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Pre-Show
Matthew Hoh & other feedback on Tuesday

A. News – Mar-a-Lago Searched!
1) not "raided," not a "no-knock" warrant

-pursuant to a search warrant
-the 4th Amendment – consider vs the 2nd

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

a) What's in a warrant?
https://www.justice.gov/opa/page/file/976846/download

-we're going to search X property
-we're looking for Y information
-which will reveal evidence of Z,A,B,C crimes
-set forth in accompanying affidavit
-requires a judge to agree that there is probable cause set forth in the affidavit – ex-parte

2) Not a no-knock warrant?
-ordinary course is that they give you the warrant and then go root through your stuff
-consider the case dramatized on TV – they give you the warrant and then Jesse is upstairs flushing the dope down the toilet, or in this case, shredding the documents

-Breonna Taylor
* all of a sudden the cops are in your house and that's the first thing you know about it

-the baseline rule is "knock and accounce"
18 U.S.C. § 3109
https://www.law.cornell.edu/uscode/text/18/3109

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

-so they can “delay” notice
18 U.S.C.§ 3013a(b)
https://www.law.cornell.edu/uscode/text/18/3103a

(b) Delay.—With respect to the issuance of any warrant or court order under this section, or any other rule of law, to search for and seize any property or material that constitutes evidence of a criminal offense in violation of the laws of the United States, any notice required, or that may be required, to be given may be delayed if—
(1) the court finds reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result (as defined in section 2705, except if the adverse results consist only of unduly delaying a trial);
(2) the warrant prohibits the seizure of any tangible property, any wire or electronic communication (as defined in section 2510), or, except as expressly provided in chapter 121, any stored wire or electronic information, except where the court finds reasonable necessity for the seizure; and
(3) the warrant provides for the giving of such notice within a reasonable period not to exceed 30 days after the date of its execution, or on a later date certain if the facts of the case justify a longer period of delay.

a) DID NOT HAPPEN HERE

-Trump’s lawyer – OH Trump’s lawyer – was notified

-the very bottom of the barrel to this is not even a barrel – Christina Bobb
Trump’s current lawyer is a former talk show host for OAN – she’s a Giuliani flack, a Stop-the-steal nutbag but as far as I can tell she doesn’t do real work.

-not even on Unamerican Bar!
https://unamericanbar.com/voter-suppression-attorneys

b) She went on Dinesh D’Souza’s podcast because sure, why the fuck not
https://www.npr.org/2022/08/09/1116575413/mar-a-lago-fbi-raid-trump-search

The raid concerned presidential records that Trump removed from the White House when he left office in January 2021, according to Christina Bobb, an attorney representing Trump.

The FBI search warrant authorized agents to seize "presidential records or any possibly classified material," Bobb said in a Tuesday interview on the Dinesh D'Souza podcast. The search took about 10 hours, she added. She said investigators said they were “looking for classified information that they think should not have been removed from the White House, as well as presidential records.”

3) Ongoing investigation

a) Doesn’t the president control classification/declassification?

YES, but this is like the “pocket pardons” argument. You still have to do it.

Authority: "Commander in chief"
Dep't of the Navy v. Egan, 484 U.S. 518 (1988)
https://scholar.google.com/scholar_case?case=8022858120381728846

The President, after all, is the "Commander in Chief of the Army and Navy of the United States." U. S. Const., Art. II, § 2. His authority to classify and control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position in the Executive Branch that will give that person access to such information flows primarily from this constitutional investment of power in the President and exists quite apart from any explicit congressional grant. … The authority to protect such information falls on the President as head of the Executive Branch and as Commander in Chief.

EO 12958 – and yes, it's an EO, Trump could have changed this, lots of presidents have
https://www.archives.gov/about/laws/appendix/12958.html

-describes the process
-**but he didn't**

b) the Archivist – David Ferriero – appointed by Obama

-left office on April 30, 2022; Biden has nominated his successor (Debra Steidel Wall) but right now there isn't one

-noticed on January 20, 2021, that Trump seemed to be taking stuff out of the Oval Office

https://www.vice.com/en/article/wxnjey/fbi-just-raided-trumps-mar-a-lago-house

https://www.washingtonpost.com/national-security/2022/05/12/mar-a-lago-documents-grand-jury/

https://www.washingtonpost.com/politics/2022/02/07/trump-records-mar-a-lago/?itid=ap_jacquelinealemany

In February 2022, it was revealed that 15 boxes of documents containing important records from his presidency, such as communications, gifts, and letters from world leaders, had been recovered from Trump's Mar-a-Lago residence by the National Archives the previous month. This suggests that Trump used his Florida home to retain possession of presidential documents in possible violation of the Presidential Records Act.[19][20] Some of the recovered documents were marked as classified, including some at the "top secret" level.[21][22]

-that's the voluntary disclosure

-On Aug, 8, they got a search warrant. By DEFINITION, that means that a judge has probable cause to believe that a crime was committed – most obvious to infer is that

On August 8, 2022, Trump's Mar-a-Lago residence was raided by Federal Bureau of Investigation agents as part of the investigation into his mishandling of presidential documents.[23]

4) Presidential Records Act

44 USC § 2201 et seq.
https://www.law.cornell.edu/uscode/text/44/chapter-22

The United States shall reserve and retain complete ownership, possession, and control of Presidential records; and such records shall be administered in accordance with the provisions of this chapter.

The Presidential Records Act was enacted in 1978 after President Richard Nixon sought to destroy records relating to his presidential tenure upon his resignation in 1974. The law superseded the policy in effect during Nixon's tenure that a president's records were considered private property, making clear that presidential records are owned by the public. The PRA requires the President to ensure preservation of records documenting the performance of his official duties (44 U.S.C. § 2203(a)), provides for the National Archives and Records Administration (NARA) to take custody and control of the records (44 U.S.C. § 2203(g)), and sets forth a schedule of staged public access to such records (44 U.S.C. § 2204). Records covered by the PRA encompass documentary materials relating to the political activities of the President or members of the President's staff if they concern or have an effect upon the carrying out of "constitutional, statutory, or other official or ceremonial duties of the President" (44 U.S.C. § 2201(2)).[4]

§ 2202
https://www.law.cornell.edu/uscode/text/44/2202

destruction
§ 2203(c)-(e)

(c) During the President's term of office, the President may dispose of those Presidential records of such President that no longer have administrative, historical, informational, or evidentiary value if—
(1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and
(2) the Archivist states that the Archivist does not intend to take any action under subsection (e) of this section.

(d) In the event the Archivist notifies the President under subsection (c) that the Archivist does intend to take action under subsection (e), the President may dispose of such Presidential records if copies of the disposal schedule are submitted to the appropriate Congressional Committees at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

(e) The Archivist shall request the advice of the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Oversight and the Committee on Government Operations of the House of Representatives with respect to any proposed disposal of Presidential records whenever the Archivist considers that—
(1) these particular records may be of special interest to the Congress; or (2) consultation with the Congress regarding the disposal of these particular records is in the public interest.

Control automatically passes to the President

(g)(1) Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. The Archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this chapter.

5) Did Trump make this a felony?

-PRA is not self-enforcing
-this story is making the rounds
-LOTS of recordkeeping statutes

18 U.S.C. § 1924
https://www.law.cornell.edu/uscode/text/18/1924

(a) Whoever, being an officer, employee, contractor, or consultant of the United States, and, by virtue of his office, employment, position, or contract, becomes possessed of documents or materials containing classified information of the United States, knowingly removes such documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location **shall be fined under this title or imprisoned for not more than five years**, or both.

As of 2018, that read "not more than one year" – which is the dividing line between a misdemeanor and a felony, that was HR 4478, signed into law to convince Trump to extend FISA warrants.

But there are lots of other statutes at issue here.

18 U.S.C. § 793(e), (f)
https://www.law.cornell.edu/uscode/text/18/793

If that sounds familiar

https://patorrez.com/lock-her-up/

18 USC 2071
https://www.law.cornell.edu/uscode/text/18/2071

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

-SBT!
https://deliverypdf.ssrn.com/delivery.php?ID=174093090115100067031070082091106027052072023065091036126127071087082109005127007086061123008063054013023106083099064096007000041010074040047002098026066126023031046064063083111006096120085119066065112003080077006028089012022026005116007102125019113&EXT=pdf&INDEX=TRUE

It is widely accepted that the Supreme Court's decisions in Powell v. McCormack4 and U.S. Term Limits, Inc. v. Thornton have come to stand for the proposition that neither Congress nor the States can add to the express textual qualifications for House and Senate seats in Article I.6 Importantly, the rationale of Powell and U.S. Term Limits, Inc.—i.e., the primacy of the written Constitution's express provisions setting fixed textual qualifications—equally applies to the qualifications for the presidency (and vice presidency) in Article II.7 Indeed, this extension of Powell and U.S. Term Limits, Inc. appears uncontroversial. For example, Chief Judge Posner opined

> The democratic presumption is that any adult member of the polity . . . is eligible to run for office. . . . The requirement in the U.S. Constitution that the President be at least 35 years old and Senators at least 30 is unusual and reflects the felt importance of mature judgment to the effective discharge of the duties of these important offices; nor, as the cases we have just cited hold, may Congress or the states supplement these requirements.8

-20 witness transcripts being provided by J6 to DOJ
https://www.politico.com/news/2022/07/28/jan-6-witness-transcripts-doj-00048668

-Alex Jones's phone turned over to J6

6) Remember tax returns?
https://www.cadc.uscourts.gov/internet/opinions.nsf/524B3B5CED10789D8525889900538BAB/%24file/21-5289-1958452.pdf

-filed motion in SDNY to unseal the search warrant and receipt of Mar-a-Lago

-no public statements on day of search

-copies of the warrant and receipt were provided to Trump's lawyer who was on site during the search

-authorized by federal court on probable cause

-property receipt requires law enforcement agents to leave with property owner

-in light of president's confirmation of the search, surrounding circumstances & the public adherence

-faithfulness to ROL

-not going to talk about more

-"I want you to know"

1) I personally approved decision to search

2) Don't take it lightly - We would have taken less intrusive means if they were available

3) the FBI have been unfairly attacked

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A. Hoh post-mortem

-why we had him on
-policy going forward

B. Punitive Damages in TX & CT

1) Background on punis

OA29 on McDonald's Hot Coffee
https://openargs.com/oa29-cognitive-dissonance/

TX tort reform

The cap on punitive damage awards traces back to a 2003 measure, House Bill 4, a massive overhaul of the state's civil litigation laws that the bill's author said was intended to fight frivolous or abusive lawsuits. "The problem that existed at the time was that there were a lot of lawsuits of questionable merit being brought where huge punitive damages were being threatened," said former state Rep. Joe Nixon, a Houston lawyer who authored the sweeping changes to Texas lawsuits in 2003.

Without limits on punitive damages, Nixon said, defendants in lawsuits were exposed to potentially unfair judgments — the threat of which would often push defendants into high-dollar settlements in order to avoid the potential for financial ruin. Opponents argued that Nixon's measure gave a pass to extremely wealthy companies that were bad actors.

The bill was one of the biggest pieces of legislation to be passed by the new GOP majority in the Texas House that year, **the first time Republicans had controlled the Texas Legislature in 130 years**.
https://lrl.texas.gov/scanned/78ccrs/HB0004.pdf

2) Understanding TX verdict

-$4.1M compensatory damages
-$45.2M punitive

-Have not seen Jury form – I understand that $4 million noneconomic, $110K economic – that's important

TX statutes
https://statutes.capitol.texas.gov/Docs/CP/htm/CP.41.htm
NOT AT PLAY HERE BUT FOR EXAMPLE-

Sec. 41.004. FACTORS PRECLUDING RECOVERY. (a) Except as provided by Subsection (b), exemplary damages may be awarded only if damages other than nominal damages are awarded.
(b) Exemplary damages may not be awarded to a claimant who elects to have his recovery multiplied under another statute.

41.008
Sec. 41.008. LIMITATION ON AMOUNT OF RECOVERY. (a) In an action in which a claimant seeks recovery of damages, the trier of fact shall determine the amount of economic damages separately from the amount of other compensatory damages. (b) Exemplary damages awarded against a defendant may not exceed an amount equal to the greater of: (1)(A) two times the amount of economic damages; plus (B) an amount equal to any noneconomic damages found by the jury, not to exceed $750,000; or (2) $200,000.
$220K + $750K = $970K per defendant x 3 so about 3 million

NOT clear if it is per lawsuit (probably) or per claim (what Bankston claims); if it's per claim, multiply it by 2.

Then you add on $4.1 actual, which gets you to $7-10 Million claim against Alex Jones

41.008
(e) The provisions of this section may not be made known to a jury by any means, including voir dire, introduction into evidence, argument, or instruction.

-not a "cap buster"
(c) This section does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally:

(1) Section 19.02 (murder);
(2) Section 19.03 (capital murder);
(3) Section 20.04 (aggravated kidnapping);
(4) Section 22.02 (aggravated assault);
(5) Section 22.011 (sexual assault);
(6) Section 22.021 (aggravated sexual assault);
(7) Section 22.04 (injury to a child, elderly individual, or disabled individual, but not if the conduct occurred while providing health care as defined by Section 74.001 of this code);
(8) Section 32.21 (forgery);
(9) Section 32.43 (commercial bribery);
(10) Section 32.45 (misapplication of fiduciary property or property of financial institution);
(11) Section 32.46 (fraudulent securing of document execution);
(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing);
(13) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher;
(14) Section 49.07 (intoxication assault);
(15) Section 49.08 (intoxication manslaughter);
(16) Section 21.02 (continuous sexual abuse of young child or disabled individual); or
(17) Chapter 20A (trafficking of persons).

Poliner v. Tex. Health Sys., 239 F.R.D. 468 (N.D. Tex. 2006) – strictly construing the "fraudulent securing of document execution

JESUS – *Tony Gullo Motors I, LP v. Chapa*, 212 S.W.3d 299 (Tex. 2006) – just because you're under the statutory cap doesn't mean you can't ask the appellate court to review the award to see if its constitutionally excessive

What happens next in TX?

-appeals
-argument is taking away the inherent power of the jury to determine damages

TX Constitution
https://tlc.texas.gov/docs/legref/TxConst.pdf

Art. III, § 66(c)
Subsection (b) was for personal injury

"(c) Notwithstanding any other provision of this constitution, after January 1, 2005, the legislature by statute may determine the limit of liability for all damages and losses, however characterized, other than economic damages, in a claim or cause of action not covered by Subsection (b) of this section. This subsection applies without regard to whether the claim or cause of action arises under or is derived from common law, a statute, or other law, including any claim or cause of action based or sounding in tort, contract, or any other theory or any combination of theories of liability."

THIS WAS PASSED IN 2003.

-interplay with bankruptcy proceedings - EXPLAIN

3) What's next in CT

Under Connecticut common law, punitive damages are available in personal injury cases involving reckless and intentional misconduct. Conduct that justifies a claim for common law punitive damages in Connecticut may also be described as grossly negligent, malicious, outrageous, or exhibiting reckless indifference. In cases involving common law claims for punitive damages, the amount that can be awarded (in addition to the claimant's compensatory damages) is limited **to the costs incurred in pursuing the claim plus the claimant's legal fees**.

-exceptions
Under Section 14-295 of the Connecticut Code, additional punitive damages may be awarded in cases involving vehicle collisions resulting from certain traffic violations. Specifically, the statute states:

"In any civil action to recover damages resulting from personal injury, wrongful death or damage to property, the trier of fact may award double or treble damages if the injured party has specifically pleaded that another party has deliberately or with reckless disregard operated a motor vehicle in violation of section 14-218a, 14-219, 14-222, 14-227a, 14-230, 14-234, 14-237, 14-239 or 14-240a, and that such violation was a substantial factor in causing such injury, death or damage to property."

In Section 14-295, “double or treble damages” refers to doubling or tripling the claimant’s compensatory damages, with the specific amount to be awarded being determined based upon factors including the severity of the traffic violation involved. The violations covered by the statutory sections listed in Section 14-295 include:

Traveling unreasonably fast
Speeding
Reckless driving
Driving under the influence of alcohol or drugs
Driving in the wrong lane
Passing in a no-passing zone
Crossing a highway divider
Driving the wrong way on a one-way street
Following too closely

1906 Ct Supreme Court case
Hanna v. Sweeney, 78 Conn. 492 (1906)
https://casetext.com/case/hanna-v-sweeney

At common law, in certain actions of tort, the jury were at liberty to award damages "not only as a satisfaction to the injured person, but likewise as a punishment to the guilty, to deter from any such proceeding for the future, and as a proof of the detestation of the jury to the action itself." [authorities] Moreover, at common law the amount of punitive damages that might be awarded was left almost entirely to the discretion of the jury; for the courts generally refused to grant a new trial for excessive damages of this kind.

This power of a jury, at common law in certain actions of tort, to award damages beyond mere compensation, and practically of such an amount as they in their discretion may determine, has resulted in the doctrine of punitive damages, which has been called "a sort of hybrid between a display of ethical indignation and the imposition of a criminal fine."

In this State the common-law doctrine of punitive damages as above outlined, if it ever did prevail, prevails no longer. In certain actions of tort the jury here may award what are called punitive damages, because nominally not compensatory; but in fact and effect they are compensatory, and their amount cannot exceed the amount of the plaintiff's expenses of litigation in the suit, less his taxable costs.

T3BE
-do you include the lesser crimes?
-eliminated A right off the bat
-picked B

More HOH

A. Listener ?s
B. More from North Carolina

-on 8/1, NCSBE certified GP as a political party
https://openargs.com/wp-content/uploads/2022.08.01-NC-certification-GP.pdf
-that ends the rescission period – they've now "acted"

-law requires you to have been approved by 7/1
-NCBSE told Hoh they wouldn't object to putting his name on the ballot anyway
-**ballot deadline is 8/12, one week from Friday**

-Dem Party filed a new lawsuit
https://openargs.com/wp-content/uploads/2022.08.02-NC-DP-cplt.pdf

48. NCSBE's investigation also discovered that NCGP worked with Michigan-based First Choice Consulting, led by principal Shawn Wilmoth. Ex. B at 8. Both Mr. Wilmoth and First Choice Consulting were recently implicated in a massive petition-fraud scandal in Michigan that led to the disqualification of numerous Republican candidates, including the party's leading choice for Governor. See, e.g., How One Firm In A 'Wild West' Industry Upended the Michigan GOP Governor Race, Bridge Michigan (June 16, 2022), https://www.bridgemi.com/michigangovernment/how-one-firm-wild-west-industry-upended-michigan-gop-governor-race (last visited July 17, 2022).

49. The problems with NCGP's petitions were not limited to forged signatures. While state law required NCGP's circulators to "inform the signers of the general purpose and intent of the new party" N.C. Gen. Stat. § 163-96(b), NCGP's instructions told circulators to obscure NCGP's ideology and leadership.2 For example, it included instructions such as: "Don't lead with [names of Green Party leaders] or Green ideology," "avoid ideology if possible," and "we don't have to say what exactly we have in mind."

50. Over 50 signatories later reported under penalty of perjury that they were misled by Green Party circulators. Ex. O at Ex. C. Plaintiff Jones, a Democratic Party member residing in Wake County, is among the many signatories who were misled. Mr. Jones was told he was signing a petition to legalize marijuana and was never told the petition had anything to do with the Green Party. See Ex. D ¶¶ 3-4, 6.

70. For this reason, courts have "regularly concluded that nominating petitions tainted by fraud or the strong appearance of fraud may be discounted in their entirety by an elections board." Williams v. D.C. Bd. of Elections & Ethics, 804 A.2d 316, 319 (D.C. 2002) (emphasis added) (collecting cases)

71. NCSBE reached the same conclusion in 2018 when it ordered a new election inNorth Carolina's Ninth Congressional District, explaining that where pervasive fraud exists, "[i]t is neither required nor possible for the State Board to determine the precise number" of individual fraudulent acts before taking remedial steps. Order ¶¶ 152-53, In the Matter of: Investigation of Election Irregularities Affecting Counties Within the 9th Congressional District, NCSBE (Mar. 13, 2019) (emphasis added).

Count I – Viol § 163-96
76. NCSBE's decision to recognize NCGP as a political party before completing its investigation into what it had determined was widespread, organized fraud affecting NCGP's petition sheets, and before it had determined the scope of the fraud, violated NCSBE's duty to "determine the sufficiency of petitions" submitted to it under N.C. Gen. Stat. § 163-96(a)(2).

Count II – State APA
IF that's not a cause of action – and it might not be – then we get to review under the state APA because
79. Section 150B-43 of the NCAPA provides that "[a]ny party or person aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to the party or person aggrieved by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute."

Count III – DJ
Same

Count IV – First Amendment
104. Courts have also long recognized that "a corollary of the right to associate is the right not to associate." Cal. Democratic Party v. Jones, 530 U.S. 567, 574 (2000) (emphasis added). Thus, forced association, including with a "rival" political party, violates the right to associate protected by the First Amendment. Id. at 577.

Count V – Writ of Mandamus
Same

I don't think Democratic Party is going to get an injunction – I think he *is* going to be on the ballot, and that makes our job even harder