

Jill:

Welcome back to #SistersInLaw with Barb McQuade, Joyce Vance, and me, Jill Wine-Banks. Kim is away this week and we can't wait to have her back. Today we'll be discussing two really important arguments in the Supreme Court, a week in the life of Trump and the TikTok lawsuit brought by the Indiana Attorney General. And as always, we look forward to answering your questions at the end of the show.

Before we get to that though, I have a really important question because I have been starting to look for presents for the holidays for my best friends, and I am just out of ideas this year. So I really, really need help. Joyce, can you offer me some help? And none of them wants chickens.

Joyce:

Well Jill, forget it then. I have no ideas. No, I'll tell you what I try to do with our close friends. I try to do something that's an experience instead of just giving people more stuff. I think my favorite one was, there's an artisanal chocolate shop in Birmingham that I just love, Chocolata. And one year we did a chocolate tasting where we piled in the all three couples and kids and we went and did five different chocolates and she explained a lot about chocolate to us. That was really great. And then one year for my birthday I took everybody to Red Mountain Park, a big park here, and we ziplined together. And we ziplined at night, which was utterly amazing. So it can be hard to find those things, but I think experiences are a really great option.

Jill:

That is such a great idea. And I just want to say, friends, turn off right now. Skip ahead. We don't want you hearing any of this. Go away now. I should have said that earlier. And I followed that advice just before COVID, literally, I gave my friends a glass blowing class. Of course you can't blow glass when there's COVID around, and so that got canceled. So basically, I still owe them a glass blowing class from that year but that's a great idea. I have some-

Joyce:

Maybe knitting Jill, you can teach everyone to knit.

Jill:

Well, yeah. Okay. Only if you'll be the teacher.

Joyce:

I'll come up for it.

Jill:

And what about you, Barb? What are your ideas?

Barb:

Well, I love the experience one. I like getting and giving experiences. My sister frequently takes me to a Lion's game for my birthday, for example, which I love. Much better than getting something, we get to share that experience, which we both love.

Some other ideas, Jill, I always love getting and giving books, especially a really thoughtful book that you know that that person will really like. Whether it's fiction or non-fiction, or something you think that... I

can be a really thoughtful gift. And also gifts that aren't really of any kind of great value but are really thoughtful and meaningful. Joyce and I were with a group of friends a month or so ago for somebody's birthday, and we pulled together a package. Someone else was the mastermind, neither of us, we signed our name to the card. But it was a bottle of champagne to celebrate. And then one of those eye masks to sleep it off. And then there was a little tiny bottle of Tabasco, it said a reminder that you're still hot. And then the last one was a picture frame that said for your next adventure, something like that. It was really cute. It was an event.

Joyce:

It was awesome.

Barb:

None of it broke the bank, but it was a very sweet gesture I thought. My daughter recently did something similar too for her roommate's birthday. Her college roommate is from Florida and it's getting cold here in Michigan. So she gave her a little package based on... I'm not sure how you say it. Huga? Do you know what that is? It's this Scandinavian idea of embracing winter by being cozy.

Joyce:

Yeah. Hygge.

Barb:

How do you say it?

Joyce:

H-Y-G-G-E.

Barb:

Yeah.

Joyce:

I always to be honest say higgi, but I think the real pronunciation is huga.

Barb:

Huga huga. Okay. Hygge. You can see how much I know about this.

Joyce:

Maybe our listeners can help us and make sure we get it right.

Barb:

Yeah. She got her a small book explaining what this thing was, hygge, hygge however you say it. And some warm socks and a mug with some hot chocolate. Just again, not an incredibly expensive gift whatsoever, but just a sweet gift to... I thought that was a very thoughtful gift.

Joyce:

I would love that.

Barb:

So, oftentimes just thinking about the person and where they are at this moment in their life can be a way to give a very thoughtful gift without spending a lot of money.

Jill:

Those are such great ideas. Thank you both. I am going to use both of them. And I want to add one. When you mentioned books, it reminded me that one of my big issues now is trying to get children trained to do some critical thinking when they're on social media. And a librarian, who has written her own children's book, recommended to me Elise Gravel. And again, I don't know if I'm saying it right, it could be Gravel. G-R-A-V-E-L, wrote a book called The Killer Underpants Invasion or Invasion of the Killer Underpants. The title is not a great title, but it is dealing with how do children learn to tell fact from fiction. I guess I'd recommend it for a lot of adults too. They should read it before they give it to children. But if you're looking for a children's book, that's one I would recommend.

Joyce:

To find your perfect mattress, take Helix's two-minute sleep quiz and match with a customized mattress for your body type and preferences for the best sleep of your life. You'll get your personalized mattress shipped straight to your door, free of charge, and they are fast and easy to set up. I was able to do it on my own.

Jill:

That's not a surprise. And I did it on my own too. And when I took the Helix quiz, I matched with the Helix Midnight Mattress and it was exactly what I wanted and needed. I've had great sleep ever since. So buy one tailored just for the way you sleep.

Joyce:

The Helix lineup includes 14 unique mattresses, including a collection of luxury models, a mattress for big and tall sleepers, and even a mattress made just for kids. Each one is designed for specific sleep positions and feel preferences. Imagine pressure relieving memory foam for side sleepers, responsive cradling foam for stomach and back sleepers and enhanced cooling features to keep your husband from overheating at night. No, just kidding, to keep anybody from overheating at night. It's the perfect TLC for your spine. Test yours out for a hundred night risk-free trial and see how amazing your rest is.

Barb:

Joyce, you had me at cradling. If you don't love it, and we know you will, they'll pick it up for you with a full refund. And Helix has been awarded the number one mattress picked by GQ and Wired Magazine. It's even recommended by leading chiropractors and doctors of sleep medicine as a go-to solution for improving your sleep. Helix is offering up to \$200 off all mattress orders and two free pillows for our listeners. Go to helixsleep.com/sisters. With Helix, better sleep starts now. You can also find the link in our show notes.

Well this week the US Supreme Court held oral arguments in two of the biggest cases that will come before the court this whole term. Not one, but two. One was called 303 Creative versus Elenis and the other is Moore versus Harper. So we're going to talk about each of those cases and I guess we can go in

order. On Monday we had the 303 creative case. Jill, can you tell us a little bit about the background of that case and the issue that was before the court?

Jill:

Sure. 303 Creative is a website design company that without having been asked to do a website for a same-sex marriage, said, "I won't do it. I want to be exempted from this on free speech grounds. It would be forcing me to say something." And so the case got to the Supreme Court because the web designer lost below and the Civil Rights Commission said, "No, you have to provide the same services to anyone who wants to buy your particular product." Which was not a custom design thing, it was basically a template. And if you sell it to any couple that's getting married, you have to sell it to all couples who are getting married. So that was the background for it, and it comes from the same sort of thinking that is Masterpiece Cake.

Barb:

Well, let's talk about Masterpiece Cake then. That was a case that was before the court a few years ago, and Joyce, didn't the court already decide this issue? That was a wedding cake, this is a wedding website, why is this issue back?

Joyce:

Right. What's going on in Colorado with gay weddings? So here's what happened in Masterpiece Cakeshop versus Colorado. The issue there was whether a Christian baker's First Amendment free speech or religious freedom rights permitted him to refuse to make a wedding cake for a same-sex couple. And the court's June, 2018 decision sidestepped the issue, it declined to decide it. Instead, it ruled that Colorado's efforts to enforce state provisions that prohibited this, had exhibited, and I'm going to quote, "hostility rather than neutrality towards the baker's religious beliefs and violated the free exercise clause." So the First Amendment has both speech and religion embedded in it. Here the court ruled on the basis of the free exercise of religion clause. It was narrower than what was requested.

And that's what gets us to 303 Creative. Whereas Jill says, we've got a Christian website designer, she says she's got a First Amendment right to refuse to do this, and the case essentially picks up where Masterpiece Cake left off. There are these complicated issues here about what constitutes speech and what sort of conduct so-called creatives can be forced to do. And that evokes a lot of strong feelings on both sides of the equation. You find people who are creative who say that they shouldn't be forced to do things and that leads to a lot of amicus briefs that were filed in this case.

But it's worth knowing that the free speech questions in 303 Creative are a little bit different from what went on in Masterpiece Cakeshop. First off, wedding websites, unlike wedding cakes, they typically include an extensive amount of text that's written by the couple. It's not clear that there's any speech going on by the designer, and I think Jill makes this point. The designer is really just building a platform that the couple speaks on, so maybe it's expressive conduct but that's not clear. And then there's another free speech issue that has no analog in Masterpiece Cake, and that's this issue of whether the designer can make the statement on her website. So lots of interesting issues here and it'll be interesting to see whether the court ducks again or whether we get a clear decision.

Barb:

Yeah. And if we get a clear decision, I fear what that will be. It seems to me, no one's forcing you to say anything. If you don't want to be in the web business, don't be in the web business, but if you are in the

web business, you got to take all-comers. I don't know. Jill, what was your reaction to the oral argument? Do you have a guess on how this case will come out?

Jill:

Well, first of all, I always hate predicting based on argument because you really never can quite tell.

Barb:

Yeah, yeah. True.

Jill:

But I would say in this case, where it's almost as if this web designer created this issue, it was no live issue at all. No one had asked her to do this. She wasn't saying, "I'm not going to do yours." And it was like the court... why would they take this where there is no actual dispute, if they weren't going to do something awful? So I fear, based on the argument and based on what they did in Masterpiece Cake, that it could lead to an outcome that I don't like. You alluded to the different hypotheticals and there was some suggestions about outlandish things, like a child of color dressing in a Ku Klux Klan outfit to sit on a black Santa's lap and the photographer having a right not to photograph that; about a venue not being willing to host a wedding for same-sex marriages; caterers, jewelers. And so it has a potential big impact when you take a case that isn't unique to its own facts. And that's really worrying me about this, is that it could be such a broad decision, much broader than Masterpiece Cake.

Barb:

Yeah, you're right. Masterpiece Cake was really narrow based on that text that Joyce just read. It just seems to me like this is a part of a trend of using the First Amendment, whether it's free speech or free exercise of religion, as subterfuge to discriminate against people based on LGBT rights or... we had the case of the kneeling football coach. It really seems like the court is allowing religion to trump other rights. Joyce, Jill mentioned those crazy hypotheticals, what were your reaction to those? I think Justice Ketanji Brown Jackson actually started it with a hypo about a shopping mall Santa, and then it got crazier from there. Justice Alito started talking about a black Santa and white kids in Ku Klux Klan outfits, the most bizarre hypo there. And then they also talked about online dating services. What on earth was that all about?

Joyce:

Yeah, I think bizarre is kind. I thought it was offensive, and really I thought Alito was out of bounds. I'm surprised that he hasn't issued a public apology for what he did. Part of the problem is that there's not a record in this case, because as we've already discussed, this is just a made up case. This is just a made up case. This was just a pretext for this plaintiff to put this issue in front of the court and hope that they would bite. So instead of talking about what really went on in the real world, the court is just talking about hypotheticals. Well, what would we do if this happened or what would we do if that happened?

So Justice Jackson has this pretty reasonable hypothetical about Santa Clauses in shopping malls and decisions that they could make. And Justice Alito wants to be the smartest guy in the room and takes it a little bit further and talks about a black Santa at the other end of the mall in KKK robes and KKK costumes and what could happen. And then he makes what he clearly thinks is a cute joke, saying "Of course you don't see too many black kids in KKK robes." And it just does not come off as funny. It comes

off as deeply insensitive. And I think it just shows, it really further confirms, how out of touch some of the justices have become with the reality of the world outside of the bubble that they live in.

Same thing with the second incident that you referred to Barb. Alito makes a reference to Ashley Madison, a website that was used by married men to hook up for sex, and then a lot of those names were disclosed. And he, again, really offensively insinuates that Justice Kagan is familiar with that website, maybe is on that website. And she doesn't even give him the time of day on it. She's just like...

Barb:

Are you done? Yeah.

Joyce:

Yeah. That literally is what she does to him. But honestly, this is the sort of stuff that responsible human beings acknowledge their mistakes for. We have not seen that, at least publicly, from Justice Alito.

Barb:

Yeah, and you raise an interesting point too about... in their bubbles. Are they just so out of touch with mainstream America that their judgment is clouded? I think that's an interesting issue, maybe an issue for another day about whether term limits would be helpful in that regard. Because I think you can get a little bit isolated there in the Ivory Tower of the Supreme Court.

And also just... Jill, I know you mentioned this, but just to make it clear for our listeners who maybe don't follow the Supreme Court so closely. It's no surprise when these cases come up before the court, it isn't just that this is what happened to be coming down the conveyor belt that day. The justices decide which cases they're going to take, and there are groups out there, on the left and the right, that engage in what's called impact litigation. They create a lawsuit solely for the purpose of getting an issue teed up before the court. So this didn't arise organically. This plaintiff just said, "What if this would ever happen to me? I don't want to have to do it." In some ways you could say there's no real case or controversy here, but she's got the case and it only takes four justices to agree to bring the case. And it doesn't necessarily mean that they're for it or against it, they just think that this is an important issue that the court should rule upon. And of course, you need five votes to decide a case, either to affirm or overrule a decision in the court below. So there could be some agenda setting going on here that somebody thought, "We didn't quite finish our work in Masterpiece Cake, what else you got out there Colorado?"

Well, there was another case this week that is a big one on the court's docket, this term called Moore versus Harper. And Joyce, how about we start with you on this one. Can you tell us a little bit about the background of Moore versus Harper and the issue that's before the court in this case?

Joyce:

Yeah, so Moore v. Harper comes out of North Carolina. After 2020 and the census data was released, States redrew their maps for deciding congressional races. And North Carolina's Republican majority redrew maps that very heavily favored the Republican party, it's what's called a political gerrymander. The problem though is, state courts are the only place that voters can go to get relief from these partisan gerrymanders. And that's because in 2019 the Supreme Court decided a case called Rucho. They looked at a political gerrymander, in that case a partisan gerrymander, and they said, "This is odious to the Constitution, but we are not going to decide this. It's a political question and we don't decide political questions. We only decide legal questions. So you can't bring cases like this to federal

court." But they left open the possibility that state courts could address these sorts of partisan gerrymanders. And that's the reason that this case Moore versus Harper comes out of the North Carolina courts.

Now the Supreme Court is essentially going to decide whether voters have any remedy at all for partisan gerrymandering. One possibility is they'll say no, it's just up to legislatures to make these decisions. The theory behind this case is called the independent state legislature theory. It used to be something that was consigned to the far right wing fringes of conservative thought. Now it's having its day in the sun. The theory essentially says that courts don't have the ability to review decisions made by state legislatures. So that when the North Carolina State legislature drew these maps, that sort of a decision is essentially unreviewable by North Carolina's Supreme Court.

And this is a really serious case. It's down in the weeds. As I explain it, I find myself sounding really nerdy, and really down in that legal place that we don't like to go because it's so complicated. But here's the impact of this case. If the Supreme Court goes along, super majorities and state legislatures will be free to do whatever they want and voters won't have any sort of redress. And so the way this independent state legislature theory gets hinged, is the proponents of it say, "Well, look at the Constitution. The Constitution says that states get to decide the time, manner, and place of elections, and that means no one can overlook the decision of state legislatures." The other side in this case, makes the argument that can't be true, because the separation of power is the balance of power, and this country depends upon judicial oversight and judicial review.

And so we'll see what happens here. There were obviously four votes to take this case. Three of them were people who showed support for the independent state legislature theory. A fourth, Justice Kavanaugh, said he thought that there were substantial issues on both sides. And the chief justice has shown support for a more limited, but still an approach that favors the theory. So interesting to note that the chief justice wrote Shelby County versus Holder, the case that gutted section two of the Voting Rights Act. He has not been a fan of voting rights and if he is the essential fifth vote here, we could possibly see some sort of really reprehensible result from the court.

Barb:

So Jill, what's at stake here? If the court were to approve this independent state legislature theory, what's the worst thing that could happen?

Jill:

Well, first of all let me point out, when we talked about the Supreme Court term, when it was just starting in October, I picked this as the case to watch. That it was the worst case that we could possibly have that I was really worried about. And my fear has not gotten any less because of the arguments here. What's at stake is partly what Joyce said, which is that voters would have no way to appeal a horrible gerrymandered map. But also it could go further. It could be they couldn't appeal to a state court, things that violate the state Constitution, things that violate the federal Constitution; they couldn't appeal when voter suppression got to its worst extent possible. That's all possible. And it makes it really frightening that this, as Joyce said, formerly fringe right wing theory has gotten the attention it did, partly because of the conduct of Trump supporters in trying to overturn the 2020 election and the work that they did.

But the very worst that could happen is that the state legislature would feel that it had the power to determine the winner, that they would take away the right of voters to cast their vote and say, "Well, we don't like how it came out, so we're going to go a different way." I think that that would, even in this

Supreme Court, would not succeed; that the substantive rights of our Constitution to cast your ballot and for it to be counted for equal protection of the laws, would mean that votes still count. And also, I would point out that it's based on the constitutional election's clause, which says two things. And we're forgetting the second part of it. It says the times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof. But, here's the part that we're not talking about, Congress may at any time by law make or alter such regulations except as to the places of choosing senators. So I think that there is a federal right that will preempt the worst that could happen under this.

Joyce:

I just have to point out, I love how they spell choosing in the Constitution.

Jill:

Yes.

Joyce:

It's C-H-U-S-I-N-G. I love that.

Barb:

Yeah, I know, isn't that great? And then there's that S that's shaped like an F thing that you see in these old timey documents too. I know. Aren't that so great? Yeah. That's excellent.

Well, Joyce, let me ask you, I know you listened to the oral argument. Based on the arguments and the questions that some of the justices asked, did you get a chance to read the tea leaves? It sounded like some of the justices were skeptical of the theory, but that there might be room for some sort of a middle ground. What did you think about that?

Joyce:

Yeah, so like Jill, I'm not much of a tea leaf reader. But because it's too depressing to really contemplate that the court would go all in for this, one has to hope that it will be... If they adopt the independent state legislature theory at all, it will be very severely constrained. Because what I really worry about, is that if they adopt it even partially in this analysis, it won't end there. We saw that with how the Roe versus Wade reproductive rights got eroded over time. They might start in a modest way here, and over time that slippery slope could lead to great damage. So I've got to say, I'm going to be holding my breath on this one. I think Jill was dead on the money when she said that this was the most important case the court would decide this term.

Barb:

Yeah, I think Judge J. Michael Luttig, a conservative judge, a Court of Appeals judge who's now retired from the bench. He testified during the January 6th hearing. He wrote an op-ed calling this a clear and present danger. So I don't think we're being too alarmist to say the danger of this thing.

Jill, where does this theory come from? Anybody who's ever been to law school knows that one of the first cases you read in constitutional law is a case called Marbury versus Madison. And that case is all about, it is the role of the courts to interpret the law, and review actions of the executive and legislative branch. The idea that judicial review is precluded, is really to me, just taking these few words completely out of context of the rest of the document. How is this theory plausible?

Jill:

It isn't, in my view. And I think we should also point out when you mentioned Judge Luttig, that our friend Neal Katyal was the person who argued on behalf-

Barb:

Yeah, he's doing an excellent job.

Joyce:

He is so exceptional.

Jill:

Yeah, he did. He talked about the blast radius of this opinion, if they go the wrong way. Meaning how much could be affected? But you're right, the very first case you read is the right of the courts to review, Marbury versus Madison. And this would basically gut that. There'd be no right for review, that legislatures could do crazy things and they couldn't be stopped. Although I would say that this is a particularly unique thing that is, as I said, it's based on the particular language of the Constitution that gives the state legislatures power in setting the times and places for elections. For federal elections as well as their own elections. And so that I'm really not worried that it's going to go beyond partisan gerrymandering. And I hope I'm right on that, because otherwise, if there's no judicial review, then I guess the only thing people can do is make sure they pay a lot more attention to who they're electing to their state legislatures.

Barb:

Yeah, that's what makes it so insidious. If they keep gerrymandering, then they just keep getting more and more power, and then they have more power to use and more power to gerrymander more, and you can never stop them. So it's a really important case.

Well, I'm the number one believer in Noom. I'm like a Noom evangelist, I tell everybody I see. They say, "You look great, what's your secret?" I say, "It's Noom. Check out their app. I'm telling you, it is life changing." When we decide we want to get fit, it's usually not just about the number on the scale. Whatever your reason is for wanting to make a change, Noom weight is ready to help. Noom weight's psychology based approach empowers you with the knowledge and support to build lasting results. I lost weight more than a year ago, and I've kept it all off. The Noom app has helped more than 4.6 million people like you improve their health and it's super easy to use. Noom knows every journey is different, so your daily lessons are personalized to you. It's the perfect step in the right direction.

Joyce:

So unlike Barb, I lost weight a year ago and I didn't keep it off. Fall is always really tough for me. I have a long commute driving back and forth to Tuscaloosa and there's not a lot of healthy places that I can eat. It always creeps up.

And so this is really funny. I just switched internists. Went to see my new internist and said, "Obviously I need to lose some weight." And I told her I was going to go back on Noom. And she said, "Noom is great. I use Noom too." So it was very reaffirming to hear my doctor telling me all about her experience with Noom.

Noom weight shows you how to pursue the goals you set for yourself and get you to them. It's about progress and what you want, not someone else's ideas of perfection. It teaches you about cravings and finding your balance to build better habits, plus the science behind it. You'll learn about your relationship to food and how cognitive behavioral therapy can take your changes to the next level. Knowledge is the key to progress and success, and Noom gives you the confidence, knowledge, and plan you need to get there.

Barb:

We all have a lot going on, so I love that Noom weight gives you the control to decide how much time you use it. You can choose anything from a five minute check-in... I can do it in about three and a half, but I'm an overachiever. To an in-depth personal coaching. Active Noomers lose an average of 15 pounds in 16 weeks and 95% of customers say Noom weight is a good long-term solution. So get empowered and stay on track with Noom. You'll get nourishment, not restrictions.

Jill:

And it's not just weight loss. For me, it was also them encouraging me to take time to meditate, to think and to exercise. It includes everything that's really healthy. It helps you stay focused on what's important to you with Noom weights' psychology-based approach. Sign up for your trial today at noom.com/SistersInLaw. That's N-O-O-M.com/SistersInLaw to sign up for your trial today. And check out Noom's first ever book, *The Noom Mindset*, a deep dive into the psychology of behavior change. It's available for pre-order wherever books are sold, or you can look for the links in our show notes.

Last week we talked about the Eleventh Circuit's unanimous decision to vacate Judge Cannon's appointment of a special master, and noted it was on hold for a week to allow Trump to appeal. Time expired Thursday night. Joyce, what happened? Did he appeal, and why didn't he if he didn't?

Joyce:

No, he didn't appeal the mandate issues. Trump has not sought rehearing en banc in front of the full Eleventh Circuit or an appeal to the Supreme Court. Look, he still technically could actually file for certiorari to the Supreme Court. There's a method that allows you to recall the mandate in order to do that. But I don't-

Jill:

Don't give him any ideas, Joyce.

Joyce:

Well look, here's why I don't think it's going to happen though, Jill. The Eleventh Circuit pointed out, we discussed this last week, in their very gentle, understated way, how completely baseless this lawsuit was. But they didn't take any action against anybody. They didn't go after the judge by name, they didn't call the lawsuit frivolous and pursue sanction against the lawyers. But I bet you that Trump talked with his lawyers about both en banc and going to the Supreme Court and they said, "If you want to do that, you're going to have to find new lawyers." Because it's very clear to me after reading this opinion, that any lawyer who pursues it further is running a real risk of, what's in the federal system is Rule 11 sanctions, for filing a frivolous lawsuit. And I suspect, particularly when you've got the former Florida solicitor-general, Chris Keese, in the mix, who understands how this Circuit operates, that he was not willing to go there.

And look, here's the reality. Trump, like anyone else who gets indicted, still has a path to challenge the search. He can file a motion to suppress under the Fourth Amendment, like any other defendant in a criminal case has. But going to the Supreme Court, really even filing this case in the first place, was not a legitimate way to get at these issues.

Jill:

Okay, you're absolutely right on that of course. And this week there were so many things that happened in the life of Donald Trump, that I had trouble getting it down to just five or six things to talk about. But the next thing I want to talk about is, of course, the conviction of the Trump organization of 17 crimes. And the Trump organization now faces a \$1.6 million fine. Which may not seem like a lot to them, but it is a big deal and the case is a big deal. So Barb, tell us about the case and its significance.

Barb:

So, a jury returned a verdict against the Trump organization, as you said convicting the organization of 17 out of 17 counts, and did so in pretty short order, pretty quickly. Now it's the organization, not Trump himself, but it is based on widespread tax fraud. The gist of the scheme was that executives would get paid a salary, but rather than paying them the salary maybe that they would otherwise command, they got all kinds of perks. Like a Manhattan apartment on the Hudson River, and luxury cars, Mercedes-Benzenes, and Trump himself paid for the school tuition at the private school for the CFO's grandchildren. So all kinds of these luxury items were paid. And as a result, not only did the employee get a benefit because they didn't have to pay taxes on these perks, they didn't declare them on their taxes because it wasn't part of their paycheck; the company itself was able to avoid payroll taxes on that number. So instead of paying somebody two or three million dollars, you pay them much less and you give them all of these great perks.

So it's a fraud. Who is victimized by that? Well, the people of the state of New York did not get the benefit of the tax revenue that they should have paid. And you know who else? Every other company who complies with the rules. That gives a competitive advantage to the company that cheats. They have more money to spend, and so when they're bidding on contracts and competing in the marketplace, they have an unfair advantage. And so for all of those reasons, it was really important to hold the organization accountable. And Trump himself may try to deflect his own role in the company, but there was evidence and the prosecutor even argued in closing argument that Trump himself sanctioned tax fraud. And during the trial they showed that he personally wrote a check for the grandchildren's tuition and that he approved a memo that reduced the pay of one of the executives to offset the amount of a perk that he was receiving.

So I think it's a great day for accountability. I also think it really helps destroy the myth that somehow Donald Trump is untouchable. He says, I could stand on Fifth Avenue and shoot somebody and it wouldn't make a difference. Well, turns out it does, as a unanimous jury of 12 people found 17 tax crimes and were only too happy to return that verdict. So I think it will help embolden people going forward, maybe prosecutors, that, "Hey, we can obtain convictions." And maybe it will encourage them to go seek more.

Jill:

And maybe it'll encourage the federal government, because when you mentioned that the state suffered a loss in tax revenue, so did the federal government. So we shouldn't ignore that. But there's so much more this week to talk about. Joyce, this week there was a dramatic discovery of more documents in Trump's possession, in his storage locker.

Joyce:

Shocker.

Jill:

Shocker, right. And it included two more classified documents. Talk about how those were found and what it all means. And then we'll follow up with some more possible consequences of this.

Joyce:

Yeah, so this is such an interesting situation. This is obviously in the Mar-a-Lago case. DOJ obviously thinks that Trump has more documents, and they may well have good reasons for that belief because these documents, classified documents, are closely guarded. They're documents whose damage, if they are released improvidently, can do grave harm to national security. So they're very carefully followed. So DOJ has good reason to believe that there may be more documents, because given their nature and the sort of damage that happens if they're improvidently released. These documents are very carefully numbered, it's not like they're just lying around with no system that the government can use to orient itself if something goes missing.

There was enough here... And really what happened is very unclear because this is all related to grand jury proceedings. So it's happening secretly. But Trump was forced to do some sort of an outside search, forced to hire independent parties to go in and search some of his properties, to see if any additional documents could be turned up. And lo and behold, two additional classified documents show up in a storage locker down in Florida. That's what we know for now. But it seems clear that DOJ is not quite satisfied yet. And so as we are taping this on Friday afternoon around three o'clock, there's reporting that a hearing is being held behind closed doors in a federal courthouse in the District of Columbia, to see whether or not someone might be held in contempt in relation to this. Likely by the time the podcast drops, there will be a lot more information, and this disclosure of these two documents could lead to a lot more.

Jill:

It's really interesting and it's of course not clear whether he was forced to hire outside people to do the search by the court, or whether his own lawyers said, "We just don't trust anything anymore and we want to hire outside people to do the search." And why they picked this particular location as opposed to any other location... Anyway, as you said, we will see what's going to happen and we'll look forward to that.

But Barb, you're our expert on the rules for handling classified documents. And Joyce alluded to the fact that these aren't just random documents, they're numbered. Who keeps records when a classified document goes to someone, including the president, and should there be more controls? How did he get these and how did he get to not return them and leave with them?

Barb:

You know what, I've never handed a classified document to the president. So I don't know if that changes how things go, and I suspect that it did with Donald Trump. But ordinarily there is an agency that generates the classified document. Only certain executive branch agencies in the intelligence community have the authority to designate classified information. FBI does, CIA, NSA, all of these intelligence agencies. And they keep track of them, they have an inventory of them. And so if somebody takes a document and uses it in a meeting, they must return that document. You can have documents

that exist on servers, most of them do, but if you print it out you have to explain what happened to it, whether you used it, stored it or destroyed it. It can't just be floating out there in the world.

The reporting indicates, I think John Bolton said this, that there were times when Trump would get these classified documents, say in a briefing or something, and he would look at it and say, "Can I keep this?" And the briefer, whoever it was who gave it to him, would just look at him and shrug and not quite know what to do about that. And he would take it, he would take it up to the residence with him and people didn't know what happened to it. Now, if you are a briefer who is lower a level person in the government, and the president asks you for something, I imagine you give it to him, and you assume that he knows how to handle classified information and that he can be entrusted with it. But there's a record that this document, when you show back up to the office and you have to account for the classified documents you brought, you have to account for it. So you say, "I gave it to the president and he has it." So I think that's one reason that the government knows what is missing because they know what it had.

I also think there is some indication that there are certain specific items they haven't found. I don't know whether these have been recovered, but you may recall that there was reporting that initially at least, they were missing the love letters with the head of Korea, Kim Jong-un. Remember he talked about, "We fell in love, we exchanged letters." Well, where are those? Those got classified by somebody. And a note that was left by Barack Obama for Donald Trump. I don't know that that would become classified because it wasn't generated by any intelligence agency or I doubt it would have any intelligence value, but it's a government document and they knew that that one was still missing.

So, should there be more controls? I think they're sufficient for people who follow the rules. When you fail to follow the rules, there are consequences. You can either lose your clearance, you can get fired, you can be disciplined, or you can be prosecuted if you have violated one of the laws. And so it remains to be seen whether the former president will be prosecuted for the way he has mishandled these documents.

Jill:

And Joyce, there's still more this week. Grand jury subpoenas went to local officials in Arizona, Michigan and Wisconsin. It seems to be the first subpoenas since Special Counsel Jack Smith took over from the Department of Justice in Garland. Why are these important? What does it mean in terms of where the investigation is going? And does it mean that the investigation is now broader, looking at all of the activities of Trump in his effort to overturn the results of the 2020 election?

Joyce:

Yeah, so I think the answer to that last question is yes, this suggests that it's a very broad-based inquiry, not just into events on January 6th itself but everything surrounding it. At a broader level, this would seem to support the claim that Attorney General Garland made, that the special counsel would hit the ground running, that there wouldn't be any additional delays. Because we talked about the fact that the Mar-a-Lago investigation is in many ways the easier, the more straight-lined investigation. But this makes it clear that the new special counsel is pursuing both Mar-a-Lago and January 6th at the same time. And the significance of these subpoenas is that they're pinning down something that's already been requested in other ways by earlier subpoenas, but making it clear that they want all communications that involve the Trump campaign. And that I think suggests a direction that this investigation may well be headed.

Jill:

Barb, last question for the week, which is, to me a lot of this is starting to look like there's an obstruction investigation. And that is Donald Trump has basically refused to turn over records. He's failed to do an adequate search. His lawyers won't sign affidavits anymore. Is the coverup getting as bad as the crime? And I think Joyce has already mentioned that the US District Judge Beryl Howell, the chief judge, is holding a hearing even as we speak right now, about whether his office can be held in contempt for failing to comply with the May subpoena. And so this development comes at a really critical time after his team said they did all the searching they needed to do. So, what do you think's going on?

Barb:

I think Donald Trump is a walking obstruction of justice. So yes, could he be obstructing justice? Oh my gosh. I think every day he wakes up thinking how can I obstruct justice today? But it does seem... I've been asked this question, why has he not been charged yesterday? How can he possibly still be doing this? It's been, what, almost two years now since he took these documents and they've been trying to get them back. How can they still be saying, please, please?

I think there are a couple issues here, and one is the fact that you have to show that a person acted corruptly to prove obstruction of justice. And I think that he will probably use his usual word salad of dissembling to say, "I thought they were mine." I think even earlier today, he sent a post on Truth Social saying that under the Presidential Records Act these are mine, and it's perfectly acceptable. I don't know whether he really believes that defense, but you have to show that he acted willfully, that is that he knew it was illegal to take them. And so I imagine there's some defense there.

The other reason I think that there can be challenges, is when you have a criminal case, you have to be able to pin down evidence that you can attribute to the particular person. It's why corporate liability can be so difficult, because in a corporation and by design you have diffused responsibility among a lot of different people. And so no one person may have had the corrupt intent at the same time as the wrongful act. And so Christina Bobb signed the document, but it was prepared by Eric Corcoran, and they didn't really know what Trump did and didn't have. And so all of these things can make it very difficult to pin someone down criminally.

But it does seem that at some point, Jill, that the coverup here is so bad. I don't know if it's worse than the crime because mishandling classified documents, especially as sensitive as this, is bad. But the way that they have jerked around the Justice Department, at some point I really hope that they just say enough is enough and we've given you every opportunity.

And one other thing I'll say, and this is not an original thought, I heard it from a friend earlier today, but the idea that it's the Trump office. Every president gets an office of the presidency and they get a staff to conduct their affairs, because they get asked to do things from time to time even after they're president. And so this contempt order has been requested against the Office of the 45th President of the United States. And I thought at first, "Oh, that's so weeny. It's not even against Trump himself. That it's against this office. Big deal." But my friend pointed out, an office, a corporate entity, a non-person, cannot assert the Fifth Amendment right against self-incrimination. And so producing the documents themselves could be incriminating because they admit, "Oh yeah, I did have more." That's sometimes referred to as the act of production. And so it is a way that one can incriminate oneself under the Fifth Amendment and you can say, "I can't produce the stuff because if I produce the stuff, I'd be incriminating myself." But the organization, that Trump office, the Office of the 45th President, does not have a Fifth Amendment right. So maybe that's driving that. So maybe the Justice Department is just as smart as we think they are and they have played the trump card.

Well, I know all of us want to do our part to protect the planet and we're under siege from climate change. But luckily there are big steps we can all make to take action. And one of the most effective

ways we've found to do our part is to reduce our garbage and food waste. By using Lomi by Pela, we've been able to drastically cut down on our household waste output. Lomi is an incredible and effective home appliance that allows you to turn food scraps into dirt with the push of a button. Lomi is a countertop electric composter that turns scraps to dirt in less than four hours. There's no smell when it runs and it's quiet. Plus it looks high tech and sleek and we love how it compliments a great kitchen setup.

Joyce:

We are big composters, but it takes a long time. I put scraps and leaves in my composter outside, the chickens play a role in it, but it takes forever. Lomi makes it really easy and it feels great. You can reduce your weekly garbage bag usage significantly. One of our kids works with food policy and sustainability. She was super impressed by our new Lomi when she was home for Thanksgiving. So you know what she's getting for Christmas.

Barb:

Oh, that's good. Always good to impress the kids. [inaudible 00:51:15] The young kids. It's not easy.

Joyce:

Yeah. It's so tough to make points with them, right? But Lomi-

Barb:

Oh yeah, it's not easy. They hate everything about us.

Joyce:

So Lomi leaves us with nutrient rich dirt that goes directly onto our plants. Our producer says he's got a huge five gallon bag full already. Food waste is a huge portion of our personal carbon footprint. And by reducing the amount of food we throw out, it's transformative. The waste reduction means it's not going into landfills and producing methane, your yard and garden and really the entire world benefit instead.

Jill:

I'm sort of hoping that my goddaughter and her husband are listening because they are so big on taking care of the environment, and they will be so proud of my efforts in this regard. And you too can be someone to be proud of. If you want to start making a positive environmental impact or just make cleanup after dinner that much easier, Lomi is perfect for you. Head to lomi.com/sisters and use the promo code Sisters to get \$50 off your Lomi. That's \$50 off when you head to L-O-M-I.com/sisters and use promo code Sisters at checkout. Food waste is gross, Lomi is your solution. With the holidays just around the corner, Lomi will make the perfect gift for someone on your shopping list. Their link is also in our show notes.

Joyce:

So y'all, I thought we'd close today on a slightly different note. I have a question for each of you. Do you use TikTok, Jill?

Jill:

No.

Joyce:

Do you know what it is?

Jill:

Of course I know what it is. I work with Victor Shi, of course I know what TikTok is. I have a young person who can tell me.

Joyce:

Does Victor send you videos to watch all the time?

Jill:

No. Because he doesn't use it either, I don't think.

Joyce:

Oh, okay. Barb, what about you?

Barb:

I have been on it on the website. I don't have the app, I haven't downloaded it to my phone. Although my kids do. I've got four adult children and I know at least two of them are very big fans. My daughter gets book recommendations from TikTok. So they enjoy looking at the videos. But in light of some of the recent things we've been hearing from FBI Director Chris Ray, was here in Ann Arbor last week speaking to our Ford School for Public Policy, and he said he doesn't have it on his phone and his kids don't have it on theirs. So you can draw your own conclusion from that. So how about you Joyce, are you TikToker?

Joyce:

Interestingly... yeah.

Barb:

Do you do dances and stuff on TikTok?

Joyce:

I'm not, no. The TikTok consumer in my house is my husband and he pulls recipes off of it. But what's really pretty creepy is I'll catch him sitting in a chair looking at his phone and he'll just be laughing to himself. It looks like he's lost it. And one morning we were outside drinking coffee with our chickens, and one of the chickens, Pickles, had jumped up on his lap and Bob is scrolling through videos. And Pickles peeks over and starts looking, so he actually turns the phone to her. And by an act of God, I actually was taking video in that moment, and I actually have that on video, it's on my Instagram account. But all that to say, Bob is the TikTok guy in our house. And I think as you say, Barb, Chris Ray's instincts are good. There are reasons to be worried about TikTok, and they've been in the news this week because they've been sued by the state of Indiana. There are actually two suits. Barb, why don't you talk about the first one?

Barb:

Yeah well, I'll talk about the one that is targeted about consumer protection for children. So the Indiana Attorney General filed a lawsuit saying that TikTok violates consumer protection laws under the laws of Indiana, by violating its agreement as to the type of content it will provide. It says that the content is appropriate for anyone over 12 years old, but as they allege in the complaint, TikTok does include a lot of content that does not meet standards for what is appropriate for 12 year old children. And so they are seeking money damages to say... They also allege that they've designed the algorithms to keep kids on the platform for as long as possible, which is also detrimental to their health. It's been detrimental to their self-esteem, to their mental health. And so for all of those reasons, they're seeking a declaration that they are violating the Consumer Protection Laws of Indiana and pay money damages.

Joyce:

Well, TikTok is certainly succeeding in keeping my husband on the app. So I don't know if that bodes well for Indiana's lawsuit or not, but I'm seeing it in action.

Jill, the second lawsuit makes allegations that I've heard for a long time, that China engages in data harvesting from its users. What's behind the second lawsuit?

Jill:

So before I answer your question, you made me alarmed when you were talking about that and I just looked, and TikTok is an app that is on my phone. I will remove it when we are done because of this very question you're asking me. Because the second one, is that they are getting information. It is a company that is owned by a Chinese company. And although the company denies this and says, "Absolutely, we are doing everything we can and we do not give any consumer information from America to the Chinese government." People just don't believe that. They believe that Chinese companies comply with the Chinese government requests and do provide the information. So the real risk here is, again, another one that could give China a big advantage by getting the information that is acquired on this. And I guess I have looked at TikTok videos. Mostly of animals. I do Twitter animals, I do any animals. In the same way Barbara does sports, I do animals, particularly dogs of course, and Joyce's chickens.

Joyce:

So Barb, given that TikTok is a Chinese entity, realistically speaking, can the state of Indiana do anything to them with a lawsuit?

Barb:

I think they can. To do business in the United States, you need to have agents doing business in the United States. You could have a registered presence here. So I think that they could get this civil relief that they are seeking. They want a declaration that they are violating consumer protection laws. They want them to cease and desist in this collection and they want them to pay money damages. So I think so. Certainly, there's parts of the entity that are overseas and not touchable, but if you want to do business in the United States, you need to have a presence here. And so I think a corporate representative could be required to show up and file a response and undergo discovery. So, I think so.

Joyce:

So, it's really interesting Barb, because when we were US attorneys on the criminal side of the house, one of our colleagues sued China over economic espionage. And really it was name and shame, right?

Nobody believed that they would actually get defendants in the United States to stand trial in the criminal case. So it's interesting to me that here in the civil arena, it may actually be possible for Indiana to at least take baby steps towards holding China accountable. Jill, Indiana's not the only state though, that's taken action here. Texas's governor Greg Abbott banned TikTok from state devices. South Dakota, South Carolina and Maryland have all taken similar but less drastic measures to keep TikTok off of their devices. What's the rationale for doing this and do you think states can get away with taking this kind of action?

Jill:

So, I do think that states can do this because it is a state-owned device and the state has a right to say what you can use it for. You can't watch pornography on a state owned device. There are certain things you shouldn't be allowed to do. And so I think that that is one issue.

Some of the wording of the restrictions have left people confused about whether a state employee on their personal device would violate any of the restrictions by having TikTok on their personal device. So that obviously has to be cleared up because of First Amendment issues as to whether people choose to risk their information being given to the Chinese government. Whether people feel that the risk, particularly to young children that Barb talked about, is so great that they don't want to have the app on their phone or have their children use it. Those are personal decisions that people can make. I just won't use it because of the risk that I see. But I think that on a state device, yes, I think it would be fine and I think it's not bad policy. And the rationale simply is that it's too big a risk to the state to have the information disclosed.

Joyce:

This is clearly not a partisan measure. We've talked about states that are led by Democrats and states that are led by Republicans. So maybe this action has some sort of public education function that helps people appreciate what the risks are and make up their own minds. But Barb, there's actually been a call for a countrywide ban, and Trump initiated action that trended that direction. What happened to it? And do you think that there's any possibility it'll happen?

Barb:

Well, Donald Trump, when he was president, issued an executive order that banned TikTok in the United States. It was quickly met with a lawsuit, and so it was tied up there. But the idea behind it, I think makes some sense. The way you control that, is you say no US Company may do business. It's the same way we deal with embargoes, prohibiting US companies from engaging in business transactions with the target company. So in this case, TikTok and ByteDance, no US Company can do business with them. The practical impact of that would mean that Apple or Google, all of the stores where you get your apps, would not be able to carry the app on their platform. It would also mean that as the various updates come in, even if you had it on your phone, you wouldn't be able to get the updates and at some point it wouldn't work anymore. So you can't really ban users from using it, but over time you can make it so that it's impossible for them to use it.

But because of this lawsuit, the Biden administration has found that maybe that's not the most effective way to go about it. And so what they are seeking is, rather than a ban they are hoping to find a way to reach an agreement with TikTok and ByteDance about using US-based servers, so that all of the American data, data of American people, would be stored here and not in China where it could be accessed by the Chinese government. And so that is working through something called CFIUS, which is the Committee on Foreign Investment in the United States. They look at all kinds of business deals that

involve foreign governments to make sure that there is not any intelligence vulnerability that gets created by mergers and acquisitions and things. So, involved in that process, the idea is to preserve TikTok, but to transform it into a way that all of its data is stored here in the United States so that you and I and Jill and Bob and Pickles can continue to enjoy our TikTok videos.

Joyce, have you made anything good with HelloFresh lately? I tend to get into ruts. I so love all the fish dishes that they offer that I tend to order those again and again. Anything else that you recommend?

Joyce:

We are right there with you, the barramundi, which I think you or Jill, one of y'all originally recommended.

Barb:

Yeah, it's so good.

Jill:

I love it's the best,

Joyce:

Such a crowd pleaser in our house. We absolutely love it. With HelloFresh, you get farm fresh pre-portioned ingredients and seasonal recipes delivered right to your doorstep, and who doesn't need that? So skip trips to the grocery store and count on HelloFresh to make home cooking easy, fun and affordable. That's why it's America's number one meal kit.

Jill:

And I'm so with you. But I have been trying to do things like in one week I will cook a curry, and I will cook a Mexican food, and then I'll also have my favorite fish. It's really great to feel like you can do so many diverse things. And now that the holidays are here, HelloFresh's festive eats makes mealtime a snap. Choose from holiday inspired dinner recipes, seasonal add-ons, or even a three course offering, all designed to make holiday meals extra yummy and easier than ever. That means you can cut down on hours of meal planning and prepping, when you set aside time for your loved ones instead. So, whether you're hosting a holiday dinner or just stocking up on snacks, you'll find everything you need at HelloFresh market. From quick breakfast to charcuterie boards and desserts, it's never been easier to prep for a party or fill your pantry.

Barb:

HelloFresh works with your schedule. Their plans are flexible and you can change your meal preferences, update your delivery day and change your address with just a few taps on the HelloFresh app. Imagine getting fresh quality produce from the farm to your door in less than a week, allowing you to enjoy the flavors of the holidays right from home.

Jill:

Go to hellofresh.com/sisters18 and use code sisters18 for 18 free meals plus free shipping. Remember, go to hellofresh.com/sisters18 and use code sisters18 for 18 free meals plus free shipping. You can also look for the link to HelloFresh, America's number one meal kit, in our show notes.

Now we're getting to our favorite part of every show, and this week we had so many great questions. We really had trouble deciding what to take. But if you have a question for us, please email us at SistersInLaw@politicon.com or tweet using #SistersInLaw. If we don't get your questions during the show, keep an eye on our Twitter feeds throughout the week, because we do sometimes answer the questions that are left over in that forum. And I know I've already answered one of the questions that came in this week on Twitter. So, let's go to you Joyce first, and we have a question from Julie for you. "What do you think the Democrats should do regarding congressional subpoenas in the new Congress?"

Joyce:

Comply. But let me hedge my bets just a little bit and say this. Y'all know and like you, I'm a rule of law person. If you get a lawful subpoena for testimony, you should comply with it. Hillary Clinton did that for 11 hours worth of testimony that was questionably based and in many ways harassing. But she did her duty and she showed up and she testified. There's been a real issue in this last Congress of whether congressional subpoenas apply to members of Congress. And really it's less about whether they apply to them than whether they can be enforced. There's not a clear enforcement mechanism and it seems uncertain that federal courts would be willing to take on an issue that involved Congress trying to subpoena its own members. But I think the principle here is you should comply with a subpoena. Although there's some suggestion that this new Congress, the new House, will engage in harassment via investigation. So there might be some limits to that. But as a general proposition, show up and give them the responses that they deserve.

Jill:

I'm glad you added the caveat, because I am worried about a lot of frivolous and ungrounded investigations being put forward by the majority in the house. And I'm glad, because like you, I am a Michelle Obama, "When they go low, we go high." But I tested this out at a speech I was doing this week, and asked the audience how many of them felt that the Democrats should do as they say should be done, or they should just follow the Republicans and ignore everything. And it was interesting, most of the audience agreed with they should do what the law says. So rule of law people.

I'm going to answer the next question, which comes from Liz in Fremont, California. But I want both of you to also give an answer because I think I may have a different answer than each of you. The question is, "I'm wanting to know how each of you goes about preparing for this weekly podcast. Do you map out who will address specific questions and topics or are you more spontaneous in nature as the show evolves?" So I think we'll all have the same answer on the second part of that, which is yes, we map out who's going to address specific questions and topics. We spend time on the day before we record, on Thursdays. We go through what are the many topics of this week that we are going to talk about, and we assign one person to write the questions for that topic. And they send out the questions that they plan to ask, so we have time to think about it.

I think where it may differ is when I see the topics and the questions, I oftentimes have to do a lot of research. Because you two are both law professors, you stay current on all the Supreme Court cases and everything. And I am more of an ordinary citizen these days. I'm not actively practicing law, but I do stay current because of... Obviously in order to comment on MSNBC, I need to be current on the law. But I do extra research for this. So I start reading cases and go back to old cases. I clearly read Masterpiece Cake as well as the 303 case this week.

But anyway, so that's how I prepare. I spend a lot of Thursday night, late into the night early into Friday morning, and then Friday after I wake up again. What about you?

Joyce:

Well, I just listened to you and Barb on MSNBC.

Jill:

No.

Joyce:

I think you give at least me way too much credit, Jill. I do a lot of work to prepare for the podcast because we go so in depth, and also because I am the nerd on the podcast and I do love going back and rereading and revisiting old Supreme Court cases. But I also really like doing an in-depth read on whatever is available out there. Not just the news reporting, but there are legal news sources. I like to have conversations with friends who are involved in cases or who have special expertise in the area, and preparing for the podcast really is a lot of fun for me. I never view it as work. It's always something that I look forward to doing at the end of the week.

Barb:

Yeah, I guess similar, Jill. And yeah, don't assume we just come in and know it. I know we make it look easy, but that's because we work so hard in our preparation. Like all of you, I'm a voracious reader of the news. I just love it anyway, I would read it no matter what. But I'm reading it to keep up with teaching, to keep up with MSNBC, so that helps as a start. But once we choose our topics... we usually choose our topics by Thursday or sometime in the middle of the week. We nominate ideas and then we reach it by consensus, which ones we'll do. And then one of us just says, I'll take this topic or that topic, and then do some research on it. I try to read relevant articles.

There's a great one, I'll come into our listeners, that I read all the time, is SCOTUSblog. It's a collection of articles and pleadings for cases in the Supreme Court. That's a goldmine right there. So anytime we're touching on anything relating to the Supreme Court, I can look there. The other place I look is the Justice Department's website. They post all of their indictments and other kinds of things. There is something called PACER where you can get court filing. So, between those three sources and then just popular media, we can probably put our hands on just about anything.

The other great resource that's out there is the Justice Manual, which is the policy manual for the Justice Department, all online. So I guess we know where to look because we've looked at them before, but that's also a great resource. And so I will frequently look to that to remind myself about DOJ policies.

Jill:

All good ways to prepare for this. And I hope that our listeners see how much preparation we do to make it look easy, so that we know what we're really talking about. And I, like you Barb, find it to be really fun to do. And I feel smarter after the show when I hear both of your views, and after I've done the research and feel like, "Oh yeah, I read that case. I really get it."

So Barb, the last question is for you today, and it comes from Jeff_Daneen and it's, "Does a person have to be a member of Congress to be Speaker of the House?" An interesting question in light of the fight that's going on among the Republicans for who's going to be speaker.

Barb:

The speaker does not need to be a member of the House. Article one, section two of the Constitution says that the House shall chuse... spelled the same way we discussed earlier, C-H-U-S-E, chuse their speaker and other officers. So it's always been somebody who is a member of the House, which probably makes some sense, but it doesn't have to be. It can be anybody. It could be me, it could be you. It could be Donald Trump. Though I don't think he would take such a lowly job, do you? I think that he wants to be president.

Joyce:

It would make him third in line to the presidency, right? If he can impeach Biden. Yeah.

Barb:

That's for losers, he's a winner, Joyce. Haven't you been paying attention? I guess he could dictate legislation and other kinds of things from that position. But at any rate, the answer to the question is no, the person need not be a member of the House.

Jill:

So it could be Liz Cheney.

Thank you for listening to #SistersInLaw with Barb McQuade and Joyce Vance, and me, Jill Wine-Banks. Kimberly Atkins Stohr will be back with us next week. 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 as the weather gets colder, our hoodie and other goodies. And please support this week's sponsors Helix, Noom, Lomi and HelloFresh. You can find their links in the show notes. Please support them as they make this show happen. To keep up with us every week, follow #SistersInLaw on Apple Podcasts, or for those of us who are still PC users, wherever you listen. And please give us a five-star review, it really helps others to find the show. See you next week with another episode. #SistersInLaw.

Joyce:

You're going to die though, Jill. Have you seen these kits where you can teach your dog how to talk? It's like buttons that you put on the floor and you teach your dog words. And so I got the kit for Bella and Fig and we're going to start using it this weekend. And Bob is just rolling his eyes, he thinks I've lost my mind. They know a lot of words.

Jill:

I am going to... What is the thing... Well, my dog understands a lot of what I say, for sure. But, so what's this kit called? I definitely have to have it.

Joyce:

I think it's called PetSmart. I'll go look and I'll send you a link to it. But it's buttons you put on the floor and you push the button that says play. And then you play with the dog and then the dog learns to push the buttons and tell you when the dog wants to play.

Jill:

Oh, I have to have this.

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Joyce:

Which means in our house they're just going to push that damn button all the time. Right? Play, play, play, play.

Jill:

I can't wait. I just got a gift today and it didn't come with a card. Luckily the company name was on the box. I called. I now have a Lego dalmatian set.

Barb:

Oh that's fun.

Joyce:

That's awesome.

Jill:

So I will be building Lego dalmatians. I'll put a picture of that on the show notes too, because it's so adorable.

Barb:

That's fun.

Jill:

I can't believe it. I'm thrilled.