

Joyce:

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Jill:

Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Joyce Vance, Barb McQuade, and me Jill Wine-Banks. Today we're going to be discussing a lot of really big issues, everything Trump, including the Mar-a-Lago search warrant, its release of the redacted affidavit, the release of the unredacted office of legal counsel memo to Bill Barr that justified and that's in air quotes his refusal to take any action against the former president, the Fulton County grand jury in full swing.

And then we'll go to the Idaho abortion decision, upholding the new rule from the Biden administration. And then we'll go to the Whitmer verdict. As always, we look forward to answering your questions at the end of the show, but before we get there, let's talk about some of our craziest ever trips. Since I'm starting on one soon, I wanted to hear what other ones you did. And mine is crazy because I'm combining a wedding in Cornwall with a safari and packing is a particular nightmare, but I did it once before, I did-

Barb:

Oh, that old trip.

Jill:

... a combination trip to ski in Switzerland, and then went to Morocco, which was hot and sweaty. Literally had two different bags, my ski bag, my Morocco bag. I am open to any suggestions on packing, but I really want to hear what crazy trips you've taken.

Kim:

I've done something similar Jill. It was a few years ago. And in the same week I went to Iceland and Cuba and I had the very same issue. I was literally on either ends of the Atlantic Ocean. And it was really interesting, I had to pack everything from snow boots and big puffers to bathing suits and shorts. And one thing that I have found is that you roll up your clothing as tight as you can in a role to get those inside the suitcase.

I like to try to carry on everything if I can just to avoid problems and I managed that. And the thing that I did was just wear my big puffer coat and wear my snow boots on the plane because those would've taken too much room inside the suitcase. Now, where I went wrong was that I was stuck on an extended layover in Boston, Massachusetts. Now this was in, I believe it was in February or March. It was in a pretty cool time of year. But for whatever reason, it was like 75 degrees in Boston that day. And all I had to walk around in were some snow boots and this big old puffer during this unexpected layover, so I had to deal with that. But still overall it was a really great trip, so I hope you have a good time.

Jill:

Thank you. I believe in the roll up as well, but I also use the compression bags that have the double zipper and boy does that make a difference, oh my gosh.

Kim:

That's a good idea.

Jill:

I can get a week's worth of clothes in a carryon bag easily. I can't get this trip in one bag. I am going to have to check a bag and supposedly going back to our subject last week of travel woes, supposedly Heathrow Airport and British Airways are really doing bad on baggage transfers. I'm a little concerned, but we'll see when I get back, I'll give you a full report. And what about you, Barb? Have you done some crazy trips?

Barb:

Well, not in the same way, so exotic or involving packing, but I did once travel to Oklahoma for work. And I have this quest in life to go to all 50 states. And at the time I had been in 40 or something like that, and I saw this opportunity to go to Oklahoma and I actually went a day early and I rented a car and I made a circuit from Oklahoma to Missouri to Kansas.

Let's see, how did I do this? I must have gone up to Kansas over to Missouri, down to Arkansas and back to Oklahoma. And I was so pleased to tick off four states in one trip. And so people asked later, "How was your business trip?" Well, it was fine, but I hit four states. So I'm now at 48, the two that remain are Alaska, which bucket list, I'll try to get there, and North Dakota. One of these days I've said to my kids, if I get to be 95 and I haven't made it, you got to promise to fly me to Bismarck just for the day and then come back.

Joyce:

Barb, our Obama US attorney colleague in North Dakota, Tim Purdon, who's a wonderful guy. #SistersInLaw, we should-

Barb:

There you go.

Joyce:

... descend on Tim Purdon. We had his daughter down here one summer when she was doing a ballet program at The University of Alabama, and we had so much fun entertaining his wife. I'm sure that he would be delighted if we just showed up.

Barb:

All right. He has an active Twitter account he calls Purdon Nation. Memo to Purdon Nation, SistersInLaw are coming to town.

Jill:

I think that we should take that seriously as one of our stops on our live tour. And I've never been to North Dakota, but my first trial ever was in Alaska, so I have you there.

Barb:

Good for you.

Jill:

And what about you Joyce?

Joyce:

Like Kim and like you Jill, I will do anything to avoid having to check a bag. So Bob and I went about 10 years ago to Israel and Jordan for three weeks. And I did a three week trip with a carryon bag, which was some pretty interesting travel. I was perhaps under packed, but my interesting story isn't interesting because of where we went, it's because of what happened. Right out of law school, my two best friends and I went to Europe and it was that typical post school trip where you flew the cheapest tickets that you could get to Europe.

In our case, it was Icelandair. And I don't even remember what year this was, whenever we graduated and they shuffle you off the plane in the middle of the night in Reykjavík, and run you through the stores in Iceland to buy whatever stuff, it's before Iceland is a big tourist destination. And so we go and we run through there, I think it's 1985. And then they put you back on the plane and you go the rest of the way to Europe. And we'd been there for a couple of weeks with our Eurorail passes having a blast, when my roommate Jane's parents get word to us that Jane who has taken the New York state bar is in the group of people whose bar exams have been lost. Do y'all remember that year?

Barb:

Oh, no.

Joyce:

A big group of bar exams get lost, and she's going to have to sit for the bar exam as soon as we get back.

Barb:

Oh, that is [inaudible 00:07:39].

Joyce:

My friend, Eva, we spend the rest of the trip protecting her from that news. At one point we were staying in a hotel that was somebody's home that they had converted to sort of a B and B type setting. And the news was on. And we could tell that they were leading into that story and we literally dragged her out of the room. We had a terrible time getting her out.

Barb:

It's like a sitcom plot.

Joyce:

It was terrible. Her parents met her when we got off the flights in New York and broke the news to her and it really sucked.

Jill:

That's awful.

Kim:

Did she really have to take it again?

Joyce:

She really did.

Jill:

Terrible. All right. Well, we'll have to continue our crazy stories. Mine would also include getting married by a head hunting tribe, the Kadazans in Borneo, so we'll talk about that another time.

Joyce:

Kim, have you used that OSEA Malibu skin cream? It is so great. It's cooling and it smells so good, I almost want to eat it. Do you ever use that stuff?

Kim:

I have tried that. In fact, I've tried a bunch of OSEA products, including this wonderful serum that I've used. I did have skin that could get really irritated, especially during allergy season. And it just helps so much. My skin's been looking great lately, if I must say so myself.

Joyce:

It does.

Kim:

Thank you so much, as is yours. And I really think OSEA is a great product. It's important to prep your skin to stay hydrated and smooth with safe, clean products, and OSEA skincare products help nourish, soften, and smooth your skin to keep you glowing from head to toe. Their body oil has been key to my daily summer skin care routine. Also, I went to Canada, it's really dry up there, body oils, that's great stuff. It has seaweed infused ingredients, and it makes your skin look healthy, smooth, nourished, and glowing. It's the perfect addition to your body care regimen. We all want amazing glowing skin. It's a power player in my skincare lineup, and it's just one of their outstanding offerings.

Jill:

And I'm listening to both of you talking about how great your skin looks as mine continues to age. And I have found the same wonderful results from OSEA. It really does moisturize in wonderful ways. You can experience radiance skin every day throughout the summer and in the winter with OSEA's Undaria algae body oil. It is one of the best products they have and they have a lot of good ones. It keeps your skin soft and glowing with Undaria algae acai pulp and Babassu seed oil. Just imagine a rich, never greasy luxurious body oil that's fragrant with sunny citrus and notes of sweet passion fruit. And you can try Undaria algae body oil and OSEA's total body glow trio kit. The kit includes body oil, moisturizing body scrub, and a plant based body brush, which is a really good brush. So you can sweep away dead skin cells, then hydrate for incredibly soft, glowing skin all summer long.

Kim:

I really like that brush too. And Jill, come on, your skin looks fantastic, you always look great-

Jill:

Radiant.

Kim:

... all the time.

Jill:

Thank you.

Kim:

But that brush, I will say, it's like all OSEA's products. The total body glow trio is clean, safe, responsibly sourced vegan, cruelty-free, empowered by the sea. The value in quality is unmatched. And since 1996, OSEA has been creating clean vegan and cruelty-free products safe for your skin and for the planet. So find your new skincare and body care favorites at oseamalibu.com and get a special discount just for our listeners. 10% off your first order site wide with the promo code sisters.

Jill:

Don't forget to use that code and you'll also get free samples with every order and orders over \$50, get free shipping. You're going to want it all, go to oseamalibu.com, promo code sisters, or look for the link in our show notes. Let's move right along to our first topic.

Barb:

Well, a judge ordered the unsealing of the affidavit for the search warrant of Mar-a-Lago and that document became public on Friday. Now it was heavily redacted, but we could still see some of it. And Kim I'm interested what new information that we learned from this affidavit that you thought was important.

Kim:

Yeah. As you said, it was heavily redacted as we expected it to be because it's very important to protect not only the methods that the FBI use to investigate this, but also the people involved. We already know we are in a time where FBI agents and others are facing increased threats, so that was expected. But just some highlights from what we could read that stood out to me that the FBI was seeking permission to search Donald Trump's residence at Mar-a-Lago because they'd reviewed 184 classified documents that were kept at his home already. And they had interviewed, "A significant number of civilian witnesses." About the fact that these documents were in the home, so that tells us that it seems very likely to me, and I want to hear what you guys say that these are people who obviously were close to Trump who knew what was going on in there.

And the affidavit suggested that these documents could reveal very sensitive information. This is very sensitive information about things like human intelligence sources, about the methods with which electronic communications and foreign documents were obtained about spy agencies. I mean, this is really, really extremely sensitive and potentially dangerous stuff when it comes to national security.

We're not just talking about a couple of pages that may have been stamped confidential, but that in essence did not hold a lot of important information. Again, we don't know exactly what this information is, but it's big. And we also learned that it was being kept in nothing resembling a skiff. This was not kept in any secure way. It was not protected from other people who may have come into this room. It was really haphazardly stored in an unsecured place at Mar-a-Lago.

Another thing I found really interesting, and I want to get you guys take on it, was this letter that was a response from Trump's attorneys that I just thought was batty. I mean, it responded to a request to seek these documents by saying a few things. One was making some assertion that some of the documents could be privileged. And again, I think it's highly unlikely, but if it was, there's a method to deal with claims of privilege, but that doesn't mean that the FBI shouldn't search it.

Another thing that it said, the most interesting thing was essentially a claim that the president, well, first of all, it said that the president can declassify whatever he wants, which theoretically while a president is in office is true. But as we've mentioned, there is a procedure. You can't just say, dot your head like genie and suddenly these things are declassified. It goes to a process through the federal agencies that take some time. And if it's already at Mar-a-Lago and he's already left office, obviously he can't do that.

And keep in mind too, Donald Trump does not have the normal security clearance now that former presidents usually have to review classified information because Joe Biden didn't give it to him, because he's already given away so much class classified information, including remember when the Russian official was in The White House and he gave away Israeli classified information. He's already proven that he can't be trusted with it, so he doesn't get the same security briefings that Obama and Clinton and Bush get because he can't handle it.

But the thing I thought was interesting is that the lawyers claim he can't break the laws that he's being investigated for because he's president and not a federal officer. Well, again, he's a private citizen now, so he absolutely can break these laws. But this whole idea that he's the president, he can do what he wants. He can unclassify what he wants. I don't know who this lawyer is or where this person got their license, but it's laughable. I want to hear you guy's thoughts on that.

Jill:

This lawyer is actually someone who was previously respected and I share your total dismay about this. I was outraged reading this full letter, and I think it had been maybe pointed out before, but first of all, he doesn't actually say, he says, "The president has the power to declassify." He doesn't actually say that he did so. And as you said, he couldn't say abracadabra, here's my magic wand, it's declassified.

And every document that was seized is still marked classified, which means they weren't officially declassified. And this argument though that you point out about he's not an officer of the US, that he is the only one who can appoint officers and therefore he's not an officer. It says officer or employee, is he not an employee as president? Of course he is.

And he took those supposedly by the way there were moving vans at Mar-a-Lago on January 18th while he was still president. Now, do we know that those boxes weren't moved there on January 18th instead of ... No, we don't. But obviously the investigation needs to get into it. And they also get into a separation of powers argument in this letter that is ridiculous and outrageous, so you've pointed out some good stuff, Kim.

Joyce:

Can I ask you a question about the separation of powers argument? We're talking about the executive branch, right? The justice department prosecuting the president. There might be some argument that he could make there, but it's not separation of powers, right?

Jill:

No, it seems to me that prosecutors are at the executive branch.

Barb:

It's the same branch.

Jill:

So excuse me, but how can you have a separation of powers?

Joyce:

I couldn't make any sense out of that. Thank you. I'm so glad that I wasn't missing something when I read that, it just didn't make any sense.

Jill:

I agree. And I'm afraid to ask that out loud because women will ask questions that men won't because they don't want to admit they don't know something. This was one where I was like, "I don't get this argument because it seems to me it's the executive branch asking the executive branch."

Kim:

I wonder if it was cut and pasted from their responses to the January 6th committee.

Joyce:

Oh, that's hilarious.

Kim:

And they just thought that that-

Barb:

Could be.

Joyce:

But it was sort of like the same reaction that I had to reading that separate civil suit that Trump filed in the Southern district of Florida, where he files the lawsuit challenging. And I'm reading it thinking, I don't understand this. I must be the stupidest person in the world. I'm sure the former president's lawyers wouldn't file a frivolous lawsuit. And then the more you read you start to think, I'm not missing anything.

Jill:

And I think the judge agreed with you, didn't she?

Kim:

Right. The judge essentially said, "I don't understand what this means."

Jill:

Like, "Excuse me, come back with something that makes sense here." And by the way you didn't file right to actually make this pleading in this courtroom.

Barb:

Well, why don't we move on? But that redacted affidavit is really interesting. And what I thought was even more interesting is the affidavit itself, it's 38 pages long, which I think speaks a bit about the extent of the investigation, though much of it is redacted, 21 pages of it are redacted. And what we get is kind of some procedural background.

The notice of filing a redacted document is actually kind of interesting because that's the one that explains why they're redacting certain things and even says that they need to protect the privacy of a vast number or a broad range of civilian witnesses. Kim, I agree with you that it sounds like there are people either at Mar-a-Lago or former administration officials who are cooperating, so that I find super interesting.

Joyce:

Barb, I focused on that too. I highlighted the language. They actually say that parts of the document has to remain sealed to protect the safety and privacy of "A significant number of civilian witnesses." There'd been speculation early on about this affidavit. Was it just one insider at Mar-a-Lago who was snitching on Trump? I don't know what a significant number of witnesses means to DOJ, but my guess would be that we're talking five or more people that they're getting information from.

Barb:

Yeah, it's not several.

Jill:

And Joyce, don't you think that means that it proves the danger that we were in with those documents being out there if five or more people knew their whereabouts and had access because they were not in a secure location? It just goes to show how dangerous it was and how I fear that the government bent over far too much backwards in trying to give some, I don't know, some protection to the former president. If anyone else had had those documents, they would've been arrested immediately and the document seized.

Joyce:

I want to push back on that though a little bit and I might be speculating a little bit too much here, but it seems to me that what happened is when the national archives gets the boxes back in January, everybody thinks it's done. Nobody thinks he's still holding onto classified material. There's no reason to believe that. And then they come to learn that down the road. I agree with you. I mean, it's weird, it's unclear. What's so frightening to me is what we see in the affidavit, that's the stuff that they took out of Mar-a-Lago before they executed the search warrant.

Jill:

Right. Exactly.

Joyce:

We still don't know what they got in the search.

Jill:

And remember they had been negotiating with him for one year. When you say January, that's not January after inauguration, that's January a year after inauguration. He had already had that material there for over one year. And that's what I'm saying. And maybe you're right, they knew about it, they negotiated, they got it back. They thought it was over. And then people came forward and said, "Uh-huh, it ain't over. He has much more." And that's when they got serious at that point again, February, March, April, May, there's letters, there's meetings. Anyway, and then double the amount is retrieved again.

Joyce:

I think that what we see in the affidavit is that this timeline is they think it's just presidential records and for a year they're negotiating for presidential records. And then the archives, when they get into it, they see some classified stuff and they're following whatever the regulations are under the presidential records act and giving Trump the opportunity is they're required to by law to go through stuff and say what the FBI can see.

And the minute the FBI gets it, I think it's within a couple of weeks that they start pushing hard and we see the DOJ process. But I do have to agree with you Jill, and wonder how much deference people just normally want to give to a former president, because it seems unbelievable that a president could put the country at grave risk, a grave risk to our national security

Barb:

To amplify Jill's point just about how hair on fire this was. The affidavit, one of the parts that is unsealed says that they weren't just in a storage room that was locked, which we have been hearing about, but they were in a storage room, the residential suite, Pine Hall, whatever that is, and the 45 Office, which I'm sure is this kitschy ex-president of fake Oval Office thing or something that he's got down there.

Joyce:

There's a fake oval office? [inaudible 00:24:25].

Kim:

Yes, unsecured.

Barb:

I don't I'm making that up. It's called the 45 Office, so who knows what that is.

Joyce:

It's got to be, right?

Barb:

But the point is they're kind of scattered all over the resort. They're not just in one storage room where they're being carefully locked.

Jill:

Somewhere near the passageway to the pool.

Joyce:

Unbelievable.

Jill:

That was publicly used.

Kim:

And it's an important point. I mean the current president, President Biden is being very careful and circumspect in how he talks about this entire investigation, because he wants to stress that this is being done by the justice department, it has nothing to do with him. But one point that he did make to reporters Friday is that he is the current president. And when he has to review his daily briefing for example, while he's in his home, there is a skiff in his home. He gets the packet from a member of a military in a sealed secured container, opens it up, reads it, returns it to the sealed secure container where it is taken out and then he leaves his in-home skiff. I mean, that's the kind of thing you need to do with even the daily briefing, let alone top secret, the highest level of secret materials that is alleged to have been at Mar-a-Lago.

Jill:

And former President Eisenhower, when he was writing his memoirs, wanted access to some classified information. He left his home, he went to an army based skiff. He reviewed them, left them and returned to his home without any of those documents. And people have gone to jail for having that kind of document, so it's not to be taken lightly.

Joyce:

It may be that having handled this stuff routinely for our work we take for granted security measures and maybe folks who don't work with this aren't aware. But for instance, in my old office, just the measures I went through, I would often actually go over to the FBI office to use their skiff, which was a little bit larger to look at documents with a group of people and people don't know.

You take your phones and you stick them in a box and you don't take a computer or anything like that. You sign in any notes that you take in the skiff. They stay in the skiff and these documents are in folders that are marked and they're labeled and they're marked classified on every page, so everybody knows what this stuff is. And the fact that in the affidavit they say classified material, top secret material, was intermingled with other stuff. It didn't have folders. It didn't have cover sheets. It's really shocking to anybody who's ever worked with that sort of classified material.

Barb:

Yeah. Agreed.

Jill:

Intermingling is shocking. The fact that-

Joyce:

Absolutely.

Jill:

... they found boxes that had personal notes and other stuff that was probably harmless mixed in with top secret.

Barb:

Yeah, agreed. I mean, I think it just speaks to Trump's, I don't know what the word is, arrogance. That the way he handled these things with such a carelessness. When I held a classified document, I didn't want to hold it. I wanted to put it back away in the safe immediately. It had a cover sheet on it and I held it as if it was radioactive because I didn't want to end up in the wrong place even accidentally. And the disdain with which Trump treats this I think is just so indicative of the way he views the world.

Well, I want to move on to a couple of other Trump related topics before we conclude here. Let's just go through these quickly. Joyce, I know you've been following the Fulton County district attorney's investigation very closely because you've been writing about it in your civil discourse Substack, which everyone should read by the way, it's excellent. Can you just give us a quick update on what's happening in Fulton County because it seems like that's the one where there's been a lot of activity.

Joyce:

Fulton County is just a hop, skip, and a jump away from where I live, Georgia, in the Eleventh Circuit, Florida in the Eleventh Circuit. So we're all going to be learning a lot of Eleventh Circuit case law over the next few weeks, as these matters heat up. Fani Willis the DA in Fulton County is pushing really hard to get testimony from a lot of different witnesses right now. And that's why there's so much activity.

Yesterday Governor Kemp was in court. He's been delaying testifying. She tried to get him voluntarily. He put her off repeatedly. She issued a subpoena. Now after delaying, after ensuring that he didn't testify, for so many months Kemp had the audacity to go to court and argue that it was too close to the election for him to testify now. Talk about arrogance and adopting the Trump point of view.

I don't think the judge is going to go for that. Kemp also had some other arguments to make. He argued sovereign immunity. And in essence, as I understand it, the argument is that because she's a county DA, she can't investigate him. Only the state's attorney general can investigate the sovereign. But it's a silly argument because he's not under investigation, he's a witness and she's made it very clear she wants to talk to him about a call that he received from Trump. She wants to see if he can help identify other witnesses, so he's really grasping at straws to continue delaying the testimonial process. She's entitled to get his testimony immediately.

Lindsey Graham, the Senator from South Carolina, also trying to avoid testifying, claiming that the speech or debate privilege in the constitution for senators and members of the house means that he doesn't have to testify. What she wants to talk with him about are some phone calls that he placed to Georgia election officials talking about how absentee ballots were counted in the state of Georgia. Doesn't really seem like a topic for congressional speech or debate privilege, but we'll see what the Eleventh Circuit has to say about that.

And Willis is also issuing a new batch of subpoenas for lawyers who may not be household names just yet, but who I suspect will be Kenneth Chesebro, who worked on the fake electors scheme and also Boris Epstein, who's a little bit like the Forrest Gump of Trump world. He seems to show up in a low-key way at a lot of different critical points of view. He sort of plays a role with Eastman. He's around the edges of everything that happens at DOJ. It might be these newest subpoenas that are the most interesting.

Barb:

Yeah. Well, we'll stay tuned, but it does seem like that's the one that is moving at the quickest pace, or maybe it's just because we have more visibility into it because of the need to get court orders for those subpoenas. But at any rate, it's definitely something to keep an eye on. Well, let's turn now to the DOJ memo that got released this week. Kim, can you just give us some background? What is this memo? Why was it sealed and why is it being unsealed now?

Kim:

Do you guys remember attorney general Bill Barr?

Barb:

Who?

Kim:

Well, it has to do with him and his decision not to charge Donald Trump after the Mueller investigation. There was a nine page memo that was written by then assistant attorney general for the office of legal counsel, Steven Engel, and also Ed O'Callaghan. And basically this memo stated, and I will quote some of it. "It is not in our judgment sufficient to support a conclusion beyond a reasonable doubt that the president violated the obstruction of justice statutes."

Now remember this report laid out 10 instances in which Robert Mueller found that Trump likely obstructed justice. It was reasoned in this memo that it did not likely violate federal obstruction statutes because "There was no underlying crime related to Russian interference." Remember no collusion. And Trump would also say no obstruction.

Well, basically these guys were saying, "Well, because there was no collusion, there was no obstruction." Of course Mueller didn't find that that was the case. And so that is what Bill Barr used as his basis when he got out and declared that even without the policy that generally said that sitting presidents cannot be indicted, that they could not bring charges against him anyway.

Barb:

Yeah. Jill, I want to ask you this, get ready to duck everyone. What did you think of the legal analysis in the memo?

Jill:

I cannot have strong enough words to say how outrageous this document is. It is one of the most partisan defense memos I've ever read. And it's supposed to be an unbiased evaluation by the Department of Justice. At least the three of us who are prosecutors have all taken very seriously our obligation to present a fair and balanced presentation of facts and evidence and of likely outcomes. It really does not in any way fairly do it. And I'm going to hold up because you guys can see it. I don't know. I mean, I've highlighted so many things in here that I have explanation marks. I'm outraged, I'm outraged, and I'm going like, "No, this is false."

And some of this basic premises, forget about the Watergate case. I didn't forget about the Watergate case, but they make all these arguments about, unless the person obstructing justice was part of the original underlying crime that they're trying to obstruct it about, excuse me, but there is no evidence that Richard Nixon was involved in the break-in that he approved it, that he knew about it in

advance. We don't have any evidence of that, but he surely was guilty of obstructing the investigation of that.

And so it has nothing to do with whether or not Donald Trump was part of or anybody from his campaign was part of the collusion part of the investigation. It doesn't mean they didn't obstruct the investigation for political reasons. It doesn't have to be that you're obstructing it. And he makes claims in here about, well, he didn't tell people to lie. He just told them sort of ... and he didn't say things, even though he said, "Basically I'm warning you, don't flip on me." That's how mob bosses talk.

This memo, honestly everyone, I think we should put a link to it in our show notes because it's not that long. It's I think maybe nine pages. And it is so worth reading. And then ninth page is just signature page. It's really eight pages of reading, very worth reading and keep in mind that every bit of law that's stated here is not correct and that the facts are equally not supportable. I mean, they make outrageous sort of ... well, he didn't mean it. Well, I don't care if you meant it or not. If you did it and you knew you were doing it, you did it.

It's really a terrible memo and it is not a legitimate justification for the decision that Barr made or for let's not forget his press conference before releasing. He put out there in the either, no collusion, no obstruction. And that was the first impression and it stuck. It really did and it was very hard to show that it actually did say there is obstruction. And Barb, you and Joyce both testified about this, so you know full well that there was significant evidence of obstruction and prosecutable obstruction.

Barb:

And I agree with you that the legal analysis is weak. It says that because the aids never followed through on these things, there's no obstruction. Of course the obstruction statute says it's enough if you attempt, so that one is dispelled. There's no obstruction if there's no underlying crime, wrong. Obstruction gets charged all the time, that's why you hear the phrase, the coverup is worse than the crime, because it's easier to prosecute the coverup. And there's several other examples of that. To me, this is just reverse engineering the result that you want to get.

Joyce:

Yeah, that's exactly what it is.

Kim:

It's a lot of bad law interpretation in this podcast episode, a lot of bad lawyering. Hey Barb, do you know what I just did?

Barb:

What?

Kim:

I just tossed a wonderful toilet cleaning tablet from Blueland into the bathroom and it smells so good. Don't you use those?

Barb:

I do enjoy Blueland, but I try to speak of things worthy of our dignity, Kim. I will say that Blueland is on a mission to eliminate single use plastics by reinventing home essentials that are good for you and the

planet. Blueland's innovative tablet refill solution takes up 10 times less space than a traditional bottle and their powerful formulas keep your home clean and smelling amazing. Now you see how that's done?

Joyce:

The idea is simple. You grab one of the beautiful forever bottles, fill it with warm water, drop in the tablet and get cleaning. Refills start at \$2 and you don't have to buy a new plastic bottle every time you run out. You can even set up a subscription so you never run out of the products you use the most like the toilet cleaner, Barb, and save even more when you buy in bulk.

Barb:

You guys, I'm going to hear you in my nightmares.

Jill:

I just bought more of the toilet cleaners because they do smell so good.

Kim:

They're so great.

Joyce:

It's everywhere. You can't get away from it now.

Barb:

From cleaning sprays to hand soap to other cleaner and laundry tablets, all Blueland products are made with ingredients you can feel good about. Try their clean essentials kit which has everything you need to get started. Blueland products come in refreshing signature scents like iris agave, fresh lemon and eucalyptus mint. And for a limited time, their hand soap is getting a summer upgrade with three refreshing new scents, strawberry rhubarb, citrus patchouli and coconut palm.

Joyce:

Right now you can get 15% off your first order when you go to blueland.com/sisters. That's 15% off your first order of any Blueland products at blueland.com/sisters. That's blueland.com/sisters, or look for the link in our show notes.

Jill:

I did just order more Blueland and it was the toilet cleaner and the hand soap, which one of my friends was here helping me garden. And she used the hand soap in the kitchen and she said, "What is this? I really like it." And she ordered the Blueland from my house.

Joyce:

I love that stuff. In Idaho, DOJ drew a line in the sand regarding just how far states could go after the Supreme Court reversed Roe versus Wade in the Dobbs decision. DOJ challenged an Idaho law and a federal judge agreed to enjoin parts of it. Kim, start us off and tell us what DOJ objected to in Idaho's law.

Kim:

Yeah, and it's not just DOJ, which I think is just so interesting about this. There is a law called the Emergency Medical Treatment and Labor Act, which I'll refer to as EMTALA after this. And basically what that does is it requires those providing medical care in hospitals that receive Medicare funding to it requires them to stabilize all patients who have a medical emergency. It doesn't have to be life threatening, but it does have to be serious.

If someone presents with a serious medical emergency, they must treat them to try to save their health or save their life and failure to do so can result in penalties, not only to the physician, but also to the hospital itself. It can lose its funding, funding that is often required for these hospitals to continue to operate, so it is important. And what the DOJ is arguing in this challenge is, listen, if abortion procedures are banned in situations where a woman is having a health threatening or life threatening complication that is preventing physicians and hospitals from providing the care that federal law requires them to provide, federal law trumps state law.

Remember that our favorite kind of supremacy is that kind of supremacy. It is supreme to state law and so by enforcing this, that this is violating federal law. And as I said, it's not just the DOJ and it shows you that the federal government is really flexing his muscle to use this law, to push back on some of these abortion laws, HHS secretary Xavier Becerra sent a letter Friday to state governors, warning them that the federal government would quote, not hesitate to ask the Department of Justice to assist them if they find out that because of laws they have passed that hospitals or physicians in these facilities are not able to adhere to EMTALA. Now of course it does not apply to every situation, it's situations where they're very serious health risk involved in a pregnancy complication or other procedure that could be barred by this abortion law but it's a really important one.

Joyce:

Barb, let's just keep it going and talk about what the injunction covers. In other words, what can't Idaho do and what prohibitions on abortion can Idaho put into effect?

Barb:

While this is I think a great victory for the justice department and for reproductive health rights, it is really limited in the recovery because the injunction only covers what Kim just discussed, which is the extent to which the Idaho law conflicts with the federal law called EMTALA, the abbreviation. And so if a pregnant patient presents at a Medicare funded emergency room with emergency medical conditions, then EMTALA kicks in.

And so if there is concern, not only about death, but also serious health jeopardy, serious bodily impairment, risk of serious dysfunction of a bodily organ, much broader basis for an emergency abortion, then doctors must perform those abortions. And to that extent, that is a carve out that means that the abortion ban in Idaho cannot be enforced. The federal law will apply there.

But for everything else, every other kind of abortion, the Idaho abortion ban will still apply. This is a good thing that will help protect pregnant patients who present at hospitals, because otherwise you have this risk that they'll be fearful that well, she's in pretty bad shape, but I'm not sure her life is in danger. It gives them the opportunity to say it doesn't matter if it's just life or death. If there is some risk of serious impairment of this person's health, then we not only should, but must take action at her request. And so that is what has been enjoined here.

Joyce:

Jill, this is a ruling that Barb is describing by a district court judge, and now it goes on appeal. What do you think that process will look like?

Jill:

Well, it's certainly going to be appealed. And I think we have to just stress what Barb said, which is that this is one of those things where the federal government did the best it could which isn't as much as we might like, but it is all that their powers allowed. It can be appealed to the circuit court, which in this case would be the Ninth Circuit. Luckily, a more liberal circuit than your Eleventh Circuit choice. And so that's helpful. It can then go to an unbank in the circuit and then it can go to the Supreme Court. And who knows what will happen at the Supreme Court, given how this court has been. But this does seem like it is probably an enforceable good move to protect the health of pregnant people. And that's all it does is it broadens that exception, that one small exception, but it doesn't help anyone whose life or health isn't at risk.

Joyce:

Kim, you're our Supreme Court expert and I'm going to ask you to pull out your crystal ball a little bit and predict what happens when this case reaches the court, which seems likely. I think there's a good chance it'll end up there. But DOJ says EMTALA, the federal law has to take priority as you've pointed out our favorite kind of supremacy. Do you think the court will agree with DOJ or do you think that this too will be a by gone after it hits the Supreme Court?

Kim:

If this were a year or two ago, I would say that the Supreme Court really protects and holds tight to the idea of federalism in that federal laws do Trump conflicting state laws for lack of a better word. Just given what has happened, particularly in the last term, particularly with this conservative super majority that seems not only intent on rolling back certain rights, but just really seeming to find postdoc justification for what they want to do in the first place. And particularly, for example, after the Dobbs decision.

We didn't just get the Dobbs decision, but we had Justice Samuel Alito who wrote it, giving speeches, acting as if he is some sort of protector of religious freedom and the fight against a secular society. Those are his words, not mine. I just don't think I can say anymore that based on precedent, based on my understanding of constitutional law, that this is a clear case. I really don't know what the Supreme Court will do sadly.

Joyce:

It's so depressing when you say it that way, but I think you're right. Two or three years ago, we would've had certainty that there would've been baseline clear rules the court would've followed. And now after watching Samuel Alito go off on his Roman holiday and talk about secular America, it really is I think deeply troubling in ways that this Idaho statute underlines. Because Barb, Idaho used a process here that I'm not sure I've ever seen before. Instead of letting the health of the pregnant person be an exception to it in abortion ban, it instead set up that very limited category of what we would normally call exceptions.

Those became defenses that doctors could use after they'd been indicted while they were midway through being prosecuted. And that's really what sets this Idaho statute apart. Abortion is illegal. Doctors can be prosecuted. Oh, but maybe they can offer as a defense after they've paid for a

lawyer and been through that horrible process, they can say, "Well, this person was going to die if I didn't do that." Is this a good approach for other state legislatures to take up?

Barb:

Boy, I think it's such a nefarious approach. Legislatures are allowed to define crimes the way they want to. They can make certain things elements that the prosecutor has to prove, or they could make other things affirmative defenses that the defendant can assert once a case has been proved. And what they chose to do here is to make these affirmative defenses. So in other words, the prosecution doesn't have the burden of showing that there was the absence of an exception of the life of the mother. It is the defense that must prove that aspect of the case. And so that can be really difficult.

As we've discussed before, the devil is in the details here. What does it mean to say the life of the pregnant person? Do we have to say with 100% certainty they would die if they had to carry this fetus to term? Is 90% enough, 85% enough? And so to put that burden on the doctor or the provider means that they're just going to turn people away. They're going to say, "Gee, I don't know. I don't want to have to." As you said, be charged with a crime, risk losing my license, pay for a lawyer, go through a trial in hopes that when I [inaudible 00:49:39] cert the affirmative defense that I believe a life was in danger, that the jury's going to agree with me. And so what I think it does is it takes all the gray area and puts that burden on the healthcare provider. And I think the hope there is the chilling effect that will cause providers to just say they can't do it because they just don't want to assume that risk.

Joyce:

It's so important for people to understand that. And the fact that that risk, that choice that doctors have to make means that people who are pregnant won't be able to obtain necessary medical care, which takes us in a funny way to Kansas. And Jill, I'll ask you following on the heels of that vote in Kansas, where Kansas voters rejected a strict ban on abortion. There are reports that women are registering to vote in record numbers, out registering men, political pollsters are reassessing their predictions for the midterm election. Do you think that in a really strange way maybe the silver lining of Dobbs is that it becomes a political rallying cry for the midterm elections?

Jill:

I do think that. I also hope that men are as impacted by this and will vote their consciousness on the same basis as women in terms of the Dobbs decision. I think we saw in the election of Ryan in New York in a contested, a special election just now, also shows the impact of Dobbs. I think that it is going to increase registration and enthusiasm. We've seen a huge rise in the enthusiasm of Democrats to vote. And I think a lot of it is based on Dobbs and its progeny. And by that, I mean all the consequences that have been predicted that might follow and what it shows about what it means to have a conservative court like this one that could take away every right that we hold dear.

And to even have that predicted by Justice Thomas in his concurring opinion. So yes, I think it's very likely that this could be. And I hate to call it a silver lining because there's really no silver lining to this, there really isn't, but at least it's going to help ameliorate the horrible consequences of Dobbs, and that if we get enough of a democratic Congress, we could pass a federal law protecting the right of abortion.

Joyce:

I think that's really fair. There is no silver lining. I saw Hillary Clinton tweet today that it's Women's Equality Day and I almost felt like tweeting back in response, boy, I'm not feeling very equal these days. And that's how this entire topic makes me feel.

Kim:

Hey, Jill, I've been trying to find ways to be better to the planet. What sort of things have you been doing?

Jill:

I applaud that move, Kim, and I think we should all be doing that because did you know that only 9% of plastic that you put in your recycle actually gets recycled? No matter how much we put in our recycling bins, that's all that gets recycled. At Grove Collaborative they believe it's time to ditch single use plastics for good. And that's a double entendre, forever and for the good of the earth. Grove carries hundreds of products aimed at replacing single use plastics across your home and personal care. And by 2025 Grove will be 100% plastic free. And like Grove Co's concentrated cleaners and refillable glass bottles, they're friendlier to the planet and twice as effective as leading natural brands.

Barb:

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. And 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 more than 2,000,000 households who are already shopping sustainably at Grove.

Jill:

Go to 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. That's grove.com/sisters. Or you can find the link in our show notes.

Kim:

This week two men were convicted of conspiring to kidnap Michigan governor Gretchen Whitmer in 2020. These convictions come at a time of rising concerns about domestic extremism and the rising threats against and disparagement of FBI agents, which both are involved in this case. Barb, I want to start with you since you followed this case so closely. We've talked before about this case, there was another trial in which these two men were ... the charges against them, the jury hung on, and two other men were acquitted. What was different about this? Why was there a conviction in this case and not in the first one. And beyond that, what does this mean in terms of prosecuting those involved in domestic terror schemes?

Barb:

Yeah, I think you never know why a jury might have been hung or even acquitted some defendants, but it may just have been the jury. It may have been one juror who was hostile to the government's case. The fact that there was an acquittal though I think suggests that there was hostility to the case against

those other two defendants. I think one thing that was different this time around was the prosecution really emphasized conduct over talk.

And I think by getting rid of those two other defendants who were acquitted, it opened the door to that strategy because last time they had four defendants and only two of them conducted surveillance of the governor's home, which is terrifying. It should send chills down everyone's spine, the idea that these guys went to her home, not once, but twice. One time they drove by and another time they went back and they came up with specific steps that they would take when they were there, in addition to building this shoot house and going through training and other kinds of things.

I think that it could have been easy for the defense to portray the defendants who did not go on the surveillance trips as tough talkers who weren't really part of the conspiracy. But I think in this case where both defendants, 100% of the defendants on trial did participate in this surveillance, it made for a much stronger case. And so I only speculate, but I think that could be why. And what does it teach us? Boy, I'll tell you, it shows me that perseverance is important in cases like this, because these are absolute domestic terrorists. They were going after Governor Whitmer, wanted to kidnap her, put her on trial because they disagreed with her COVID shutdown orders.

Now you can disagree all day with people's political decisions and you can take her to the ballot box and you can file lawsuits and all kinds of other things. But what you can't do is engage in vigilant justice and try to use violence to make this stop. That is domestic terrorism. And so I really applaud the US attorney's office in the Western district of Michigan for having the courage to do this a second time, because it would've been the easiest thing in the world for them to just say, "Well, we respect the decision of the jury and we've decided to move on."

But what they did instead is the very hard thing, which is to try a case again, and risk public embarrassment and humiliation of having an acquittal or another hung jury. But they weren't worried about that. They put those egos aside and they did their duty and got these convictions, which I think are really important.

Kim:

Yeah. Remember that this was a domestic extremist attack against a government official before January 6th. This is something I think it's part and parcel, but this has been going on for some time and it continues to go on. Joyce, like in the first trial, the defendants argued that this was entrapment that the FBI essentially set them up. Of course the jury disagreed. But can you talk a little bit about prosecutors? How do you walk this line when you have an investigation that involves undercover agents, they have to act in a way they're dealing with these folks? Where does that line draw between encouraging someone to commit an action or just following them as they're committing an action, investigating them covertly and making sure you can prove that to a jury without a jury thinking, hey, the FBI was after these guys.

Joyce:

Well, the good news is that the law regarding entrapment is very well established and prosecutors and agents train on this issue. They know where the line is and they know at least in theory what kind of conduct crosses over the line. And that's typically when you take someone who's not predisposed to commit a crime and you rush them into that crime and in essence override their will, something that agents are very careful not to do.

But something that we've talked about before on the podcast is this notion of when do you make an arrest, right? Because these are situations that inherently involve danger to the community, here danger to Governor Whitmer, you don't want to let it go on for long enough that there's real risk to

her. In other words, you've got to make your arrest someplace left of boom, right? Boom is the bad thing that you want to keep from happening.

And the question is always how far left of boom do you make the arrest? And that's where sometimes there's this question about whether you're taking down the criminal, whatever it is, the enterprise, the conspiracy, before there's enough evidence to suggest that it really is the intent of all of these people to participate in criminal conduct.

In a situation like this, DOJ has to be concerned about a future entrapment defense. They've got to be careful to take steps that don't involve inducing someone to commit a crime that they're not already predisposed to commit. And that means that the more planning that you let defendants do on their own, the stronger the case will be. So in this setting, for instance, there's been some criticism that agents moved in before the defendants had set a firm date for them to pull off the kidnapping.

Maybe it would've been a good idea to have that evidence, but really what you've got to do as a prosecutor is to stay in consultation with the agents and make sure that your North star is keeping the community safe. You're collecting all the evidence that you can in a very thoughtful way. You're not stepping over the line and inducing people to commit a crime, but you still have to make sure that you don't let these guys get close enough to completing their plans that they kidnap the governor of Michigan.

Kim:

Jill, we've talked a lot about the rise in threats against FBI agents since the warrant was executed at Mar-a-Lago. There was a lot of anti FBI rhetoric in the defense in this case. How do you think this is affecting not only the FBI's work, but prosecutors who are bringing cases like this that rely on FBI investigators, sometimes covert FBI agents. How do you think that could affect those cases as this anti FBI rhetoric just gets worse and worse.

Jill:

It seems obvious to me that it is all part of the strategy of attacking the government by the Maga crowd and that it will hurt that there is no reason to have these fears. There's nothing that the government has done that justifies it, but we've seen attacks on the FBI offices. We've seen some really bad behavior, so it is going to make it harder for juries to trust, but it's not jurors who are reading the real news.

If you are reading the facts, for example, about the Mar-a-Lago search, which we've talked about, and the fact that the search warrant had probable cause, that it wasn't a raid, that the probable cause if you had any doubt about its veracity, the fact that they walked away with 11 sets of highly classified information proves that the facts in the affidavit were correct, so it only really verifies it.

I think that if you're paying attention to truth and reality and facts, it's not going to have any impact on the FBI or on prosecutors. The other thing is the FBI has always had some kind of pushback and they're ready for it. I don't think that any prosecutor is going to change their decisions about what they investigate and what they prosecute because of fear of these kind of attacks. That doesn't mean that you don't have to think twice about it.

I mean, I had some threats when I was an organized crime prosecutor and you do have to think, how safe am I walking from the courthouse to my remote location when I'm out of town trying a case? But you do your job because it's the right thing to do. Hopefully the work of the FBI will go on and the credibility of the FBI is shown by the results of this case and that people will take that more seriously. And I think there are some Republicans who are ready to take that as the truth.

Barb:

Can I just add one more thing before we close on this topic too? I just want to express my admiration for Governor Whitmer. She has carried on with her duties with great courage and resilience despite this attack. And it's part of the job. I think verbal criticism is part of the attack or part of the job, but the idea of threatening to kidnap you should not be part of the job. I just want to say how much I appreciate her service and in the service of all public officials, which today does include unfortunately these kinds of threats and risks to our safety. So to all of them, thank you for your service.

Jill:

Hey guys, you know that this is my last week for a couple of weeks, because I'm leaving for a trip that includes a safari in Africa and I'm worried about staying hydrated while I'm there. Do you have any suggestions?

Kim:

I really do. You should take with you some packets of Liquid I.V. because during the hot summer months or during your wonderful African safari, we need to be proactive about keeping our bodies fueled and hydrated. And just one stick of Liquid I.V. in 16 ounces of water hydrates you twice as fast and more efficiently than just water alone.

Barb:

Jill, I think it's great because it's packable and it can't get damaged in your travel, so it's the best thing to take. Because there's nothing better than getting refreshed with Liquid I.V. after working late or a hard workout, it gets you right back in the game. And every day you can know that you're treating your body right. Liquid I.V. in 16 ounces of water hydrates you two times faster and more efficiently than water alone. It contains five essential vitamins, B3, B5, B6, B12 and vitamin C. And it has three times the electrolytes of traditional sports drinks made with premium ingredients that are non GMO and free from gluten, dairy and soy. It's really the perfect accompaniment to your trip, Jill.

Kim:

Yeah. I mean, I take it whenever I hike or do anything active. And like Barb said, you won't be breaking any TSA rules by taking it with you. And Liquid I.V. comes in a bunch of delicious different flavors. Listen, they have concord grape, lemon lime, pina colada, tropical punch, watermelon, strawberry, passion fruit, guava, acai berry. Right now I'm really, really loving the tropical punch. I haven't even tried them all yet, but that one, the lemon lime are really good. What about you ladies?

Barb:

Yeah, I like the lemon lime. I'm kind of a lemon colleague girl. I always tend to gravitate toward that. How about you, Jill?

Jill:

I'm definitely in the lemon category. That is my favorite, but I have to say the pina colada is really wonderful.

Barb:

Take your hydration game to the next level and grab your Liquid I.V. in bulk nationwide at Costco, or you can get 15% off when you go to liquid-iv.com and use code sisters at checkout. That's 15% off anything you order when you shop for better hydration today using promo code sisters at liquid-iv.com or look for the link in our show notes.

Jill:

It's time for one of our favorite parts of this show, which is answering listener questions. We all love to hear from you and we love to get into thinking about the things that are troubling you. If you have a question for us, please email us at sistersinlaw@politicon.com or tweet using #SistersInLaw. If we don't get to your question during the show, keep an eye on our Twitter feeds throughout the week because that's where we will answer other questions that are posed to us during the week.

And this week we had so many good questions. It was really hard to get to picking out just three, but I'm going to start with one from Cindy in Marshall, Michigan. And of course since it's from Michigan, I'm going to ask Barb to answer that question. And Cindy asked something that has puzzled me since the news about TS/SCI docs being found at Mar-a-Lago. She asked, "Since these are so top secret code word, seen only in a skiff, how could the former president get them out of that kind of control into his own residence?" Barb, go ahead.

Barb:

Yeah, this is a great question. And I've had some similar puzzlement Cindy. By the way, Cindy in Marshall, Michigan is a lovely place, beautiful historic town. One of the sites of the underground railroad, so cool place to live, Cindy. You're absolutely right, ordinarily if you're handling these kinds of documents, you are only reviewing them inside a skiff.

I imagine for the president, they go to The Oval Office and it is in the care and custody of a person who brings it to him. He gets these presidential daily briefings where they come in and they may want to bring documents for him. What John Bolton has said, his former national security advisor is that from time to time, he'd say, "Can I keep this?" And they would all just sort of look at each other and shrug and say, "I guess so." That was a real failure I think on their part to allow him to take that. But I suppose when it's the president and the boss who says, "I want to take this with me up to the residents." They bowed to that. But they really shouldn't have allowed that.

I think that's how it happened. And then what we read in the release search warrant affidavit is that what they found was these classified documents were just intermingled among newspaper clippings and letters and all kinds of things. He would just take them home with them at night into the residence and throw them in a pile somewhere. And from there, they ended up in these boxes. I think it was a dare election of duty by president Trump, as well as some of his top aids who really should not have allowed that to happen.

Jill:

And I think we have to point out that it seems like when the boxes are packed to leave The White House at the end of the term, there is no set review and that's because there's an assumption that the president follows the law and follows the rules. And so no one actually goes through to see if he's taking White House stationary or top secret documents or the China.

Barb:

You know what they're going to do Jill, they're going to have to put that, you know that device they put on clothing items sometimes in stores so when you walk out it beeps, they're going to have to put that on all the classified documents now. Way to go, that's why we can't have nice things, Donald Trump.

Joyce:

But I mean, seriously, if they took classified documents, did they take the China and the silver? Maybe we'll find out.

Jill:

Yeah. Could be. Okay. Our next question comes from Deborah and it's for Joyce. Since Matt Gaetz is winning his primary, what's going on with his legal issues. I haven't heard anything about his woes in a long time. There's some recent reporting, isn't there Joyce?

Joyce:

There is, there was a report just yesterday in The Daily Beast. They talked with eight people who were either witnesses or subjects. I thought subject was very interesting because that suggests someone whose conduct potentially falls within the scope of what's being investigated, someone who could be charged. But The Daily Beast spoke with all of these people and they all said that they expected to hear from the government that the case was not over.

Why would it be so quiet, Deborah? Well, it's actually because Gaetz is a candidate who's on the ballot. He was on the primary ballot. The Florida primary has just happened. He'll be on the ballot again in December. And it's never absolutely clear to me how many days before an election DOJ decides it's time to shut down any overt investigative activity, but certainly 60 days would be a good marker. This case is being run I think by all accounts out of DOJ's criminal division, out of the public integrity section. And so it's very likely that they were observant of that 60 day marker before the primary. And we won't hear much publicly about this case until after the November election is over.

Jill:

Thanks, Joyce. And our last question for today is for you Kim. If Rudy Giuliani spent six hours pleading the fifth in Fulton County, can the grand jury assume he's guilty or is it like criminal cases where they don't allow adverse inferences?

Kim:

That's a good question. It's a couple pieces to the way this question was asked. So a grand jury can't assume guilt in any circumstance because that's not what a grand jury does. A grand jury is assembled in order to determine whether there is probable cause to warrant issuing charges against a certain potential defendants. And so in fact, grand juries only hear the prosecutor's side, they do not determine guilt. They only hear the evidence that a prosecutor presents in order to determine if probable cause exists.

Now you are right also in a criminal case, a criminal jury that does determine guilt or innocence pleading the fifth cannot be the basis of assuming guilt of anyone. People have the constitutional right to plead the fifth, it really wouldn't work, if that could be taken as an assumption of guilt. Now you mentioned the word inferences and that's an important one that in cases, particularly civil cases, if motions are argued, particularly if not all the fact finding is done, if someone makes an argument to a judge in the middle of a case, a judge may make inferences or even a jury can make inferences in favor

or against a particular party in that case, but that's not a dispositive ruling. So in no case can pleading the fifth be an assumption of guilt overall.

Jill:

Thank you for listening to #SistersInLaw with Kimberly Atkins Stohr, Barb McQuade, Joyce Vance, and me Jill Wine-Banks. You can send in your questions by email to sistersinlaw@politicon.com or tweet them for next week's show using #SistersInLaw. Go to politicon.com/merch to buy our pale blue tee, or now it's getting to be fall, our hoodie and other goodies. And please support this week's sponsors, HelloFresh, OSEA Malibu, Blueland, Grove and Liquid I.V. You can find their links in the show notes. Please support them as they really help make this show happen. To keep up with us every week, follow #SistersInLaw on Apple Podcasts or wherever you listen. And please give us a five star review, it really helps others define the show and it makes us feel good too. See you next week with another episode #SistersInLaw.

Joyce:

Jill, you cannot say stuff like that and just walk away, no, no, no, no, no.

Jill:

Yeah, it's true. I got married again to Michael on about our second anniversary in an actual Kadazan tribal ceremony. And it was arranged by a friend of my husband's who had been in the Peace Corps and had married the daughter of the head hunting tribe he was working with and it involved gongs and I wore the authentic village wedding dress, which every bride in that village wears. And we drank tuak, which is a very potent liquor. It was terrific. I had a ritual shower before the wedding, which is at a public pump out in the middle of a field filled with animals. And I had to walk over a rope bridge to get to that field, so it was quite an exciting time.

Joyce:

Jill, you're the most interesting person I know, you really are.

Barb:

Are there pictures, Jill?

Joyce:

I was going to say, can you show pictures.

Jill:

There are. Are you kidding? Don't you read the Borneo Bulletin? They did a whole story on it. I will have to-

Joyce:

It's all in the Watergate girl, ladies.