

War Powers and Impeachment Update

Roman Mars [00:00:08] Hearing the song Panama in the late 1980s wouldn't be all that weird.

Elizabeth Joh [00:00:12] It had such memorable lyrics like "Hot shoe, burnin' down the avenue. Got an on-ramp comin' through my bedroom." And Panama was the last hit single the band Van Halen recorded with their lead singer David Lee Roth before he left the band in 1985. Except it would be weird if you were the dictator of a Latin American country and you were hiding out in the Vatican embassy in Panama City and the American military would not stop playing. You see, on December 20th, 1989, the United States invaded Panama. President Bush sent out American troops there, mainly to capture General Manuel Noriega, the self-proclaimed maximum leader of the country.

Roman Mars [00:01:12] The United States had a complicated relationship with the military dictator of Panama. Sometimes Noriega had been an ally, but sometimes he wasn't.

Elizabeth Joh [00:01:21] In the late '80s, Noriega or "La Peña" or "Pineapple Face" because of his pockmarked skin, was increasingly a problem because he played both sides. Sometimes he helped the United States by providing information to its intelligence agencies, and sometimes he tipped off drug cartels. In 1988, two federal courts in the United States indicted Noriega on drug trafficking charges. The general had also canceled the results of Panama's 1989 presidential election. And in December of 1989, Panamanian troops shot and killed an unarmed American soldier in Panama City. That was it for President George H.W. Bush. On December 20th, 1989, at 1:00 in the morning, American troops invaded Panama and overwhelmed the Panamanian defense forces. 23 Americans were killed and more than 300 were wounded. Panamanian casualties were high to--at least 500--although the number is disputed. And Noriega? He escaped the initial invasion and showed up four days later at the Vatican embassy in Panama City. And thus, a standoff started, and so did the musicological warfare. The U.S. Army blasted Van Halen's Panama from speakers set up in a vacant lot across from the embassy. They also played hits from Twisted Sister and David Bowie. It was a nonstop onslaught of deafening music. Why? Partly to make sure that military communications couldn't be intercepted, but also because Noriega reportedly hated rock music. He was known to be an opera buff. In fact, in his 1997 memoir, Noriega said that the music blasted at him during the invasion was a "scorching, diabolical noise--a roaring, mind bending din."

Roman Mars [00:03:18] And maybe it worked. On January 3rd, 1990, Noriega surrendered himself to U.S. military authorities. Within hours, he was on a military transport plane to Florida to face federal charges as a criminal defendant.

Elizabeth Joh [00:03:30] Noriega would eventually be put on trial, convicted, and spend decades behind bars--first in the United States, then in France, and eventually back in Panama, where he died in 2017. President Bush stated publicly on the day of Noriega's surrender that the U.S. "used its resources in a manner consistent with political, diplomatic, and moral principles." Operation Just Cause had used 27,000 troops against a Panamanian force of about 12,000. But was this a legal use of American troops? The United Nations didn't think so and voted to condemn the American invasion of Panama. The U.N. called it a "flagrant violation of international law." And what about American law? There's a federal law called the War Powers Resolution. The law expects a role for the president and for Congress whenever American troops are sent abroad in armed conflict. President Bush didn't exactly follow it to the letter, but Congress didn't complain either. And

the invasion of Panama stands out for this strange silence. In January of 2020, President Trump made what is probably one of the most significant foreign policy decisions in his presidency--to order the killing of Iran's top military commander, Qassim Soleimani. This time, Congress has not been silent.

Roman Mars [00:05:01] Some members of the House and the Senate are arguing that Trump has broken the law. So, has he? Well, it's time to find out. This is What Trump Can Teach Us About Con Law--an ongoing monthly series of indefinite length, where we take the tweets of the 45th President of the United States and his critics to use them to examine our Constitution like we never have before. Our music is from Doomtree Records. Our professor and neighbor is Elizabeth Joh. And I'm your fellow student and host, Roman Mars.

Elizabeth Joh [00:05:58] The Constitution says a couple of very specific things about who is responsible for what when it comes to waging war. Congress has the power under Article I of the Constitution to declare war and also to organize and pay for the military. The president of the United States is the commander in chief of the military. But what the Constitution isn't very clear about is what happens when the United States is not at war, but the president sends American troops abroad in some situation of armed conflict. The Constitution doesn't say anything about that. This has been an important issue ever since the bombing of Pearl Harbor, which is the last time Congress formally declared war. Sometimes Congress and the president may agree that troops have to be sent abroad in a situation of armed conflict. Congress can provide express approval. Probably the most well-known example is right after September 11th, 2001; Congress passed what is known as the 2001 Authorization for the Use of Military Force. It gave President George W. Bush the authority to use all necessary and appropriate force against those nations, organizations, or persons that he believed were connected to the 9/11 attacks. Believe it or not, that authorization remains in effect today. And there's general agreement that the president of the United States has the authority to command troops to protect against a sudden attack against the United States. And that makes sense. It would take too much time to ask Congress for formal approval. So, the example I always give to my students is imagine aliens invade America--the president gets to defend the United States. That's the idea.

Roman Mars [00:07:42] Okay.

Thomas J. Whitmore [00:07:43] We're going to live on. We're going to survive. Today, we celebrate our Independence Day.

Elizabeth Joh [00:08:00] But there are so many instances that don't fall into these categories. After the Vietnam War, which itself wasn't a formally declared war, Congress decided to address these situations in what's called the War Powers Resolution. It's called a resolution, but it's actually a federal law. In fact, it became law over the veto of President Nixon. The War Powers Resolution contains a lot of different provisions, but for our purposes, here are the important parts. The president of the United States, according to the law, can send troops abroad in situations of armed conflict when 1) Congress has declared war, 2) when Congress has given its approval in some other way, or 3) when there's a national emergency. The president is also required under the law to consult with Congress in every possible instance before he sends troops. Even if he doesn't do it beforehand, the president is also supposed to tell Congress within 48 hours of already having sent troops abroad. The War Powers Resolution also says that the president should withdraw the troops after 60 days unless Congress says it's okay for them to stay.

As you can tell, the War Powers Resolution has--at its core--the idea that the president and Congress are supposed to work together in the important decision about whether or not to send American forces overseas in situations that the law calls "hostilities." Is the War Powers Resolution itself lawful? Every single president since Nixon has taken the position that the law interferes with the president's constitutional authority. But presidents have also generally complied with the law dozens of times since the War Powers Resolution became law. A typical thing presidents have done when committing trips abroad is to tell Congress, "Well, I'm telling you because the War Powers Resolution says so." But then they also say, "But of course, I'm not required to do this under the Constitution."

Roman Mars [00:09:58] Congress can put up a fight about these kinds of noncompliance, and they sometimes do.

Elizabeth Joh [00:10:03] All of these issues were raised in a very tense week this January--in a very Trump like way. The United States and Iran have had a very complicated and tense relationship over the past 70 odd years. I don't want to get too much into it here, but it involves everything from the threat of nuclear power, proxy wars, to the control of the Middle East. While these tensions have existed for decades, there was a certain escalation in December of 2019. An Iranian backed militia group in Iraq attacked a military base. That attack led to the death of an American contractor and the wounding of other Americans and Iraqis. This led to an American counterattack. And on December 31st, the U.S. Embassy in Baghdad was surrounded by thousands incited by that same Iranian backed militia. At the heart of Iran's elite military and intelligence force was a man named General Qasem Soleimani. Most Americans probably had never heard of him before this, but Soleimani had important roles in the Syrian civil war, Iran's role in Iraq, and intelligence networks across the Middle East. Soleimani was also behind hundreds of American deaths in Iraq. On January 2nd, Trump gave the order to have Soleimani killed.

Newscaster [00:11:21] Hello. In a dramatic escalation of tensions in the Middle East, a U.S. Airstrike has killed Iran's most important military commander. General Qasem Soleimani was the commander of the Quds Force, Iran's elite Revolutionary Guards.

Elizabeth Joh [00:11:37] And at 6:32 that same evening, President Trump cryptically tweeted out a picture of an American flag. No words, just a low-resolution jpeg of an American flag. Iran's supreme leader, Ayatollah Ali Khamenei, responded the next day by tweeting out a call for "severe revenge" following Soleimani's killing. Trump responded to this tweet with a tweet storm of his own the next day, January 4th. "Iran is talking very boldly about targeting certain U.S.A. assets as revenge for our ridding the world of their terrorist leader who had just killed an American. Iran has been nothing but problems for many years. Let this serve as a warning that if Iran strikes any Americans or American assets, we have targeted 52 Iranian sites, some at a very high level and important to Iran and the Iranian culture. And those targets in Iran itself will be hit very fast and very hard. The U.S.A. wants no more threats." This tweetstorm amounts to the president of the United States threatening to commit a war crime. The 1949 Geneva Convention considers attacking the clearly recognized historic monuments, works of art, or places of worship, which constitute the cultural or spiritual heritage of peoples as a war crime. The very next day, Trump kept going with this, he told reporters flying with him on Air Force One that "they're allowed to kill our people, they're allowed to torture and murder people, they're allowed to use roadside bombs and blow up our people, and we're not allowed to touch their cultural site? Doesn't work that way."

Roman Mars [00:13:24] Trump's own defense secretary, Mark Esper, clarified two days later that, no, the United States was not going to strike cultural targets in Iran because doing so would in fact be a war crime.

Elizabeth Joh [00:13:36] Then, on January 5th, during an already tense week between Iran and the United States, Trump tweeted, "These media posts will serve as notification to the United States Congress that should Iran strike any U.S. person or target, the United States will quickly and fully strike back and perhaps in a disproportionate manner. Such legal notice is not required but is given nevertheless." What's amazing about this tweet--it's both wrong and threatens to break the law at the same time. So, first, Trump threatens to react to any Iranian attack by striking back in a, quote, "disproportionate manner." International law experts will tell you that if a country takes an action in self-defense, it's supposed to be proportionate--not disproportionate--to the threat it faces. Second is Trump's so-called notification to Congress. He's trying to tell Congress that his tweet amounts to complying with the War Powers Resolution. Remember that the law has a notification requirement to Congress. Well, tweeting is not one of the recognized forms of communication between the president and Congress.

Roman Mars [00:14:47] Why not?

Elizabeth Joh [00:14:48] Could be, but it's not. Trump also says that he's not required to tell Congress anyway. So that's not true, at least according to the War Powers Resolution. Remember, the law says that whenever the president sends the military in situations of armed conflict, he's supposed to tell Congress within 48 hours.

Roman Mars [00:15:07] According to the law, the president is supposed to consult with Congress in every possible instance before sending the American military into armed conflict.

Elizabeth Joh [00:15:15] What actually happened in the case of killing General Soleimani? Trump did not consult with Congress beforehand. In theory, the War Powers Resolution contemplates that Congress is supposed to work with the president unless there's some really good reason why they can't. So maybe you can't consult if there's some emergency. Was this such a situation? At first, the Trump administration said that the strike prevented an "imminent attack on American interests." But then those explanations changed. Secretary of State Mike Pompeo told Laura Ingraham on January 9th--

Mike Pompeo [00:15:52] There is no doubt that there were a series of imminent attacks that were being plotted by Kassam Soleimani. We don't know precisely when, and we don't know precisely where, but it was real.

Elizabeth Joh [00:16:02] And then on January 13th, Trump tweeted, "The fake news media and their Democrat partners are working hard to determine whether or not the future attack by terrorist Soleimani was 'imminent' or not and was my team in agreement. The answer to both is a strong yes, but it doesn't really matter because of his horrible past." So, it doesn't really matter, according to Trump, whether it was imminent or not. But that doesn't help in his noncompliance with the War Powers Resolution. And what about that tweet notification to Congress? It turns out that, well, 48 hours after the drone strike, the White House did send a formal notification to Congress, as they're supposed to do. What did it say? We don't know because the notification was classified and not released to the public. So, were we about to go to war with Iran? On January 7th, Iran retaliated against the United States by firing more than a dozen ballistic missiles at two Iraqi air

bases where American military forces were located. No Americans were killed, although some were reportedly injured. And then the world watched foreign relations by tweet. Iran's foreign minister tweeted, "Iran took and concluded proportionate measures in self-defense. We do not seek escalation or war but will defend ourselves against any aggression." President Trump responded by tweet, "All is well. Missiles launched from Iran at two military bases located in Iraq. Assessment of casualties and damage is taking place now. So far, so good. We have the most powerful and well-equipped military anywhere in the world by far. I will be making a statement tomorrow morning." The next day, Trump spoke from the White House and told reporters that "Iran appears to be standing down, which is a good thing for all parties concerned and a very good thing for the world." Of course, this was a volatile and tragic week in other respects. Because of these tensions, Iran also accidentally shot down a Ukrainian Airlines flight on January 8th, killing all 176 people on board. But between the United States and Iran, that--for now--appears to be that.

Roman Mars [00:18:18] Not for Congress, though. On January 9th, the House voted mostly along party lines to prevent Trump from taking additional military action against Iran. It was a nonbinding resolution, however, and thus doesn't have much practical effect.

Elizabeth Joh [00:18:33] The Senate will soon be voting on a similar measure introduced by Senator Tim Kaine. That bill has the possibility of becoming a federal law because if it is approved by the Senate, then it would also go to the House potentially. But ultimately Trump is very likely to veto it and Congress doesn't have the votes to override that veto. These congressional measures, along with the various tweets, press conferences, and speeches by members of Congress--even by some Republicans--show a concern that the president of the United States is overstepping his constitutional authority by failing to work with Congress. Well, it's a classic Trump issue, right? Yes and no. Remember the Panama invasion? President Bush did not consult with Congress before sending troops to depose and arrest the leader of another country. Bush did tell Congress that he was about to invade Panama a few hours ahead of time, but that was not a consultation. And keep in mind that the invasion of Panama was one of the largest deployments of American troops since the enactment of the War Powers Resolution. American soldiers died in the conflict--and yet from Congress, there was silence on Panama. There have been many examples since the Vietnam War when members of Congress introduced resolutions, held hearings, sent letters, even filed lawsuits about presidents they felt were not complying with the provisions of the War Powers Resolution.

Roman Mars [00:19:58] So why was Panama different?

Elizabeth Joh [00:20:00] Like most things, there's probably not one single reason. Public opinion supported removing Noriega. So did most of Congress. And the major objective of the invasion--taking Noriega from power and getting him back to the United States--happened within days. And it also happened while Congress was on its winter break. When they returned to session, the whole thing was over. There wasn't much to complain about. By contrast, congressional reaction to Trump's drone strike is more familiar, historically. Congress is pushing back against the president for ordering military action abroad without complying exactly with what the War Powers Resolution appears to require. But this is Trump. And the part that is new is Trump's brand of presidency. The impulsiveness, the conflicting rationales, the tweeting back and forth. All of this gets mixed in with impeachment, too. On January 9th, Trump tweeted, "Hope that all House Republicans will vote against crazy Nancy Pelosi's War Powers Resolution. Also, remember her speed and rush in getting the impeachment hoax voted on and done. Well,

she never sent the articles to the Senate. Just another Democrat fraud. Presidential harassment."

Roman Mars [00:21:20] So we have the quiet Panama incidents. And then we have the slightly more, you know, like, "We're going to put some resolutions together that condemn this in some way." Have there been times in between where this has been tested in different ways? And how did it shake out?

Elizabeth Joh [00:21:34] Yeah, I mean, as I said, what we're seeing now with Iran is very familiar because what typically happens is there will be members of Congress who are very upset that the president--very often of another party, but not always--is doing something that feels like is a breach of proper division about the war power. And you'll see speeches. You'll see things like this non-binding resolution we're seeing now. But nothing ever really gets resolved ultimately because, number one, the Constitution's pretty unclear. Number two, courts just don't want to get involved in what essentially feels like a political sort of issue. What we see is, like, in the gaps where the Constitution doesn't say anything, historically, Congress and the president are always sort of working something out. We never come to the brink of, "Well, then Congress is going to pull money from the troops so they have to come home" because that would be political death, right? That's sort of their ultimate option. So instead, you see a lot of speechifying attempts at legislation. And then ultimately some kind of compromise occurs. And, of course, you know, public opinion can be very strong here in either weighing against what the president does or what Congress does. So, the short answer is: No, we've been going through the motions with the War Powers Resolution ever since it was enacted. And, you know, literally every president since Nixon has said, "I don't really have to comply with this, but I'm just going to do it to make you happy." And sometimes they don't even do that.

Roman Mars [00:22:57] Right. So, this is one of these rare cases in the history of this show in which the conflict between Trump and Congress is kind of typical.

Elizabeth Joh [00:23:07] Yeah, it feels refreshingly familiar. Right. It feels like, "Oh, this is normal conflict."

Roman Mars [00:23:11] I mean, the only weird part is the Twitter part of it and the sort of bold admission of future war crimes, which is probably just related to the fact that he doesn't know what he's talking about.

Elizabeth Joh [00:23:23] That could be it. But yeah, the Twitter part is absolutely the novel part of it--sort of the changing, shifting, you know, rationales for what's happening. Also, the representatives of two countries on the brink of war potentially tweeting at each other seems bizarre. So, there's that, too. But the actual constitutional conflict about whether or not the president has to comply--could be forced to comply--with the War Powers Resolution? That's a kind of normal conflict. That's happened a bunch of times.

Nancy Pelosi [00:23:56] Last week, in our view, the president--the administration--conducted a provocative, disproportionate airstrike against Iran, which endangered Americans. And did so without consulting Congress. So, if you want us to all join together, let us have a strategy that we work together on. I do not believe, in terms of what is in the public domain, that they have made the country safer by what they did. And that is what our responsibility is.

Elizabeth Joh [00:24:31] So let's do an impeachment update.

Roman Mars [00:24:32] And so today is January 21st. Tuesday, January 21st. And we're in the middle... We're not in the middle. We're in the beginning of the Senate trial.

Elizabeth Joh [00:24:42] That's right. We're having hearing opening arguments today by the House managers and also responses by the president's lawyers. And at this point, there is a lot of wrangling about Senate procedures--about exactly whether or not witnesses will be called and what kinds of documents and evidence will be considered by the Senate. So, we're just getting started.

Roman Mars [00:25:04] And so this is a shifting landscape. So, we're just going to talk about what we know at this point, which may be a little different than when an audience member might be hearing this recording. Okay.

Elizabeth Joh [00:25:13] So in December, the House passed two articles of impeachment against President Trump. The first one alleges an abuse of power on the part of the president regarding his attempt to pressure Ukraine into opening an investigation into Joe Biden and his son in exchange for military aid. The second article charges Trump with obstruction of Congress by refusing to help the House in its investigation. On January 15th, the House voted to send the formal articles of impeachment to the Senate. Seven House Democrats were named as impeachment managers. These are sort of like prosecutors who are supposed to make the case against Trump in the Senate trial. They literally walked across the Capitol from the House chamber to deliver two articles of impeachment to the Senate. Just a few hours before the Senate trial was to begin, the Government Accountability Office, which is a nonpartisan agency in the federal government, issued a report on Trump's decision to withhold that almost \$400 million in aid to Ukraine. And some context--there's a provision of the constitution known as the Take Care Clause that says the president "shall take care that the laws be faithfully executed." And according to the GAO report, "faithful execution of the law does not permit the president to substitute his own policy priorities for those that Congress has enacted into law. The withholding was not a programmatic delay." So that's just a very formal way of saying, "It appears that the president did break the law," according to the GAO. And that was just Thursday morning. At five minutes past noon on January 16th, the seven House managers arrived at the Senate. The Senate Sergeant at Arms declared, "Hear ye, hear ye, hear ye. All persons are commanded to keep silent upon pain of imprisonment." He will say the same thing each day of the Senate trial--only the third impeachment trial of a president in American history. Then came more formalities. As the Constitution itself states, "the Chief Justice of the Supreme Court presides over the Senate trial of the president." Chief Justice John Roberts was sworn in by Senator Charles Grassley, the senate president pro tempore. If you want a sense of how formal the process is, the Chief Justice was transported to the United States Capitol by car, as he will every day of the senate trial. Do you know where the Supreme Court is in relation to the Capitol?

Roman Mars [00:27:45] It's sort of right behind it, right?

Elizabeth Joh [00:27:47] It's across the street. He's going to travel by car every day.

Roman Mars [00:27:51] Across the street.

Elizabeth Joh [00:27:53] Just gets in the car; it's like a Warner Brothers cartoon. Then it was Justice Roberts' turn to administer the oath to all the senators. This is what the oath, which has roots in the 1700s, said--

John Roberts [00:28:08] Do you solemnly swear that in all things appertaining to the trial of the impeachment of Donald John Trump, President of the United States, now pending, you will do impartial justice according to the Constitution and laws, so help you God?

Senators [00:28:24] I do.

Elizabeth Joh [00:28:26] They said this out loud, but then they also individually signed an oath book. So, the senators are now jurors who will hear evidence and arguments presented by the House of Representatives and the White House to decide whether Trump should be removed from office. The Senate then moved to issue a summons to President Trump that formally notified him of the trial and of the charges against him. On Saturday, January 18th, the House submitted in a 111-page opening trial brief. It begins this way: "President Donald J. Trump used his official powers to pressure a foreign government to interfere in a United States election for his personal political gain and then attempted to cover his scheme by obstructing Congress's investigation into his misconduct. The Constitution provides a remedy when the President commits such serious abuses of office--impeachment and removal." The White House released a response the same day. The seven-page document begins, "The articles of impeachment submitted by House Democrats are a dangerous attack on the right of the American people to freely choose their president." And on January 20th, the White House formally responded with its own 110-page brief. The tone of its opening won't surprise you. Here it is. "The articles of impeachment now before the Senate are an affront to the Constitution and to our democratic institutions. The articles themselves and the rigged process that brought them here are a brazenly political act by House Democrats." And the president's lawyers here have made a striking argument; even if Trump did abuse his powers in office, he can't be impeached because he hasn't been accused of a literal crime. It's a notable argument because most people with some knowledge of constitutional law agree that impeachable offenses don't have to be crimes. That idea goes all the way back to the drafting of the impeachment clauses. The convenient part of this argument for Trump? It means that you don't have to argue about the facts. All you have to say is that the process is itself illegitimate.

Donald Trump [00:30:37] There was one call, which was perfect. And then there was a second call, I guess a couple of months later, which was perfect. The president of Ukraine said it was perfect. This was a perfect call. And I think we're doing very well.

Roman Mars [00:30:52] And their 110-page rebuttal--the White House's 110-page rebuttal--when they use a word like "rigged," like the way that Trump speaks, is the audience for that term Trump? Like, pleasing him? Or is it really meant to convince Congress? Or is it going to convince the American people? What is it meant to do?

Elizabeth Joh [00:31:14] Well, he's not going to read the brief, so the brief is not for him. But to the extent that any of that gets extracted into soundbites and little clips--or pieces of the brief that are put on television for 10 seconds--I think it is meant for Trump supporters because I don't think there are any serious arguments, legal arguments, about impeachment. The very process here is rigged. You know, if it's like a trial, there'll be facts and evidence. And as we speak, the Senate is sort of wrangling about procedure and what's going to happen next. But the rigged argument is of a piece with what Trump's rallies are like and his general demeanor about institutions. And I think it's meant for an audience--for clips and memes and things like that.

Roman Mars [00:32:00] Is the brief, like, an official legal part of the impeachment proceeding?

Elizabeth Joh [00:32:05] Yes. So, they were required--the House was required--to file a brief. And then the president's lawyers also filed a brief. You will then see what looks like an approximation of a normal trial, except there are a lot of outlying nonnormal trial-like things. You know, the Senate is sitting as a jury. But they also get to state what the rules are; they get to decide what the rules are, which is, of course, not at all like a normal trial. The jurors get to decide what evidence they want to hear. That's not trial-like at all. It's not conventionally like a trial. So, there's a lot of misleading things. I mean, I think there's already some hope. You know, I think the American public sometimes attaches itself to great public figures they feel will save the day. I mean, Chief Justice Roberts, under the terms of the Constitution, is not actually the judge in a conventional sense in the Senate trial. He's the presiding officer. So, we'll see how it actually plays out. But he'll be called upon to make some decisions. But his decisions can also just be overridden by the majority of the Senate. So, it's not like he gets to say what is going to happen. He might weigh in a little bit. And he'll do formal things, like, you know, read the senator's questions out loud. But that certainly doesn't require a huge amount of skill. I think what we should be prepared to see is as much a political spectacle as a legal one.

Roman Mars [00:33:25] So if the senators make the rules and Roberts does happen to want to hold someone in contempt, they can override all that stuff, right?

Elizabeth Joh [00:33:34] Well, I mean, I don't think it would come to that. I mean, I think basically the best way to think about it is this. In a normal, ordinary run of the mill case, a jury just decides facts, and the judge decides the law. And they have those very clearly delineated roles. But in the Senate trial, the jury is going to decide the facts, but they also basically decide the law that they're going to apply to their own facts, which is quite bizarre and, of course, can't help but be partisan or political because of the process. Your average judge cannot have his rulings overturned by the jury. So that's what you could see here.

Roman Mars [00:34:13] Even the opposite, like a jury trial could happen and the judge can nullify the result if they feel like it violates the law.

Elizabeth Joh [00:34:20] Well, that's not going to happen.

Roman Mars [00:34:22] It's so tipped in the balance of the law in an actual criminal case that--

Elizabeth Joh [00:34:27] Yeah, I mean, the jury has power in an ordinary case to, you know, make ultimate factual determinations, which can be things like guilt or innocence in a criminal trial. But, like I said, don't put too much faith in Roberts somehow bringing down the fairness hammer. The process isn't meant to work that way.

Roman Mars [00:34:48] It's not robust enough to handle a real challenge to it in a lot of ways.

Elizabeth Joh [00:34:53] I mean, the biggest source of pressure would be public opinion and people weighing in.

Roman Mars [00:34:58] Yeah.

Elizabeth Joh [00:34:58] And we shall see how long it takes. It may be over within a week or two, or it may take a month.

Roman Mars [00:35:04] Right. This show is produced by Elizabeth Joh, Chris Berube, and me, Roman Mars. You can find us online at trumpconlaw.com. All the music in Trump Con Law is provided by Doomtree Records, the Midwest Hip Hop Collective. You can find out more about Doomtree Records, get merch, and learn about current tours at doomtree.net. We are a proud member of Radiotopia from PRX, supported by listeners just like you.