

Joyce Vance:

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Jill Wine-Banks:

Welcome back to #SistersInLaw with Joyce Vance, Barb McQuade, and me Jill Wine-Banks. Kim is away this week, but we already miss her, and can't wait to have her back. You might have seen that we tweeted some photos of us wearing our pale blue women's t-shirt, which is of course available at [politicon.com/merch](https://politicon.com/merch). Get yours now. We love them. I'm wearing mine today, and if the... Oh, good.

Barb McQuade:

Me too.

Jill Wine-Banks:

Joyce is in Washington, so she's probably too fancy for us.

Joyce Vance:

I'm not wearing mine, but I do love it.

Jill Wine-Banks:

Today, we'll be doing a perjury explainer, and discussing mounting evidence coming out of the January 6th investigation in books and in the news. Then we'll talk about the praying football coach, whose case was argued at the Supreme Court this week. As always, we look forward to answering your questions at the end of the show. Before we begin our serious issues, I want to talk about all of you and what you would call your memoir. I have to defend the title of mine, which is the Watergate Girl. People often ask, "How could you write a book with the word girl?"

It's really easy to understand, because it was suggested by the publisher who has the final say on what a book's title is. I said, "Then you're not publishing my book, because I won't use girl. He said, the editor said to me, "Well, what captures the era better than the word girl?" Man, he had me at that, because it really is true. The '70s, I was called a girl. That's what it was. There were still ads that said help, wanted male. Help, wanted female. I love that title, but I have a title for a second book that I'm thinking of writing, and it's about Jill's pins, and it's called Broaching the Truth, the Trump-

Barb McQuade:

Love it.

Joyce Vance:

Oh, good. So good.

Jill Wine-Banks:

It's the Trump administration through Jill's pins. Maybe I'll get to work on that. Barb, what would you call your memoir?

Barb McQuade:

Oh, so good.

Joyce Vance:

That's awesome.

Barb McQuade:

When I was a little bit younger, my kids were small. I always said that if I were to ever write a memoir, it would be entitled here, mom, hold this, because that's for most days of my life is the thing I heard most frequently. I could go out and work as U.S. attorney prosecute public corruption cases, whatever. But most frequently, the phrase I heard was, "Here, mom. Hold this." But more lately, I think that this era of my life would be called, "Has anyone seen my phone?" Because I say that many times a day. Has Anyone Seen My Phone: The Memoir of an Absent-Minded Professor. I think it would be something like that.

Jill Wine-Banks:

I love that.

Joyce Vance:

Hey Barb, I had to actually get an Apple Hub. It's like this HomePod thing. It's expensive. The only thing I use it for is to say, "Hey Siri, can you find my phone?" Wherever the phone is in the house, she'll make it play that little tone.

Jill Wine-Banks:

Oh, that's good.

Joyce Vance:

She'll say, "Your phone is nearby. Hang on a second, Joyce." I can literally hear my husband rolling his eyes, but it saves me so many times.

Barb McQuade:

Does she ever get frustrated with you, like when it's the third or fourth time that day, "Hey, it's in the kitchen, you dumb?"

Joyce Vance:

You, guys, did you hear that? When we said that, Siri on my phone just literally said, "I don't have an answer for that. Is there something else I can help with?" She's so helpful. She never gets frustrated with me.

Jill Wine-Banks:

The only reason for a landline phone is so that you can find your cell phone.

Siri:

Is there something else I can help with?

Barb McQuade:

What about you, Joyce, what's your memoir title?

Joyce Vance:

Okay, Siri, stop now. But no, I think my title would have to be never enough chickens, which is a good metaphor for the way we live. We are always doing something new, whether it's planting new stuff or acquiring new chickens, because exciting news in our house, as long as my chickens stay on their eggs, we might have baby chicks rolling next week.

Jill Wine-Banks:

Wow. We need to see pictures.

Joyce Vance:

I know. It's really exciting. I can't wait. I'll send you all pictures.

Jill Wine-Banks:

Well, those are going to be books I want to read for sure.

Barb McQuade:

Well, it's springtime, and I am determined to plant something beautiful in my yard. Joyce, I know you've used FastGrowingTrees in the past. I'm thinking about ordering something. How does that work?

Joyce Vance:

I adore FastGrowingTrees. In fact, the last thing I did... I'm out of town. The last thing I did before I left was to fertilize my Meyer lemon tree, which is big and has lots of beautiful growth. I am looking forward to lemons this year, because spring and summer are actually the season for finally getting outdoors and entertaining, especially if you're up in Michigan, pool parties, barbecues, all of that. But if your yard looks like a plant cemetery, you're not going to enjoy it as much. Get your place looking like a resort easily with FastGrowingTrees.

When it comes to caring for your plants, know-how matters. That's why fastgrowingtrees.com's experts curate thousands of plant varieties that will thrive with your specific climate location and needs. Their advice about climate has been great for me. My blueberries are finally growing, because I have plants that work in my area of the country.

Jill Wine-Banks:

There's no lines and messy cars from hauling plants all over town, because you order online or over the phone, and your plants are shipped to your door in one to two days. Plus, they're growing and care advice is available 24/7. Although Joyce, I'd like to have some advice on fertilizing from you as well. Whether you're looking for increased privacy shade or adding some natural beauty to your yard, FastGrowingTrees have the perfect plants and the expertise for you.

Joyce Vance:

Jill, I'm probably going to upset Barb when I say that my advice about fertilizing is to get chickens, and use the chicken poop to make compost. It's fabulous. I think, although my FastGrowingTrees have grown quickly, they're even better than they would be because they have that wonderful chicken poop fertilizer. Sorry, Barb.

Barb McQuade:

I don't need any fertilizer at all, because I've already got enough BS.

Joyce Vance:

There you go. Well, even if you've never had a green thumb, like miss McQuade, FastGrowing plants will make you feel like you do. But, Barb, really, I have faith in you. One million home gardeners have already seen what fastgrowingtrees.com can do for them. Now, it's your turn. We love what FastGrowingTrees has done for our homes and gardens. We know you will too. Plus, with their 30-day alive and thrive guarantee, you can trust everything will be healthy for years to come. I once had a plant show up from them that had done poorly in shipping. They replaced it promptly.

So go to [fastgrowingtrees.com/sisters](https://fastgrowingtrees.com/sisters) right now, and you'll get 15% off your entire order. Get 15% at [fastgrowingtrees.com/sisters](https://fastgrowingtrees.com/sisters). That's [fastgrowingtrees.com/sisters](https://fastgrowingtrees.com/sisters), or look for the link in our show notes.

The January 6th committee has been working at a fast pace. We're hearing more and more about their work, new revelations keep coming to light. Meantime, there are some signs that DOJ's investigations are looking higher up the food chain than the Proud Boy and Oath Keeper cases that are currently in progress, but no indictments yet. What does it all mean? The big question is whether we'll see accountability for these efforts to subvert the election that culminated in an insurrection. Let's talk first about the committee's hearings, which we've now seen a schedule for.

We've learned that there will be eight all televised during June, starting on the ninth. Jill, what do you think about this proposed approach? You tweeted, "U.S. capital riot, January 6th committee, to hold public hearings in June, properly planned. They will exceed the drama and impact of the Watergate hearings. I can't wait to watch you." You ask this question, and you look at these hearings, I suspect, through the lens of your Watergate experience. Do you think that they can come up with a strategy that will catch the public's attention, and will that change anything?

Jill Wine-Banks:

Yes and no. Yes, I think they can come up with a great strategy, and with the available techniques that they have that we didn't in terms of the kind of graphics and videos that they can use, and the way they can play audio that we didn't have, it will be very dramatic to hear the words of the actual participants in this insurrection. But will it change anything? Probably not because the people who need to have their minds inundated with facts are not going to be listening. They'll be listening to Fox news, which will be putting forth totally fake information.

They will listen to Donald Trump interpreting things in a way that has no relationship to reality, but there is a chance that there will be those people in the middle, some more middle of the road Republicans, some independence, and that they will be the ones who are impacted by it. Also, possibly, it can attract the youth vote, which I am now thinking is really important. They are becoming more and more disengaged. So if we can attract independence and young voters and some Republicans, then it will make a difference. In any event for history, it's very, very important.

It made a huge impact during Watergate. It changed people's perspective of whether the president was a crook. He said, "I'm not a crook." People went, "Oh, yes you are." I don't know that it'll be as dramatic as that, but it is so worth doing. It is the right answer. I just want to add, I think that the Mueller investigation failed in part because they did not put forward a compelling visual narrative. They issued a very long report, which all of us read, but people around the world did not read. Watching this could be a difference, so I think it's really important.

Joyce Vance:

I think that's a fair criticism of the Mueller report. I mean, for us, it's essentially our job to watch or to read these sorts of things. A lot of people have lives to live and families to take care of. They need to really... I think it's the responsibility of our legislators to deliver the facts to them in a method that makes it easy for them to consume. I'm sure you guys saw the reporting this morning. CNN has gotten its hands on 82 text message exchanges between Mark Meadows, the Trump White House chief of staff, the last one, and Sean Hannity at Fox News.

Hannity is essentially asking the White House to tell him what he should be reporting on in his shows. My head just exploded. So Jill, I agree with your point that Fox News may not really present this. Given all of these problematic issues, Barb, what's your view of how these hearings will play, and what the committee needs to do?

Barb McQuade:

Well, I think that people tend to look at this solely as a political opportunity. How will it affect the midterms, and can they get the people spun up in time for the midterms? I look at it from a longer view than that. I think regardless of whether it has any impact on the midterm elections, it's just really important to understand what happened, because our nation was under attack. I think of this the way I think

of the 9/11 commission and the way they did their work. They were trying to figure out how is it that we had this attack.

They looked at it from lots of different perspectives, the intelligence community, border security, the security of documents, identification documents, and all of those kinds of things. Then at the end of it, they looked for gaps in the law, and found ways to change the law to prevent some of these things from happening again. I think that's the mission here. I'm less concerned about a dramatic moment when we read Marjorie Taylor Greene's emails or text message or something, and laughed at... She's misspelled martial law or something.

That's all very amusing for the political classes, I think, but I think we really need to determine how on earth could this have happened? We came really close to a coup, and how do we make sure this doesn't happen again? I also think there's value in finding facts that can be shared with the Justice Department, who, no doubt, is also investigating this from a criminal perspective, very different mission from what the committee's mission is. But to the extent, they elicit useful testimony, and they've already talked to 900 witnesses, some of which has been very, very enlightening that they can share that with the Justice Department so that they don't need to spin their wheels and duplicate efforts.

I think for those reasons, I'm looking for substantive things that can help understand where the weaknesses are in our election laws, and our information security, and our voting security that could have allowed them to get this close to overthrowing an election.

Jill Wine-Banks:

Barb, I think you mentioned something that's really, really important, which is the role of congress. That is to fill the gaps that are going to be discovered in our laws to ask, "Why did we have this happen? How could it happen, and could it happen again, and what laws need to be amended so that it doesn't?" Clearly, the Electoral College Act needs some help. There are many other areas where laws need to be put in place to make sure that we don't lose the fundamental principles of our democracy.

Joyce Vance:

I really agree with that. Times change. Technology advances, and our laws need to be refined to protect our elections. I hope that Congress will look at some gaps in the law. Jill, you point to the Electoral College Act that really need to be updated to protect our elections, which should be bipartisan work. Everyone should want to make our elections fair and secure. Maybe while they're at it, the Democrats can finally get the restored Voting Rights Act across the finish line, ha, ha, ha, right? Because there's been no success in that so far, which is I think one of the reasons that we're where we are.

But be that as it may, Jill, we now have news from committee chairman, Benny Thompson, that he's going to ask house GOP leader, Kevin McCarthy, Representatives Perry and Jordan to cooperate in the investigation. There's even more reporting that they're considering sending letters, requesting testimony to Marjorie Taylor Greene, to Lauren Boebert, to Mo Brooks, and to Andy Biggs. These new letters are being

discussed internally as a final chance for these folks to cooperate voluntarily before the select committee considers ways to compel their assistance.

Do you think the committee should issue subpoenas, and do you think that they'll be enforceable if they do?

Jill Wine-Banks:

Yes, I think they should issue subpoenas if the letters do not work. I think that every citizen in America has an obligation to cooperate in this investigation of something that was clearly terrible, which even those people whose names you've mentioned, even the most right wing of the Republican supporters of Donald Trump recognize in reality the danger that we were in and how close we came to losing our democracy, because that's what they said initially before they backed off it. They know that there's a real problem, and they should be willing to share very relevant information with Congress so that it can take whatever steps it needs to take.

Will the subpoenas be enforced? Well, based on what's happening with the currently pending contempt work recommendation to justice about Mark Meadows, I don't know. It's taking them an awfully long time. While there may be reasons for this delay, and I think even you, Joyce, are moving toward the feeling that the time has come for the Department of Justice to act, that there's low hanging fruit, that there's evidence apparent to every person who's read the news over the last few years that needs to be dealt with.

There is more, there is no doubt, and you can investigate this forever, but at some point, it's time to say enough is sufficient, and we're going to act on it. I hope that they will. I hope they'll issue subpoenas. I don't see any special protection for members of Congress. They have a privilege based on anything they say on the floor of the house in connection with their job. But when they're acting in a campaign mode or outside their job, they're just like any other citizen, and they shouldn't get a break.

I think the president can be subpoenaed. I thought back in Watergate, and still think a sitting president can be indicted for crimes. Certainly, a former president can be indicted and also subpoenaed.

Joyce Vance:

I agree with you. Just to be clear, if I was the sitting attorney general of the United States, I think I might have had a more aggressive approach towards this entire issue. From day one when I stepped in, I think that there are multiple legitimate approaches. I understand the institutionalist's view. That's respectful, but I have for a long time thought it was past time to go ahead and enforce these subpoenas. This is the only way of ensuring that congressional oversight remains rich and full that we have a functioning three party or rather a functioning three branches of government system with oversight that actually works to hold the executive accountable, so no argument from me.

I would've frankly enforced the Meadows subpoena from the get go, although Barb has made the point that DOJ could possibly be treating him as a witness in other cases, or maybe as a defendant in other cases, but I think it's overdue. But Barb, our

friend, Dan Goldman tweeted, former prosecutor in the Southern district of New York, Dan tweeted, "One benefit of the leak of Meadows' text messages is that it ensures DOJ gets access to them without having to overtly request them. DOJ cannot avoid looking at them as part of the coup investigation. If that was the purpose of the leak. It's very clever."

How about it? Do you agree with Dan?

Barb McQuade:

Super interesting. I saw that tweet when it came out. Dan has been not only a federal prosecutor, but he has also served as counsel to the committee that conducted Donald Trump's first impeachment. He knows how these committees work. So if he has that insight, he probably knows more than I do about whether that was the purpose. I don't know that that means it will be received that way. I mean, Joyce, you know how these things work. It isn't like DOJ is wondering what to do with this, and they're befuddled, and they're lazy, and they're slow.

Gee, if only we had a little more information, we might decide what to do with Mark Meadows. I think their... I have faith in them, and maybe that is naive. Maybe that is being blindly loyal to an organization I worked for. But number one on Mark Meadows, I think that they haven't just not gotten around to charging him yet. I think there's a strategy behind it. Either they're considering him more as a target or subject of bigger charges, like conspiracy to defraud the United States, or seditious conspiracy, or obstruction of an official proceeding, or he filed his own civil lawsuit in December.

Part of the principles of federal prosecution say that you should bring criminal charges if you believe you can obtain and sustain a conviction, and there is no alternative remedy available. With that civil lawsuit pending, we saw the committee file a motion for summary judgment just about a week ago. It seems likely that there will be a decision in a civil case where they'll get an order compelling Meadows to testify and to comply with the subpoenas.

It seems to me like that's going to be faster and cleaner than going through a whole trial and then an appeal. If they really want to use Meadows as a witness, and not just make an example of him as, I think, they did with Steve Bannon, then I think this other route might actually be a better strategy. I know it's frustrating to see them as this chamber of silence where nothing comes out. We don't know what they're doing, but as Merrick Garland has emphasized, there are norms at DOJ. You don't announce pending investigations, and it's more important to adhere to those norms during moments of crisis than at any other time.

I think even with regard to... I know, Jill, you have agitated that you're antsy. Why aren't they doing anything? I'm certain they're doing tons. I think they're probably working around the clock 24/7, but I don't see a charge coming out this year. I think if it comes out, it'll be well into next year. It just takes so long. I look at that case in Michigan where Gretchen Whitmer's kidnapper or plotters allegedly were either too acquitted or subject to a hung jury. Man, that was a pretty clean, tight case, but it just, I think, shows you the enormous burden of proof when you're trying to prove guilt beyond a reasonable doubt, and you've got to prove it unanimously to 12 jurors.



There are going to be jurors in the batch who are Trump supporters, or who are skeptical of government in one way or another, and so it's got to be airtight. It's got to be an airtight legal theory, and you've got to have airtight facts. I think there just hasn't been time for them to completely scour all of these facts yet, because, of course, you have to not only have enough to run with. You have to disprove the negative, all of the other possible innocent explanations that the defense might come up with, and that takes time.

I remain optimistic that they get it, that they're working toward investigating and holding accountable all of these people. I think one of the things that we can do, or I can try to do is just to help the public understand why it takes so long, and try to manage expectations. It's not coming before the midterms.

Joyce Vance:

It's such a good point. I know people are so frustrated, but having done, like you, Barb, a number of these public corruption investigations, they move slowly, not because anybody is being negligent, but because for instance, convincing witnesses to cooperate with you, it's a slow process, and then getting them in there to cooperating and gathering the evidence, and putting it together, and figuring out what else you need. Even if you're diligently working on a case 24/7, that sometimes takes years to come together. There is nothing worse than shooting at the king and missing.

Jill Wine-Banks:

I agree with your conclusion that you can't shoot and miss, but there are cases that aren't the whole case. You can add indictments. You can add counts. There are some things that have happened that are as clear as Mark Meadows having been in contempt as Steve Bannon having been in contempt, and those cases should be brought right away while more is developed. In Watergate, we got some of the most incriminating evidence in response to a trial subpoena, which was right after the indictment. We indicted...

In less than a year after our appointment, we were appointed in May. By the next March, we had indicted. Then we developed additional evidence in support of the indictment, and went to the Supreme Court. We did a lot of stuff in between indictment and trial, but I just don't think you have to wait for the perfect case. You're right. There could be one Trumper on the jury that will lead to a hung jury. That is absolutely going to be a risk no matter what. But I also want to point to in the Manafort case, there was a Trumper on the jury who said, "I voted to convict on every single count, because as juror, I was sworn to listen to the evidence, and decide on the evidence, and the evidence was clear that he was guilty."

"I believe in Donald Trump, and I believe all this other stuff that he says. But in court, I had to go as a juror." I believe jurors take their oath seriously, and so I just think that there are cases that can and should be brought sooner rather than later, and that our democracy is on the balance here and needs to see some action so that people don't give up hope. Young people particularly are distraught over this, but so are my generation. We're very upset about the lack of action.

Joyce Vance:

Barb, do you think that there's a middle ground here? Can DOJ do anything while it's investigating to try to help the public have confidence in its integrity? In other words, not to promise that there will be indictments, but for instance, for Merrick Garland to go out and talk about the process that DOJ uses more, not necessarily in the context of the January 6th investigation, but in a way that helps the public understand why these delays happen, why DOJ can't do more to openly talk about cases. I feel like some conversation about process, some civic education about process would go a long way here. Am I right, or am I wrong?

Barb McQuade:

I think you're right about that. Now, he did give that speech on January 5th, which I think was excellent. He talked about a commitment to holding accountable everybody, anybody at any level, whether they were at the Capitol or not, who was responsible for this assault on our democracy, words to that effect. Then he did, in that speech, talk about how they start with cases that are right in front of them, and they use it to work their way up, and build larger cases. I think the public has such a short memory that it would be useful for him to get out there and talk again.

Also, Joyce, you've pointed out that his remarks were really very focused on January 6th as that date creating, I think, at least some uncertainty, confusion as to whether he was talking about only the attack or the entire bigger picture of the effort to overthrow the election. I think you could talk about that without identifying individual suspects. I think it might be more assuring to the public to talk about that and to talk about process, and to explain why it takes so long. I can remember doing a lot of that. When I was serving as U.S. attorney, it took us about five years to charge our former mayor with a massive public corruption indictment.

There was a lot that was in the public domain about that case, because he had had a related state case, and so there were bits coming out that there was a federal investigation. We talked all the time about why it's so important to take our time and to do cases properly, and to be patient. I think that that was well served. It just helped, I think, make sure people knew that it isn't because you didn't care, or you're not working very hard, that idea to assure the public.

The DOJ policy on neither confirming nor denying the existence of an investigation does have an exception when necessary to assure the public. I think in very broad terms, he could be doing a little more maybe to talk about the ways in which the justice department is on the job.

Joyce Vance:

I think that's a great point. We could do a lot to help the public understand the time it takes. I always remember like your mayor case, we did the entire county commission in Jefferson County, Alabama's biggest county. It took a long time to go all the way up and get to all of them. I remember we were indicting the last one about the time I was arguing the first case on appeal in front of the 11th circuit. One of the judges on the panel looked up at me as I finished my argument and said, "Well,

Ms. Vance, before this is over, you'll be able to have a full quorum meeting of the Jefferson County Commission in federal prison."

It literally had taken that long for everything to come together, but I think the public, at the end, appreciates the work. Like you and Jill, the point you all have made is the question is whether there's sufficient confidence there while the work is ongoing for the public to have a reasonable basis for trusting DOJ, and saying, "Okay, Merrick Garland, we'll spot you the time that you need." The problem is coming out of the Trump era, people just don't have that level of confidence. I do think DOJ is going to have to find a way to do more.

Jill Wine-Banks:

There's a lot of reaction from people saying, "I'll believe it when there are indictments." There's a general reaction now that no matter what... That was the reaction to the January 5th speech that Merrick Garland gave, which we all liked, but it really isn't a substitute for action. I don't think it's satisfied the public interest in seeing somebody held accountable for the serious threats to our democracy.

Joyce Vance:

Agree. Let's make a pact that on the morning that we wake up to find that DOJ has handed down indictments, no matter where the sisters are, we'll all fly to someplace together and share some champagne to celebrate.

Jill Wine-Banks:

I would love that.

Barb McQuade:

Deal.

Well, my skin care routine consists of soap and water. I'm curious what you two do to make your skin look so ravishing. Jill, do you have any secrets?

Jill Wine-Banks:

Well, Barb, we're going to bring you into the modern era. We really are, because there are some stuff that just feels so good and smells so nice. There's a company that I've been using, which is a female and family run business. That makes it even better. It's OSEA. They have made clean and ultra effective skincare and body care products for over 25 years using seaweed as their star ingredient. It's all vegan and climate neutral certified. They have award-winning cleansers, serums, face moisturizers, and they're known for creating incredible body products like their famous body oil.

I love their new body cream. It is really just absorbs into your skin. You will love using it. It makes you feel really good. Their body oil has been key to my daily skin care routine, and its seaweed-infused ingredients make your skin look healthy, smooth, nourished, and glowing. With summer coming up, it's the perfect addition to your body care regimen. We all want amazing glowing skin in the summertime, well,

all year. Barb, for you and me in the winter, we really need the moisturizing. The value and quality is unmatched.

Since 1996, OSEA has been creating clean, vegan, and cruelty-free products, and that's important to me. It's safe for your skin and for the planet. They've done it again and again. Another favorite of ours is OSEA's new body butter. It's softening and nourishing with the most amazing citrus scent. It's even clinically proven to moisturize your skin for up to 72 hours.

Joyce Vance:

I spend a lot of time outside in my garden, and messing around with my chickens, which means my hands and sometimes all of my skin really takes a beating. I love OSEA because the rich texture feels good, and it applies smoothly without being sticky. My skin looks moisturized, not crabby. I feel healthy, and a little bit really goes a long way with these products. When I tried it, I knew I was never going back because it gave my skin the energy and the moisture that made me feel my best. I feel confident. I feel hydrated and silky soft.

I don't worry that people are going to look at me and wonder what's up. OSEA is amazing for legs and feet in the summer months. You really should try it. Find your new skincare and body care favorites at [oseamalibu.com](http://oseamalibu.com), and get a special discount just for our listeners. Get 10% off your first order, site wide, with promo code SISTERS at [oseamalibu.com](http://oseamalibu.com). You'll get free samples with every order, and orders over \$50 get free shipping. You'll want it all. Go to OSEA Malibu, [oseamalibu.com](http://oseamalibu.com), and use code SISTERS, or find the link in our show notes.

Jill Wine-Banks:

Every so often, we like to pick a legal concept that's in the news, and give you the background on what it's all about, the things we take for granted, but that are not all that obvious except to lawyers. This week, we want to talk about perjury. Barb, perjury is a term used regularly in news reports, and it's throw about casually in daily conversations about Trump and his supporters, and no doubt by MAGA about anyone who says Trump lost the 2020 election. What does perjury really mean in terms of a criminally prosecutable case?

Barb McQuade:

That's such a great question, Jill, because I think people throw around perjury the same way they throw around treason, right? This is treasonous. This is... He should be charged with treason, which of course has some really specific elements. Treason doesn't apply unless we're at war. It's aid and comfort to the enemy. So often, people, I think, assume it's synonymous with disloyalty to the United States, which it's not. Same with perjury. I think sometimes people will think anytime someone lies, they have committed the crime of perjury. But in fact, there are a number of different statutes that cover lies.

I think Joyce is going to get into the details of the various elements of each of those things. But depending on where you are, whether you're under oath or whether you're talking to a federal agent, one of the things it really requires is that a person

then and there knew that they made a statement that was false. It's not enough that they're shooting from the hip, that they're being reckless. It has to be a specific statement that you can say, "Here's what you said. At that time, you knew that that statement was false."

I've charged variations on these false statements or perjury. It's hard to charge, frankly, because you have to be able to identify the precise language. Oftentimes, that's from a transcript if somebody was testifying and their words were transcribed. You would say in the indictment, "The person committed perjury when they stated," and then you quote the language, when the person then and there knew that that statement was false. Then you have to go about and prove that they knew that that statement was false at that time.

When it comes to the false statements charge, you also have to show that it was material. It has to be an important fact. It can't just be my favorite flavor of ice cream is vanilla, and I lied when I said it was chocolate. Nobody cares about that. It has to be something that matters, and it's important to the matter at hand. I think that sometimes when people are very casual and tossing off this idea of perjury or false statements, that's not enough. It's not enough to lie on TV, or to lie in a text message, or to lie to political supporters. It has to be either in an official court proceeding or under oath or to a federal agency in a matter within the jurisdiction of that agency.

Jill Wine-Banks:

So Joyce, just to make it even clearer, let's talk about the specific statutes that govern federal perjury. We're not going to get into any of the state laws. But under federal law, there are several things that could apply to a false statement. One is a false statement violation under 1001, but there's also perjury under 1621 and 1623 of all of Title 18, which is our criminal code. Do you want to just talk about some of the elements of those and why you would use one versus the other?

Joyce Vance:

Sure. I think the elements of the perjury charges 1621 and 1623 really illustrate the point Barb is making, which is that you've got to have a precise statement that the witness makes under oath that turns out to be a lie. Technically, the four elements of both of these perjury charges are that the declarant, the person who makes the statement, so it's usually a witness in the grand jury or at trial that that declarant took an oath to testify truthfully. No oath, no perjury charge. You have to testify that they willfully made a false statement that was contrary to the oath. In other words, they lied while they were testifying.

You have to show that the person who made the statement believed that it was untrue at the time that they made it, and, of course, that the statement was related to a material fact. The most important... I shouldn't say the most important. These elements all have to be there, but what makes it so relatively rare to bring a perjury charge because they're very difficult is that the statement has to be literally false and made with the intent to deceive or to mislead. The Marjorie Taylor Greene hearing is a really good example of this, because the private lawyers in that case

weren't lawyers who were used to nailing down a witness who was lying in order to make the perjury charge.

She would make these statements that were generalized and perhaps misleading or false, I don't remember, without any effort to show that they were misleading. For instance, as a prosecutor, if you've got a witness who's repeatedly saying that they don't remember, you might want to start pushing on that, and talking with them about things that they did remember from that point in time, and getting them to the point where they have to concede that it's embarrassing and very unlikely to be true that they remember one text and not others. Then continue to push on that until you have a very precise sort of a lie that you can charge.

That's why you don't see particularly congressional hearings resulting in perjury charges very often at all. Something I really like in 1623, and Barb, I bet you use this provision as well, is that it goes a little bit in addition, and it makes it clear that you can be charged if you make two declarations both under oath, and they're inconsistent to the degree that one of them is necessarily false. You don't have to prove which one is false. But if you've got two conflicting under oath statements, then you are in a setting where you can go ahead and bring a perjury charge.

Of course, 1001 is much more. I think of it a little bit as a catchall. This is for false statements made to federal agents, made to the government. They don't necessarily have to be under oath, although increasingly, there's a trend in some courts to... I think this is a very specific requirement now that you have to be advised that making a false statement can be a lie, or that you're signing a form under penalty of perjury, but no oath requirement, so 1001 can be used for every thing from a signature on a document that contains false information and something like a Sarbanes-Oxley corporate filing that goes to the government all the way on to the FBIs in your office interviewing you, and they say, "Did you rob the bank?"

Maybe they say, "Did your office nextdoor neighbor rob the bank?" You say, "Well, no, he was sitting in his office all day." You know that that statement is false. That's a material false statement that could be charged under 1001. That's a lay of the land here in a statutory sense.

Barb McQuade:

Can I jump in with one thing? That's my favorite aspect of these perjury false statement things. You can recant.

Joyce Vance:

That's right.

Barb McQuade:

There is an opportunity. It's one of the few statutes where you can undo it. We used to... I'm sure you did too, Joyce. This is DOJ policy. Maybe you had this experience, Jill. In the grand jury, when you've got a witness in, a hostile witness, somebody who's not a government agent or something, who is... Before they testify, you read them the rights, essentially Miranda Rights. But in addition, you say, "For perjury and

false statements, you can be charged with a crime if you lie here." Then they give their whole testimony. Maybe they're in there an hour.

They're answering questions. At the end, you say, "Okay, now that you've testified, if there's anything that you said that was wrong, you could be charged with perjury or false statements, if you knowingly made a false statement. Is there anything you would like to correct at this time?" Most of the time, they'd say, "Nope, I testified to the best of my ability. I'm all set. Thank you." Every once in a while, they'd say, "Could I have a moment to go consult with my lawyer who must wait in the hallway?" They'd slip out for a minute, and they'd be gone for a second.

You play with your pencil or something. Then they come back in, and they say, "Remember when I answered that one question about whether I had the gun in my possession?" Yes, I remember. "I said I didn't have the gun in my possession." Yes. "Actually, I did have the gun. I just... I made a mistake. I made a mistake. My lawyer refreshed my memory, and now I realized I made a mistake, so I just want to clarify that." "Okay, thanks." There is an opportunity to clarify and correct.

Joyce Vance:

We would have that experience on occasion, but my favorite one in a public corruption case was a witness who was outraged that that language was used with him, and went to the judge to say that the prosecutor had tried to brow beat him for giving him this warning. Fortunately, the judge wasn't having any of it. That was a very unusual take by a defendant on something that's meant to, frankly, protect the defendant from prosecution for perjury.

Jill Wine-Banks:

Well, let's be honest. It may protect them, but it also is intended to encourage revelations that you're entitled to is a way to bring out the truth. I want to talk about one of my favorite perjury cases, which is a Supreme Court case called Bronston. The reason it's my favorite is because it says, "You can deliberately mislead in your answer as long as it's literally true so that if I ask you a question about what color was the car that you saw," and you say, "Well, I was in a blue car." That's completely immaterial to the question I ask, and it may be literally true, even though it's intended to divert and mislead.

So you can deliberately mislead if you're clever enough. That seems, to me, a big problem when you have white collar criminals or public officials who are corrupt. Do either of you have a favorite perjury case, or are the stories you just told some of your favorites?

Joyce Vance:

I do have a favorite perjury case, but it's a case where we didn't charge perjury. It, I think, maybe illustrates how important it is to have perjury hanging over a witness's head. I was prosecuting a fire bombing case. This was a fire bombing of a witness in a very serious drug kingpin case that resulted in the imposition of the death penalty on a drug kingpin. It was the first time the death penalty was used after it was restored in the federal system. I had this related obstruction case, and we had two witnesses



or two defendants, potential defendants, involved in the fire bombing, who fire bombed the witness's house, and then drive away.

One of those potential defendants is legally blind, so we know he's not the driver of the car. We have a couple of witnesses, and one of them is in the grand jury. He adamantly insists that the guy who had sight was not the driver of the getaway car. So I go through this process that Barb has described, and tell him that we're going to prosecute him for perjury if he doesn't tell the truth. He asks to speak with his lawyer, and the lawyer comes to me with a really bemused look on his face and says, "Listen, the blind guy drove the getaway car."

I said, "No. No, he really didn't." The lawyer's like, "No, put him back on the witness stand, and he's going to explain, and he's going to tell you the truth. He wants a deal. He wants to cooperate. He wants to be a witness, not a defendant." So the testimony that we then had available to us in court when the case went to trial was that in fact, the blind guy, the legally blind guy, is the driver of the getaway car with the other guy who needed both hands free to throw the Molotov cocktail that they used to fire bomb the house. He's saying, "Go a little bit to the left. Go to the right. Now, go straight."

Barb McQuade:

Come on.

Joyce Vance:

We end up, because we have this information, getting testimony from a couple of different witnesses. There were multiple cars there who see it happen, and drive away. The greatest thing in that case though was how law enforcement ultimately found the defendants. One of their tires was literally down to the metal, and there was just a line in the road from where the fire bombing occurred to where these two ended up driving to, and following the fire bombing. The sheriffs in that county just followed the rut in the road, and fingered their two guys.

It was an interesting case for many reasons, but it reminds you of the importance as a federal prosecutor of being open to what is unlikely sometimes being the truth. We were lucky, frankly, that the witness in that case insisted on telling the truth, even when I was a little bit disbelieving. Ultimately, we did get to the right result in that case.

Barb McQuade:

I don't have a good war story of my own to compare with that one, Joyce. That's awesome, but the most famous case of false statements, I think, that I often point to is the case of Martha Stewart, because I think it is a good example of how it works in the real world. That no matter how important you are, how famous you are, the law applies to everybody. The rule of law applies to everybody. In her case, she got in trouble for insider trading. She got a tip on some stock, and sold it ahead of time before the market knew about it.

Then when she was asked about it by investigators, she lied. It was that lie that was the false statements charge. I think it's important... I know at that time,



there are many people who thought, "What's the big deal? What's the harm here? It's harmless. She didn't mean... She's so beloved in all the other things that she does. What's the big deal?" But I remember at the time and the example I often use is that telling the truth is everything when it comes to the court system. I think we've lived in such a world where truth has seemed not to matter anymore, and people are willing to say whatever suits their purpose in the moment.

But in the court system, truth still matters. Unless we are ready to give that up, then we need to safeguard truth by enforcing these laws about perjury and false statements, because cases are all built on the testimony of others, and so we need to make sure that truth is preserved at least in the courts.

Jill Wine-Banks:

That's such a good point, Barb. I have to say listening to Joyce reminded me of actually the favorite perjury trial that I had while I was still prosecuting organized crime. The FBI had tracked two mob hitmen from Boston to California, where they were going to kill some labor leaders. They got caught. Well, actually, before they got caught, the FBI broke into their hotel room, and discovered a huge cash of weapons. They were really worried that they would not be able to stop the murder, and so they left the room quite visibly searched.

The hitman fled town, and got picked up for a speeding ticket on the way to the airport, and then were brought in to us. They answered some questions with perjury, and so ended up being indicted for perjury, not for the murder attempt, which is just one of those things that falls in your lap sometimes. You take what you can when you're dealing with organized crime, or I would say with the Trump administration. That takes us back to our other point.

I think at some point, we should maybe link our first discussion about the evidence in January 6th, and the perjury that we now are seeing in that connection. We can talk about some of the examples of real perjury that would meet the qualifications for the laws that we've discussed. But for now, I think we'll stop with this information for our listeners about explanation of perjury.

Joyce Vance:

Well, Barb, you like me have four kids. One of the many things we learned to deal with with our kids is that they all seem to go through that acne phase. My youngest, who will be eternally mortified if he listens to the podcast this week, is going through that. Have you found anything that helps?

Barb McQuade:

Well, I won't identify anyone by name, but I did want to talk about Apostrophe. We all have to live in our own skin, and that's why our podcast is excited to partner with this episode sponsor Apostrophe. Apostrophe is a prescription skincare company that offers science-backed oral and topical medications that are clinically proven to help clear acne, and connects you with a board-certified dermatologist who will create a personalized treatment plan that's perfectly tailored to your unique skin.

Jill Wine-Banks:

Simply fill out Apostrophe's online quiz about your skin goals and medical history. Then snap a few selfies, and your dermatologist will create your custom treatment plan. Apostrophe treats all types of acne from hormonal acne to facial acne and even chestne, bacne and buttne. I recently could have used it for maskne, which is a real thing, when you wear your mask long periods of time, as I did on a flight to California. They'll help you to treat acne breakouts from head to toe.

You'll love the unboxing experience. Your products will come in a cute box with a postcard and stickers to personalize your prescription bottle. It's even better not having to go to the pharmacy, and wait in line to get your meds.

Barb McQuade:

We have a special deal for our audience. Save \$15 off your first visit with an Apostrophe provider at [apostrophe.com/sisters](https://apostrophe.com/sisters) when you use our code SISTERS. This code is only available to our listeners. To get started, just go to [apostrophe.com/sisters](https://apostrophe.com/sisters), and click begin visit. Then use our code SISTERS. At signup, you'll get your first visit for only \$5. That's [apostrophe.com/sisters](https://apostrophe.com/sisters). Use that code, SISTERS, to get your dermatologist-crafted treatment plan for \$5. We thank Apostrophe for sponsoring this podcast.

Well, the Supreme court heard a really interesting First Amendment case earlier this week. I was interested in hearing your thoughts about it, all of my sisters. The case involved a high school football coach who was fired for praying on the 50-yard line after football games. The facts are a bit disputed. His lawyer says that the coach engaged in private prayer by taking a knee on the 50-yard line, and praying. The school district's lawyer said that the coach organized student participating prayer. He prayed loudly for all to hear.

He was sometimes joined by the players, because he wanted to model what he believed would make the players better people. So he was fired only after defying repeated complaints from opposing teams, and warnings from the school district. The case is a clash between three different rights protected by the First Amendment, the right to free speech, the free exercise of religion, and the prohibition on the establishment of religion by the government.

I note that you see this all the time after an NFL game, when some of the players on both teams will meet at midfield, and they'll take a knee, and they'll do a little group prayer. But that's different because the NFL's not a government actor, so the First Amendment doesn't apply there, but a public school, a public high school is very much a government actor. So with that setting, Jill, can you just explain briefly what these three rights are that are involved here, and how they clash free speech, free exercise, and the establishment clause, or maybe the anti-establishment clause is a better way to describe it?

Jill Wine-Banks:

It is. Let me say, as a preface to this, that I have a very strong point of view on the First Amendment. The words under God were added to the pledge of allegiance after

I had learned it, after I was already old enough to say it in school. To this day, I do not say under God. I pause when other people say it, because I believe that is-

Barb McQuade:

When was that, Jill, because it's before my time? When was that?

Jill Wine-Banks:

I don't remember exactly how old-

Barb McQuade:

When you were a child?

Jill Wine-Banks:

Yeah, I was in grade school. It was in-

Joyce Vance:

It's late '50s, right?

Jill Wine-Banks:

I was in grade school. I don't remember the exact year, but I was old enough to know that-

Barb McQuade:

Wow.

Jill Wine-Banks:

I didn't believe under God was... I mean, even at that young age, I don't think I necessarily affiliated it with the First Amendment, but I just felt that it wasn't my religion to say under God. I just wasn't going to do it.

Barb McQuade:

Separation of church and state.

Jill Wine-Banks:

Exactly. Exactly. So that's... I just want everyone to know that I have a very strong view on that. I feel strongly about how students might have been impacted by this coach. But back to the First Amendment, First Amendment says that gives you a right to freely exercise your religion, to freely speak your mind, and prohibits the establishment of religion by the government. You can see in this case how very clearly those three can overlap. This is a very tricky case of whose rights get involve first.

Is it my right to practice my religion by praying after a game? Is it the student's rights to be free from the influence of a coach, particularly a coach or a teacher, but coaches have a very special relationship with the students, to be free

from the pressure that that brings on them to follow his method? Is it because he is in his job? A lot of the argument of the Supreme Court was, "Well, exactly, when was his job over? Was he part of his job after the game ended?" So-

Barb McQuade:

Wasn't that such nonsense? They say, "Well, what..." As soon as the game ends, when the clock hit zero, suddenly he's not at work anymore, and he's free to pray. I mean, there's a lot that happens right after a game ends, right? Go to the locker room and gather.

Joyce Vance:

Yeah, surrounded by all those players in the picture. Sure.

Jill Wine-Banks:

It was ridiculous because the evidence really showed that his job included making sure everyone was safely off of the field, that the team... There was a whole bunch of stuff that clearly his job did not end when the clock struck zero, when the final game tally was in. But so it is a conflict between the students' First Amendment rights, between the right of all of us to be free from the establishment of religion. It's a fine line. The argument's also included "Well, what about if a teacher has a Bible on their desk, their own personal Bible?"

What if they read it when students aren't in the classroom, but they're on the job, obviously? They work from nine to three or whatever their hours are, and they're reading it. There's a lot of very tricky questions here about not establishing a religion because this is a public school. If it was a private school, it might be different. If it was... Obviously, as you said, if it's a commercial business like the NFL, that's a different story. But when it's a public high school, the establishment becomes very, very important.

I also am opposed to under God being on our currency, by the way, just to throw in that. That explains the three conflicting rights. The coach is saying, "I have a free speech right and a right to practice my religion as I see fit." The school is saying, "You are establishing religion by doing that on the job, and you can't do that." I think they're right.

Barb McQuade:

Joyce, let me ask you, the law in this area is a little murky because the court has allowed some prayer at some school events. I wonder if you could help us understand the limits. The court in these arguments on Monday referred to the Lemon Test, but some justices have also noted that the Lemon Test has been abandoned. Can you tell us what the Lemon Test is, and how the court thinks about where to draw these lines? I think one of the things that members of the public sometimes think is that all of these bill of rights protections are absolute, and they're not.

Because, as Jill just pointed out, sometimes one provision comes in tension with another provision, and so the court has to look at all parts of the constitution to try to honor it. As a result, it sometimes ends up coming up with these balancing

tests or three-part tests or other kinds of things to think about how to look at these things, and what can be reasonable restrictions on these rights. How does it work in this area if you can give us a quick and dirty little summary?

Joyce Vance:

So here it is, quick and dirty. I think calling the law in this area murky is a polite Michigander term. I can think of other equally suitable terms I might use, but since we're a family rated a PG podcast, I won't use them, but the law is pretty screwed up. By the way, the Lemon Test, this is not Liz Lemon from 30 Rock, one of my personal heroes. This is actually a 1971 Supreme Court case, Lemon versus Kurtzman. Lemon establishes a 3-Prong Test that the court uses to evaluate whether a law or a governmental activity violates the establishment clause of the First Amendment that Jill was talking about.

The establishment clause really is the place where this notion that you have religious freedom, but there also shouldn't be one state run religion, and no religion should be elevated by government. It's where they clash, and they meet, and we decide who wins. Sadly, I think that we're about to live in an era where the right to establish your religion and practice it if you're a certain type of Christian is going to be predominant. But that said, the Lemon Test has three parts. The court uses these, as I said, to decide whether or not the activity or the law violates the establishment clause.

So first, still consider the purpose of a law. The law has to have a secular legislative purpose. It can't be established in order to, for instance, promote a religion. It just has to have some sort of a legitimate nonreligious purpose. Then there's the effect prong of the test. The principle or primary effect of the law or practice can't be to advance or to inhibit religion. It has to be neutral. Then there's an entanglement prong of the test. The action can't foster an excessive government entanglement with religion.

The court looks at these factors to decide what is and what is not in violation of the establishment clause. Here's the murkiness that you referenced, Barb. It's not at all clear that the court will use lemon to decide this case in front of it, the coach case, because lemon has come in for a lot of criticism. Most notoriously, it came in for criticism from Justice Scalia who disparaged it in a 1993 concurring opinion. Here's what he said about Lemon, "Like some ghoulish figure in a late night horror movie that repeatedly sits up in its grave, and shuffles abroad after being repeatedly killed and buried, Lemon stalks our Establishment Clause jurisprudence once again."

Not quite as colorfully, but in the court's most recent decision in this area, American Legion versus American Humanist Association, both Justices Gorsuch and Kavanaugh were critical of the Lemon Test, but strange bedfellows on the other side of the equation, Justice Alito writing for the majority in American Legion said he thought there might still be a little bit of life left in Lemon. Justice Kagan, too, believes that it has some vitality, so hard to predict whether Lemon will be the law. After Kennedy, the coach case comes down.

I think the question is more one of how the court is going to decide that this kind of prayer is okay, not whether it will get there after oral argument. It seems clear that the court will get there and say that the coach was entitled to do what he

was doing. I will be waiting with great excitement for the first case where a Muslim coach or a Jewish coach, or maybe a pagan or a Satanist one tries to do this, and see how the court gets out of that. It really increasingly clear.

Barb McQuade:

I think that is so dead on, Joyce. I think that people see this as just part of the culture when you're praying at midfield. Just wait till it's somebody who's a non-Christian religion, and see if it's different, because I think that will be the real test. Hey, Jill, I wanted to ask you, back to your... Under God is so interesting. To me, it seems so clear that when you have state action, like you're in a school, or you're in a government building, it's separation of church and state. You can pray all you want outside.

I consider myself a devout Christian, but I don't bring it to the workplace, because I work in a public institution. I didn't bring it when I worked for the federal government. I don't bring it when I work for a public university. My prayer and my religion is something I focus on in my time, because I don't want to use my authority in my position to any way coerce students or others to think that they have to follow suit. It seems so easy, but there is all this case law, as Joyce said, where the court has upheld the use of religious symbols.

We have invocations before graduation ceremonies and sessions of Congress and other kinds of things on our currency. It says, "In God, we trust." How does all that stuff comply with the First Amendment?

Jill Wine-Banks:

Well, of course, as you can tell from my particular perspective...

Barb McQuade:

Well, how's... Let me ask about how has the court found that [crosstalk 01:04:06] First Amendment?

Jill Wine-Banks:

It's sort of just let it happen. I think it's just wrong. Actually, I want to go back to something that you had asked Joyce about the Lemon Test. I mean, obviously her definition is completely correct, the three-part test, but I think it might help our audience to hear, for example, how does that apply, and what does it mean? It's things like if you say that the state is going to build playgrounds in schools, and the parochial school gets the same funding. It's a secular purpose to provide playgrounds, and so that meets the secular test.

The major effect of having a playground has nothing to do with advancing a religion or hindering a religion. It's not excessive entanglement in religion. That's the kind of thing that would pass the Lemon Test as opposed to something which was we'll pay for the textbook of a catechism, for example, where it might be more of a difficult question. The courts have allowed... Obviously, our currency all says, "In God, we trust." Every time I look at it, I go, "Not for me. I'm not so adamant that, for example, I would take an oath, and affirm that I would tell the truth," but I just...

I don't see any good argument that's been made that justifies allowing some of the things that we have allowed, including crushes and even a menorah, which would represent my religion. Those things should not be allowed at public expense or in public property.

Barb McQuade:

I have to say I agree with you. What I recall about the cases in this area, just having studied it in law school in a First Amendment course that I found fascinating. But what I remember is when it comes to things like this on the money and in vocations, it goes back to tradition. Well, we've always done it that way. We have this long... We're built on this Christian Judeo tradition, and so we can do that. Slavery was a tradition. I think we've all recognized that there's no place for that in our country.

I don't know. It's always bothered me too, but nonetheless, in an effort to find a way for these three competing rights to coexist within our First Amendment, the court has to find some middle ground, and so there has to be some compromise. We'll stay tuned. I can't help but wonder what the cussing cheerleader thinks about the coach who prayed at midfield.

Joyce Vance:

Well played, Barb.

Jill Wine-Banks:

I'm getting more and more concerned with the news about global warming and seeing the impact of dramatic changes in climate and weather patterns. I know all of us are concerned and want to do our best to help the environment. Have you done anything, Barb, to make sure that we're not using as much plastic as the statistics are really scary about how much is actually recycled?

Barb McQuade:

Yes. In fact, only 9% of plastic actually gets recycled no matter how much we put in our recycling bin. There's something called Grove Collaborative, where they believe it's time to ditch single-use plastics for good. Grove carries hundreds of products aimed at replacing single-use plastics across your home and personal care routine. By 2025, Grove will be 100% plastic free. Like Grove Co's concentrated cleaners and refillable glass bottles, they're friendlier to the planet, and twice as effective as the leading natural brands.

Joyce Vance:

Switch to sustainable products for every room in your home. From laundry care to hand soaps and more, Grove Co has you covered with safe formulas and refillable packaging that never compromise on performance. In the COVID era, nothing is better than their hydrating hand sanitizers. But from self-care to home care products, we know you'll love the way they've revolutionized keeping your home and body clean and fresh. So join over two million households who are already shopping sustainably at Grove.

Barb McQuade:

Go to [grove.com/sisters](https://grove.com/sisters) today to get a free gift worth up to \$50 with your first order. Plus, shipping is fast and free. Get started right now at [grove.com/sisters](https://grove.com/sisters). That's [grove.com/sisters](https://grove.com/sisters), or look for the link in our show notes.

Jill Wine-Banks:

Now, it's time for our favorite part of the show, which is where we answer your questions. If you have a question for us, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com), or tweet using #SistersInLaw. If we don't get to your questions during the show, keep an eye on our Twitter feeds throughout the week where we'll answer as many of your questions as we can. This week, we have had some really super terrific questions. Some of them are stumpers.

Let's now turn to those questions. Our first question comes from Karen. Barb, I want you to answer Karen, and tell how can one judge make a ruling that affects all flights? Can another judge just rule the opposite, or is it first come first serve?

Barb McQuade:

Really great question. We have an order out of a district court judge in Florida who issued a nationwide injunction regarding masking in public transportation. That injunction is out there. Yes, another court could hear this if they wanted to. That is not within that same jurisdiction, because they're only coequal courts. This happened during the Trump travel ban. There were cases out of Maryland and New York and other places that were issuing competing orders, and so you could end up with this patchwork of different kinds of orders going on.

That's why it's important to have those cases work their way up. I think at some point the TSA has to decide how it's going to respond to these different kinds of rules. The organization that put the rule out is the CDC, and so if they got a better ruling, say, out of a district court in York that said, "No, you can go on ahead," then that judge's rule in New York, I think, would be confined solely to her jurisdiction. Do you guys disagree? I mean, when you have these nationwide injunctions, some other judge could come along and trumpet, don't you think?

Jill Wine-Banks:

I think so.

Joyce Vance:

Then you get a circuit split that has to go up to the Supreme Court, right? I mean, that's how that often works.

Barb McQuade:

Yes.

Jill Wine-Banks:

I think you are absolutely right.



Barb McQuade:

But I think in this instance, they've decided to fight the battle. TSA has removed the requirement for the meantime, and that's going to stay in effect until the case works its way up in the courts. But I think you could theoretically have this battle where you have this patchwork of different opinions throughout the country.

Jill Wine-Banks:

Our next question comes from Peg. She asks, "When someone is found in contempt of court, and is fined a daily amount, what penalty, if any, occurs if there is a refusal to pay the fine? Is there a time limit for how long the fine can be continuously paid before another penalty is assessed?" That's a great question, Peg. I'm going to answer it by saying I'm assuming you're talking about the \$10,000 a day fine that has been imposed on Donald Trump for not turning over documents, and not responding to, as he should have, a court order.

The answer is there's no time limit until he complies. He can stop it by paying the fine. Not by paying the fine, but by turning over the requested information, and the judge could triple the fine. He could do other things. He also could jail Donald Trump for refusing to comply with the court order. That is a penalty that is allowed. That was a great question. Thank you for that. Our last question is definitely for Joyce. It comes from @PrincessJaguar. What type of yarn would you all suggest for a soft, chunky blanket?

Joyce Vance:

Well, it's so nice to get to end the podcast on a note that doesn't involve the end of democracy as we know it. Thank you, Princess Jaguar, for the lighthearted moment. I have strong feelings about yarn, and so I'll just say life is too short to knit with cheap yarn. For large blankets, I really like an obscure blend called Bluefaced Leicester, which you'll find spun up in a chunky yarn, and offered by a lot of independent dyers on Etsy or other places. It makes just a lovely yarn that's as soft as cashmere, really, but that's very economical.

It's far less expensive than cashmere, and makes a great blanket. I suppose, at some point, I'm just going to have to schedule a Zoom, and let people come to me with their knitting and yarn questions so that we can have fun geeking out about important topics, like what kind of knitting needles we like, and how to block a sweater when you're done. Because neither Jill nor Barb and not really even Kim, the fabric artist among us, is a knitter, but I'm eternally hopeful, and I'll keep working on them.

Jill Wine-Banks:

I do needlepoint. Does that count?

Barb McQuade:

I knit my brow a lot.

Joyce Vance:

You do knit your brow a lot. I'm going to agree with you there.

Jill Wine-Banks:

Thank you for listening to #SistersInLaw with Barb McQuade, Joyce Vance, and me, Jill Wine-Banks. Kim will be back with us next week. You can send in your questions by email to [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com), or tweet them for next week's show using #SistersInLaw. Go to [politicon.com/merch](http://politicon.com/merch) to buy our pale blue t-shirt, and please support this week's sponsors, HelloFresh, FastGrowingTrees, OSEA Malibu, Apostrophe, and Grove. You can find their links in the show notes. Please support them as they really make this show possible.

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Barb McQuade:

Joyce, is your Siri possessed? It seems like she doesn't stop talking.

Joyce Vance:

I don't know what her deal is. I worry that it's maybe the Apple algorithm, and maybe they're listening in on #SistersInLaw. Maybe they just want to get a first crack at the episode. Hey Siri, are you possessed?

Siri:

I don't have an answer for that. Is there something else I can help with?

Joyce Vance:

Yeah, definitely possessed.

Siri:

I'm not sure I understand.