

SETH MEYERS - HOST, LATE NIGHT: [00:48:38] She's right.

These guys have made it very clear that if they had their chance to advance their political career by feeding their base unhinged lies that undermine democracy, they'll absolutely do it again. Shame alone doesn't work on these people. If it did, Ted Cruz would have shaved that beard months ago. I mean, he looks like the guy who makes it to the final four on Survivor even though it takes them two days to hack open a coconut. That thing has more bare patches than a golf course in November. Cruz should be expelled from Congress and then banished into the woods by John Lithgow. Get out of here! Why can't you go back from where you came? It looks like the woke cancel culture is at it again. I expected more from the Hendersons.

Also it's insane that Cruz and Hawley are supposed to be jurors in this trial when a good argument can be made that they were accomplices. It's like if there was a jury of Minions for the trial of Groot, a movie that Universal refuses to make no matter how many times I pitch it. They keep saying, we don't think kids like courtroom dramas. And then I say, well, how come my kids watch Law and Order? And then they say, why do they watch Law and Order? And I say, I don't know. I'm watching it, and they're in the room. Are you going to make my movie or not?

In fact, several senators who were a party to the big lie that led to the insurrection keep getting invited on Sunday shows, for some reason. They've been using that platform to push more lies and discredit the impeachment trial, like Lindsey Graham, who personally called up the Georgia Secretary of State and tried to get him to throw out legal ballots over the weekend. Graham tried to argue, all at the same time that Trump shouldn't be tried, that he does deserve blame for the riot and also that he's still the most influential Republican in the country.

Lindsay Graham: [00:50:03] Yeah, I think I'm ready to move on. I'm ready to end the impeachment trial because I think it's blatantly unconstitutional. I'm ready to get on with trying to solve the nation's problems. And as to Donald Trump, he is the most popular figure in the Republican party. He had a consequential presidency. January the sixth was a very bad day for America and he'll get his share of blame in history.

unidentified interviewer: [00:50:26] You still believe President Trump is the best face for the Republican party? Yes or no?

Lindsay Graham: [00:50:33] I think he's I think he's the yeah, I think. Yeah. I think, I think Donald Trump's policies serve the country well.

SETH MEYERS - HOST, LATE NIGHT: [00:50:41] First of all, how can Trump be the face of the Republican party if we never see his literal face, if you refuse to testify or offer any statement to the impeachment trial? He's just been shuffling around Mar-a-Lago like an old, silent film star who never made it in talkies because he sounds like he's talking through a wet sock. He hibernates at Mar-a-Lago like Punxsutawney Phil if Phil got fired for stealing office supplies. We know you're in there, Phil! Come out with the stapler! Phil Jr.! Go out and show him your shadow! It'll buy me six more weeks. Second, Lindsey, think about what you're saying. Just

put these two thoughts together. You said Trump deserves blame for a violent insurrection that breached the Capitol for the first time in 200 years, injured 140 police officers and tried to overthrow democracy, and also he's the face of the Republican party.

So, what does that say about the Republican party? You're so close to getting it. It's like explaining a riddle to a toddler. So, if the dad took the son to the hospital but the doctor said the patient was also their son, then the doctor must be, Oh, I think I saw this on an episode of Maury one time. Meemaw, where are my VHS tapes of Maury? You threw them in the garbage? Why? For your Precious Moments dolls? Meemaw, you know what? You know what my most precious moment's going to be? When I move out of this one-horse town.! Oh, you could cry your crocodile tears all you want, Meemaw, it's not going to change nothing. Now, where's my suitcase? Why is it filled with Precious Moment dolls?

We can't let these guys succeed in diminishing the trial or brushing it aside. It should be a mechanism, not just for holding Trump personally accountable, but for examining the forces that led to the insurrection in full view of the public.

Rep. Marjorie Taylor Greene - Past Present - Air Date 2-9-21

NICOLE HEMMER - HOST, PAST PRESENT: [00:52:19] See, to me, it seems so unlikely that people who are more moderate, and let's put moderate quotations here, will be more likely to attack a figure like Greene, so much as they might be more likely to model themselves after a person like Greene. And the reason that I bring that up is to get us back to Congress and the unwillingness to challenge Greene or to sanction Greene, for fear of alienating the base behind her and the people who look up to her. And that's such an interesting dynamic within the Republican party, and if we think about the ways that conservatives have tried to figure out ways to deal with fringe groups over the past many decades - National Review does this thing where they try to purge the John Birch Society, it takes them a long time to come to that conclusion, not everybody actually agrees. Most parts of the conservative movement are like, actually we're perfectly fine with the [John] Birch Society.

And politicians will give themselves some plausible deniability, but they realize that these are important components of their electoral coalition, and so even in those moments where you see Republican politicians, slightly rebuking people like Steve King or groups like the [John] Birch Society, it's not ever really all that full throated because of this understanding that they're a key part of the most excited and most turnout prone, parts of the base.

DR. NATALIA MEHLMAN PETRZELA - HOST, PAST PRESENT: [00:53:54] Yeah. And that's how you see the base, kind of its edges, become center. Because the more that, even as you're making strategic calculations to not speak out against what seemed like at some outlandish beliefs, the more no one speaks out about them, and they just become kind of part and parcel of what a party stands for. And I think she's a good example of that.

NEIL J. YOUNG - HOST, PAST PRESENT: [00:54:18] Yeah, and I think that's where this whole comparative point with Liz Cheney is important to think about too, because right now, it's now been dealt with, but I think a third of Republicans were wanting to push Liz Cheney out of her spot. I mean, Cheney, the daughter of Dick Cheney, a tried and true conservative but

voted for impeachment the second time around after the attacks on the Capitol, and the fact that she is in the hot seat and Greene isn't really, to me, it tells you everything you need to know about what this party is.

NICOLE HEMMER - HOST, PAST PRESENT: [00:54:50] And what its consequences and rewards structure is. Because they're also not holding Donald Trump responsible for anything he's done. Liz Cheney represented one of 10 Republicans, and I don't think they'll see it in nearly so many as that in the Senate.

NEIL J. YOUNG - HOST, PAST PRESENT: [00:55:03] And that's where I think your historical point about the John Birch Society and the National Review's response, and Republican establishment dealing with that in mid 20th century, it feels like we're an inverse experience because there the establishment was able to hold on to the center and to push the fringes back out. That whole relationship to the establishment has been flipped. It is a slur to call yourself establishment. It is a mark against you to be an establishment figure. And I think the power is in the folks like Greene, who get to, even if they are reviewed by their own party, to actually use that, to fuel their own political rise, and I think to continue the transformation of the party itself.

Incitement - What Trump Can Teach Us About Con Law - Air Date 1-30-21

ELIZABETH JOH - HOST, WHAT TRUMP CAN TEACH US ABOUT CON LAW: [00:55:50] If you've been paying attention to what's been discussed after the riot at the Capitol happened, we've heard a lot of different terms, so maybe it's useful for us to define what they mean. So in criminal law, a conspiracy means that a group of people have agreed to do an unlawful act and then they'd take some step towards it. So what's interesting about the crime of conspiracy is you don't have to be successful in the objective of your conspiracy to be guilty of conspiracy, you can just be guilty of the conspiracy all by itself.

Now there's also sedition. Historically, sedition has meant you're encouraging or supporting or being involved in an attempt to overthrow the government. Now today there's a group of federal criminal laws that punish stuff around sedition, but one of the laws today that is of interest is seditious conspiracy, so it's a combination of things. So it's a crime under federal law to conspire to overthrow, put down, or destroy by force the government of the United States, or even if you agree to use force to prevent, hinder, or delay the execution of any law of the United States. So in plain English, that just means it's a crime to agree, not just to overthrow the government, but it can also be a crime to agree to delay the execution of federal law. So that's what seditious conspiracy is.

Proving seditious conspiracy can be tricky under modern law because you need evidence of some sort that the agreement existed, so it's not always easy for prosecutors. So that's why it's no surprise we're seeing the charges already filed don't have that yet, they're mostly that they entered the Capitol without permission and things like that.

ROMAN MARS - HOST, WHAT TRUMP CAN TEACH US ABOUT CON LAW: [00:57:29] And so they have to investigate the parlor DMs to get those, potentially.

ELIZABETH JOH - HOST, WHAT TRUMP CAN TEACH US ABOUT CON LAW: [00:57:34]

Presumably, yes. Sedition has a long history in our system, and not a very honorable one. State and federal laws have long been used to punish even just criticizing the government, and so people have actually gone to prison for doing things like writing and distributing pamphlets, or just making speeches that criticized the government. So people are getting excited about the prospect of a sedition prosecution, we have to be kind of careful about it, given what we know and have experienced.

ROMAN MARS - HOST, WHAT TRUMP CAN TEACH US ABOUT CON LAW: [00:58:05] It has its own flavor of totalitarianism and monarchism.

ELIZABETH JOH - HOST, WHAT TRUMP CAN TEACH US ABOUT CON LAW: [00:58:09] Exactly, exactly. You've heard the phrase, "you can't shout fire in a crowded theater."

ROMAN MARS - HOST, WHAT TRUMP CAN TEACH US ABOUT CON LAW: [00:58:14] I have, yeah.

ELIZABETH JOH - HOST, WHAT TRUMP CAN TEACH US ABOUT CON LAW: [00:58:15] So what do you think when you hear that phrase?

ROMAN MARS - HOST, WHAT TRUMP CAN TEACH US ABOUT CON LAW: [00:58:17] Well, I think the point is, you can have free speech and you can say things based on your feelings and convictions. However, if you express something verbally that it is a harm to people, that would cause harm and wreak havoc, that that is not protected as part of the normal bounds of free speech.

Yeah, that's pretty good. I mean, this phrase is used all the time, right? People say in all the time, you can't shout fire in a crowded theater is like the one phrase people associate with free speech and the first amendment.

And presumably, in that axiom, what is being described is a scene in which there is not a fire in a crowded theater. There is no fire, but someone shouts fire...

ELIZABETH JOH - HOST, WHAT TRUMP CAN TEACH US ABOUT CON LAW: [00:58:57] ...and causes a panic or something like that. Right. Right. And often it's used to convey this idea that, well, you can't just say anything you want, some things are not allowed, but there's no controversy that every kind of speech is allowed. There are some kinds of speech that can be restricted or punished, but many of the people who use that phrase either don't know the context or ignoring the context.

The phrase comes from a Supreme Court case that's more than a hundred years old. When the court reviewed the conviction of a man named Charles Shank. Shank was the General Secretary of the US Socialist Party, and the socialists were opposed to the war, World War One. Now, Shank was part of a group who drafted and distributed a pamphlet that was highly critical of the war and the drafting of men for the war effort. Now, keep in mind the context. It seems like, "well, that's a pamphlet, right?", but at the time there was some serious doubts, the government was not sure whether they could actually get enough men drafted for the military, for the war effort. So if you had really popular, critical speech, like Shank's, that could undermine what the government's doing.

Now, if you read the words in Shank's pamphlet today, they seem not very radical by today's standards. The pamphlet cites the constitution as one of the greatest bulwarks of political liberty. The leaflet goes on to criticize the war and says people should assert their rights. Didn't tell people to riot or anything like that. But for publishing that pamphlet, Shank was charged and convicted under the Espionage Act of 1917. Well, wasn't his pamphlet protected speech? In 1919, the Supreme court said no. They said Shank's conviction was constitutional, and in doing so, they said what matters is whether the words that were spoken, or published in this case, were a so-called clear and present danger given the context of the war at the time. It is Oliver Wendell Holmes who writes the opinion and to sharpen his point, again in upholding this conviction, he says, "the most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic."

So there's two problems here for people who are always talking about "you can't shout fire in a crowded theater". First, the fire in a crowded theater phrase tells us that some speech isn't protected. Okay, but which speech isn't protected? How can the government go? And the second thing is, despite the fact that people are citing and even in 2021, that standard that was used in the Shank case was the standard for judging this kind of speech for decades, but it isn't the law now.

ROMAN MARS - HOST, WHAT TRUMP CAN TEACH US ABOUT CON LAW: [01:01:36] Okay, so what's the law now.?

ELIZABETH JOH - HOST, WHAT TRUMP CAN TEACH US ABOUT CON LAW: [01:01:39] So after Shank, we see a number of cases where the Supreme Court seems to support the government's punishment and censorship just for being critical of the government, criticizing the government, making speeches, writing things down, especially during war time. So it's not so great for free speech. But by the 1960s, the Supreme Court is ready to change its mind about this. They want to provide more protections for free speech rights, even when the speech is really awful or it sounds like it could cause people to be violent.

So in 1964, the leader of a KKK group in Ohio holds a rally where there are Klan members, they invite a reporter, and the leader gives a speech. He says, "We are not a revengent organization, but if our president, our Congress, our Supreme Court continues to suppress the White Caucasian race, it's possible that there might have to be some revengeance taken." So the speaker's name was Clarence Brandenburg, and for that speech he was convicted, actually, for the advocacy of violence to accomplish what was called industrial or political reform. These were so-called syndicalism laws that were pretty common back then. The Supreme Court agreed to hear the Klan leader's case, and in 1969, the Supreme Court overturned his conviction.

Now what happened? The court said that this speech, even awful speech like Brandenburg's, is protected by the first amendment—"unless it is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." So there's two parts to what the court says here. If the state wants to punish you, put you in prison for your speech, the speech has to be directed at imminent illegal conduct, and it has to be likely to produce that result. So why doesn't Clarence Brandenburg's awful speech about revengeance qualify? Well, remember Brandenburg said that some kind of unspecified bad thing, that's the revengeance, **might** happen at **some time** in the future, **if** he thought of the suppression of Whites continuing, if it **might** continue. So everything's really conditional on hypothetical.

And so the Supreme Court, in that case says, look, there's a big difference between this kind of advocacy, which is kind of hypothetical and kind of gesturing at the future, and actual incitement.

Final comments on a new game I just invented

JAY TOMLINSON - HOST, BEST OF THE LEFT: [01:04:05] We've just heard of clips today starting with the Broadcast highlighting a portion of AOC's Instagram live recounting her experience in the Capitol. Democracy Now played clips of AOC and Rashida Talib recounting their experiences on the House floor. Representative Cori Bush spoke with a message for her Republican colleagues asking that they all stand together against White supremacy. The Broadcast then ran down the case made by the Democratic House managers in their pre-impeachment trial brief. The Brian Lehrer Show discussed and debunked some of the conservative talking points in defense of Trump. Start Making Sense focused their attention on the insurrectionists and all those who entered the Capitol building complex illegally. The United States of Anxiety drew a comparison to pre-Nazi Germany and how the rise of Nazism was helped along by a big lie about the loss of the First World War. Citations Needed exposed the healing con propaganda that always tells Democrats that the way to heal the country's divides is to do whatever Republicans want. And Seth Myers on Late-night explained why we need accountability in the public for all to see for all those who threatened to destabilize the country.

That's what everyone heard. But members also got bonus clips from Past Present examining the GOP's failure to hold Marjorie Taylor Greene accountable for any of her words or actions and what that means for their party plus What Trump Can Teach Us About Con Law got into the nitty-gritty details about the legal definition of incitement. For non-members, those bonus clips are linked in the show notes and are part of the transcript for today's episode so you can still find them if you want to make the effort. But to hear that and all of our bonus content delivered seamlessly into your podcast feed, sign up to support the show at bestofthleft.com/support or request a financial hardship membership, because we don't make a lack of funds a barrier to hearing more information. Every request is granted, no questions asked.

And now, well, we'd usually hear from you, but I am desperately low on VoicedMails so I'm going to skip to a new sort of game experiment that I came up with. I haven't even like -- this is brand new. I came up with this idea yesterday, and I'm flying a bit by the seat of my pants and I thought, yeah, let's try it. Let's throw this out to the masses and just see what happens.

JAY TOMLINSON - HOST: [01:06:38] So, this new game that I came up with, its sort of constructed on the idea of the *New Yorker* caption contest. It's a way to sort of give you a premise and see what sort of responses we get from the audience. And the game, instead of talking about comics, is about learning how misleading misinformation works, you know, disinformation in the media, particularly headlines. So, instead of a caption, we're writing headlines.

So, I'm going to give you three stories. My first thought was I'll just give you a story, like a comic to do a caption for. But I thought, well, maybe one story won't be very good or maybe you'd be interested in a different one, so I'm going to give you three stories. You can write a headline for all three of them; you can pick which one you particularly like; take it however

you like. So, I'm going to give you three headlines, and your task, your homework, is to learn a little bit about the story, get some of the details and then write the most misleading but truthful headline that you can. So I'll give you the headlines and then I'll give you some tips.

First headline: the Biden administration is launching a review about Guantanamo Bay. Apparently, they're looking into closing Guantanamo Bay prison once again, sort of launching a review. So, there's a story.

Second story is that the Biden administration is apparently rescinding the Medicaid work requirements. So, there have been work requirements attached to Medicaid; it's been controversial. Apparently, Biden is looking to rescind it. So, that's a story for you to look into.

And then the third is that Biden is beginning to allow asylum seekers who are currently waiting in Mexico to enter the US. So, there was a Trump policy saying if you're seeking asylum then you can stay in Mexico until we get to you, which it might be never. If they got their way. The Biden administration is reversing that to some degree. And so you can look into the details of that.

So, those are the three stories to choose from, and here's some tips on how to be misleading. So, some classic disinformation techniques is to mischaracterize or sort of twist or cherry-pick facts so that you are technically saying things that are true but really mischaracterizing it. This often goes hand-in-hand with clickbait headlines. So, like maybe you get some bonus points if your headline is really clickbait-ey. Then, another classic: manipulating data, what you might think of as lies, damn lies and statistics. So, if there are any statistics related to those stories you could maybe highlight those but in a misleading way. Another example is appeals to emotion. Classic. Like it usually goes hand-in-hand with one of the others. Like you might mischaracterize something or like really emphasize something that doesn't deserve to be emphasized for emotional appeal to get people angry about it when it doesn't necessarily deserve it. And then, the last example I have for you is stoking polarization. Again, sort of goes hand-in-hand with some of the others like appeals to emotion. But, I chose three stories that all have to do with Biden, so as sort of a launching-off point, it's pretty easy for a mischaracterized or sort of a misleading headline to stoke polarization. The point is to say that Biden is doing something terrible and he's the worst, and then it is sort of naturally divided on polarizing lines. So, yeah. If you can write something true but with a wildly partisan angle, that's pretty good. That's pretty, you know, can be pretty misleading, but extra points.

If you can write a headline that is a really effectively a lie, like, it's so misleading that it's basically a lie, but manages to technically not say anything incorrect, it's a real art form, which is why I think it could be a fun game. And I'm excited to see what people come up with. And I don't think I've ever assigned homework before. This is kind of a new thing. That's why this is an experiment. So let me know your thoughts. Give it a shot. You can send in your responses by email, or you can leave a voicemail all the normal ways, however you like it.

So, the three headlines once again, and I'll put these in the show notes are: there's a review to close Guantanamo Bay prison; they are rescinding Medicaid work requirements; and talk about changing the policy about asylum seekers currently in Mexico and their ability to enter the US while their cases are pending. Join in the fun and help us all learn about the mechanics of media manipulation while you're at it.

JAY TOMLINSON - HOST, BEST OF THE LEFT: [01:12:00] As always, keep the comments coming in at (202) 999-3991 or by emailing me to jay@bestoftheleft.com. That is going to be it for today. Thanks to everyone for listening. Thanks to Deon Clark and Erin Clayton for all of their research work for the show. Thanks to the Monosyllabic Transcriptionist Trio Ben, Dan, and Ken 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 design, web mastering, occasional bonus show co-host and so on. And of course, thanks to members who sign up to support the show themselves or purchase gift memberships to share the show with others all at bestoftheleft.com/support/. That is absolutely how the program survives. And now everyone can earn rewards and support the show just by telling everyone you know about it using our Refer-o-Matic system at bestoftheleft.com/refer. For details on the show itself, including links to all of the sources and music used in this and every episode, all that information can always be found in the show notes, on the blog and likely right on the device you're using to listen. 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 twice weekly. Thanks entirely to the members and donors to the show from bestoftheleft.com.