

Joyce:

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Jen Taub:

This is Jen Taub inviting you to unwind every Sunday with my new podcast called Booked Up. It's just you, me and our favorite authors. I'll be talking with them like no one else is in the room. Be honest, who doesn't love to listen in on a private conversation, especially with writers like my first guests, Dahlia Lithwick and Michael Cohen. Plus, on the last Sunday of each month is our Booked Up book club featuring Never Trumper, George Conway, official preppy handbook author Lisa Birnbach, publicist Ivan Lett and advice columnist E. Jean Carroll. Please follow Booked Up with Jen Taub on Apple, Spotify or wherever you get your podcasts. And email me @bookeduppoliticon.com.

Barb:

Welcome back to #SistersInLaw with Jill Wine-Banks, Joyce Vance and me, Barb McQuade. Kimberly Atkins Stohr is away this week and we can't wait to have her back. Today we'll be discussing the FTX scandal, hate crimes and the marriage equality law. And as always we look forward to answering your questions at the end of the show. But I wanted to start by asking both of you a question. I don't know if you saw this piece in the Washington Post, but it talked about how people are using emojis in the workplace, especially with Gen Z and the communication gap that can arise between people of different generations. And I wanted to ask each of you, number one, do you use emojis? Do you know what emojis are?

Jill:

Yes, of course we know.

Barb:

All right. Do you use them? I do.

Joyce:

I use emojis a lot because I know this will come as a shock to both of you. I am very often sarcastic in my communications. And I've learned that there's no way to read tone in an email, so I use appropriate emojis to indicate I'm being sarcastic and I do it-

Barb:

So what would be an example? How would you indicate sarcasm? Like if you were to say, "Nice hair, Barb." What would you do to include-

Joyce:

Well, if I said, "Nice hair, Barb." I'd be totally serious and there'd be no need to use a sarcasm emoji.

Barb:

Say you were my sister. Channel my sister and say, "Nice hair, Barb." How would you do this?

Joyce:

I like the black sunglasses face and there's also the one with the eyes rolling up in their head. So I'll use both of those to signal that I'm being sarcastic.

Barb:

Yeah, that's a good one, okay. How about you, Jill? Do you use emojis?

Jill:

Use Bitmoji more than I use emojis and Bitmoji-

Barb:

What's Bitmoji?

Jill:

Oh my gosh, if you don't have it's wonderful. You can personalize an avatar that looks like you.

Barb:

Oh, I see. Yeah.

Jill:

Put in your own hair and you can dress it any way you want in a sporting outfit or very dressed up. And then you can look for things that really make it easy to communicate one thought, one idea, one feeling or to say, "Happy Hanukkah" or "Merry Christmas" or whatever it happens to be. It's a really fun, easy way to communicate. I don't use that many smiley faces and sad faces but I do occasionally use something and my system is set up so that if I type certain words like congratulations, it'll have a bottle of champagne pop up. And I sometimes add that to the message. Yeah, that's kind of a lot of fun things-

Barb:

It'll suggest an emoji, right?

Jill:

Exactly. And that it's just fun. But I could see how in the workplace that I would not be amused if I was getting emojis instead of words as a response to a question. And that could be a generational issue. And it's such a good point that I'm going to raise that as a chit-chat with Victor on our iGen politics because I bet he thinks it's okay to do and may do it and I'm just wondering about that. So I'm going to check in with him on that.

Barb:

Yeah. And according to this article, it is in widespread use by Gen Z. I use it in my personal texting like with friends and all of you, but I don't think I would use it in a workplace setting. But I think that's changing and I think Gen Z is absolutely changing it. Are we becoming like a hieroglyphics language culture. Are we losing language as a result? Or is it that you can convey more with emojis? I've been impressed, my 91-year-old father-in-law has become the master of the emoji. He loves the thumbs up emoji which the Washington Post article says the young people don't love. They think it's lazy and they

think it's not expressive enough but I think it's great. He uses it and it's a sort of a general, "Yes, I'll be there. Affirmative." I like the one and I've been using lately the smiley face.

It's like a half smiley face with the salute. Like if somebody says 1:00 AM, "Can you pick me up at location x?" I sent him the little salute, that means I'm on it, 10-4. But they're all interesting. Okay, so lightning round, last question then. How about the exclamation point? Same thing. Gen Z are big users of the exclamation point. So there was a time when I would not write any, I thought if including an exclamation point is just lazy writing. If you want to emphasize excitement, write words that generate excitement, don't throw in an exclamation point. I gave that up in middle school. But according to the Gen Z people, if you just say thank you, that sounds flat and mean. And an exclamation point suggests enthusiasm in the thank you. And so you should always include it, at least one. Some say up to three. How about you? Do you guys use them?

Jill:

I'm with them on that. And I think it's partly because since we're all learning to write in short sentences for Twitter, it's a way to communicate without having to use all those better words that might communicate your enthusiasm, is an exclamation point does it in one little mark. So I think it's an okay thing.

Joyce:

Yeah, I totally agree. And look, I mean you guys know my background. I grew up as a Jewish girl in the valley out in Los Angeles. We are very prone to exclamation points and I've never lost that trait.

Barb:

All right, well, I'm going to send each of you a big thumbs up emoji and we can-

Jill:

So what's the option instead of a thumbs up that Gen Z likes if they don't like thumbs up 'cause I like thumbs up?

Barb:

A smiley face but a really big smile if you send only a wand smile. Oh, they think that you're like throwing shade.

Joyce:

I send the smiley face that has three hearts on it to say that sort of thumbs up thing.

Barb:

Yeah. Wow. I got to up my emoji game. Joyce, I don't know about you, but I'm going to have a house full for the holidays and I think it's going to be the perfect time to break out of the freezer all that great meat I got from Moink. I've got some ribs in there, I've got some bacon in there and I've been waiting for my meat eaters to get home. How about you?

Joyce:

We just got a new box a couple of days ago. There's this really amazing sausage, bockwurst made with uncured bacon and we ate it that night, cooked on a sheet pan in the oven with peppers. Everybody in the house loved it. I can't wait to pull out the rack of lamb. So I think that'll come out over the weekend. What I like so much about Moink, Barb, is it lets us support small family farmers and reduce our environmental imprint all while enjoying the highest quality meat on earth. When you join the Moink movement, you can do that too. Their animals are raised humanely, their employees are paid a living wage and the quality is way better than anything you'll find in the stores. The meat is delicious.

Jill:

Moink delivers grass fed and grass finished beef and lamb, pastured pork and chicken and sustainable wild caught Alaskan salmon straight to your door. The Moink farmers farm like our grandparents did, well maybe not my grandparents, but other people's grandparents. And as a result, Moink meat tastes incredible. The family farm does it better and the Moink difference is one that gives you total control over the quality and source of your food. You choose the meat delivered in every box, everything from rib eyes to chicken breasts, pork chops to salmon filets and much more. Plus you can cancel any time and the food is really good quality. It's hard to believe how good it is. And you mentioned you just got some ribs and I put off cooking those for a long time 'cause I was really intimidated by cooking ribs. And I finally looked up a recipe and did it. It was so easy and so delicious and so meaty. It was a wonderful meal. I really like it. And I love the idea that you can get great food and help America's rural farmers.

Joyce:

Moink includes recipes in their boxes and other options that you can look up. And I certainly have sort of a set series of go-to recipes for me. But I've enjoyed trying their recipes too. They do a great job. Shark Tank host Kevin O'Leary called Moink's bacon the best bacon he's ever tasted. And Ring doorbell founder Jamie Siminoff jumped at the chance to invest in Moink. Plus they guarantee you'll say, "Well, Jill, what did they guarantee?" You'll say.

Jill:

They guarantee you'll say, "Oink, oink. I'm just so happy I got Moinked."

Joyce:

You'll love it like we do. It's the perfect option for a family meal or dinner party.

Barb:

God bless, Jill Wine-Banks for saying that...

Jill:

I love the product. I'm willing to say it.

Barb:

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Joyce:

You guys, I'm going to share my recipe with you for how I've been doing their filets because you know you just get one or two in a box unless you swap out for a bunch. I've been using it to make a great filet mignon salad. Absolutely [inaudible 00:11:13] in my house.

Barb:

Wow, sounds great. Wow.

Joyce:

It takes like 10 minutes to make it.

Jill:

I also want your rack of lamb. I think I might actually be willing to try to do that. I've never done it.

Joyce:

It's super easy. I use the one that's in the Joy of Cooking. It's really very easy and again, it's relatively quick. If you don't want to stick a roast in the oven for three hours.

Barb:

Well, let's move on to the news. One of the big stories this week was FTX, this cryptocurrency platform and Sam Bankman-Fried, it's leader who was arrested this week in The Bahamas where he awaits extradition. Joyce, can you please give us a little background on FTX and its recent financial problems? And by the way, if you can in a sentence or two explain what cryptocurrency actually is for our listeners. You tell me what it is. Yeah, you tell me.

Joyce:

So you'll be really amused that to get the answer to this question, how do you explain crypto in a couple of sentences? Because I can do it, but my explanation is long and convoluted because I'm not as conversant with it as I should be in some ways. I turn to my daughter who when she was interning on Capitol Hill, part of her job was to attend a bunch of hearings on crypto several years ago. And I asked her what's the easiest way to define it in very few words and this is what she told me.

She said, "Crypto is digital currency that is made and used through encrypted blockchain." And then she told me, "But mom, what you really need to do is watch one of those Crypto for Beginner YouTube videos to get the hang of it." I was sort of insulted by that because I was involved in some crypto cases when she was, I don't want to say still in diapers, but not much older than that because for me and, Barb, this might have been your first exposure to crypto as well, it was an alternative currency that was often used by people who were engaged in criminal activity and that was how I was first exposed to it.

Barb:

Yeah, dark web stuff.

Joyce:

Exactly. But the blockchain technology is very interesting and it involves replicating transactions in a secure way so that they theoretically can't be altered. That's held up pretty well in practice. The

interesting thing about this situation though is that it's really got very little to do with crypto per se and more to do with a garden variety fraudster. FTX was a crypto exchange. It was the third biggest crypto exchange, one of the markets where crypto is traded and where people invest money in cryptocurrency. And so this was not a scheme that depended upon the use of cryptocurrency. It was more akin to a Ponzi scheme, something where the bad guy is using money that people entrust to him, that they invest with him and then keeps taking in more money to create a semblance of normalcy while he's actually spending the money that earlier people have given him.

Of course that only works until people start wanting their money back and then the whole thing collapses. And that's what happened with FTX. They filed for bankruptcy on November 11th after a surge of customer withdrawals took place earlier in the month. Bankman- Fried had to admit that the company didn't have sufficient assets on hand to meet customer demand. So since it happened in the context of FTX in the crypto market, I think it's important for us to discuss and try to better understand crypto at the same time understanding that this is less about crypto and more about fraud.

Barb:

That's a great explanation, Joyce. Thank you. And Jill, let me ask you about the charges. So the Southern District of New York unsealed an indictment on Tuesday. Can you please tell us about those charges?

Jill:

They are a very broad range of charges and very not well spelled out and specified. They include conspiracy to commit wire fraud, actual wire fraud, conspiracy to commit commodities fraud, conspiracy to commit securities fraud, conspiracy to commit money laundering which starts to get really sounding exciting and conspiracy to defraud the Federal Election Commission because there are some election campaign contribution charges as well. And they are very wide ranging and very vaguely set forth and they all are part of the misappropriation as Joyce said, it's really embezzlement of the funds that people entrusted to him rather than that there was something inherently wrong with the concept of cryptocurrency. Although I have to say, I'm sort of in this older group of people who thinks it is almost like the Trump trading cards.

Barb:

Oh man.

Jill:

It's not really a thing, it's just sort of a-

Barb:

Wait, you don't have any? I thought we were going to trade.

Jill:

You told me they're sold out. I mean I can't even get one if I wanted one. There's a lot of fools in the world buying those, but anyway-

Barb:

I'll get them for you guys for Christmas.

Jill:

Oh, thank you. Really, that would be so wonderful. Here's the worst thing, you can't even pick the ones you get. They just randomly select.

Barb:

Oh really? You can't choose the one with the laser eyes?

Jill:

No, you cannot. They will send you whatever it is and that means if you buy a second one, you could get a duplicate of the first one.

Barb:

That's how it is with trading cards-

Jill:

Such a grifter.

Barb:

Card as a child. That's how it goes.

Jill:

Oh, my God. Anyway, there were billions of dollars of customer funds deposited with FTX and they disappeared. And so people have lost a lot of money and it looks like the SBF, as he is now known, which also sounds a lot like MBS. I don't know why I confused the two of them, one was a killer and the other is just apparently a thief. But anyway, Bankman-Fried-

Barb:

Allegedly.

Jill:

Allegedly, yes, allegedly. He was arrested on these allegations and extradition is awaiting.

Barb:

Well, Joyce, let's drill down on that a little bit. As Jill said, it's a very extensive indictment with a lot of different charges and they threw the kitchen sink at them. But I did notice that this is not what we would call a speaking indictment where the government preview some of its best evidence like the Oath Keepers indictment for example, is filled with quotations from text messages that provide evidence of the crimes. This one is not like that. It just uses the language of the statute, just parrots that statutory language, but it does have a lot of different counts. What do you think is going on there? Any theories about why it's charged the way it is?

Joyce:

Well, you know like I do that the U.S. Attorney here moved incredibly quickly. They moved nearly-

Barb:

Wait, the Southern District of New York big footing it into a case.

Joyce:

What the Southern District of New York big footage shoved everybody else out of the way. For those of our listeners who don't have DOJ backgrounds, we should probably explain, the Southern District of New York is notorious for sending out a couple of subpoenas and then claiming that they've got jurisdiction over a case. There's a little bit of friendly competition among U.S. Attorneys. And, Barb, I'm sure you had the experience that I had of once or twice of talking with friends in the Southern District of New York about why they weren't going to poach on our cases. But here in New York, beat everybody else to the jump. It may well have been their case nonetheless. And there may have been some legitimate concern here about, for instance, if SBF might have tried to move to another country where it would've been very difficult for the United States to get him back from.

So that could be a legitimate reason for moving quickly. But, Barb, you shared some speculation with me that I think makes a lot of sense. And you pointed out that because DOJ can't add any additional charges after extradition, that's how the complicated treaty options work on extradition. What they did here was they made a lot of different charges, they covered the landscape and then as the case evolves, they will dismiss the ones that don't apply, but they would not be able to add them after an extradition. And specifically here, there's a lot of uncertainty about what crypto is. It's such a young currency. Is it a security? Is it a commodity? Nobody really knows so you have to charge a lot of different ways. And then as we used to say in my office, let God sort it out.

Barb:

Yeah, I think that's super interesting, the security versus commodity issue. A security, I guess I would explain as an instrument that represents some financial backing, like a stock is a security or a commodity which is a product like pork bellies or orange juice features or something like that. Those are commodities. And so is it a thing that you own this cryptocurrency that this is your stuff? Or is it that it is a security and it represents some cash value. And that will define which statute it falls under because a jury has to make a finding about that. So I suppose if you include both, then you're covered. If they file a motion to dismiss one of those pretrial. So that'll be super interesting to watch.

Joyce:

And of course the risk is that it's neither, right? I mean it's really just going to be a very complicated and utterly fascinating case to watch, move forward.

Barb:

It's a currency. Yeah. Well and there's always fraud, right? Good old bread and butter wire fraud. So I think no matter what it is-

Joyce:

Yes, that will be the path forward, undoubtedly.

Barb:

To take their money. That's a fraud, so doesn't matter what it is. So that's pretty interesting. Jill, let me ask you about SBF himself, Sam Bankman-Fried. He has portrayed himself as a bro. He lives on the

beach, he wears shorts. He says he doesn't read books, he has unkempt hair. Is it all just a put on? He's also been very forthcoming doing a lot of interviews trying to, I think, portray himself as an innocent but well-meaning kid. Oh, live and learn. Who knew this was so complicated. But I also note that his parents are professors at Stanford Law School and have been involved in his business. So what do you think? Do you buy it, that he's this bro in over his head or is he instead a scheming, financial, sinister criminal?

Jill:

Well, he's also apparently a mathematical genius. He went to a special math camp when he was young. He's a graduate of MIT.

Barb:

Math camp. Is that like debate camp? Did Joyce meet him there?

Joyce:

No math at debate camp.

Jill:

Did you have socials with a science-

Barb:

They had mixers.

Jill:

Yeah, mixers. Right. But he is a graduate of MIT. And his appearance really makes me rethink all the criticism that I had of the press coverage of me talking about how I dressed because how you dress does communicate something about yourself. And he's obviously trying very hard with his uncombed hair, with his baggy shorts to create a certain look. And it's not one that if I were going to invest any amount of money I would want to put into a company that he had anything to do with because his appearance looks so unprofessional. But you're right, his parents are both law professors. They must have raised him in a home of books so I think it is pretty much a put on, I don't know what he thinks he's accomplishing by it because I can't imagine that that attracts business but yet I think it probably is. And as I say, I don't see the value of it. I think he is something much more than that. And if it's part of a pre-planned defense, then it's not going to work either. He knowingly took people's money and kept it and cheated them.

Barb:

Now what about extradition, Joyce? DOJ is going to seek extradition of Sam Bankman-Fried to the Southern District of New York. There he is in The Bahamas and I think he said he's going to fight it. How does extradition work?

Joyce:

So the fact that he says he's going to fight it is a little bit of a tip off that he has a sophisticated legal team representing him already. Extradition from foreign countries is a matter of treaties. There are different treaties with different countries. With The Bahamas, he'll be able to delay extradition but it's extremely unlikely that he'll be able to prevent it. He'll be back in the United States, if not in weeks then

in months. And it's really not at all unusual. The situation where you arrest someone on a United States indictment in a foreign country, that's entirely possible and there are restrictions. For instance, some countries will not let you extradite someone if the offense that they're charged with in the United States is death eligible. If it's a capital offense, countries like the United Kingdom won't extradite back unless you relinquish the possibility of a capital prosecution. But that situation won't arise here. There might be some delay, but the path forward is pretty straight up.

Jill:

And, Barb, can I go back to your, because my COVID brain is making me maybe not be clear. Part of the question you just asked about whether SBF was what he seems to be. What I forgot to mention, you mentioned about his parents' involvement in the company and both are very well respected Stanford law professors, Ms. Fried has retired, I think now she's not full-time teaching but Mr. Bankman still is. And Mr. Bankman was very much involved in the business. He was often in The Bahamas meeting with staff and doing promotional work. Ms. Fried seems to have been much less involved but both of them are very involved in getting him legal help, which goes to Joyce's point about the extradition and the fact that he says he's fighting it means that they have good lawyers. There's actually a fellow law professor at Stanford who is working on the defense and they're saying that they're going to put up all their assets to defend their son. So they are definitely involved.

Barb:

Yeah, thanks, Jill. And we should say Jill is dealing with COVID at the moment and we're sorry that you're going through that, but you report that you're feeling pretty good other than your positive COVID test. So we're glad for that and we're happy that you're able to join us despite your positive test.

Jill:

Other than having to isolate for my chest.

Joyce:

Seriously, Jill showing up while you're COVID positive is high, sisters-in-law.

Jill:

I know, but I have to isolate from Brisby. I can't let him kiss my face. Oh my God.

Joyce:

Oh, poor Brisby.

Barb:

Yeah. Well we're glad you're able to join us through the magic of technology. Well, let me ask either of you this question. Joyce, I guess I'll ask you because you raised it first. You say the fact that he is fighting extradition shows that he has a sophisticated legal defense. Why is that? I mean, if I were charged with a crime and I believed I was innocent of these charges and I wanted to defend myself in court, I mean, I'm not going to fight extradition, right? I'm going to come back to the United States, I'm going to go to court and I'm going to put on my defense. Extradition really is fighting your very appearance in court. So why fight extradition?

Joyce:

Right? And it's interesting because it means he's sitting in a Bahamian jail for a little bit of extra time, but there is some value in delay. Right now there is a lot of animus, a lot of heightened sentiment about what went on with FTX. And sometimes lawyers believe that with the passage of a little bit of time, they may be able to negotiate a better sort of deal. I mean, I wouldn't want to speculate about what's going on in the defense team's mind but in many countries it would be a pointless effort to spend money fighting extradition because it would be so close to an automatic process. Here there is a little bit of an opportunity to delay and they're clearly intent upon taking advantage of that for whatever reason.

Barb:

Well, we'll have to wait and see what happens there. It'll be an interesting case to watch. In some ways it's a traditional fraud case, but in other ways I think it's about to make some interesting law in this new world of cryptocurrency. So we will follow it and keep our listeners up to date. Today's episode is sponsored by PayPal Honey. Well, I have been using Honey and I am sweet on Honey these days because I saved a bundle buying some holiday cards when I got the Honey code that saved me a good chunk of change. And so thanks to Honey, manually searching for coupon codes this holiday is a thing of the past. Honey is the free shopping tool that scours the internet for promo codes and applies the best one it finds to your cart. It supports more than 30,000 stores online ranging from tech and gaming to popular fashion brands and even food delivery and greeting cards.

Jill:

And here's how it works. Imagine you're doing your holiday shopping on one of your favorite sites. When you go to check out, the Honey button automatically drops down and all you have to do is click apply coupons. Wait a few seconds as Honey searches for the coupons it can find for that particular site. And if Honey finds a working coupon, you'll watch the prices drop. I've seen it work a million times. I've been using Honey oh, for many years long before we started doing this podcast. And it has worked to save me over time quite a lot of money. It's really good.

Barb:

We can't believe how much we've been saving. I just saved \$25 on holiday cards and I know the other sisters have seen great savings too. It always amazes us how easy it is to save. You can add Honey to your phone to just enable it on Safari or whatever app you use and you can find savings on the go.

Joyce:

If you don't already have Honey, you could be straight up missing out on holiday deals. It's literally free and installs in a few seconds. And by getting it, you'll be doing yourself a solid and supporting this podcast. We'd never recommend something we don't use. And believe me, I've used Honey and used Honey and used Honey all season long. Get PayPal Honey for free at joinhoney.com/sisters. That's joinhoney.com/sisters or look for the link in our show notes.

Jill:

At a time of what is supposed to be holiday cheer and brotherly love, it's disturbing that we are instead seeing a dramatic surge in hate crimes often with a link in my mind to disinformation and domestic terrorism. We've already discussed the Department of Homeland Security's domestic terrorism advisory bulletin from November 30th which warned of potential violence against the LGBTQ+ community, racial

and religious minorities, U.S. critical infrastructure which of course then happened in South Carolina and much more. And today I want to look at the relationship between domestic terrorism and hate crimes and delve into the facts and causes and solutions for hate crimes. And Joyce, I'm going to start with you as a law professor and ask you to define hate crime and distinguish it from domestic terrorism.

Joyce:

So the FBI defines a hate crime as a criminal offense that was motivated in whole or in part by the offender's bias against a person's actual or even just their perceived race, ethnicity, national origin, gender, gender identity, religion, disability and/or sexual orientation and that the crime was committed against people, property or society. It's a pretty complex definition that comes down to the motivation behind the crime. And the type of crime typically falls within the cases that DOJ's civil rights division would bring along with the United States attorney in that jurisdiction. The definition of domestic extremism is very different. The FBI and DHS both use a definition that involves an individual who's based and operating primarily within the United States or its territories and isn't being directed by a foreign terrorist group but they're engaging in criminal acts seeking to further political or social goals wholly or in part through the use of force.

It's a hyper-technical definition that's based on the statutory definition of domestic terrorism that's at 18 USC 2331. And that specifies domestic terrorism as three things, criminal acts that involve danger to human life and that appear to be intended to intimidate or coerce a civilian population to influence the policy of a government by intimidation or coercion or to affect the conduct of a government by mass destruction, assassination or kidnapping. And that occur primarily within the territorial jurisdiction of the United States. So you can see where those two sets of crimes might not be mutually exclusive, right? It's possible that you could have a hate crime that would also involve domestic terrorism. But typically when we talk about hate crimes, we're thinking about civil rights violations. While terrorism cases involve people with some sort of a political motive, people who want to use violence to frighten or intimidate the public or influence the government with the action that it takes.

Jill:

But of course they can clearly overlap in many ways. You could see how someone who is using a political goal that is to keep the races separate, for example, that's clearly based on racial hatred.

Joyce:

Yeah, you could absolutely have overlap in this area.

Jill:

So we've also, we've talked a lot about the rise in anti-Semitism and also against the kind of hatred of the LGBTQ+ community, including the recent attacks that we've seen. And there's a really interesting case right now, criminal case in Michigan where there was a plea that hasn't gotten as much attention. Tell us about that case, Barb, and why it's so important.

Barb:

Yeah, so a guilty plea was announced this week out of my former office in the Eastern District of Michigan. Really proud of my former colleagues there. It involves a man who is entering a guilty plea for crimes he committed in the summer of 2020. And that was the summer of George Floyd, the summer of the Black Lives Matter movement. Think about that time in June and July. And he called nine different

Starbucks stores in Michigan where they were wearing Black Lives Matter in support of the cause. And he called all of them and made racial slurs in each one of these to people who answered the phone. And I tend not to want to repeat racial slurs because it's awful and I don't want to give airtime to the words, but I think it's important that when we don't minimize what was said in these calls, because I think sometimes when we hear racial slurs, we just move right on without thinking about the words.

And so I'm going to give a little trigger warning here they come, but I'm going to share them just because I think it's important to know that people are out there saying this. After George Floyd is killed by a police officer. And most of us, I think were feeling concerned about police brutality and what was happening to Black citizens in police custody. This guy calls nine different Starbucks stores and in each one he calls and says, I want you to tell any employee wearing those Black Lives Matter t-shirts that quote, "The only good n is a dead n." He also told one of them, quote, "I'm going to go out and lynch me a n..." Word. And one of them there was in a beverage cooler inside a 7-Eleven, there was a note with a noose in four other parking lots at Starbucks stores inside the cars they would find nooses with notes that said something like the perfect accessory to go with your Black Lives Matter t-shirt.

And so this was a serious crime because it terrorizes a community. It says a particular community is not welcome here. And not only should everybody who shares that characteristic in this case being African American, but everybody, all of us, I feel deeply offended that in a community where we welcome people because of their diversity, where we tolerate all racial differences, religious differences, it is incredibly offensive to our notions of equality to think that somebody is out there saying those things. And so I was very proud of my former office for charging that case because it's important to hold people like that accountable, to send the message that society does not tolerate this kind of behavior.

Jill:

It is really an very important case, I think. And you mentioned about the, of course the police and the fear that happened because of the George Floyd killing. And there was another indictment today of five police officers for the killing of a Black motorist. And there was certainly clear perjury and obstruction, but eventually a video proved that the officers had beat and abused the man, they stopped. And I'm wondering whether, going back to this question of how do you tell a hate crime from domestic terrorism or just plain murder, how do we tell in some of these cases, the defendant admits I did it because I was motivated by the religion of the people I attacked or the race of the people I attacked or the gender identity of the people I attacked. But in a case like this where police stop a Black man once again, he ends up dead. How do we tell whether that's murder? Is it more than that? Is it the thing like Barb was talking about Joyce, where society has to say, "We cannot tolerate this kind of behavior beyond the fact of the murder?"

Joyce:

This is such a good question. And Jill, do you remember we were discussing this after the murders in Atlanta at the Asian owned spas, right?

Jill:

Yes.

Joyce:

Targets are all Asian, defendants not saying anything and it looks like a hate crime and it sort of walks like a hate crime but it's tough to know for sure. It's difficult for prosecutors in these situations so

partially it's a matter of state law. In the first instance, if you've got a state statute and they come in some different flavors but if you've got an available one and you can put together the proof of the motive, then you can supplement the murder charge with a hate crime charge or in some cases it just amplifies the punishment when that statute is there. That's been an issue though in cases like Ahmaud Arbery's murder which also happened in Georgia, where the state charges and also the way the prosecutors chose to prove their case didn't do anything about identifying the crime as a hate crime.

They didn't have a state statute at that point in Georgia. They now have a state hate crimes statute and prosecutors were nervous. They admitted quite candidly about injecting race into the trial. So you have a conviction in a case that clearly looks to be animated by a racial motive and the conviction doesn't really vindicate that. In that situation DOJ can and it has come in behind the state. It did in the murder of Ahmaud Arbery, it did in the George Floyd case to use the federal hate crime statute.

And as you pointed out, again, Jill, it's just a point of how good is your proof of the motive. The federal hate crimes statute is pretty easy to apply if you have that evidence in the case of a homicide. It can be much more difficult to prove and there can be questions about whether something is a serious enough bodily injury to make that statute a felony conviction. So lots of complicated twists and turns both with the law and the facts but the decision about whether hate crime charges are appropriate is largely a matter of whether you have a statute available and how good your proof of the racial animus is.

Jill:

So let's move to a slightly different question, which is why has the number of hate crimes increased so dramatically? Is it related to Barb's new special topic of disinformation? Is it related to Trump's language, there's good people on both sides of the Nazis? And his meetings with clear members of the white supremacy groups and anti-Semitic people? And does that just validate the bigotry and does it result in the crimes? I was also interested in researching for this topic. I looked at a place that I try to stay away from which is Fox News to just see how they're covering it. And of course they're saying "Democrats blame the GOP for fanning the flame of bigotry against LGBTQ people. And I don't think I'm blaming them. I think that there may be a direct link to the crimes that we're seeing because of the language and enabling people to say these things out loud and then act on them. What do you think, Barb?

Barb:

Yeah, I've actually been researching this very recently for my book on disinformation. And it is all part of this same political agenda. And I don't want to say it's a Republican agenda, it's an agenda of the far right, which is a subset of the Republican Party. There are plenty of Chamber of Commerce Republicans out there who just want to have their low tax, small government policies and that allow small businesses to thrive. That's a legitimate view. But there is a faction, I think of the far right that is trying to demonize their opponents in an effort to prevail. There's some research that says if I divide the world only into two camps and then I make the other camp appear to be the devil, to be so undesirable, you can't possibly align yourself with that other undesirable side, then you'll have no choice but to be on my side.

And so how do I do that? I've got to fan the flames and make you believe that everything the other side is for is evil. And so the LGBT community is all about grooming children for pedophilia. And the Jewish community is all about controlling the media as global elites and Asian Americans have brought us in Trump's words, the Kung Flu and the China Flu. So all of those things give license to other people to engage in hate speech and speech begets action. So when you demonize another group, most people are not going to take the bait, but are certainly there are people out there who are unhinged enough

who are going to act all of these mass shootings we've had in recent years that have targeted groups, Club Q and the Tree of Life in Pittsburgh, there was a Walmart shooting in El Paso, Texas.

There was a supermarket shooting in Buffalo. All the common denominator of all of those people was some variation on the great replacement theory. You will not replace us white, straight Christian people are being eliminated by all of these other groups. And so we need to eliminate them first. That is all part of that same narrative and it is fueling disinformation and it is fueling hate and it in turn is fueling violence. And so I think that we need responsible grownups to stand up and say enough and denounce the disinformation that is part of this feedback loop.

Joyce:

Can I supplement that though, Jill, and just jump in and say, I agree with everything Barb says. And I think that there's also a more pedestrian force at work here which is that these crimes seem to be more prevalent because they're being viewed through this lens more frequently and they're being reported more frequently. Whereas 10 or 15 years ago, people would've dismissed it as a homicide and not been very interested in the racial motive or in a motive that had to do with religion or anti LGBTQ bias. Now we are seeing that come to the forefront and it's becoming something that we are better capable of discussing and better capable of seeing the need to provide accountability for. So in some ways, the increase in these cases, I don't want to say that it's a positive thing because that's not the case, but I think it signals that we are handling cases more appropriately.

Jill:

So let's take that the next step, which is how do we decrease the number of these from happening? What are our suggestions for reducing these crimes? Is labeling them as hate crimes with the added penalties, is that part of the solution? What is the way to educate the population that there needs to be an acceptance and a tolerance of diversity?

Joyce:

I mean, it's twofold, right? Part of it is education, which in a lot of ways is the solution to all crime, better education, better early education but also using existing laws. And DOJ, I give Merrick Garland high marks for this. He has done a good job of being unafraid to let the civil division bring these prosecutions. And if you can create deterrents by showing people that if they engage in this sort of conduct, there will be a penalty and that it will happen swiftly and that the sentences will be lengthy, then you can also begin to build deterrence. That may not change people's bad attitudes but it will keep them from committing homicides.

Barb:

Yeah, I think criminal prosecution is one way to send a message that this is not acceptable. And I know the FBI and DOJ are taking a more active role in this. One thing that I noted in the materials DOJ put out recently and, Joyce, I don't know how this was handled in your district, but one of the things the department has done is elevated hate crimes and civil rights violations to a level one priority in every district in the country. So there is this process that the FBI does with, they call threat banding, where in every area of responsibility together with the U.S. Attorney, they develop what the priorities are going to be of their district. And certainly you can't investigate everything. And so the FBI together with the U.S. Attorney will identify the priorities recognizing that they're going to be different in different parts of the country.

The number one priority for the department across the country in the past 20 years has been terrorism and National Security. And then in each community you can identify what else is going to be a category one priority. So for example, in the Eastern District of Michigan, when I was there, it was violent crime, public corruption because those were significant threats here. I imagine in other parts of the country there were different things, opioids in certain parts of the country, for example. But civil rights was always a very low priority even during the Obama years. And as a result, the FBI in Detroit dedicated about one agent to it and they were as diligent as they could be but it was only one agent and it was often the newest person at the division, at the field office. And so they weren't just as skilled in developing a case and then they would get some experience and quickly move on to a different squad. So it was always the newbie and only one. And so as a result, they just couldn't be terribly productive. But Merrick Garland has made civil rights and hate crimes a top tier priority in every FBI field office in the country. And so I think that is likely to bring with it additional resources, more experienced agents and as a result, more cases because I don't think that cases are on the low-end just because they're not out there. I think they're on the low-end because they have not devoted significant resources to investigating them. And so I think investigating those cases and bringing offenders to justice and telling people about it is a way to de-normalized hate crimes.

Joyce:

And so the inside baseball part of that is that when that threat banding process is done, that establishes the priorities that will be used when the special agent in charge of that FBI office is evaluated in the end of the year. And FBI folks are good at working to their priorities. You can bet that the SAC, who wants to do well will make sure that she or he is doing a good job with their top banded priorities. And so as Barb says, civil rights was often relegated to the third category. If even that Barb's and my former colleague Todd Jones, who was the US Attorney in Minnesota before he became the head of ATF, was fond of saying, "All business is personal."

And that applied very heavily for me in the area of civil rights where I would just often use whatever resources I had at my disposal to convince my FBI Special Agent in Charge that it was worth investing the resources in our district into civil rights cases because the work mattered even though he wasn't going to get the kind of credit for that he would get, for instance, for working public corruption or foreign or domestic terrorism cases. And I was blessed with a really great SAC in this regard. But the point that Barb is making about using criminal cases to deter hate crimes is an important one. DOJ also has civil side authority in the area of civil rights and those cases can do a lot to create societal change in attitudes. So for instance, in my district this week, they've announced the settlement of a big civil rights housing case where Black people were being excluded systematically in a certain jurisdiction from fully participating in the housing market.

And of course, that's the long-term societal change that we need to see if we are going to do better in this area. To Barb's point about resources, that case was done by a woman that I hired in AUSA that I was able to hire when I was given a spot that was designated for civil rights. Some of those were pushed out to U.S. Attorney's offices nationwide during the Obama administration and so this woman has continued to work to do what's in her portfolio. And I think that's how we change the mentality that permits hate crimes, by making hate and racial motives unacceptable society wide.

Jill:

I hope you're right. I have long believed, unfortunately, that you cannot change people's minds by legislating. You can prevent behavior, you can arrest them, you can punish them and maybe that sends a message to other people that it's not acceptable. But I do think we have to go back to some educational

component and to stopping the disinformation that has become so rampant and that is infecting the minds of so many people because really you're not changing people's minds by legislating against it. You can pass all the civil rights legislation you want but it's not going to make people decent people until there are consequences.

Joyce:

Yeah, I agree with that. I think you can't change attitudes with legislation and that's why the civil side, civil rights work is so important, right? When communities are more diverse, when education is inclusive, I think that's exactly what you're talking about, winning over people's hearts and minds.

Jill:

Exactly.

Barb:

Well, everybody knows it can be tough to save during a tough economy with inflation. And so we're all always looking for ways to save wherever we can. And with the Upside app you can get cash back on all of your purchases. The sisters and I have been reaping the rewards on everything from dinners out to trips to the store and even when we hit the road to visit family and friends. The Upside app is super easy to use. You can join us in using the rewards to keep your budget in check and push back against rising prices. For me that means more trips to restaurants plus money down on holiday gifts.

Joyce:

Rising prices mean we need to cut back on ordering out or online purchases. There's nothing fun about financial discipline. That's why we started using Upside. Upside is an incredible app for anyone who buys gas, groceries or dines out. In other words, everyone. And with Upside, we don't have to cut back because you can get cash back. That means more savings for investments, simple pleasures and holiday gifts for your loved ones. You need to get it.

Barb:

To get started, download the free Upside app, use our promo code, Sisters, and get \$5 or more cash back on your first purchase of \$10 or more. Next, claim an offer for whatever you're buying on upside. Check in at the business, pay as usual with a credit card or debit card and get paid. In comparison to credit card rewards or loyalty programs, you can earn three times more cash back with Upside. Upside users are earning more than a million dollars every week. That's probably why they have a 4.8 star rating on the App Store.

Jill:

So you'd be smart to download the free Upside app and use promo code, Sisters, to get \$5 or more cash back on your first purchase of \$10 or more. That's \$5 or more cash back on your very first purchase of \$10 or more using promo code, Sisters. You can also get the link in our show notes.

Joyce:

So this week, President Biden signed a law into effect that has been controversial. It's the Respect for Marriage Act and it provides some protection for same-sex and interracial marriage. Barb, we've

discussed this a little bit previously but can you set the table and help us understand what the law does and what the criticism that it doesn't go far enough is about?

Barb:

Yeah, this was actually a very refreshing piece of legislation, I thought. The Respect for Marriage Act, it's been so difficult to get anything through Congress but it protects same-sex couples' marriages and it also protects the right for interracial marriages. So in light of, I think if it had not been for the Dobbs case, I don't know that anyone would've thought this legislation was necessary because remember, we had the Obergefell case that said, federal law has to recognize same-sex marriage. There had been the Windsor case a few years earlier that recognized state and states the right to marry. And so it seemed like there's no need for it, right? Because same-sex marriages were approved.

But the Dobbs case came along and I think really cut out the foundation for all of these cases that are built on this idea of substantive due process which is the idea that there are some rights that are so fundamental that even though they're not specified in the Constitution, they still exist because the Ninth Amendment says things like rights not enumerated are retained by the people. And so what are those rights and the court has held? Well, there's this whole penumbra of privacy rights. And among those are things like the right to contraception, the right to same-sex sex and then same-sex marriage. But with Dobbs, especially Clarence Thomas's concurring opinion that says, "I think all that substantive due process is garbage. I think we should get rid of it all." There was this need, I think, to legislate and say, "No, we as a member of Congress say that this is the law." So that is now on the books.

Joyce:

So, Jill, given the criticism that's been lodged against this bill, is there a good case for it? I mean, Barb is refreshed. I'm sort of excited to see Congress doing anything on a bipartisan basis. But on the actual issues here, is this purely symbolic or does it carry any real protection for these marriages along the lines that Barb outlined?

Jill:

So it does and let me say that is not to diminish how important anything bipartisan is these days. I grew up in an era where that was the rigor and I really am one who would like to see it return a lot. But yeah, I mean, first of all, it repeals DOMA, and the Defense of Marriage Act from '96 which was really awful and has in part been set aside by the Supreme Court, but wasn't completely abolished. And so it now makes clear that in the case of Thomas' warning coming true, in the case that the court does overturn Obergefell, although Barb and I are saying it differently, but-

Joyce:

I say Obergefell. How do y'all say it?

Barb:

Oh, three different ways.

Jill:

Yeah, it's three different... Well, on iGen we had Jim Obergefell and that's how he say his name.

Barb:

Oh, how does he said it? I guess he would know.

Joyce:

He says Obergefell.

Jill:

No, he said Obergefell but that's my hearing.

Joyce:

It's confusing.

Jill:

Bad on accents.

Joyce:

He says Obergefell and that's what we're going.

Jill:

But we all know who we're talking about.

Joyce:

That's what we'll go with.

Jill:

Yeah, that's what I'm saying. But it does not give a requirement that states allow a marriage license. There's no mandatory thing here. And it doesn't limit anything that the states may do that are anti-gay, anti-trans. For example, things that are, you can't get your birth certificate change to reflect the gender of your choice in some states. So it's not a perfect act, but it does provide the protection that now exists under the Supreme Court decisions in the case that someone, for example, lives in a state that turns against this, should the case be overturned. Their state, if they were married in a state that still recognizes and allows same-sex marriage, their marriage would have to be recognized in their home state and the federal government would have to keep recognizing it.

And that means that things like Social Security benefits would have to be given to a same-sex partner. You would be able to sponsor a spouse for citizenship which you might not otherwise be able to do. You would have to get equitable treatment for your marriage. It would have to be as recognized as a marriage between a man and a woman. And there'd be the Full Faith and Credit required from every state. So as long as you get married and have a marriage that is valid in the states that are wise enough to do that. And I could see a mass migration from some of these states as a result of states taking these bad actions. But yes, I think it's more than symbolic. I think it does provide some protection in the event that the existing protection from the Supreme Court is taken away. In the same way that would a law have been good to have had in place to protect Roe, if Roe had been put into a statute, would there be more protection for women's rights if that were the case? So I think it's a good thing.

Joyce:

Yes, so that makes sense. And it raises this question. It's sort of the why now question, Barb. The Supreme Court decides, now I'm going to feel self-conscious about how I say it, but the Supreme Court decides Obergefell in June of 2015 requiring all states to recognize same-sex marriage. So why in this moment are we having concerns? What prompted it?

Barb:

Well, I think it's because of Dobbs, right? If we're concerned about the bottom being knocked out of all these substantive due process rights then that one's next and so I think to protect against those kinds of worries. I suppose the other thing that's going on is we are still seeing attacks against the LGBTQ community. We just had the Club Q attack. And so anything we can do to legitimize the LGBTQ community, including the sanctity of marriages, I think is something that can help be one of those things that helps build resilience. I also think that the LGBTQ community is still not on equal footing with the rest of us in terms of rights.

There is something called the Equality Act that's been proposed in Congress that's an anti-discrimination act based on sexual orientation that is not on the books. And so when you have these cases like the one that's pending out of Colorado involving the website designer that can say, "I'm going to refuse to the business of a couple in a same-sex marriage as part of my First Amendment rights." I think if you can codify these things and show that the anti-discrimination laws are narrowly tailored to achieve a compelling governmental interest, then you can't trump it with your first amendment. And so I think that's part of what is motivating this statute at this moment.

Joyce:

Yeah, I think that's right. I remember reading for the first time the opinion in the Dobbs case and getting to Clarence Thomas's concurring opinion and thinking, "Really, they've just taken away women's reproductive rights and now he wants to go after same-sex marriage, something that was fought for so hard and that protects so many people." But if you read his opinion, the analysis that he uses should put you in fear that Obergefell and marriage equality is next on the chopping block. But, Jill, part of this law also involves interracial marriage. A Supreme Court case called Loving v. Virginia made interracial marriage legal in 1967, that was how late in our history that happened. It's largely based on a Fourteenth Amendment equal protection rationale. That's different than the rationale that undergirded Dobbs, that undergirded Roe v. Wade that undergirds Obergefell still. There's some suggestion that interracial marriage, Loving v. Virginia is less vulnerable to being reversed by the Supreme Court because of that Fourteenth Amendment rationale even after Dobbs. Do you agree or do you think we should be worried about this too?

Jill:

Well, given the conduct of the Supreme Court, I worry about everything now. I mean, I would've never thought that I would live to see Roe overturned and I certainly wouldn't think I would live to see Loving overturned. But it is possible. It happened with Roe and so it could happen. On the other hand, you've pointed out the real distinction and I'll point out a different distinction, the first distinction being that Loving is based on the Fourteenth Amendment, not substantive due process but also in the threat issued in the concurring opinion by Thomas. It included same-sex sex, same-sex marriage and the right for married couples to have contraception. It did not mention interracial marriage, something that Justice Thomas is in himself. And by the way, one of the pens awarded for the signing of the Marriage Equality Act went to the vice president who is also in an interracial marriage. And so I think that both politically,

socially and legally Loving is in much less threat. No problem having it included. Better safe than sorry, but I think it's much less in danger than same-sex marriages.

Joyce:

It's really crazy when you back up a little bit, when you zoom out and think about what's really going on here. Something like thirds of Americans support same-sex marriage now and except in really cringey corners of what right-wing social media, there's really no one who says that interracial marriage that there's any reason that shouldn't be allowed. But this court has been laser beam focused on a very conservative social agenda. It's always interesting to me.

You see Justice Roberts go out and play a little bit with the progressive wing, but once you get back to these core conservative agenda issues like abortion and like voting rights, Roberts is right back in there with the conservative wing of the court. So do you think that Dobbs was one and done, that abortion was really the big goal here? I mean, it is so hard to think just from a global perspective that we're going to see an end to access to contraception. But when you think about the legal rationale that was used in Dobbs, that is the logical outcome, right? Do you think we're really going to go there or will the Supreme Court pump the brakes? Barb, what do you think?

Barb:

I don't know but this court has not only decided cases coming across its desk, it has been very proactive in choosing which cases it's going to decide. And even in cases where the courts below followed the status quo, they've taken cases up. And so to me, they have signaled a desire to be very proactive in reforming the law. They are not, I know Chief Justice Roberts was fond of saying, "Oh, we're just umpires. We call balls and strikes." Which sort of presumes that we're just there. The players are initiating the activity and we just say what it is. And that's just not the case.

This is all part of a conservative legal movement led by the Federalist Society and other advocates who are involved in impact litigation. You can start a lawsuit at any time. All it takes is one clerk anywhere in America to deny a marriage license or any of these kinds of things to create a case or controversy and bring it up through the courts and then once it's there or paying for contraception, there are all kinds of ways to get these cases up before the court. And this court seems very eager to shape the agenda. So I don't know if they care so much about some of these other issues but they have not shied away from them before.

Jill:

And it's also true that there have been cases, as you note, that have been brought to the court by deliberate attempts. So the web designer case, 303 Creative, is one that was, it hasn't happened. She has never designed a website. She's just saying, "If I'm asked to, I don't want to have to do it." And that's so speculative. That's not the kind of case that would normally be taken by the court. And Joyce, you said, except in the most cringey corners of the right-wing and I don't think it's cringey corners because that sounds like it's a teeny little thing. And Barb, the same thing. I mean you referred to it except for this Republican Party that is gone to the far right-wing, the far right-wing has absorbed what used to be the GOP.

And so I think there's good reason for serious concern about all of these things because I think that it's not just a fringe element of the party that the people who believe, as you refer to, Barb, small government socially, maybe more liberal but fiscally very conservative, that's a very small part of what's

left in the party. It's certainly not the ruling part of the party. So I think we have to be worried about all of these things.

Joyce:

At this time of the year I find myself really needing a little bit of extra motivation to get up in the mornings. It's freezing cold. Don't laugh at me, Barb. I know our idea of cold is not yours.

Barb:

It's 72.

Joyce:

And some days, man, you just don't want to crawl out from underneath the covers. Some mornings you wake up on the wrong side of the bed or you have a long day at work and there's still more to do. Maybe you've been feeling like you just can't catch a break. We never know what type of day we'll have but Calm can help you handle every day. That's why we're partnering with Calm the number one mental wellness app to share with you the tools that improve the way you feel. You can reduce stress and anxiety through guided meditations, improve focus with curated music tracks and rest and recharge with Calm's imaginative sleep stories for children and adults. It really helps.

Barb:

I've been working on this book and so it is my practice every morning to just get up and get out of bed straight to the computer, cup of coffee and I work from 6:00 to 9:00 AM but I do take a little break about halfway through and I use Calm and I just go for a little walk around my street, outside my house for maybe 10 minutes and it's the cool air gives me a little refresh and putting my mind somewhere completely else is really beneficial, I think to recharge. It's become my habit and it really lifts my mood and gets me recharge and ready to go. So Calm helps you stress less, sleep more and live a happier, healthier life. They're guided meditations, sleep stories, relaxing music tracks and daily movement sessions are all designed to give you the tools to improve the way you feel. More than a 100 million people around the world use Calm. Even if you've never meditated before, you'll get the support you need to reduce stress, improve focus and uplift your mood.

Joyce:

The sleep stories which I'm a huge fan of, help you drift off quickly to recharge your brain. And they're also great for getting kids to calm their minds at night or even husbands so you can rest assured they're getting the sleep they need. If you go to calm.com/sisters, you'll get a special offer of 40% off a Calm premium subscription. New content is added every week. So relax, Calm's got everything you need for a happier and healthier you.

Barb:

I'm yawning just hearing Joyce say the word sleep stories.

Jill:

And they are wonderful. I love how they work to put me to sleep when I've been staying up late. And as you all know, I sort of start my work really late at night, after 11 o'clock at night and then I get this revved up energy and it's hard for me to turn it off so I have to make a conscious choice. And what I do

is I use Calm to help me find my center and it'll work for you too. For listeners of the show, Calm is offering an exclusive offer of 40% off a Calm premium subscription at calm.com/sisters. Go to C-A-L-M.com/sisters for 40% off unlimited access to Calm's entire library. That's calm.com/sisters or look for the link in our show notes.

Barb:

Well, this is the part of the show that is our absolute favorite where we answer listener questions. We really get so many great questions. We're really grateful and we spend a fair amount of time sort of sifting through which are our favorites, which ones we're going to answer. And we're sorry we can't get to all of them, but if you have a question for us, please email us at sisterinlaw@politicon.com or tweet using #SistersInLaw. If we don't get to your question during the show, keep an eye on our Twitter feeds throughout the week where we'll answer as many of your questions as we can. All right, Jill, got one with your name on it here, comes from Judy in Oregon and she asks, "What is the status of the Equal Rights Amendment?" Did this house switch kill it? I'm 76 years old and I want to see it part of the constitution before I leave this mortal coil." What can you give? Can you give Judy any hope out there in Oregon?

Jill:

I can because I have the same goal, I want to see it pass. And I think with the Marriage Equality Act passing, I go, okay and the Equality Act pending, why not the Equal Rights Amendment? Why are women not officially part of the Constitution? But to her question is, "What's the status?" Not whether it should be. She obviously thinks it should be. I think it should be. I bet you two think it should be. And so it really has already met the requirements of the Constitution to become the Twenty-eighth Amendment, the Trump administration, when all of the states got to the point where we had enough ratifications, could have just told the archives to publish it and that would've made it part of the official Constitution, but Trump didn't. I thought for sure that the Biden administration would and that they would withdraw a Trump-era, office of legal counsel opinion that said that there was a timeline that had been officially put in place and couldn't be overcome.

I don't believe that timeline is an official part of the amendment that has been ratified. And I don't think any states can withdraw their ratification and that the late ratifications count just as much as the early ones. So I think that all it would take is for President Biden to say to the archives, "Publish this as part of the Constitution and then it would be part of the Constitution." We do have this little hurdle of the legal opinion from DOJ that needs to be overcome but if the president said, "Let's reevaluate that," and they looked at it afresh, I think they would conclude that there is no hurdle that prevents this from becoming officially the Twenty-eighth Amendment. We shouldn't have to start the process all over again. Enough states have ratified it. It should be the law.

Barb:

All right, well, there's some hope for you, Judy in Oregon. Our next question comes to us from Donna Joyce, I'm going to direct this one your way. And Donna asks, "If Donald Trump is indicted by multiple jurisdictions, what order would the cases be tried? Do the jurisdictions coordinate?"

Joyce:

This is a very interesting question. The former president has become so popular with prosecutors that there's really the risk that there could be multiple jurisdictions all trying to get a piece of him simultaneously. And the question in that situation is, what do you do? Who goes first? A little bit more

complicated here because there's the possibility that there could be some state prosecutors involved. Certainly Fulton County could possibly indict the former president on a similar timeline to DOJ. There is a Speedy Trial Act that comes into play here. Prosecutors have only a certain amount of time from the time of an indictment to take a defendant to trial.

But a judge can order that there be an continuance to the Speedy Trial Act time and a defendant can agree to it. But if for instance, we were to see a very early federal indictment and a much later state or additional federal one, we would probably see that first indicted case move forward first but not infrequently, especially when you have federal and state indictments that involve the same set of facts. This happened with Ahmaud Arbery down in Georgia. You actually have an agreement among the prosecutors about who's going to go first. And that can be based on, it can have considerations involving evidence. You might want to let the strongest case go first in some settings and other times, perhaps the federal prosecutors strong-arm their state colleagues just a little bit to get to go first.

Barb:

All right and our final question comes from Courtley who asks, "Could you explain a bit about how the system makes the determination of sentence severity and why there's an apparent difference in magnitude between white-collar and blue collar crimes involving similar amounts? This is an interesting question. The sentence in the first instance is set by the legislature. So in states, the state legislature will say the maximum penalty for assault is 20 years. Or the maximum penalty for first degree murder is life. So that number gets set by the legislature. Same on the federal level congress sets a statutory maximum for every crime. Bank fraud is 30 years. Some drug crimes are life and those get set by statute. But then in sentencing, there are also sentencing guidelines which are not mandatory. If they are mandatory, a jury has to find them. Most jurisdictions have advisory guidelines that just give a judge a ballpark based on data from other cases about where a sentence should come down.

And even the guidelines are really not that different between white-collar and drug cases. I mean, maybe drug cases are higher but the dollar value is what drives white color crime. And so when there is a very high dollar white color crime, the guidelines are quite high. It's why Bernie Madoff faced more than a hundred years in prison. We had some cases in my former district against public officials where the sentencing guidelines were 360 months to life. That's 30 years to life. Sentences came in at 21 and 28 years in some of those cases which were below the guidelines but really quite high. And I think so often, Courtley, your observation is correct that white-collar defendants instead get things like 18 months, six months, probation, home confinement and other kinds of things. And I think it's because their defense attorneys make very persuasive arguments about why they are not a danger to the community.

But I think, personally, that completely misses another very important component of sentencing which is deterrence. It isn't just about protecting the public. It is about making people think twice before they engage in that kind of behavior in the future. If all you get is a slap on the wrist, then it was worth the risk, right? Because sometimes you might get away with it. And so I think that one of the things that goes on is judges who are wealthy, highly educated, successful people look out at the defendant and say, "Wow, that person reminds me of my fill in the blank son, daughter, self." And they don't see them as a criminal the way they might, who is someone who is less educated, perhaps a member of a minority group and is selling drugs on the street to live, whereas this defendant is stealing people's money out of greed.

If you had ask me which is more egregious, I would say the white-collar crime which is based on greed and not on need. I'm going on a little rant here. And so I think the bias of judges is the answer to your question, Courtley. There's a great book on this by Jennifer Taub, our friend, called Big Dirty Money,

who talks about these incredible disparities and how people game the system when they have a lot of resources. So that'd be a great topic for another episode. But until then, I want to thank you for listening to #SistersInLaw with Jill Wine-Banks, Joyce Vance and me, Barb McQuade. We're missing Kim, but we hope she'll be back next week.

You can send in your questions by email to sisterinlaw@politicon.com or tweet them for next week's show using #SistersInLaw. Go to politicon.com/merch to buy our shirts, hoodies and other goodies just in time for the holidays. And please support this week's sponsors Moink, Honey, Upside, Calm and HelloFresh. You can find their links in the show notes and please support them because they really help make this show happen. To keep up with us every week, follow #SistersInLaw on Apple Podcasts or wherever you listen and please give us a five star review. It really helps others to find the show. See you next week with another episode #SistersInLaw.

Joyce:

I had asked my agent if I could write a lifetime movie and she was like, "No, you can't do that. It's not your brand." And I was like, "Come on, I really want to write a lifetime movie. It's like my career goal." And she was just like, "No." So I don't know what she'll think about recipes.

Barb:

Come on, Joyce. Come on.

Joyce:

You got to be great at writing lifetime movies.

Barb:

It's all about the big city girl goes to small town Alabama and she takes up knitting. She opens a knitting shop and she learns the joy. She meets a nice guy. Come on. It's your life.

Joyce:

I could. Absolutely. I could-

Barb:

Your life is a lifetime movie.

Joyce:

Absolutely write a lifetime movie.

Barb:

Autobiography.

Joyce:

Never. My autobiography wouldn't be a lifetime movie.

Barb:

Yeah, it's like those lifetime holiday movies.

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Joyce:

And then there'd be all the years that the boy she married was super annoying and she had to yell at him for being a slob. I don't think that's lifetime movie material.

Barb:

Yeah, that part doesn't make it into the final cut. They meet and live happily ever after.

Joyce:

There we go, with chickens.