

Jill:

I've had some hard choices to make with HelloFresh recently as they've introduced some of their seasonal offerings. I still revert it to one of my favorites, which is always barramundi, and they had a great barramundi recipe this week that I'm looking forward to cooking. And that's just one of more than 30 recipes available from HelloFresh every single week. Get 16 free meals across seven boxes with code Sisters16 at hellofresh.com/sisters16, or look for the link in our show notes. You'll be glad you did. Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Barb McQuade, Joyce Vance and me, Jill Wine-Banks. Today, we have an exciting show where we'll be discussing Mar-a-Lago and the January 6th Committee.

So, much to talk about, including Judge Cannon's refusal to take the graceful way out of her terrible opinion, and the Department of Justice's 40 plus subpoenas and their search warrant for two phones, and the resumption of congressional hearings, possibly scheduled for January 28th. We'll also be talking about the asylum seekers who followed our immigration laws, and are now being relocated without any prior warning to the receiving states, or the asylum seekers. Very cruel in my opinion, and then we'll talk about SCOTUS's continuing its potential undoing of all prior law on balancing religious freedom and protecting civil rights in a case involving an LGBTQ club at Yeshiva University.

And as always, we look forward to answering your questions at the end of the show. But before we get to that, I want to make sure that you all know that we're going to be live together for the first time recording an episode of SistersInLaw. We're going to be at the Texas Trip Fest in Austin. And then we're going to have a special party afterwards, where we will be able to talk to each and everyone who comes there. If you're either at the Trip Fest or you just are living in Austin, look for ways to get there to meet us. We look forward to seeing you all there, and I have a request to talk about the reason that I'm now back, which is that I have survived my trip to the UK for a wedding, and my trip to Africa for a safari.

Barb:

I just have to know Jill, when you went to the wedding, did you wear one of those big hats?

Jill:

I didn't. I asked the mother of the bride, because I had been to her wedding and worn a big hat. And she said, "Nope, no one's wearing hats anymore." The mother of the groom wore a fascinator, and there were at least a half dozen people in the audience with big, feathery concoctions.

Barb:

Oh, I love it.

Jill:

And I actually had bought a fascinator. Now, I guess I'm going to have to wear it on the show because where else I'm going to wear-

Barb:

There we go.

Jill:

... a fascinator?

Barb:

It could be your new Jill's pin. You could be Jill's-

Jill:

Right.

Barb:

... Jill's fascinator.

Jill:

Well, today's pin by the way is a T-shirt I'm wearing, which I don't know if you can all see which has a leopard on it, because we did manage to see unfortunately no leopards. I'm wearing this instead of having seen one. We did see cheetah, and we did see lions. And we saw of course tons of elephants, giraffes, zebras, wildebeest, impala, nyala. It was really amazing, and we saw a fight between zebras. A mother and baby were being protected by the father-

Barb:

Wow.

Jill:

... and I got it on film. It's not very good, because I'm in a vehicle and they were running around us, but it was amazing to watch the father kick, and then get bit. I mean it was an amazing, amazing event...

Kim:

By another zebra?

Jill:

Yeah, by a pack of other male zebras.

Kim:

Wow.

Jill:

And they were running crazy. And then we saw a pack of newborn giraffe, little teeny... well, I mean little teeny for a giraffe, but pretty big and the mothers share responsibility. There was at least a half a dozen babies with one mother tending to them, and it was just so adorable and wonderful to see. And then because I love adventure, we decided to go snorkeling in the ocean. And nobody warned us that the weather was really terrible, and the waves were gigantic. And to get to the reef, we had to go in a little rubber zodiac, which required holding on to ropes with both hands as you're sitting on the edge of this thing. And the waves are coming over us, and throwing us in the air.

It was terrifying, and then we got there. And of course because of the waves, it wasn't clear. We could hardly see anything, but we did see a few pretty fish and a mantaray. And it was a little more dangerous than I liked. Because while we were snorkeling, the waves come over and fill your snorkel with water. And then you try to get rid of it, but because the waves are so big, you can't. And then you can't see the

other people in your group, because the waves are so high. So, it gets a little alarming. I probably wouldn't have done it if I had known in advance. And then I guess my final thing was as we were leaving the lodge, the game park where we stayed in a tent, complete with all the noise of a tent, I fell into a cactus.

And when I got home, I had to go to the immediate care center for my doctor, because I had so many things embedded in my hand-

Kim:

Oh, no.

Jill:

... and it had gotten infected. Now, I'm on antibiotics to get rid of that. But other than that, the trip was fabulous. It was really something I recommend to see nature in that way is incomparable, really is.

Kim:

You survived wild animals to get taken out by a cactus.

Jill:

Exactly.

Kim:

I'm so sorry.

Jill:

It's true, it's true. What can I say? And we were at one point surrounded by the most inter species conglomeration. There were zebras and wildebeest and impalas running around our vehicle, blocking our way of course as they ran around. And I'm not sure what they were fleeing, because they kept going in circles for quite a while before they finally got out of our way and let us proceed, but it was beautiful.

Barb:

Well, I just like to think that somewhere in Africa right now, there's a zebra telling her friends that she saw Jill Wine-Banks.

Jill:

I actually did encounter some fans of ours while I was there and also...

Barb:

No way.

Jill:

... yes, it's true, it's true, people who listened to our podcast were in the same safari campus I was. And then of course, I converted some of the others who hadn't heard of us yet, but are now going to be listeners. And as soon as I returned to Chicago, there were several people in the airport who came up to me and said, "Don't I see you on TV? How come you look familiar to me mean?" I mean our show really

has amazing reach. It really does, and I'm so proud to be part of this group. I can't tell you how wonderful it is, and how much I missed you, but I was able to be listening to you in Africa. I listened, and it was fantastic to turn on my phone, my Android phone which also gets honey, and listen to you and get updated on what's important in the news.

Barb:

We're glad to have you back.

Jill:

And I'm so glad to be back. Hey Kim, have you been thinking at all about life insurance now that you have stepchildren and other people in your life?

Kim:

Yeah Jill, I have. You're exactly right. Things getting married are a great opportunity for you to make sure that you have the coverage that you and your family need. And we pay thousands every year to protect our homes, our cars, and even our phones, but too many of us aren't taking steps to protect our family finances. That doesn't just disappear, and a life insurance policy can provide your loved ones with a financial cushion they can use to cover those costs, giving you peace of mind that they'll be protected no matter what. And now is a great time to buy.

Barb:

I like having all the data in one place. I'm a very visual person, and that's great about Policygenius. They make it easy to compare your options, from top companies, making sure you're not paying a cent more than you need to for the coverage you need. Policygenius is an insurance marketplace that makes it easy to compare quotes from top companies like AIG and Prudential, all in one place to find your lowest price on life insurance. You could save 50% or more on life insurance by comparing quotes with Policygenius. Options start at just \$17 per month for \$500,000 of coverage. Here's how it works. Just click the link in the description, or head to policygenius.com to get personalized quotes in minutes, and find the right policy for your needs.

Kim:

You'll feel great knowing that licensed agents at Policygenius work for you, not the insurance companies. And they're on hand through the entire process to help you understand your options, so that you can make decisions with confidence. Plus, there are no extra fees, your personal information isn't sold. And their ability to get you covered in less than a week without unnecessary medical exams has earned Policygenius thousands of five star reviews across Google and Trustpilot. So far, it's helped over 30 million people shop for insurance, and you could be next.

Barb:

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Jill:

Let's get to it because there's so much to cover. Barb, do you want to start us off?

Barb:

Yes. Well, I want to talk about all of the latest developments with Mar-a-Lago and the January 6th investigation. And Jill, a lot happened while you're away, but I'm sure you've been reading the news and you're up to date. But before we talk about Mar-a-Lago, Jill, I want to ask you this and all of you sisters, the Mar-a-Lago document scandal needs a good name. Jill, Watergate was so indelible that every scandal since has been something gate, Russiagate, et cetera. And I'm tired of that one. We need a new shorthand from Mar-a-Lago. I don't know if you guys have any suggestions, and I think it needs to be short enough to fit in a tweet. Do you guys have any suggestions?

Jill:

I think our listeners are going to come up with the best answers, but it did immediately occur to me since we have shortened Mar-a-Lago to MAL. And malfeasance seem to pop into my head as a name for it. I mean Watergate was because it happened in a building called Watergate, and then the gate stuck for Russiagate and Billygate which goes back to the Carter administration-

Barb:

Yeah, Billygate.

Jill:

... and many other gates that amount it to nothing. My candidate is malfeasance.

Barb:

Okay, malaprop.

Kim:

Malaprop would be a good one. What else? Do you guys have any others?

Joyce:

I wonder if it'll be Watergate and everything after this will become alago.

Kim:

Oh...

Joyce:

It'll be like this Don Jr. Alago.

Barb:

Oh, that's super interesting.

Kim:

Oh, that's good. I like that one. I second what Joyce said.

Barb:

I've heard our friend Asha Rangappa referred to it as nara lago using the nationals archives-

Joyce:

Oh, that's good. Yeah, yeah.

Barb:

... acronym. So, that one's pretty good. All right. Well listeners, share your ideas. Always looking for good language and names, but why don't we talk whatever it is we're calling it, the latest news of course is that Judge Aileen Cannon appointed a special master. And she also refused to grant DOJ their request for a stay about those a hundred or so classified documents that were seized in August as part of those 27 boxes, they pulled out of the Mar-a-Lago basement and office. Kim, there's been some controversy about this opinion already. Whoa, can you just share with us what is it that people are objecting to?

Kim:

Well, yes, there has been controversy over this order, as well as the last one. And I can talk about what I thought was most interesting. I'd love all of you guys' thoughts to giving your professional experience. But in addition to the fact that Judge Cannon did not go back at all on her previous order which did things as we've discussed previously, gives too much credence to this argument of executive privilege, I was really troubled by how she talks about the classification of these documents as if that is not a determined fact. It was as if there was fact finding to be done, to determine whether or not the documents in question are classified, despite the FBI and federal authority stating that they're classified the FBI.

So, that's troubling to me, not only legally, but just in terms of where we are in this country for a couple of reasons. We have seen a sustained attack on the credibility of the FBI that is being fomented by people within Donald Trump's circle, and it's very troublesome. It's very important, and it has led to FBI members facing threats, and it's a very dangerous thing. And I think this idea implicit in this order is that the FBI cannot be trusted in legal documents to determine that these documents are classified, and that's really, really troublesome. It also by extension gives credence to this idea that Trump made, that he had the power to and thus did declassify some of these documents.

These are things that he has said on whatever his social media platform that he's still allowed to be on. Now, it's important to note that his lawyers have actually not argued that. They have never stated that he declassified these documents, but it's left open. It's this thing that's floating around that's perhaps a theory, and Judge Cannon lets it continue to float there, with this idea that that is not a determined fact. So, that's the biggest thing about this, that is troublesome to me. It's all the other things, the fact that it will delay the DOJ's investigation, the fact that it's what stands this idea that he could make some executive privilege claims, the fact that now we know.

And this is something I didn't even know before the last time we talked about this. I thought that the national security investigation could move forward even if the criminal invest investigation has been paused. The DOJ says, "No, no, they're too inextricable for that to happen." This is holding up everything. There's a lot of things wrong with this order. Those are just some of the things I found, and I would love your thoughts too.

Barb:

Yeah, totally agree with the identification of that classification issue as the most astonishing. It is a core executive branch function to classify documents. The idea that she's saying there's some question, is a

classified document really classified? I mean that's right up there with if a tree falls in the woods and no one hears it, did it really fall? What? Are you kidding me?

And then as you mentioned this thing about she tried to clarify the order, but I think she only made it even muddier, this idea that the Justice Department said, "You can't really conduct this intelligence risk assessment without also involving the FBI and asking questions that will likely be used in a criminal case, interviewing people to find out who had access to these documents, and why are there empty folders, and those kinds of things." And I think the worry for the Justice department is if the FBI gets involved, then later down the road, there could be an argument that they were in violation of her order. And therefore, they were tainted.

Their review of that makes any case the fruit of the poisonous tree, and you have to throw it out. She just said where's the effect of, "All right. Well, they say they're inextricably intertwined. I'm not sure I'm convinced, but to the extent it really, really, really is intertwined, you can do it." Well, is that going to get litigated later? I think the water's just got even muddier. Joyce, you're our appellate nerd, self proclaimed. Do you think DOJ should appeal, and do you think they will appeal which might be two different questions?

Joyce:

I think you and Kim have been offering the rationales that will ultimately lead DOJ to appeal here, although it's perhaps a more finely tuned decision for them to make than some folks have been suggesting. But because there are all of these issues buried in this either in artful at best or disingenuous at worst opinion, DOJ ultimately I think will appeal and will seek clarification. And Barb, that last point that you were making about this opinion is bizarre, right? The judge doesn't trust the government to make classification decisions. That requires the review of a special master. But somehow in her order, she says, "Well, it's fine for DOJ to just say on its own if the intelligence community review, becomes inextricably intertwined with the criminal case, then DOJ can just decide to go ahead."

She somehow trusts them to just make that decision and of course, she doesn't. Of course, the problem is that it opens the door for Trump down the road to challenge whatever happens. And DOJ cannot win under cannon's order if it stands. Although there's some reasons to believe that the special master process could move more quickly, and this is only a decision made by one district judge. So, it doesn't have a lot of precedential value. DOJ ultimately will have to go to Atlanta to file an appeal. I have been refreshing PACER ever since the judge's order came down. For those of you who don't know what PACER is, it's this system that lawyers use nationwide to see pleadings that are filed in all of the federal courts.

And this is one of my pet peeves, and maybe a topic for another day. It's very expensive, so it restricts access to these sorts of documents. And I think every time I refresh the page, I'm spending another 40 cents or something like that. So, it adds up. I refreshed right before we started the show. DOJ has still not filed. I think if we don't see a filing by the close of business today, then something may be a foot because part of DOJ's analysis here is that they suffer irreparable harm if the judge's decision is not stayed. It seems that with every passing minute, that rationale gets weaker. I think the 11th Circuit would certainly write to that.

Barb:

Mm-hmm, good point.

Joyce:

We're in the next couple of hours, we'll be determinative here.

Barb:

PACER has a paywall, but SistersInLaw does not. Free with our advertisers, please support them. Jill, go ahead. Did you want to respond to that?

Jill:

Yeah, no, I just wanted to add something that refers to what both Kim and Joyce said, which is these documents are not even questionably not classified. They are all marked classified. They are stamped on every page with their classification. It's an absurd opinion that questions, and Kim is right. I mean it's terrible to be questioning the authority and the wisdom and the honesty of the Department of Justice, and the FBI in stating in a brief that they are classified, but the fact that they're marked means that there can be no doubt about it. This is creating though a speed bump. It's not a roadblock. Eventually, this is going to be undone. I just wanted to note that.

Joyce:

And I know we have more stuff to get to. Here's my concern. Trump, you give that man an inch-

Jill:

Yes.

Joyce:

... and he will take a mile. My concern is today it's only a special master and a little bit of delay, but that gets magnified and expanded, and shuts down the investigation, something he's been very successful at doing over time. And I think respectfully, it's time to get this on the road to Atlanta. People have made a lot of complaints that six of the 12 judicial seats in the 11th Circuit are Trump appointees. But after the 2020 elections, we saw judges stand up for the rule of law and say that there was not fraud in the election. And this is the point in time for the 11th Circuit to stand up and do the right thing, and show the country what federal judges do, regardless of who put them on the bench.

Kim:

Agreed. I wish I had faith if that would happen, but you're right.

Barb:

Well speaking of federal judges, Jill, I wanted to ask you about the other part of the judge's order, where she has appointed a special master a judge named Raymond Dearie. This was a name put forward by Donald Trump, and the Justice Department did not object. They agreed to this name. What do we know about him, and do you think he seems okay?

Jill:

Well, let me start with some facts, and then I'll give you my opinion. In terms of the facts, he's 78. He is a former US attorney for Brooklyn, the Eastern District of New York and the former chief judge of the Eastern District of New York. After he was US attorney, he became appointed by Reagan as a judge. He's clearly a Republican, appointed by Reagan. He served for over 36 years on the court. He is highly regarded by everyone, by prosecutors, by defense lawyers. Our friend Andrew Weissmann has said that he is a wonderful person, that he is fair and compassionate. He also spent seven years as a FISA court judge, the Foreign Intelligence Surveillance Court.

And it gets now to my opinion which is it's a surprising choice for Trump to have put on his list, because one of the things he did on the FISA court was approve the Carter Page warrant, which of course is one of the big gripes of Donald Trump. It's hard to see how he got picked, and it's equally another surprise would be that he is now on inactive status. He went from being an active judge to being a senior status, which means you get to reduce your caseload to inactive. Meaning, you really don't have a caseload, but you could be recalled if there was a real need. And he left with this great reputation, and now the thing that's going to overtake it all is that he's the judge that Donald Trump picked to be the special master.

It's hard to imagine other than his commitment to public service why he would agree to do this at this point in his career. So, that's what we know about him, but I mean yes, I think it's an interesting choice. It's the one of the two choices of Trump that the Department of Justice found no fault with. And therefore by default, became the one approved by both, and therefore was the one selected.

Barb:

Yeah, I'm hopeful that Judge Cannon for as bad as her decision making, has been so far by of outsourcing these decisions on the review to someone who appears to be a reputable judge, that in the end will get the right answers. I hope so. Well, let's turn to January 6th, and that investigation. There was reporting this week that DOJ has issued 40 new grand jury subpoenas in the past week. Some of the recipients were Mark Meadows, who is of course Trump's former chief of staff, Bernard Kerik, former New York City police commissioner, and a Trump campaign insider. Joyce, what do you make of the flurry? Do you think it has anything to do with the upcoming midterm elections?

Joyce:

This is such an interesting question. What Barb is referring to is this notion that DOJ typically goes dark at the 60-day mark ahead of an election. And my understanding of that policy, and Barb I'm interested to hear how you interpreted in your office, was that it applied the candidates who were on the ballot in the upcoming election. I think frankly, there's a good reason for DOJ out of an abundance of caution to avoid influence on elections, to be a little bit broader than that in regards to things, but I resist this notion that we should all be walking on eggshells around the former president, and that he deserves special treatment.

And I wouldn't be horrified here to see DOJ continue this investigation, maybe not indicting three days before the election, but to continue doing its work. I'm not really convinced that they tried to get all of these subpoenas in ahead of that 60 day deadline. I suspect that this is more reflective of the fact that the department received a lot of information about the work of the January 6th Committee, which gave them very concrete reasons to go ahead and issue subpoenas to a lot of these people. And if I was a betting woman, I would bet that this flurry of subpoenas has more to do with that than with the upcoming midterms.

Barb:

Donald Trump is not on the ballot this November, but you know who is, every member of Congress. And I wonder to what extent this is an effort to get ahead of it for those people. If you look at the language of the subpoena, it talks about information about members of the executive and legislative branch. I know there's been some reporting about Kevin McCarthy and Jim Jordan, and other members of Congress and their roles. One election sensitivity is activity relating to those folks, so that could be how the policy comes into play.

Joyce:

How do you think this works? Is it only if there are targets of the investigation, if they're witnesses? Do you think DOJ can move ahead? I mean isn't part of the problem here that DOJ has a fuzzy policy, and it might be time not just to make it an official policy, but actually to flesh out all these details? This is something that you and I did as US attorneys. Part of our job was to go back, or at least my job chairing the criminal practice subcommittee was where policy wasn't completely formed, or needed to be updated. We would go back and flesh it out. This seems like one whose time has come for some review.

Barb:

Yeah, you're right that the law or the policy is a little bit murky, and having clarity is important because I know that as a prosecutor, just tell me where the line is and I will follow it. I will stay behind it.

Joyce:

Exactly, yeah.

Barb:

But there is some value in having some flexibility. Because if the lines are super clear, and you find yourself in a situation where you want to put somebody in, then the more clear the rules are, the harder it is to exercise discretion and decide the case based on the facts. You have to just follow these policies. There is a trade off between clear lines and permitting discretion. Yeah.

Jill:

This policy goes back a long way because even during Watergate, there was a time when an indictment was held because of the political considerations of an election. And again, it was clear, or at least we thought it was clear that that was because the potential defendant, or could even be a witness maybe was the candidate. It's not something that should apply when someone is a potential candidate two years hence. I think that that clarification could be helpful.

Barb:

Yeah, we'll see. I guess we don't know, but you're right, they've got a lot to chew on there in the coming months. Kim, I want to ask you about another thing. And in the same reporting where we heard about DOJ issuing 40 grand jury subpoenas, there has also been reporting that DOJ has seized some additional phones. We knew early on they had seized the phones of John Eastman and Jeffrey Clark, and now there's reporting that some more Trump insiders had their phones sees. Boris Epshteyn, who is a campaign lawyer Mike Lindell, the MyPillow guy and another person who worked on the campaign. And I thought it was significant, because it takes a search warrant to get a phone. A subpoena won't do it. Can you explain to our listeners what's required to get a search warrant, and why that might be significant?

Kim:

Yes, absolutely. And you're right, it seems that this investigation is certainly ramping up, even as we reporting. As we're recording, there's a report from the Washington Post essentially saying that the Justice Department, the January 6th investigation is, "looking at everything." So, a lot of people under a microscope here. Generally speaking, to obtain a search warrant, it requires a showing of probable cause and not just probable cause period, but probable cause that evidence of crimes will likely be found at the place of the search. And in this, the DOJ has to specify what crimes they're talking about. It

can't just be open ended. It has to be very specific, and there are often limitations placed on this search limitations in terms of area, in terms of scope.

They can't just go in and take everything. It has to be very targeted and specific. If there was a search warrant issued for a phone, they would have to show a likelihood that a crime was committed, a likelihood that the evidence of that crime was on that phone, and demonstrate why you take that whole phone. Because obviously, phones contain more things. It has to be very specific. Also, as we've said many times before, because these are high profile targets, you better believe the DOJ is crossing their Ts and dotting their Is, because they know the level of scrutiny that will be involved here. And just in getting ready for this, I looked on the DOJ's website. And you can go on it too.

Depending on what evidence the DOJ is seeking to obtain, there are a plethora of internal guidelines that the DOJ sets out to obtain, whether it's electronic evidence, whether it's phone evidence, where it's a search of the premises of an attorney. There are a lot of attorneys involved in the scope of this investigation. They have very detailed guidelines by which they go to obtain this investigation, which is why I hate the use of the word raid so much. Raid just sounds like somebody's busting in, and just surprising people and just grabbing. This thing is done so meticulously and so by the book and so by the rule of law and of course, with the order of a judge. It's really important to keep in mind as we talk about this.

Barb:

Yeah, that's the part I thought was so significant. A judge made a finding that there's probable cause and evidence of a crime will be found on these phones. I'd love to see them in what crimes they're identifying. We'll just have to wait and see. And of course, it requires that very detailed affidavit. One day, perhaps we will see what's in there. All right. Well, finally Jill, let me ask you this. We learned this week that the January 6th Committee is getting ready to hold another hearing. They've said that they hope to hold their next hearing on September 28th. What do you think they'll cover, and what think's been missing from the story they've told so far in all of their hearings?

Jill:

Before I answer I want to go back to what Kim just said about using the word raid and the word seized would be in that same category. I really think we need a new glossary of terms, because it does create the wrong impression. It's seized pursuant to a lawful search warrant with probable cause, and we need a better way to call it than seized or raid. And those are routinely used by the media and create a bad impression. As to what's going to happen with the committee, they've said the 28th, but it's not firm I would say. There's a chance that it won't actually happen on the 28th, and they have not said what they're going to cover. There's been a lot of speculation.

Some of the speculation focused on the secret service aspects of this and getting the documents, all these missing phones and records and texts that are somehow suddenly gone from January 6th. And we thought it might be that, and confirming Cassidy Hutchinson's testimony with that about angle. So, that was thought to be the case, but we really don't know. I don't have a good answer as to what they're going to cover. There's certainly a lot of gaps in the information that's available to the public that I think people would like to know, and some of it does revolve around the secret service and some of it just revolves around who took documents away.

Now, that's maybe beyond the January 6th, which is focused more on the fake electors. I think there's a lot of testimony that could be had on the fake elector scheme. That might be another subject for them to cover.

Barb:

All right. Well, we'll have to wait and see. I have found all of those hearings to be absolutely fascinating. I can't wait. I'll be there with the popcorn. Hey Joyce, you ever drive down the freeway and see plastic bags flying around? I really don't like it, and it concerns me. Is there anything we can do about it?

Joyce:

Yes. We have a suggestion for our listeners, and I'm glad we do. I've read a lot about plastic in the oceans, where it's very dangerous and we're a big composting family. We try to minimize our use of plastic, but it's tough. Plastic bags and trash bags, plastic is really everywhere we look. And there's not enough being done about it. Over a hundred billion plastic bags are used and then thrown away every single year. So, that plastic bag you see in the gutter or floating in a stream or washed up on the beach, multiply that by a hundred billion. It's horrible, and there is a better way. It starts with our favorite new product called A Better Bag.

Kim:

That's why we love HoldOn. It's a company born from the idea that there must be a better way to go about our daily chores. Trash bags and kitchen bags are necessary staples, but do they need to be a hundred percent plastic? One hundred percent no.

Barb:

HoldOn trash and kitchen bags are heavy duty, plant based, non-toxic and 100% home compostable, which means they break down in weeks, not decades and all without filling up our landfills or polluting our oceans. HoldOn bags are on a mission to make daily chores something you can feel good about one bag at a time. Together, we can get rid of single use plastic.

Kim:

To shop plant based bags and replace single use plastics all over your home, visit holdonbags.com and enter sisters at checkout to save 20% off your order. Sustainability has never been more simple. That's H-O-L-D-O-N bags.com and enter sisters to receive 20% off your order. Small things can lead to lasting change if we stop and say, "Hold on." Thank you HoldOn for sponsoring this episode. You can also find the link in our show notes.

Joyce:

This week we learned that Governor Ron DeSantis sent people that he would call illegal aliens, and that he would call people to Martha's Vineyard. I'm sure everyone has seen the headlines. It's a deeply disturbing and very interesting story, especially given the fact that DeSantis fancies himself a candidate for the Republican nomination for the presidency. Kim, why don't you start us off with the news side of this and help us understand? I know the Boston Globe has had conversations, and you've been part of some really great reporting. What's going on here and who are the people that the governor has involved in his political machinations?

Kim:

Yeah. This is a group of people who it's important to know that despite what Governor DeSantis says, they are not illegal immigrants. There are people who lawfully have applied for asylum. They are going through the process and the fact that they were even allowed to be put on buses or in this case, planes

is because they were released from DHS custody these are not people who have just crossed the border and were somehow just running around in the United States.

These are people who have instituted a process, and they're going through that process, but some folks like Governor DeSantis and Governor Greg Abbott thought that it would be a great political move to take the people who have been released from DHS custody after their asylum applications, who were within their states, put them on transportation and send them to blue states. Now, it's very important that not only are they not sending them to other states run by Republicans, but they're trying to prevent them from even getting subsequently to states that are run by Republicans. This is purely a political move. I live in Washington DC. There have been thousands of people who have been sent here.

And as a result, they have found social services and the District of Columbia has mobilized in order to get them what they need, until they get to their final destinations. But because of course the former president, President Obama spends time on Martha's Vineyard, they thought that it would be a great look, DeSantis and these other governors, to send plane loads of people with no notice to Martha's Vineyard. If you've never been there, Martha's Vineyard is a pretty small place. It's an island off the coast in Massachusetts. There are lots of wonderful people there. I was just there last month, and I have no doubt of the reports that they were not surprising at all that the people who arrived there were met with kindness.

They were met with services. The state of Massachusetts and its authorities mobilized to make sure these people had food and shelter, and help them to get to their ultimate destinations. As we record this, they've already been transported, or in the process of being transported to the mainland of Massachusetts, so that they can continue to get services. Because again, Martha's Vineyard is small and it's probably harder to do it on the island than elsewhere. The stunt largely failed, because these people were treated wonderfully and got what they needed, but one thing that really makes me angry about this is that in this political stunt, these governors gave away the game.

They have shown that they have the resources and ability to move people and get them where they need to be, even if it is outside their state. If they really are angry about these people being within their state, they've shown that they have the means to do something about it. Now, what they could do is coordinate with other states, regardless of the party of the governor in those states, whether they're Republican or Democrat, and create some sort of plan to coordinate, to help these people and to help transport them to where they may have families, where there may be greater resources, where there may be better services to help them, but now they're trying to do this to get at people.

It's also worth noting that there is a Republican governor in Massachusetts, but it's one that's Charlie Baker who is not part of the mega crowd. So, they hate him too. He's essentially a blue person as far as they see, but that's really galling about this. There is policy, there is policy that we can do to better manage people when they're here waiting for their asylum claim to be adjudicated, but they're given away the game here that the cruelty is the point.

Joyce:

I remember being in Israel it's been a decade now, but having someone explain to me that part of the strength of their economy was immigration, which meant that there were people coming in to take low level jobs as they began to work their way up and to increase the demand side of the economy. And I wonder if this doesn't backfire in the long run and if these blue state economies aren't fueled by this introduction of at a macro level, valuable human capital. While at a micro level, people who... I hope that some of these folks were pleasantly surprised, and some of the myths about what an ugly country we've become were dispelled by the warm treatment that they received on the vineyard and in Massachusetts.

Barb, some people have gone so far as to suggest that the behavior of DeSantis and others is criminal. And I'm wondering what your take is on that. Is it a crime to round people up, to lure them onto airplanes under false pretenses and drop them off, God knows where?

Barb:

Yeah, I think it's going to depend on the facts. The reporting is a little bit sketchy about exactly how this came about, and what people were told. There's some reporting that a woman known only as Perla told people that if they got on the plane, they could go to Boston where housing and jobs would be waiting for them. Now, I don't know if this is true. I don't know who this Perla person is. I think that would matter a lot. There is a federal kidnapping statute. I don't know if this qualifies, but the statute has in addition to language about seizing somebody or kidnapping, or abducting them or carrying them away which implies physical removal. It also uses the word decoys.

I don't know how that phrase has been interpreted. It's such an unusual situation. As we say so often in these times, an unprecedented scenario and perhaps an unprecedented use of the statute, but to the extent they were lured or deceived into getting on that plane and going to Boston, and then really just dumped there, I wonder if they don't have potentially a claim there. I also think that they could have civil remedies about being lured on false pretenses, intentional infliction of emotional distress, and other kinds of things like that. I would imagine that those who enforce our nation's immigration laws would be interested in gathering information from them and interviewing them to find out exactly how it came to pass that they got on these planes, and were sent to Martha's Vineyard.

I think just more fact finding needs to occur, but I think there's a possibility of legal remedies. Whether they're criminal or civil, I don't know.

Joyce:

It's a really interesting question. Like you Barb, I've been reading the statute which as you mentioned says decoys. It talks about kidnapping, abducting, carrying away, confining, but then it says and holds for ransom or reward, or otherwise any person. I think you could make out a technical case for kidnapping perhaps because kidnapping, you can actually kidnap somebody in the place where they're in if you simply impede their movement for a period of time. You can hold them in place, and that can be a kidnapping. Like you say, it's this really novel question. I guess ultimately I come down more on the side of thinking that anyone who would do this should be convicted by the jury of public opinion.

Maybe that's the right place for accountability, but there are legal proceedings already underway. I'm sure we'll be talking about that more, but Jill on the political end of the spectrum here, another load of people were dropped off unceremoniously of all places in front of Vice President Kamala Harris's residents. What do you make of that political stunt?

Barb:

And I want to point out that busloads have been brought to Chicago as well. They're picking sanctuary cities to do this, but the one at the vice Presidents official residents is particularly awful, because they were basically dropped off in the middle of the street with no facilities around them. If anybody is familiar with Washington or you can Google it and see, there's nothing around the Vice President's house that would be shelter, food. And they were deceived, but so was the city of DC. The District of Columbia wasn't notified. On the other hand, Fox News was notified, and a videographer was put on the plane with these people, so that they could be recorded. And this would be used I'm sure for campaign purposes.

And I hate calling it a political stunk because I think that belittles how terrible this is, and what a wrong it is to the people involved. Now on the other hand, they're probably better off in the District of Columbia or Chicago or Massachusetts than they ever would be in Florida or Texas. They will be treated much better. Chicago has embraced the people brought here. And as you've already noted, these people are refugees, asylum seekers who followed our rules. They are not undocumented. They all filed the documents that are necessary for this process. Their treatment makes it even worse than it would be in any other circumstance, and it should not be allowed to happen.

DC has called out the national guard and has found temporary housing and food, as has Chicago, as has Massachusetts. I think it's probably they're better off than they would be in the states that deported them.

Joyce:

Barb, I was so excited this weekend, I got two more of the glass hand soap bottles from Blueland. I now have Blueland soap in every bathroom in our house. Are you using Blueland?

Barb:

Yeah. What I like about it is that it's eliminating some of the single use plastics by allowing you to refill some of the same bottles. 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 to 10 times less space than a traditional bottle, and their powerful formulas keep your home clean and smelling amazing.

Jill:

The idea is simple. Grab one of the beautiful forever bottles, fill it with warm water, drop in the tablet, and get cleaning refills starting at just \$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, and save even more when you buy in bulk.

Barb:

From cleaning sprays, to hand soap, to bathroom cleaner, you see what I did there, 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 upgrade with three refreshing new scents, strawberry rhubarb, citrus patchouli and coconut palm.

Joyce:

I saw what you did there Barb and I'll say it, it's toilet cleaner. 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. I love their products, and you will too.

Kim:

The Supreme Court is still in summer recess. But as it often does, it issued an emergency order this week in a case that could end up being a major test in the legal battle between religious freedom and

protecting civil rights. Barb, this order was short, it was procedural, and it was fairly technical. And the court didn't even make a final ruling here, but can you explain to us what it did?

Barb:

Yeah, but as you highlight, even though the ruling itself was technical, I think it portends a really interesting battle, that's going on within the Supreme Court. Last week or two weeks ago or so, Justice Sotomayor took up a case involving Yeshiva University that refused to recognize a student group called the Pride Alliance, an LGBTQ organization on campus. And they filed suit in state court in New York as a violation of the city's human rights law, and a judge in New York said that Yeshiva had to comply with that law and had to recognize this group.

And Justice Sotomayor ruled in favor of Yeshiva a couple of weeks ago and said, "At least procedurally, I'm going to put a stay on that order, until we can take a look at it," but what we saw this week was the court did take a look at it, and decided that the Supreme Court should not take up this question, sent it back so that the state court order will remain in place. And the ruling was as you say procedural, the reason that the court dismissed this appeal now is they said that they still have some remedies they can exhaust in the New York Court system. They have not exhausted those, so that the case is not really ripe to come yet before the Supreme Court. For now, it's out of the Supreme Court.

It's back in New York courts and the litigated there, but what's super interesting about this issue I think, and I think many issues to come is this clash between anti-discrimination matters and First Amendment protected religious matters. People say, "As a matter of my religious tradition, I do not recognize gay rights." And others say, "I don't care what your religion is. You can't discriminate against people on any basis, not race, not gender, and not sexual orientation." We've seen these issues come up before with the Baker case Masterpiece Cakeshop out of Colorado, involving a bakery that refused to make a wedding cake for a gay wedding. And we've got another one of these coming up this term about a web website creator, who refused to make a website for gay wedding services.

So, really interesting clash of issues, and I think we're going to see this case again. And I think we're going to see this issue again, and it's really interesting this idea that somehow religious liberty is more important than recognizing anti-discrimination laws.

Kim:

Yeah, I think you're right. I think this is not the last time we're going to see this tension for sure. Jill, as Barb said, technically, the LGBTQ student group one this round, but Justice Samuel Alito, remember him? His dissent is really the news maker here. What did he say, and what does this mean if this case does return to the court, which it looks like it may do?

Jill:

You're completely correct. And basically, what he said is he was joined by three others, Gorsuch, Amy Coney Barrett, and Justice Thomas.

Kim:

Yeah.

Jill:

And he said there are at least four votes for taking cert on this, and there's a high probability that the decision would be in favor of the Yeshiva. What he's basically saying is that when we balance religious

freedom and the civil rights laws of any state, the balance is going to be for the religion. And therefore, they're going to get to do whatever they want, even if it is a violation of the human rights laws. And we've seen this balance be tested this year in the last term of the court with the praying coach, but also with the tuition decision. And the tuition decision is interesting as a prelude to what might happen when this does go back to the Supreme Court.

And I assume that it is going to end up back there because ultimately, although the state was forced to give tuition, they were allowed to set certain limits on it saying, "We will fund anyone who abides by basically the human rights, and doesn't discriminate against anyone on the basis of gender or sexual orientation." And the schools that had brought the lawsuit said, "Well, we can't do that. We're going to discriminate. We won't take your money." In the end, they didn't get the tuition payments that they had sued for. It gets to be a complicated balance, and it'll be interesting to watch this go back to the Supreme Court next term as to how they're going to balance these two rights.

Kim:

Joyce, I'm calling this order a slide of hand shadow docket case, because we've talked a lot about the shadow docket where the court takes up in its emergency docket, which is meant to resolve procedural issues and other intermediate issues, without ruling on the merits of the case, but they've been doing it in a way that often rules on the merits of the case. A great example is allowing that Texas abortion law to go into effect, which basically was a prelude to do Dobbs. They let us know that Dobbs was coming with that shadow duck order, but here the court didn't make a decision. Instead, it gave Yeshiva this roadmap to the state court system. It did everything, but call the plaintiffs and Uber to the state court.

This is new. What's your take on this, and what does this mean about state laws that are meant to protect civil rights?

Joyce:

Yeah, I mean the decision really reads like an implicit threat I think to New York State courts. If you don't step in and permit Yeshiva to deny recognition to the Pride Group, then the Supreme Court will do that for you in the future. And they did Kim as you say, provide obviously a very detailed roadmap for the litigants. Go do X, Y, and Z and then you can come back to us, the Supreme Court for a ruling if the New York State Supreme Courts won't let you discriminate against your gay students. I would say that this is a little bit less shadow and a lot more daylight. It's this unprecedented just guidance from the Supreme Court on what litigants should do.

I tell you what though, I got an interesting text message last night, and it looks like the Dean of Cardozo Law School which is part of Yeshiva got the last laugh. He sent a message out to all of their alums and their students saying that he wanted to reiterate the law school, which is part of Yeshiva, but which doesn't have a religious curriculum, that it has a history and an ongoing commitment to supporting rights. He says and I'll just read this part. He says, "We are also pleased to announce the launch of a weekly popup class starting on Wednesday, September 21st at noon, exploring LGBTQ plus law policy, history, and civil rights challenges past, present and future with prominent scholars, researchers and movement leaders." And I thought what an elegant solution.

On the one hand, you have the Supreme Court bending over so far backwards to harm people. And Cardozo Law School part of Yeshiva, one of the litigants has engaged in this warm embrace of its LGBTQ plus community.

Kim:

Yeah. And listen, this is an important space to watch, especially when it comes to Justice Alito, who has become essentially the leader of the new conservative wing of the US Supreme Court. He has been giving speeches as we mentioned before, really, really just digging into this idea that there is this attack on religious rights, which it's not true. The Supreme Court and other courts protect religion better than just about any other right. I used to say every right to the Second Amendment. Now, I say even more, but he is determined to allow a religious exception to just about anything, including really fundamental and important rights that need to be protected in this country in my opinion.

I really think that this is a space to watch. And even if it's a case that involves a religion other than Christianity, make no mistake that the force behind this, that the basically religious law firm behind this challenge is the same one that's behind a lot of these other challenges. This is something that's been done by the conservative right movement, and it's really dangerous, but it's something that we will keep an eye on.

Joyce:

Today's episode is sponsored by Honey, the easy way to save when shopping on your iPhone or computer. Not only the easy way to save, but the easy way to shop, because I do find I'm much more inclined to shop online hoping that Honey will pop up. And I've actually been doing that to refresh our linens ahead of having company come for Thanksgiving, and Honey has been very good to me today. Honey is the free shopping tool that scours the internet for promo codes, and applies the best one it finds to your cart. Thanks to Honey, manually searching for coupon codes is a thing of the past.

Kim:

Yeah, I really appreciate Honey too. We have been shopping for outdoor furniture recently, and I have to say Honey did us a solid. It was really great, and here's how it works. Just imagine you're shopping on one of your favorite sites. And when you go to check out, the Honey button appears. And all you have to do is click apply coupons, then you wait a few seconds as Honey searches for coupons. And it does it really fast. And if Honey finds a working coupon, you watch the prices drop.

Joyce:

We can't believe how much we've been saving. I just saved over \$30 on towels that I'll be using with our holiday guests, and I know that other sisters have seen great savings too. It always amazes us how easy it is to save and even better, Honey doesn't just work on desktops, it works on your phone. If you're shopping during meetings, it'll work for you then too. Just activated on Safari on your phone, and save on the go.

Kim:

Yeah, we saved on our outdoor furniture and I won't say how much I saved on my shoes, because I know my husband is listening...

Joyce:

Girl, I want to see pictures.

Kim:

Oh my God, they're so cute. Anyway, if you don't already have Honey, you could be straight up missing out. And by getting it, you'll be doing yourself a solid and supporting this show. We'd never recommend

something we don't use. So, get Honey for free at joinhoney.com/sisters. That's joinhoney.com/sisters, or look for the link in our show notes.

Joyce:

Now it's time for listener questions, which is always one of our favorite parts of the show. We love hearing from you, and we love your questions. They really make us think. We're very happy to have them. 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 questions during the show, keep an eye on our Twitter feeds throughout the week. Sometimes, we answer your questions there as much as we can. And this week, we're going to start with a question that I want you to answer Barb, which is from Donna in Las Vegas Nevada. And she asks, "Please explain why some judges are appointed, and some are elected. Is it consistent across the country, or unique in each state?"

Barb:

That is such a great question Donna in Las Vegas. It is different across the country. Each state gets to decide how they will select their judges. And some choose to use appointment, and some choose to use election. Federal judges are all appointed by the president and confirmed by the Senate. So, that's an appointment system, and their terms are for life in the federal system, but states are all across the board. And there's an in between one that I think is fascinating and maybe the best of all, because there's some concerns about elected judges that sometimes people who are the best campaigners aren't necessarily the best qualified people to be judges.

And then there's also a concern that the appointment system promotes this old boy political insider system. I know Missouri is one state, and it sometimes referred to as the Missouri plan. They do this thing where the governor appoints a judge in the first instance, but then they are held accountable by the people with retention elections. And I think that's actually a decent model, because good people are identified to be selected. But if they turn out to be political hacks, they can be ousted by the voters. So, that's how it currently works, and there could be better ways to do it. What's great about 50 states is we get 50 different laboratories to experiment with.

Jill:

Can I just say in Illinois, we do have retention votes and we have elected judges. And the problem is that people vote with no real knowledge of what the campaign is about, and it forces judges to campaign. And it seems so awful to me.

Kim:

And fundraise...

Jill:

I really hate, it's just not a good system in my opinion. No one is informed enough to make those votes.

Kim:

And it's something that even Supreme Court justices like retired Justice Sandra Day O'Connor and others have spoken out against the idea of elected judges, because judges are supposed to be impartial. And it's very difficult to be impartial if you have to be a politician.

Jill:

Exactly. Speaking of judges, let's move on to another question of a judge who was appointed in the federal system. And this is a question from Franny Fly and Joyce, I'm going to ask you to answer this. Is there any recourse to correct Judge Cannon's errant ruling?

Joyce:

This is a really great question. It's very timely, and we're about to see this in action. I think the first recourse is actually what DOJ did here. You can go back to the judge, and respectfully explain why you think that their opinion is erroneous and ask the judge to correct it themselves. Judge Cannon chose not to hear. The next step is the appeals process, and this is literally how our courts are created for higher courts to correct the errors made by lower courts. And of course, the fundamental issue that we're facing right now as a country is whether people have a sufficient amount of confidence in the court's integrity to believe that this process actually works.

There have been a lot of complaints about politicization of the courts, and that's one of many reasons I think we live in a difficult era, where a single man, a former president has managed to challenge public confidence in democratic institutions, ranging from law enforcement to the legislative branch, and now including the courts and their integrity. It's why it's so important for the country to come back together, and begin to resume a semblance of normalcy without these constant challenges to institutions that the Republican party continues to tolerate from the former president.

Jill:

I sure hope you're right Joyce and Kim, I have another question for you from Sue in Portland Oregon. "Could you please explain a presidential pardon? Aren't they usually guilty of a crime, and can someone decline a pardon?"

Kim:

A presidential pardon is a power granted by the Constitution Article two. It is a plenary power, which means it's very broad. And the only limitations to a president issuing a pardon is one, that it only applies to federal crimes and two, that it cannot be used in the case of impeachment. If a Supreme Court justice or someone else's subject to impeachment, a president cannot pardon for that crime. Can someone decline a pardon? Yes, you don't have to accept it, but it's one of the broadest powers that a president has.

Jill:

Let me just add a little to that which is yes, you can decline a pardon. And one of the reasons that you might decline a pardon relates to a question from Lena who asks, "Can the fact that Steve Bannon was granted a pardon by former President Trump for his federal fraud charges in the We Build the Wall scheme be used against him in the New York State case, since a pardon is an admission of guilt?" And that is a correct statement. There is a Supreme Court case that says if you accept a pardon, you are admitting guilt. And that was something that was important in the pardon of Richard Nixon.

When President Ford offered him a pardon, he asked the lawyer who brought him the offer of pardon to bring with him a copy of the Supreme Court case saying that, so that former President Nixon would understand that if he accepted the pardon, he was admitting guilt. So, that is important. Now, whether that could be used against Steve Bannon the pardon in a related state case, I'm not answering that, I'm just saying that. It is in fact an admission of guilt. With that, we bring to a close this episode of

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Kim:

Y'all know what's going to happen now right? All this episode in my head, I'm going to say, "Someday, somebody's going to make you want to turn around and say goodbye. Tell that baby are you going to let him hold it down and make..." I have hold on in my head all day. Don't you know, don't you know, things will change. Things'll go your way if you hold on for one more day. All right.