

Hello, fellow law nerds. Welcome to a special episode of Boom! Lawyered, a Rewire News Group podcast hosted by the Legal Journalism team, half of which is in California right now.

And so I am being joined by one of my absolute favorite people, Elie Mystal. He is the justice correspondent for The Nation, where he covers courts and the criminal justice system in politics. He is also host of the legal podcast, Contempt of Court, a podcast which I have yet to appear on, by the way. He is also an Alfred Nobler Fellow at the Type Media Center. And his first book is a New York Times bestseller, Allow Me to Retort, A Black Guy's Guide to the Constitution, published by the New Press. And now he's working on his second book, which maybe he'll talk to us about if he's willing to spill some of those beans.

Or I don't know, maybe he spent his entire writing sabbatical playing Baldur's Gate, which is what I would have done, honestly. That's because I have no discipline when it comes to writing. So Elie, thanks for joining us. So good of you to join us. I just beat Baldur's Gate a week ago. Finally beat the game. It was a huge accomplishment.

And then like six hours later, there was an earthquake. So I was really feeling like I am bringing the fire in my personal life, my book writing life, you know, not so much, but you know, that's why I had to beat Baldur's Gate three before I could finish book two, right? Like that's just how it works. Those are the laws. Them's the laws. So it's been almost a year to the day since you came on for our 200th episode. It was like last April.

And we talked about your book, right? I told all my non-lawyer friends to read it because it's funny, it's smart, and it's written for lay people. So that's wonderful. And you also have a podcast. And can you just tell us a little bit about what you're covering on the podcast, Contempt of Court? Yeah, so the podcast was a limited series, which is why you haven't been on. We have run our course. And it was meant to be just a focus on all of the different ways we can reform the Supreme Court, right?

Because it's clearly broken. Like I don't like, you know, when I started my career, you know, you go back 15 years ago, I was like the crazy guy talking about, you know, the impending disaster in the disaster movie. Like, you know, the guy who gets killed, the, you know, the scientist who's like, you know, the global warming could lead to the global cooling and Dennis Quaid can you help us out? So you're like Dennis Quaid in the day after tomorrow, basically. I was Woody Harrelson in the day after. I was the crazy, crazy scientist guy, right? Now I'm Dennis Quaid. Yeah. Now I'm like, hey, guys, have you, you can see that we're freezing to death here. Like we got to do something, right? And so the podcast is really like, there is a way to fix this institution.

This institution is not set in stone. The Constitution, I mean, people forget, I know you know this, but people forget Article 3, it's incredibly short. It's like 18 sentences. And that leaves Congress with a lot of room to shape what the Supreme Court is. There are ways, multiple ways we can bring these nine unelected, unaccountable rulers to heel if we would just try. And so the podcast is really about all the different things we can try. Obviously, I talk a lot about court expansion and court reform that way, but I talk about ethics reform. I talk about term limits. I talk about jurisdiction stripping. All the things that we can do to, as I put it, right size the Supreme Court. The Supreme Court is overpowered in our system. It is literally the boss villain that has too much HP to play along nicely with others.

And so what I'm talking about is trying to reduce the Supreme Court so that it fits back within a concept of a constitutional republic and the concept of elected government, which it just doesn't anymore. Right. Right. You mentioned ethics, which is something I wanted to get into because the last time we talked, since the last time we talked, you got into a bit of hot water for suggesting that a billionaire takes Sam Alito into a submersible to go visit the Titanic. And this was, you know, after it had been discovered that Alito was taking these luxury, private trips with a hedge fund manager and ProPublica was coming out with a story. And Sam Alito pre-budded that story in the Wall Street Journal, which was very odd.

And, you know, why is it that Sam Alito feels so empowered to act in what I consider to be a fundamentally anti-democratic way and a fundamentally unethical way to the point where he's literally being given space in one of the papers of like conservative record, I would call the Wall Street Journal a paper of conservative record, giving him an opportunity to talk to his people before some explosive news comes out about how he's been unethical. Like what gives him this chutzpah? Yeah, there are a couple of problems with Sam Alito, and it all starts from the flaws in his personality. Sam Alito hates women. And I don't say that kind of idly or even as an ad hominem, right? Like, if you just read his decisions throughout his career, he has a problem with women. He has a problem, especially with women who are not tied to a husband and a kitchen and a bedpost, right? Like, he really does not like the idea that women should have co-equal rights in the society with men. And if you read him, you read it.

You see it in his actual opinions, the way that he writes about women, the way that he writes about women's issues. It is simply different than even the other justices who kind of agree with him on the policy. He writes about them differently. He treats women in the courtroom differently. Like, you can track his willingness to interrupt female advocates in front of him versus whether or not he will interrupt male advocates in front of them, even if, again, the advocate is saying

something he doesn't agree with. Like, there's a level of derision in his voice when he's talking with, you know, Solicitor General Elizabeth Prelogar.

That just doesn't happen with the other justices. I mean, Neil Gorsuch is basically in love with Liz Prelogar. Like, he doesn't, you know, agree with anything that she stands for. But like, they have like a amiable kind of colloquy, you know, when they're talking, not Alito, not Alito, right? So it's kind of starts there as his like core personality flaw, if you will. And then he has been empowered. People should understand Sam Alito as your kind of irascible racist uncle, right? Who comes over for Thanksgiving dinner, criticizes your spouse who cooked Thanksgiving dinners, because the turkey is too dry. And then when everybody else wants to go and watch the latest Disney movie with the kids, with Moana or whatever, or Encanto or whatever, Alito wants to put on Fox News.

Like, that's his personality. And what comes through with this, as you're talking about, with this kind of speed dial that he has to The Wall Street Journal, like, he clearly reads his own press, which is kind of shocking and weird when you think about how incredibly powerful and unaccountable he is. But this is a guy who's sitting at home watching Fox News all night and reading, you know, he probably has a Google alert for his name and reads, like, every negative thing that's written about him and then wants to react to that, then wants to have, you know, as if, you know, being able to literally rule over the country isn't enough. And it's not enough that he can just straight up veto laws passed by Congress and orders made by the president. That's not enough for him. He also wants to be talked about nicely when he does it.

And so it's this real, real amalgam of horrible personality flaws laced with just a real evil and poor view, conception of constitutional rights, freedoms and liberties. He's a terrible guy. And he's been the worst guy on the Supreme Court. People have understood him to be the worst guy in the Supreme Court ever since Scalia died. Like, you know, it's a bit of like the Sith. There's a bit of a Sith there, right? Like always two there are. And when Scalia died, the apprentice became the Sith master. Like that's kind of the popular view of him. But again, his antithety towards women predates Scalia's death. Like that has always been his kind of central motivating feature.

And so you just knew, I mean, if you go back to the Dobbs League a couple of years ago, the most shocking thing about the Dobbs League to me was when I read from Justice Alito. I was like, you're kidding me, Roberts. You're kidding. You're giving Alito this position because when you, without even reading the leak or getting to the conclusion, as soon as you saw that Dobbs V Jackson Women's Health was gonna be written by Alito, you knew it was going to be the very

versed version of that opinion. You knew there was no coming back from it as soon as you saw that Alito was the one writing it.

And it seemed to me like that was the point, right? He wanted to write this really nasty, mean, a mean opinion. And I have a feeling that had it gone through the regular process, like that opinion would have been watered down to be less hateful towards women and hateful towards pregnant people, but you leak it, you get it out there already. And then if a more watered down version comes out, then the people who he's supposed to be serving, right? The Federalist Society, Harlan Crowe, Leonard Leo, all of those people will see him as someone who couldn't really get the job that he was sent there to do done. That's sort of how I read it.

You will never convince me that anybody other than Alito or somebody on his team leaked that opinion. You will never convince me. Yeah, absolutely. People were saying it was one of the liberals. And it was like, there's no way. It was no way it was gonna be any of the women because the women know that they're gonna be under the gun. Women attorneys don't get the same leeway that men do, right? There was no reason for it to be Breyer because he had Jackson coming in. So what would the point of it? It was absolutely a conservative and I agree that it was Alito. There's no upside to leaking it unless you're trying to lock in the weak votes. And the weak vote is always Kavanaugh. I mean, we're talking about Alito as the evil.

Remember, Kavanaugh's the dumb one, right? And this kind of hierarchy of Alito being the evil, kind of corrupt, curdled genius. Kavanaugh's the idiot who's just like, do you need some cigarettes? Boss, I can go get you some. Like, that's, like, he's so intellectually weak and facile. The leak is done to lock Kavanaugh in to the most extreme version of the opinion. I'll just, I'll always believe that. I mean, you'll have to, you can't convince me otherwise. And of course, when the leak investigation comes up with like, oh, we couldn't find who did it. Yeah, I know why you couldn't find who did it, because he did it.

So, you know, we've established that Sam Alito just, you know, DGAF, right? He does not care. But Roberts was supposed to be the guy that cared, right? You know, he's the guy during his confirmation hearing, talking about, oh, my job is just to call balls and strikes. Like, what happened to that guy? What happened to the guy who was concerned about the legitimacy of the court? Like, what do you think is going through Roberts' mind right now? Because he's presiding over the most lawless and anti-democratic Supreme Court, and he was the guy who was supposed to be the upstanding, like, sensible conservative. No, Roberts is getting exactly what he wanted. He's not getting it in the way that he wanted it, but he's getting exactly what he

wanted. And I look at Roberts vis-a-vis the more extremist version of Republicans on the Supreme Court.

And the same way that I look at kind of the Republican Party vis-a-vis Donald Trump. Donald Trump brings Republicans victory. Donald Trump does what Republicans have always wanted to do. Policy-wise, there is almost no difference between Donald Trump and Mitt Romney. The difference is breathing. The difference is grooming. The difference is that Mitt Romney wants all those same things without calling people rapists and murderers, without literally raping people, without grabbing them by the pee. Like, Mitt Romney wants the same things. He just doesn't need to fuck Stormy Daniels to get it, right?

But their conclusion is the same. And people forget that about the Republicans. Donald Trump is nothing if not a standard issue fricking Republican policy person. He just does it with increased racism and misogyny and idiocy and danger and whatever. He's their id, he's the Republican id. Right? That is how I think Roberts views Alito or Thomas or Gorsuch, right? They get to the same point. How they get there, completely different. And Roberts wants to get there slowly, incrementally. Roberts wants to boil the lobster, right? Raise the temperature slowly and slowly until the lobster is cooked and it doesn't even know what happened, right? Alito just wants to stab it with a knife. He's just like, give me that lobster, you can, ah! Right?

He's just, he wants to crack the lobster. Roberts wants to slowly boil the lobster, but in the end, they're eating your rights. Like in the end, they're coming for you. They just are coming from you from two different angles. So I think that's the thing. What is interesting about Roberts? And I think this also goes for Barrett to some extent. The Fifth Circuit is a problem for them. Because, right? Like there are conclusions that those alleged moderates want. And then there's the Fifth Circuit, which is in straight off the chain YOLO mode. And it just, the Fifth Circuit is just embarrassing them at this point, right?

Because the Fifth Circuit thinks that it's, I've made the analogy in one of my pieces for The Nation, that the Fifth Circuit basically downloaded the FedSoc app, but doesn't quite know how to use it. So they're just kind of like spitting out the conclusions, but they're doing it in this torturous, embarrassing, stupid, legal way. And Robertson, to some extent Barrett, are trying to like clean up just the refuse that the Fifth Circuit keeps dumping on their desk, while preserving the very evil and disastrous outcomes that the Fifth Circuit is trying to get. That's why you had the judge shopping thing from the judicial conference, and if people don't understand, the judicial conference is made up of Chief Justice John Roberts, Chief Justices of the various

circuit courts, some district courts, and some retired judges. It is John Roberts' mouthpiece. The judicial conference is John Roberts trying to make rules for the entire federal judiciary.

So when the judicial conference says, we're gonna stop this judge shopping thing, we're gonna stop Matthew Kacsmaryk, we're gonna stop the Emperor of Amarillo, that's John Roberts being like, I am sick of y'all. Like y'all need to chill, right? But of course, what's the Fifth Circuit do? What does the Northern District of Texas do? Yeah, judicial conference, go sit on it. Right, right. They literally told the judicial conference that they just weren't gonna follow the new guidelines. And since the judicial conference is just an advisory board, it's not Congress, they can do that, right? So like that's the push-pull within the Republican caucus on the Supreme Court and in the federal judiciary.

All of the Republican appointed justices generally want the same things. There's just a sense of how we go about getting those same things with one wing, a Roberts, a Barrett, kind of more interested in getting those things the right way. And the Alitos and the James Hoes and the Matthew Casmarics being like, let's just do it and be legends, right? They're the fire festival versus the burning man version of the same thing. Okay, so now that we're talking about the Fifth Circuit, let's talk about the Fifth Circuit. So the last time you were here, we were talking about the mifepristone case, right? The Fifth Circuit ruling had just come out. And here we are a year later. We're three weeks past oral arguments in that case. And last year, both you and I were pretty pessimistic about the outcome of that case. And I think right now we're both on the same page in terms of it might not turn out as bad as we had expected. And that's because I think the justices were tired of the Fifth Circuit.

They looked at the standing argument, the standing that the Fifth Circuit conferred upon these Christian doctors and dentists, by the way. I'm never gonna not add the and dentists part. They looked at these arguments and I want to read a quote that Madiba Dennie, she writes for Balls and Strikes. She just has a new book out about originalism.

I don't know if it's out yet or not. But she's- I blurbed it, so I already read it. It's good. Okay, she's brilliant. I'm looking forward to reading it. But she summed up the case this way, quote, like the losers who ask, if I were the last man on earth, then could I go out with you? These medical professionals are asking, if I were the last doctor on earth, then could I force you to give birth? And that's really ultimately what the case is about for me, right? The small cabal of Christian doctors and dentists who say they are being forced to complete abortions, despite the federal law conscience protections that are available to them and that say they don't have to perform abortions.

And it just seems to me that, you know, one of the things that Erin Hawley, who's Josh Hawley's wife, Josh Hawley of the Insurrectionist Hawleys, who by the way, I will always, I will always point out is the only Republican on the Senate Judiciary Committee who has not been given money by Harlan Crow. Like he's so odious that not even a Nazi memorabilia enthusiast is willing to give that man any money. And so I just think that that's important to note. But Aaron Hawley kept- I like marble Nazis, not living ones.

Exactly. And so, you know, Erin Hawley kept pointing out that these doctors are so harried and stressed out and they're being asked to scrub in, to perform these abortions against their conscience, and they don't have time to go up to the 14th floor and, you know, talk to the hospital administrators and lawyers to find out what their protections are. And that just seems like a case of that's too bad, right? Like, the rules are in place for you to use them, and if you are a doctor, an ER doctor, you don't want to help people, you don't want to do your job, then the law says you can go ask for conscience protection. The law doesn't say, get together with a bunch of other jemokeys and then file a lawsuit saying that you don't want to do your goddamn job. And so, I mean, am I wrong in, A, my assessment that the case isn't going to be as bad as we think it is and that you and I are on that same page, and that people like Amy Coney Barrett and Neil Gorsuch

“just seemed, like, what are we doing here with these jackasses and their ridiculous standing arguments? Yeah. Look, there's so many things wrong with that case. But yes, we're on the same page, and I'll start at the beginning.”

I agree with you. It's always important to point out, just because you never know who's going to be listening to these shows. Ladies, if you are going to your dentist for reproductive health care, somebody has told you a lie. That's not how it works. No. Just straight up. All right. So with that said, let's start with where you started. This idea that Erin Hawley was pushing, that the real problem with these doctors and dentists who never prescribe the abortion pill, never had an abortion, never had a medical abortion, and have nothing to do with their case, Erin Hawley's argument is that sometimes they have to scrub in to the emergency room to go treat people who are suffering what she called complications from the abortion pill.

That is A, not true. There are not complications from the abortion pill and the way that Erin Hawley was mentioning it. B, to the extent that you have to scrub in to the emergency room to quote perform an abortion, that's because a woman is dying. That's because a woman is about to die. And you, as the doctor, are needed to provide medical care to a dying person. If you've got a problem with that, you need to get your ass out of the medical profession entirely and go

start a seminary. Well, if I may play devil's advocate for a moment, because this is one of the things that I've been focusing on in the last couple of weeks. There is a lot of daylight between what federal law requires, which is stabilizing treatment if a person's health is deteriorating. If the person's health is in serious jeopardy, you give them the abortion.

Versus state law, like Idaho's law, which says you got to be on death's door before we're going to give you an abortion. It's the difference between state law saying abortion only protects the life of the pregnant person and federal law saying you get an abortion to protect the health of a pregnant person. So I think what these doctors are saying is that there are these pregnant women, pregnant people who are coming into emergency rooms who don't really have emergency. They just feel some kind of way about their pregnancy. And so they're going in at the last minute and saying, hey, man, I kind of need an abortion right now. Can you help me out?

And that's not how it's happening. But even if it were, even if there were a case where there was an abortion that might be needed to save the health, but if they didn't get the abortion, they wouldn't necessarily die. How is it that that's where we're living? How is it that we are living in that gray area with these anti-choice doctors and dentists saying, well, we don't want to have to make a quick judgment as to whether or not the abortion is needed to keep the person from dying versus to keep the person from having their health in serious jeopardy? Why are we having that conversation?

And it's also, as you point out, you already have a conscientious objection protection, right? So if you don't want to perform the abortion, don't. If you think that there's a, if you think that it's a gray area, and you're the kind of person who looks for gray areas to find a way to not give pregnant people medical care. If you want to think there's a gray area, you don't have to scrub in. There are literally laws in place that protect you as the doctor from performing procedures that you do not morally feel are valid. So again, get your ass gone from the hospital and let somebody who's willing to help step in, scrub in in your place. That's the rule already in place. You don't have to take away the entire abortion bill to protect your conscientious bigotry. In any event, as you pointed out, the Supreme Court didn't seem to go for it.

And it really started with Neil Gorsuch, who, again, no fan of women, no fan of abortion rights, but just couldn't deal with the standing issue. There's a really good reason why Neil Gorsuch can't deal with the standing issue. Because Neil Gorsuch understands that if you accept the standing issue here, then you have to accept the standing issue in a whole lot of cases that Neil Gorsuch doesn't think you should have standing on, right? The environmental standing issue,



for instance, that Neil Gorsuch specifically brought up. This is the James Ho, doctors have standing because pregnant people are like wildlife, and there are people who enjoy seeing just their round bellies and their glowing visages, and they're deprived of the roundness of the belly. Especially if people take... I mean, this is Ho's argument.

I'm not making... No, that's actually the argument. This is the actual argument. So Neil Gorsuch brought that up. He was like, I don't agree with that. I think that's stupid. And of course, he thinks it's stupid because that argument has been used in the past not to control the bodies of women, but to protect wildlife, right? It's a way that you stop polluters. You say like, hey, I like going to this national park. And when you dump oil all over it, you ruin my, quote, aesthetic, you know, benefits. And that's an argument to sue polluters. So Neil Dorsage doesn't want you to sue polluters, right? He wants you to be able, he wants polluters to be able to destroy the environment. And if that means some pregnant people and or manatees have to be allowed to, you know, do what's necessary to protect their health, Neil Dorsage is fine with that, right?

So he was very against the standing argument. The real difficulty was Amy Coney Barrett to me. I mean, it was, I would say it was funny in this kind of macabre, gala-zimmer way because she so desperately wants to ban the abortion bill, right? You can hear it in her voice. She thinks it's wrong. She wants to get rid of it. She couldn't get over the stand. She kept coming back to the standing issue, just trying to find a way and the Aaron Hawley couldn't get her there, just couldn't get her there. And every time Aaron Hawley slipped up, oh man, I listened to the whole hour and a half of the argument, as I know you did. Listening to all four of the Supreme Court women just dunk on Aaron Hawley was like life-giving. It was like life-affirming. It was.

Because every time Hawley slipped up, Kagan, Jackson, they were just on her ass like white on rice. It was really nice to listen to, just to deal with that ridiculousness. So yeah, I don't think that Mephistone is going to be bad. However, you heard what they were talking about, what the Alitos and the Thomases were talking about. That was my next question. That was the Comstock Act. Comstock Act. I've been yelling about the Comstock Act for 18 months. 18 months now, right? 18 months. And one of the things, you know, I was glad to see that Tina Smith of Minnesota is stepping up. You know, Cory Bush put out a tweet right after the argument saying like, we got to get rid of the Comstock Act.

Elizabeth Warren fired a very weak shot across the bow, where she was like, well, maybe if a case doesn't come out right, you know, and the Supreme Court takes an extreme position. And I just keep saying to myself, as much as I loathe the Supreme Court, as much as I loathe these basic six people, there's nothing extreme about upholding a law that is still a law, right? Like, we

can't hang that albatross around the Supreme Court's neck. Oh, the Supreme Court is enforcing a law that's still on the books. How dare they, right? It is Democrats' job to repeal this law.

And given that they may not be, probably won't be able to repeal it, even if they were to try, to try, it is their job to use the bully pulpit to talk to the country about the dangers of Anthony Comstock and his perverted dildo hoarding ways, right? Like, this is a man as he was anti-vice, anti-obscenity, while engaging in those same vices and obscenities himself. Like, he was the original, like, ding-dong on Twitter talking about trans people and drag queens being a threat to minors. Meanwhile, he's a youth pastor, right? Like, that's the sort of person Comstock is. And I have to say, it would not be difficult for a Republican Attorney General to just come in and start enforcing it.

And so what I don't understand is, why aren't more people concerned about this? Why is it that Democrats aren't just full-throatedly talking at having town halls? Remember all those death panels we had to deal with when Obama was trying to pass the ACA? Why aren't Democrats doing Comstock death panels? Talk about how maybe they'll use it to ban Pornhub. Get the men involved. Like somehow we need to talk about how broad this Comstock Act was. And while it may not be as broad now as it was then, it could easily be brought back to, it could be imbroadened if I may make up a word, right? So can you just yell back at me about the Comstock Act?

So I agree in parts, I concur in part and dissent in part, but also don't let me drop the pornhub angle, because that's a word I've been told. To start where I disagree, I do think that we can hang some of this on the Supreme Court, on the extremists in the Supreme Court, because yes, there's a law on the books, but like for a long time in this country, there was a law on the books that said you could put somebody to death for chopping down a tree, right? I mean, there have been a lot of like evil laws on the books. And if you're the judge, it's just like, well, you chop down the tree, you get put to death.

I can still say, hey, you're an asshole, right? Like that, you don't have to, and just because the law allows you to do something, doesn't mean it has to be done. And so when the judge, the person with discretion in the system, enforces some of these old, evil, outdated anachronistic laws, I think you can still give them a large part of the blame for doing that. That said, where I agree, obviously is, why haven't we repealed this already? This is an anti-obscenity law from the literal 19th century. What are we doing that we've even allowed this law to still be on the books?

And when you go to specifically the town halls, I cannot, and this is generally where I kind of start every morning, I cannot understand how in a presidential election year, that is going to be close, where women will likely make up the decisive vote, especially because white men just can't be trusted. And quite frankly, without trying to get you in trouble or anything, we also have to understand that the overwhelming minority support that Democrats usually count on to carry them through in close elections might not be there because Joe Biden has decided to live or die under Benjamin Netanyahu's regime. And we just have to acknowledge that that could be, could be an electoral problem for Joe Biden, because there are a lot of black and brown people who don't feel like voting for BB in 2024, right?

So in that world where you're going to need, you can't lose 52% of white women like you always do, right? You need to win 52, 53% of white women. How are you not running on the Comstock Act specifically every fricking day? How is that not front and center in your campaign? Because while there are, I used to call them reasonable, I think we're well beyond reasonable people disagreeing about the abortion issue. But I don't know people who disagree about contraception on, you know, Monday through Saturday, right? There are a couple of hypocrites that show up on Sunday, and they're like, oh, contraception is bad. And then you say like, I see y'all don't have 17 kids, so maybe you can shut that. But in any event, most people think contraception is OK, and the Comstock Act bans that.

So why aren't you running on that every single day, especially when Republicans have given you every soundbite indication that you need that they are coming for the contraceptives next through the Comstock Act? Like, I don't see how that's not one of the two or three most important issues. Sorry, it is one of the two or three most important issues in this election, and I don't see how Democrats are not running on it every day. Every day. Yeah. To not lose the Pornhub. You joked saying that they could use the Comstock Act to... They're already doing that in some states. In, and don't ask me how I know this.

Because you're a lawyer and it's your job to know. I read stuff. You read a lot of things, Elie. You're a very well read man. In Virginia, they've essentially banned pornography, especially on internet sites like Pornhub, so that if you're in Virginia right now, I believe, and I live in New York, so I haven't been able to test this, you can't access Pornhub from an IP address in Virginia because of Glenn Youngkin's Christian conservative ridiculousness that is inspired by the anti-obscenity laws like the Comstock Act. So it's literally like they are already doing that. Now, I don't expect Joe Biden to run on Pornhub. To run on porn?

I think that might be a little bit too much for him. You're moving too fast for me, son, right? But there are other democratic surrogates, and you brought up, I'm not trying to be funny here, but you brought up a guy like Cory Booker, right? You brought up a person like Cory Bush. Oh, I said Cory Bush. Right? I thought you said Cory Booker. But there are other younger surrogates out here, democratic surrogates out here, who could at least be making that point in a little bit more of a, you know, a Twitch-friendly, TikTok-friendly way, than perhaps Grandpa Joe could be making it, right?

So like on the Pornhub specific point, if you just look at how young people reacted to, have reacted to the attempts to ban TikTok, like getting into young people's heads about this is what they're taking away from you, and just drawing the line, because the conservatives have already put in all of the dots. You just got to connect them. You just got to say like, look, from this to this, to look at Virginia, right? From this to this, to now they're going to take it away from Walgreens. Like you just have to draw that line for people. And I think it should be dispositive in this election, because I can talk to a lot of people about a lot of issues that they have with Joe Biden, you know, across a number of indices.

But when you get into their wombs, right? When you get into what they're, the rights that they are trying to take away from people over their own bodies, in my experience, people kind of, people wake up, people figure it out. But I'm a random guy on the Internet. Can you imagine what you could do if you were the president of the goddamn United States and you were talking about this every day? Yeah.

And I'll give a shout out to Vice President Kamala Harris, because she does talk about it every day. They don't cover her, and they don't, you know. Yeah, that's the thing. The media doesn't cover it, and it's just kind of like, it's very frustrating. It is frustrating. And you're right. I mean, I do agree with you that the Israel business, right? It's harming him. It's harming him. And I think that the unwillingness to recognize it and to, I mean, if we're not going to stop the war, if you're not going to stop funding this war, then you need to have a counterweight, like a domestic policy issue that is going to make people who oppose the war and oppose your participation in it, make them look at you and say, oh, well, here's how he's different than Trump, right? And I don't think he's doing enough of that right now.

So I want to ask you one more question. Why are people insisting that Sonia Sotomayor retired now? And why? And do you agree with me that it is a ridiculous conversation to have? Because it's not going to happen. Joe Biden is not going to ask Sonia Sotomayor to retire. So why is it every few weeks we have this influx of commentary about these think pieces about, well, Sonia

Sotomayor out of retirement? Well, RBG and blah, blah, blah. Like what gives? What gives with the she must retire conversation? Okay, okay. So the risk of earning your the only thing I agree with you on is that this is a stupid conversation. This is a stupid conversation.

It's a distraction. It's not happening. Let's move on to other things, right? Like the time for her to be pressured to retire has come and gone. She's not going to. It's first of all, just very difficult to pressure a Supreme Court justice to retire. Anyway, we did it with Breyer. If you were going to do it with Sotomayor, you needed to do it with Breyer at the same time you did with Breyer. That was the right time to do it. You didn't do it then, so it's not going to happen. So let's move the frick on, right? That I completely kind of agree with. I mean, if you notice, like I haven't even written about it. Like I just, I honestly think that it is a distraction. The reason why it's a distraction, though, is I think interesting, because to me, they're kind of two camps here.

They're the people who still kind of, I would say, fundamentally respect the Supreme Court. You know, as people, as intellects, as whatever. And then there are people like me who don't, right? Who kind of fundamentally like are done with these people. And like when you are done with, I can speak as a person who is done with these people, when you are done with these people, you stop seeing the personal stories and the interpersonal, you know, like excellence and whatever. And they're just fucking votes. They're just votes. Sotomayor is a vote that I need and she's old. I would like to place her vote that I need that's old with a vote that I need that's younger and it is a transactional thing, right?

And so the people who are looking at the courts as a more transactional bargain, which I think is correct, are saying like, this is an example of how you treat the court transactionally. Right? The people who are defending Sotomayor and defending her, you know, why is Latina right to stay for as long and at least outlive frickin Thomas? And like, I get all that, but they're looking at Sonia Masomayor as like a human, like a person with like hopes and dreams and you know, who has, you know, something still significant to give to this world and why should she be put out to pasture just because and I get all of that if she's a person, but if you think about her as a vote, it's just, well, she's old. That is, she's old is a complete sentence, right?

It's a complete thought. And that's enough for a lot of people. So I think that's why there's conflict among our sides. And it's all like drizzled in this, I think, drizzled in a base of losing, right? Like it all comes from this idea and this fear and this reality that we lose a lot and probably will again. And it's just like, well, if we're going to lose, if we're going to lose, we're trying to figure out ways to kind of minimize the impact of losing. And again, I don't think that that is wrong in a kind of transactional sense, but I do kind of recognize that it all comes from a sense

of deep fear and sadness over things that we've lost already, right? So again, that's why I think it's a bit of a distraction because, and look, I don't think just win elections is a great answer, but just win elections when we are five months before the election, to me now, is the right answer. It's the thing that we should be focusing on now.

If you wanted to have this discussion two years ago, here's the last thing, because I don't see this in all of the back and forth that I've seen. I have not seen, if I would put it like this, Imani, if I was going to write about it, I would not be writing about Cinemayor, I would not be writing about Gidsenberg, I would be writing about Kristen frickin Sinema. Because as it stands now, right? As it stands now, with Joe Manchin completely off the reservation, I'm not going to vote for anybody that can't get a Republican vote because I love the coal, I love to lick it, it's so cool in my mouth. With Joe Manchin off on his crusade, confirmation of Sotomayor's replacement would come down to Kristen frickin Sinema staying on board. Kristen, I'm about to lose my seat.

I realize that now. I am now playing for the big Pfizer contract in the sky. She, not Joe Biden, not Chuck Schumer, not Dick Durbin, Sinema would have more power over who the next Supreme Court justice is than anybody else. And that is simply not a world I am willing to live in. I mean, I've debated with my friends. Again, I agree with a lot of these people who are saying that she should retire. But I've debated with people, and they assure me that Sinema can be trusted. And I'm like, what? You can't say you think, but you can't say you're sure. So you can even... Like, who replaced Sinema? Well, Liz Prelogar. That's kind of the easy, obvious choice. Or Candice Okomi. What's her last name?

It starts with a B. Sinema's not going to vote for... And that's always been my point. Like, you've actually moved the needle in terms of my viewpoint on Son of My Own Retirement, because I like the way you phrased it. It's a transaction. I did a podcast with Ola Yemi O'Louran, and she was talking about voting for Joe Biden as a transaction, as an adversarial process. I don't like Joe Biden. I don't need to like Joe Biden. But I can oppose Joe Biden more easily than I can oppose Donald Trump, right? And so that makes sense to me in terms of the transaction. What doesn't make sense to me is what seems to be this weird clout chasing among some people where they're like, well, I'm just gonna keep writing the same thing over and over when there's just no point to it, right?

Like, as you said, cinema ain't voting for a liberal to replace Sotomayor. They may, she may vote for a centrist to replace Sotomayor the way that Garland would have been a centrist to replace Ginsburg, maybe, back in 2013. So I appreciate your answer because it actually did move the needle for me. They're just, they're so, as Gandalf would say, even the very wise

cannot see all ends, right? And so, look, if this conversation was hap- again, when we made Ryre retire, who, if you noticed, didn't want to retire. Like, was just, was very happy being a Supreme Court justice and riding his bicycle and playing bridge with evil people. When we forced him to retire, if you did that as a package deal, that would have been a different discussion. But now, five months out, all of it based on whether or not cinema will go along, I just, I can't get up for that fight.

Like, there are just other fights that I need to be having right now. Yeah, yeah. Well, on that note, Elie... If Biden wins, if Biden wins, then somehow the Democrats keep the Senate. Yeah. Then... Yeah, yeah, she's gonna go. They're gonna be, yeah, she's gonna go. And I also just want to point out, there are a lot of people in my mentions who say, yeah, why are we having Sotomayor retire? Why can't we make Thomas retire? Well, because we're not Republicans. There would be no reason to push for Thomas or Alito to retire under Biden. So that's foolishness.

Thomas, honestly, I think Thomas is the kind of guy that he ain't, Republicans think they can force him out in the next administration. I think Thomas is the kind of guy that leads in a coffin. Really? He loves that job. He loves that job and that power. I think you think so he's gonna live forever. Alito is the guy who's like, I'm done. Put me on the speaking circuit. Elie, I cannot, I can't tell you how much I appreciate you coming and having this conversation with me. It's always so fun to talk to you. You're just such a smart person. You break the law down in a great way. You're a great person to listen to for people who don't like the law. Because they may not like the law anymore after talking to you, but at least they'll have good reason. And they'll be able to explain why they don't like the law and the Supreme Court.

Eat your broccoli. Eat your broccoli and read my book. Allow me to retort. A black guy's guiding the Constitution. But seriously, everyone, follow Elie. You can follow him on Twitter, ElieNYC. I don't think he's any other places. Blue Sky Threads. You haven't really branched off to those places yet, or not planning on it. Who has the time? I don't want social media to begin with. Who has the time? You can follow me, Angry Black Lady, on all of the things. I'm almost everywhere."

You should follow Rewire News Group, Twitter, Instagram. Particularly our TikTok is slapping. It's just so good right now. And that's going to wrap it up for me today. Elie, what are we going to do? See you on the Tubes. We're going to see you on the Tubes, folks." From Boom! Lawyered: