

Jill:

Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Barb McQuade, Joyce Vance, and me, Jill Wine-Banks. Today, we'll be discussing three really good topics. One is a recently filed civil case against Donald Trump for the death of Officer Brian Sicknick, and we'll talk about some other civil cases pending as well. We'll talk about what the Supreme Court is doing to expand the Bruen decision about concealed carry, and then we'll talk about the legal significance of the speaker election chaos and delay.

As always, we look forward to answering your questions at the end of the show, but before we get to all that serious stuff, I have a question for my three sisters, and that is I want to know what organizational tricks you all use to get everything done that you get done because you are all really busy and multitask on everything, and I just don't ... I sometimes get so overwhelmed with, how am I going to get sleep even just four or five hours? So, I want to know what you are doing.

Joyce:

Wait. Sleep? You think we're supposed to sleep?

Jill:

Well, maybe that's something that we all agree we have to give up is sleep but no, seriously. We just talked about how important sleep is, so let's talk about what you do to make yourself more efficient. How do you organize even, Joyce, with your knitting, how do you organize all of your possessions for knitting so that you can find what you need when you want it?

Joyce:

So, I do have a really good trick. I'm very visual. I have to see things. So, my husband likes to use aluminum foil in the refrigerator. Once something is in foil and I can't see it, it's dead to me.

Jill:

My God. Mine does the same thing.

Joyce:

So, I ended up getting these little ... they're like clear acrylic, sort of pullout drawers, and everything in the refrigerator is organized into them, so you can find it. Makes it really efficient when I go to make a meal. It cuts down a lot on time that I waste. I do that with everything. I do that with my knitting. My projects are all on a bookshelf so that I can pick the one, the one I want to work on, and it's easy to access, but I do that with my scholarly materials too. I do that for research. You can't see them. We're all sitting here looking at each other's offices, but I have this really great L-shaped counter space, and I literally will leave things out in piles with either a sticker on top or a paperweight on top so that I know what to pick up next and work on. For people that are visual, that's a great system.

Jill:

What about you, Barb?

Barb:

Well, I have always been a disciple of the list. My mother got me started on the list at a young age. She was a great list writer, still is. If you go to her house, you'll see lists all over the kitchen counter in the

kitchen table and everywhere else about all the things she needs to do. I started doing it, and it really is, to me, the only way to stay organized and keep track of all the things that I need to do.

It also serves as kind of a motivator to have a list because I want to check things off the list. Sometimes, I put things on the list just so I can check them off. [inaudible 00:03:29]. It feels really good to check things off the list, but I keep them on my phone mostly. Before I had an iPhone, which I carry with me everywhere, I used to have post-it notes that I stuck in my wallet, and then it would have to-do lists there, but that got so messy and clumsy. It's such a great tool to have it on your phone. I have lists for a lot of things. I have to-do lists. I have a to-do list for my book project, which is great because you never know when and where you're going to get inspiration. So, I can make a quick note in my phone on my to-do list there.

Then, like Joyce, I do tend to be a little bit visual. I have post-it notes stuck all around my computer on things I don't want to forget like something I need to do right away or I want to come back to. I will often just jot it down really fast on a post-it note and stick it up there as a reminder. I have shortcuts on Apple on a post-it note and just some things I don't want to forget. So, that's a constantly rotating cast of post-it notes stuck to my computer screen.

Jill:

Boy, I'm learning a lot. I'm abolishing tin foil from my refrigerator because it is true. You have to open it and rewrap it.

Kim:

You discover something bad sometimes when you do that.

Jill:

Yes. Well, a lot of times, you have to throw it away. I also am a list maker for sure, and I love crossing it off, and I do too. I do a written list that I can look at, but I also have one in my phone. What about you, Kim? What's your solutions?

Kim:

Yeah, a couple things. So, one, and it's similar to what's already been said, but one, I'm a pen and paper kind of gal.

Jill:

Yeah.

Kim:

So, I have, for the past couple of years, I bought actually an agenda, like the old school agendas that have the refillable calendar and note things inside. As I was buying it, I'm like there's no way I'm going to use it. I use it all the time. So, like everybody these days where we use our phones for our calendars and meetings because we're sent evites and stuff, I'm not talking about that granular level. I mean bigger picture when I have things to do, when I have big ideas and just to organize my thoughts more generally when I write them down every week in this weekly planner, I find that that is a really, really helpful tool just to keep me on track.

I also put ... I'm keeping a headache diary because I get migraines and post-COVID headaches, and I need to do that. It's a way to know how attached, how bad my headaches are depending on what's going on in a week, so that can be helpful too to put all that together, but that just keeps me really on track.

The other thing I have done is basically what Joyce has done for a fridge, I've done with my desk. Over the pandemic, my desk, which you all see when I'm on TV, I'm actually sitting at my actual desk. It's not just my TV studio. It's my podcast studio. It's my radio studio when I host on NPR. It's my desk when I write my stories for the globe. It's all of these things. It's my design studio when I'm designing clothing. So, I have set it up that all of the devices that I need are within arms reach. So, I could start a podcast, go live on radio, go live on TV right in front of me and have everything there.

The only bad thing is every now and again, when somebody wants me to go into a studio or go somewhere else, I'm like, "No, no, no. I have everything that I need right here. Don't make me leave my desk. I could do everything here. Once I leave, then I'm totally handicapped," but the pandemic has forced me to become very efficient, so I hope I'm able to keep doing that for some time.

Jill:

So, I also am a list person as I said, but I also am a file folder person. I have created folders not just on my computer that are linked to projects, but I have actual physical folders where I can find my SistersInLaw contracts, my MSNBC stuff, and it makes it really easy, but I also have a DIN folder, which is do it now. It's all the stuff that you're really supposed to do right away.

Now, unfortunately, that folder gets really big, and one of the ways I try to avoid that is not doing things more than once. So, when I open up an email, I don't, "Oh gee, I'll think about it and put it away." No. Answer it right then. Don't read it a second time. Read it and respond. That seems to me one of the most efficient things that I do is to not postpone doing it so that you have to do it twice. Those are my tricks.

The other thing is I've gotten to use ... I have these little red books because they're easy for me to find in my purse. It's very small and very flexible, but this is what I keep all my notes in by day, and they're just dated. This one started September 14th, 2022, and I'm almost at the end of it but not quite. That is very helpful to me, and it also means that I can find things when I need them. Gee, what did I think about an issue from last March? Well, I can go to the notebook, and I can find it. So, that's very helpful to me.

Joyce:

I do something similar, Jill, that I'll just mention. I have been keeping, ever since we started doing MSNBC, which seems like a really long time ago now, I would keep for every month in the notes file on my phone just a running list of what I was thinking about issues. At some point, I'm going to go back and look because they're day by day through the start of the Trump administration, through the impeachments. Although it was great at the time, super helpful for jogging my memory and preparation, I think it'll be more interesting in hindsight, and maybe that's one of the benefits of being organized. You have a record

Jill:

That sounds really great. It sounds like the potential basis of a book so-

Joyce:

No.

Jill:

No.

Joyce:

No.

Jill:

Well-

Joyce:

No book.

Jill:

My history of the daily thing is captured by my pins. That's my way of looking at the Trump administration is what was I thinking on a certain day of what was happening in the Trump administration. I can go back and look at what pin I wore and why I wore it. So, that will help me to remember the Trump administration.

Hey, Barb, I've been using Honey for a really long time now, and I've been recommending it to all my friends, including all of you. So, what do you think?

Barb:

Yeah, Jill. I've been using it since you recommended it. I have to say I save money every time I buy something online. It's easy to use, and they're one of our sponsors, so we love Honey. Today's episode is sponsored by Honey. It's the easy way to save when shopping on your iPhone or computer. It feels great to know you're getting a deal, and it also means you're smart. Saving is the perfect gift to yourself when you're the type of person who loves to maximize their opportunities. Thanks to Honey, manually searching for coupon codes 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 in your cart.

Kim:

Just imagine your shopping on one of your favorite sites and when you get to the checkout, the Honey button appears, and all you have to do is click apply coupons. Then, you wait a few seconds as Honey searches for coupons it can find for the site. If Honey finds a working coupon, you'll watch the prices drop. Recently, I saved a lot of money on a pair of shoes. I needed to replace my running shoes, and I wasn't even thinking about a sale. This is just something that I needed. When I went online and found them, the Honey button popped up, and I saved about \$15 on them, which was a really great deal. It also works on your phone. Just activate Honey on Safari on your phone and save on the go.

Barb:

So, if you don't already have Honey, you could be straight up missing out, and by getting it, you'll be doing yourself a solid and supporting the show. Get PayPal Honey for free at joinhoney.com/sisters. That's joinhoney.com/sisters or look for the link in our show notes.

Joyce:

Yesterday brought reporting that a day ahead of the second anniversary of the January 6th attack on democracy, the former President Donald Trump was sued by the estate of Capitol police officer Brian Sicknick, who died following the January 6th attack. The wrongful death suit names Trump as well as two of the rioters. Barb, clue us in on all of the allegations here.

Barb:

Yeah. So, the complaint is primarily focused on Donald Trump for inciting the crowd to engage in the attack on the Capitol on January 6th that of course resulted in the death of Officer Sicknick, but in addition to Donald Trump, the family, his estate, his family has also sued the two individuals who directly attacked him with bear spray. You may recall the facts that he was on the front lines on January 6th. He was in hand-to-hand combat with people, and according to the allegations, these two men struck him with their hands and feet, fists and kicking and also sprayed bear spray in his face. He died the next day from a stroke. The medical examiner said the cause of death was natural, a stroke, but that it was certainly brought on by the events that had occurred on January 6th.

So, the claims in the complaint are for wrongful death, which is a statute under the law of Washington, D.C. Another one is the Ku Klux Klan Act, and this is one we've seen before by some of the members of Congress, Bennie Thompson and Eric Swalwell have also filed lawsuits under this. It is basically about conspiracy to violate someone's civil rights by force and intimidation to prevent someone from exercising their duties. This alleges that Donald Trump and the others in creating the mob and preventing Mike Pence to count the votes that day led to this chaotic scene that resulted in his injuries.

There's common law assault. There's negligence per se for engaging in the action. The assault charge is against the two individuals, and there's an aiding and abetting common law assault by Donald Trump for his role in instigating the mob. So, they're asking for \$10 million, and I think it could be really interesting to see how this plays out civilly because of all of the different factors that happened in civil cases from criminal cases.

Joyce:

Yeah. So, that's a really good point. We talk a lot about criminal law, a little bit less about civil law, but Kim, you are one of the resident civil lawyers. So, can you talk about what the consequences are? Nobody goes to prison in a civil lawsuit, but what could happen to the defendants? Barb has talked about a pretty hefty penalty the plaintiffs are seeking.

Kim:

Yes, it is. So, looking at the complaint, what they ask for are both compensatory damages. What the estate is asking for is compensatory damages, meaning an award commensurate with the harm that is caused, which that in itself could be significant since Officer Sicknick lost his life and lost his livelihood, the ability to provide for his family over his lifetime, but it's also seeking punitive damages, which could be quite large. They're not enumerated. It's asking a jury to decide exactly what these damages could be, but it can have a very significant impact. Not only is it just a determination by a jury, a legal determination that you are liable, you are responsible for the death of Officer Sicknick, which in itself is an important thing, but also a reminder.

I mean, I think about O.J. Simpson, right? So, he was acquitted in his criminal trial, but he was found liable for the deaths of Ron Goldman and Nicole Brown Simpson. Ever since, just about everything that he makes is subject to being taken and given to the families of those victims because the award was in the tens of millions of dollars, so the same thing can be true. Sure, Donald Trump has more money than

O.J. Simpson allegedly, but it's still an important thing if that judgment is handed down. It definitely sends a strong message.

Joyce:

So, Jill, something that's always disturbing, I think, for people who become plaintiffs or litigants in civil cases is the amount of time and, of course, Donald Trump is the master of delay when it comes to court procedures. That means that civil suits are, in some ways, an imperfect remedy because they take so much time. What do you think the timeline would look like or will look like in this matter?

Jill:

That's such a great question, and it's probably one of the main reasons that people hate lawyers is because of the delay. I've spent two stints in private practice, and I can only tell you how frustrating it was for me as someone who likes to see things get done to have to deal with. In this case, I'm going to predict that we're talking years, a minimum of two, probably more would be, on average, what it takes. That was before COVID and all the delays that happened, so it could be even longer, but I will say this. Part of the remedy here is that there's discovery. Part of the remedy is that there will be disclosures that come out in this kind of a lawsuit that don't come out in a criminal case even during those two or three years. That is something that's very important and that could help the families dealing with their loss. It, of course, doesn't bring back the person who they've lost, but it is something that will make a difference.

Joyce:

Yeah. I'm sort of swayed both directions on that. I hear what you're saying. Discovery probably means depositions, right, including a deposition of former President Trump.

Jill:

Yep.

Joyce:

That could become very interesting. Of course, we won't get to read along. My guess would be that discovery materials will get sealed in this case, and we won't learn about them until maybe, as you're saying, a couple years down the road, dispositive motions are being written. There's a lot of anxiety for the family, right? They're living up and down every day. They don't really get closure as they go through a drawn-out civil suit. So, I always am a little bit torn.

There's also another problem, and Barb, you hinted at this a little bit. A key issue in a case like this is proving that the defendants are responsible for the harm that the plaintiff has suffered. That could be a major problem here, right?

Barb:

Yes. An element of many of these claims is causation. You see this in criminal cases as well. That is, it's not enough to say the defendant did something bad and that the victim, the plaintiff suffered harm. You have to be able to link the two, that the bad thing was the cause of the harm. It has to be more than just the but-for cause. We talk about that in the law that but-for causation is, you can almost tie to anything, right? I had a friend who said that he could blame his wife for anything wrong he ever did because his wife was always the but-for cause of it. I was late to work today, and it's all my wife's fault because she

asked me a question, so she's the but-for cause for his being late despite all of his other delays along the way.

That's not enough under the law. First, you must have but-for causation, but you also have to have a closer nexus. They call it proximate cause or legal cause, and that is cause that is direct and not too remote. So, a jury would have to find that Donald Trump's incitement of the crowd and these men with the bear spray were not just the but-for cause of Brian Sicknick's death but also the legal cause, that it was close enough, that what they did, it was reasonably foreseeable that death would result. You don't have to predict exactly who or exactly how but that someone could die as a result of it.

Causation was an issue ... Joyce, you mentioned this earlier when we were talking in the Derek Chauvin case about George Floyd, where one of the defenses was that he died of an underlying heart condition and not because Derek Chauvin's knee was on his neck for nine minutes, and the jury rejected that. Based on the evidence they saw in court, they concluded it was because of the knee on the neck, so it's a question that a jury would have to find. Was the bad conduct of the defendants here the legal causation of Brian Sicknick's death?

Joyce:

Yeah, so that's the key point here, right? The jury gets to decide the causation issue.

Jill:

Right.

Joyce:

So, Jill, Kim, you guys have done these cases before. Would you have any advice for the plaintiff's lawyers here? How might they prove causation and avoid some of the problems?

Kim:

Well, I mean what Barb said is really important, the issue of proximate causation. It's not always easy to prove here, but it's also important to know that there are other legal principles. One of them is you take your plaintiff as you find them. When I was in law school, we called it the eggshell theory is that if somebody has a condition, like say someone has a heart condition, and you let your dog get out of your control, and the dog runs up and attacks the person and bites them, so the physical injury is a bite on the leg but because of this heart condition, the fear from that attack causes them to have a heart attack, you can't just say if they sue you for their trauma and their injuries, you can't just say, "Well, no, I'm only liable for that dog bite because your heart condition had nothing to do with me." No, no. You take your plaintiffs as you find them. If that person had that inherently and there was a risk that such an attack could spur a heart attack, you could still be liable for that.

So, just because ... I think the biggest issue in this case, right, is the fact that he had these medical conditions after the fact, and it created this doubt as to whether he died because of the January 6th attack or because he had some other condition. I think and the attorneys, I know one of the attorneys who filed this complaint who is a very competent attorney and who's done a lot of national security work and other work regarding civil cases in Washington involving public officials, and I don't think they would've brought this claim if they didn't think that they could make that nexus and make that proof between the two.

We already know we have the medical examiner who said, yes, he died from having these strokes, but it was caused, it was spurred by the events that he endured that day. I think that this will be an important

test as this moves forward through discovery because you also have other people, other police officers who suffered a lot as a result from this. It may not have been directly involved from being struck or attacked on that day. It could have come after that, and I think that could set an important guideline as to how other cases like this could proceed, but I will be watching this case to see just how they make these offers of proof because I think that it could be interesting and important, but I think that they certainly believe that they can put that nexus together.

Jill:

It seems likely to me, based on what we've seen, that a jury will get this right away in the same way that they did in the case of George Floyd, ruling that it wasn't natural causes, that it was the sole approximate cause was the knee on the neck. They will see that Officer Sicknick would have had a long and healthy life but for this. So, I think both Barb and Kim have covered a lot of the legal issues of the but-for causation. Obviously, the plaintiffs here are going to have to deal with the first autopsy said that it was natural causes, but that doesn't end the discussion. It will be very clear, I think, from the evidence introduced by the plaintiff that it was not natural for him to die at that time. So, I'm feeling very optimistic about the outcome of this case and many of the other civil suits that are pending.

Joyce:

Kim, we've touched on this a little bit, but there's this civil lawsuit, there are other civil lawsuits that the former President is involved in. Based on your experience, how do you think civil suits measure up against criminal prosecutors for families that are seeking justice and closure, and specifically, what's the carryover possibility? If interesting evidence comes to light in the civil suit, can it be used in a criminal case?

Kim:

Yeah. These are great questions. So, civil suits and criminal suits are meant to accomplish two very different things, right? Things are crimes and could subject you to fines or imprisonment because as a society, we have decided there are certain actions that people should not engage in. If they do, they should be punished. They should be punished by the state, by local state, or federal government, and so that's what criminality is.

A civil suit is not just meant to punish/ it's meant to make the people who were harmed whole, and that is what is being sought here. Usually, the remedy in these cases is money because that's really, you can't give this officer his life back. You can't give the family their husband and father back, but you can compensate them financially, and so that is the difference here.

Obviously, the standard of proof is a big difference here in a civil case. It's the preponderance of the evidence, whereas in a criminal case, when your freedom, your liberty is at stake, it has to be beyond reasonable doubt but yes, that last point that you make is really important and that Jill made as well, is that this discovery, yes, when fact-finding is done in this case in the discovery, it can bring to light facts that can certainly be passed on to a prosecutor and can absolutely be the basis for or buttress already ongoing criminal investigation. So, yes, those two things absolutely have a crossover value. It can go both ways. A criminal case can provide evidence that can aid in a civil suit and the other way around. So, I think the discovery in this case will be crucially important.

Jill:

There is one thing that cannot carry over to a criminal, which is the use of the Fifth Amendment. It can be used in a civil case to draw adverse conclusions against the defendant, but you cannot do that in a criminal case.

Joyce:

Yeah, that's a good point from the rules of evidence. That's a big difference between the two. So, Jill, that all sounds interesting, and that could give us a lot to talk about in the coming year. What are the other cases out there, the other civil cases? We've talked less about those that Trump is facing. Can you give us the roundup?

Jill:

Sure. I can give you a really quick roundup because if I go through each of them in any detail, it would take the rest of this entire podcast because there are so many. I'm going to start with, of course, your friend Mary Trump has a fraud case pending against her uncle. E. Jean Carroll has a double case now. It was started out defamation, but now, under New York law, she was able to file a case for the actual rape that she alleges despite the passage of time. It's now legal in New York to bring that case.

We've already mentioned the KKK cases that Eric Swalwell and Betty Thompson brought, and there is a case, a fraudulent business opportunities case, Doe versus Trump Corporation. There's the New York Attorney General civil case for \$250 million. There is a bunch of cases that were settled, so I'm not going to even mention those. It means that he paid people, but they're gone.

Karen Bass and nine others also represented by the NAACP brought a suit similar to the Bennie Thompson and Eric Swalwell. Several police officers have filed separate lawsuits, two in one case, a third in another and a fourth in another all for their injuries sustained in the January 6th episode. The Metropolitan Police have filed a suit for injuries on behalf of their officers. That's the Metropolitan Police of D.C. LDF sued the Trump campaign for their efforts to overturn the election. Scotland has a case pending for his-

Joyce:

Why not?

Jill:

... unexplained wealth at his golf course, and the courts there threw it out once, but it's back again, so that's pending. There's a Trump Tower assault. I think that one was settled, so we won't count that one. Of course, our friend Mimi Rocah, the DA in Westchester County has a case pending about the valuation of his golf course there to decrease his taxes. So, a lot of this is fraud-based, either financial deceit, but some of it is relating to the terror of January 6th. So, there are a lot of cases that he has to defend against, and there will be discovery in all of them. So, we should follow all of them. It's going to be very interesting.

Joyce:

I appreciate the laundry list. I know it's long. It takes time to go through it, but I think because so ... Well, yeah, in part, as Barb laughs, because there is so much, right, and so much of it involves fraud or so much of it involves anti-Democratic measures, I think it serves to remind people that there's not a political witch hunt being perpetrated against Donald Trump. There is extremely problematic conduct that he needs to be held accountable for.

Well, we're talking about this on the anniversary of January 6th, which I think is something that we can't let go without noting by the time you all hear the podcast, it will be the 7th, but we are taping Friday afternoon, and it's a tremendously sad day and a commemorative day in so many ways. I know people, especially people who aren't lawyers, but even some of the lawyers I know are deeply frustrated by the slow pace at which justice has seemed to come for Trump, but I hope this gives folks a sense that there's more than one way to get justice and that the legal system is actually grinding forward, although at a very slow pace.

Kim:

Barb, I'm tired of ordering carry-out. You have any ideas? I don't want to go to the grocery store.

Barb:

Well, do I ever, Kim? Funny you should ask because HelloFresh is the way to be able to cook at home delicious meals that are delivered right to your door. With HelloFresh, you get farm fresh, pre-portioned ingredients and seasonal recipes delivered right to your doorstep. 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:

I love their recipes. They are so delicious and easy to cook and easy to select the ones that you're going to like. With HelloFresh, eating well in the new year can be stress-free and delicious. With over 35 weekly recipes, they have the options you're looking for to help you achieve your goals. Choose Calorie Smart, which is what I use, and Carb Smart recipes or even customize your meals by swapping proteins or sides, upgrading your proteins or adding protein to a veggie dish. So, skip the snowy schlep to the grocery store, and stock up on snacks, side dishes, desserts and more at HelloFresh Market. Simply add these staples and sweets to your weekly order, and they'll arrive at your doorstep along with your meals.

Barb:

HelloFresh even works with your schedule. Their plans are flexible, and you can change your meal preferences, update your delivery date, 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 season right from home.

Jill:

Go to hellofresh.com/sisters21 and use that code, Sisters21 for 21 free meals. That's really a good deal plus free shipping. That's hellofresh.com/sisters21 and use code Sisters21 for 21 free meals plus free shipping. You can also look for the link to HelloFresh, America's number one meal kit in our show notes.

Kim:

The Supreme Court has yet to issue a decision on the merits this term as we record this, but its shadow docket is ever busy. Among the issues on that shadow docket, the Second Amendment again. We've talked about how last year's opinion in Bruen dramatically expanded the right to carry a gun under the Second Amendment. It expanded it beyond one's own home. It expanded it, in my opinion, beyond reason or the text of the Constitution, but in the process, it voided multiple state laws that put

restrictions on who can carry a concealed firearm in public, but now, pro-gun advocates are pushing even further. They're challenging the laws that were enacted after that opinion last summer in an effort to try to keep people safe while still adhering to the words of the U.S. Supreme Court. These laws were already scaled back, but they're still being challenged.

So, Joyce, what's going on here? For people who were watching and saw this opinion and thought, okay, the people who wanted fewer gun restrictions, one, why are they still suing in states like New York? Why are they still battling this?

Joyce:

Yeah, right. It's a confusing situation. Bruen, as many folks will recall, was a case that came out of New York, so it's appropriate that this new one does to the gun owners here are essentially saying that New York isn't giving them the benefit of their win in Bruen. In that case, the Supreme Court struck down New York's concealed carry law, and of course, by extension, similar laws in other states.

So, the New York legislature, in response to that, was called back into session. Democrats were by New York's governor, and they promptly passed an act that they called the Concealed Carry Improvement Law, a very clever name. That happened last July, so very shortly after Bruen came down. Predictably, that law came under an almost immediate attack. Gun owners said it was indirect defiance of Bruen because it made it too difficult for them to get concealed carry permits.

So, based on Bruen, the federal district judge, and I love his name by the way, this case went to Judge Sinatra, he disallowed a number of the new law's provisions. He said that the state couldn't require applicants to demonstrate what the law calls "good moral character." He said that the law could not require people who wanted to have guns to provide a list of all former and current social media accounts for the past three years. Also, he said that the court or rather, that the state could not impose these sorts of sensitive place restrictions that included places like healthcare providers, churches, and parks, that they couldn't limit the places that specifically.

So, Judge Sinatra, who's a Trump appointee, for what it's worth, echoed Justice Thomas's opinion in Bruen. He found that the new state restrictions were inconsistent with the nation's historical traditions, and he disallowed the New York law. It goes on appeal to the Second Circuit. The Second Circuit says, "Hmm, Judge Sinatra, your order is interesting, but we're going to stay your order."

This is where these cases always get difficult. We talk about cases going on appeal and judges staying. Here's what that means in this situation. Judge Sinatra, the trial judge says, "I agree with you, gun owners. This New York law is bad. I'm not going to let it go into effect." Second Circuit says, "Not so fast. We are going to stay the district court's order. If you're keeping score at home, that means that the law is back into effect." There's a little bit of wrangling in the Second Circuit, but they stand firm. It's interesting because the three judge panel in the Second Circuit, they rule unanimously, and they are made up of a Trump judge, a George W. Bush appointee, and a Clinton judge.

So, we're seeing this sort of bipartisan in the judicial system setting, so that's why we're currently here. Second Circuit says New York's law can remain in effect. The gun owners are unhappy. That Second Circuit case is being briefed right now. The first brief isn't due until sometime next week, but the gun owners went straight to the Supreme Court on the emergency orders docket, what we sometimes call the shadow docket, and they said, "You know, wait a second, Supreme Court. We'd like you to reinstate Judge Sinatra's stay so that this law does not remain in effect while the litigation is pending." That's horribly complex. What you need to take away from that is that this is not a consideration of the merits of the case. This is just the preliminary skirmish while the case is on appeal in the Second Circuit.

Kim:

Wow. So, Judge Sinatra, he did it his way, but then the Second Circuit ... Ooh.

Joyce:

Nice.

Kim:

All right. New York, New York.

Joyce:

New York, New York.

Jill:

Oh, Strangers in The Night. That's my song with Michael.

Kim:

All right, start spreading the news, you guys. All right, so-

Joyce:

No, no, no, no. I'm going to say here's to snatch a song. You ready? (singing)

Barb:

Oh, well done.

Joyce:

You could write it a really good appellate opinion.

Barb:

That is such a good one for the court.

Joyce:

You could write a great opinion here with Sinatra songs.

Kim:

Yeah. Oh, my goodness. All right. So, Jill, as Joyce pointed out, the Supreme Court has been asked to step in, but they're not being asked to rule on the merits. It means, meaning that they're not being asked to rule whether or not these laws or this law in New York is unconstitutional. It's just this procedural issue. Should Sinatra have stopped the law from going into place? Should the Second Circuit have reversed him? That's all the Supreme Court is being asked to decide, but what we've learned from the shadow docket is that things are not always as procedural as they seem. So, is there anything we can learn about how the court sees this law based on this shadow docket action?

Jill:

Oh, I would say definitely yes because it goes back to Dobbs and what happened in that case, which was ... and even what we talked about last week with Title 42. It's not a merits case that's at the Supreme Court. It's whether the 19 states can intervene, albeit they are very late in filing and whether they have any interest in filing. So, these procedural things can matter. In the same way that we saw, as soon as the court acted on the shadow docket on Dobbs, that Roe was in trouble, I think that we can see this portending a difficult time for the expansion of Bruen. I think that that's maybe the most important thing is not just whether gun laws can be enacted that comply with Bruen but whether there is some foretelling as in the Dobbs decision by Thomas that they're going to go even further.

So, in Dobbs, there's the threat to any kind of interracial marriage, any kind of same-sex marriage, into the use of contraceptives. I think in this case, you could say that if judges are forced to do, well, let's see, in the day that the Constitution became part of our ... was passed and became effective, there were no guns like this, so therefore, there's no controls that could be put in place because they didn't exist then. That kind of historical research would be very difficult for courts to do and is also a total expansion of the originalist theory of deciding cases that really makes me very frightened for the future of democracy in America if we're going to be saying that nothing can happen that isn't consistent with what existed in 1700. That's absurd. That's what this case could mean. So, warning to everybody, this is an important, important case.

Kim:

It really is, yes. Basically, if the laws didn't apply to muskets, they could say that this isn't ... I think it's important to watch the shadow docket case because even if the court does nothing but say either, "Yes, this law can go into effect," which I don't think they'll do or say more likely, "No, keep this law on hold while this case makes its way up the appellate chain," I think that tells us something because with the abortion case, the Texas case, they let that go into effect, and that was the first clue that Dobbs was coming and I think the first clue that we're going to get even worse merit decisions from the Supreme Court is if they hold this law and prevent it from going into effect while this makes its way through the lower court in the Second Circuit.

So, Barb, given what the court has already said both in the Bruen decision and in Heller, how likely is it that state lawmakers can pass any gun law that doesn't apply only to muskets and make it stick?

Barb:

Yeah. Well, just to play out your musket reference, which is so brilliant, Kim, and Jill, you raised this too. The idea is that there are justices on the Supreme Court, plenty of judges who claim to be textualist, originalists, and that words should be interpreted to have their original meaning that they meant at the time the words were written. They do that in lots of instances, but somehow, when it comes to firearms, that argument just gets shrugged aside and short shrift like, "Oh, of course that would be ridiculous to use here, assault weapons and all these other things," when a gun at the time the Second Amendment was passed, as Kim has said, was a musket, a single-shot, one ball.

To answer the question you just asked, Kim, I do worry about it. For one, I think any state that has one of these may issue permit laws is in big trouble. That's what was at stake in Bruen, which was to get a permit, you had to apply and affirmatively show that you had a need for it, that you had a reason, you carried a lot of cash from your business to the bank at night or whatever it was. The court in Bruen said, "Nope, that's no good." They did say they would support shall issue rules. That is the default is you get your gun unless there is something about you that means you don't qualify like you have a felony conviction or you're mentally ill or something like that, but there are a number of states that had those may issue laws, and I think challenges there are going to bring them down.

The other thing we have seen is in Texas, there was a federal judge who struck down a law that was passed in Texas saying that it was illegal for people under 21 to carry handguns. The judge there said, "Oh, nope. If you're 18 or 20, you have all the same rights as anyone else who's an adult, and following Bruen, the Supreme Court's decision in Bruen, we can't restrict the rights of an 18 or 19-year-old or 20-year-old to carry a firearm. Therefore, that one's struck down too."

So, I do worry, and we've seen this before as you were talking about, Jill, in the abortion context. We've seen it in another context. Chief Justice Roberts really likes to do this two-step thing. Rather than annihilate every right in one fell swoop, he does it incrementally. So, first, we get Bruen with the may issue, and then the next case that comes up, I don't see how they distinguish the reasoning from all of this if they think that this is a right of the people to carry guns.

Now, there is language in Heller when even Justice Scalia, the originalist himself, said words to the effect of the Second Amendment does not allow for any person whatsoever to possess any gun whatsoever at any place wherever. So, it does acknowledge that there is some room in the state interest to protect public safety in restricting gun rights, but I think that room is getting smaller and smaller. It's like the walls are closing in.

Kim:

Yeah.

Joyce:

I'm really interested in the last part that you said, thinking back to Justice Scalia's majority opinion in Heller, and in Bruen where the court seemed to acknowledge that there was some places, right, where they would permit some regulation. There was a series of questions during oral argument in that case with Justice Amy Coney Barrett. Well, what about Times Square on New Year's Eve? Can you restrict guns there? So, part of this New York law does involve those place-based restrictions. I wonder if the court might not split the baby and permit some of that, but as you say, Barb, do away with the rest of it.

Jill:

Yeah. I think The Atlantic article has so many good examples of the expansion that could happen. I mean, they've struck down the restriction on domestic abusers getting guns and so many other things. We should put that link in the show notes.

Kim:

Yeah, no, that's a good introductory piece, and I think the points that all you made were so important, but the point that Barb made about this difference between the shall issue laws, which defers to you get your carry license versus the may issue ones, which is up to the licensee to decide whether you deserve one, that's, in a sense, what these laws are. What they're saying, the laws say, okay, you can get your concealed carry license, but there are some things we have to do to make sure that unless ... You can have the license unless.

How do we know the unless? We need to know whether you have a temporary restraining order against you by a spouse. We need to know what you've been doing on your social media if you've been threatening people. We need to talk to you just to get a sense that you're all right. They're not saying they won't issue the license, but this is precisely it. It's that incremental change, this constitutional doubt that's being cast on states doing exactly what the Supreme Court said they had to do, and it still seems like it's not going to be enough.

Up next, I think you're also going to have challenges certainly to assault rifle bans like things that you have in Massachusetts. You're going to have challenges to all sorts of laws, and I'm not sure which one the Supreme Court won't look a scan set. So, I think that this is the beginning of a very dangerous time when it comes to the Second Amendment and the Supreme Court. I wrote a column about it. I'll also put that in the notes, but I think this is something that we should all-

Barb:

Yeah, it's an excellent piece in The Boston Globe about this issue on the shadow docket. So, I enjoyed reading that, Kim. Excellent piece.

Kim:

Thank you.

Barb:

A little message to Chief Justice Roberts, what I would say, I always go back to this great quote by Justice Robert Jackson from a case. It's called Chicago versus Terminiello. Unless we use a little practical wisdom, folks, we're going to convert the Bill of Rights into a suicide pact. Common sense, people.

Kim:

Joyce, I have not been getting the sleep I should get. Any advice?

Joyce:

Kim, we've been sleeping great in our house ever since we switched to Helix mattresses, and it's really easy to do. 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.

Jill:

I took the Helix quiz, and I matched with the Helix Midnight Mattress, and it was exactly what I 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 just for kids. Each one is designed for specific sleep positions and feel preferences. Imagine pressure relieving memory foam for side sleepers, that's me, responsive cradling foam for stomach and back sleepers, and enhanced cooling features to keep you from overheating at night. It's the perfect TLC for your spine.

You can test your new mattress out for a 100-night risk-free trial and see how amazing your rest is .if you don't love it, and we know you will, Helix will pick it up for you and give you a full refund. Plus, Helix mattresses are American-made, and they come with a 10 or 15-year warranty depending on the model.

Jill:

If you don't love it, and we know you will, they'll pick it up for you with a full refund. Helix has been awarded the number one mattress picked by GQ and Wired Magazine. It is 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.

Barb:

Well, sisters, I want to talk with you about this week's historic delay in the House of Representatives in electing a Speaker of the House. My gosh, did you see those images of these poor kids who came to see their mom or dad sworn into Congress on Tuesday, and they're still there sleeping in the seats on Friday? It was crazy. Kim, tell us, can you just explain what is it that made the Republican majority find it so difficult to elect a speaker in Kevin McCarthy? Who was holding out? What were they holding out for?

Kim:

Yeah. It's both hard to explain and really simple at the same time. Basically, you have the Republicans, the Republican caucus in the House, which is in control of the House. They have the majority that they cannot come to a consensus because there are such strong political and personal differences between them. I should say like intra-partisan. It's not even political because this has nothing to do with policy. This has nothing to do with how conservative they are or what policies they may support or their views on things. This is purely a segment, a very extreme segment of the caucus whose members don't trust Kevin McCarthy because they don't think he's going to give them what they want. He is attempting to negotiate with them in order to get what they want, but there's nothing that he can say or promise, it seems, that will placate all of them.

So, this is something that, on the one hand, it's pretty common. We've seen in previous administrations including under Nancy Pelosi, right? There were a couple times where her leadership was challenged at the time that her speakership election came up by people who disagreed with her on policies within her own caucus, the Democrats. What she did was she sat down with them, and they negotiated what they wanted, and at the end, she was able to pretty easily and handily exert control and count votes and exert her power in order to secure that speakership, while at the same time, giving some concessions to people agreeing to have some people be able to be on committees or to bring up certain pieces of legislation or various things.

Kevin McCarthy, at least so far as we're taping this, has been unable to do that because the Republicans are not fighting over policy. They're not even talking about policy. There is a Trumpy segment within this that is anchored by the Freedom Caucus that is not going to give in to someone who they see as too much as a part of the establishment and has not been in line with the Trumpiest part of the party. I don't know, again, at the time of this taping what he can promise them to get them on board, so it is unprecedented. We say that a lot, but it just shows how broken Congress is. It literally, they can't elect a speaker. They can't pass any laws. They can't even set the rules for the term. I'm not sure people are going to get paid past the weekend. It's a mess.

Barb:

Well, Kim, that's a great segue into thinking about the consequences of this delay. Not only do we have this historic delay but, Jill, let me ask you. In a no sitting Congress, we haven't had this in something like 164 years. What are the consequences of a delay of several days before we have a speaker?

Jill:

The delay itself also shows what's going to happen over the next two years, so beyond what it matters for today. For today, it matters because the extremists are really in control, and it could lead to some really bad consequences there, but it means going forward that they're going to maintain some control over whoever the speaker ends up being, and it's looking more like it might be McCarthy might get it.

It's going to mean there are going to be disruptive investigations in the House, which has already been promised by Jim Jordan who says, "I don't want to be Speaker. I want to be the Chair of the Judiciary, so I can do these unbelievably unnecessary investigations." They're going to be looking at Hunter Biden's laptop. They're going to kill the Mar-a-Lago investigation, the January 6th investigation. Tour guides at the Capitol have been told they can't even mention January 6th when they're giving guided tours of the Capitol.

So, I think we're in for a really bad thing. It does mean that right now, no legislation can be introduced. It means that if there were an emergency, there'd be no vote because it can't come to the floor until there's a speaker. It means that we're really not a functioning government. As Kim mentioned, no one's getting paid until this is resolved. So, how long can this go on? Well, before the Civil War, there was, I think the maximum was 122 votes a hundred years ago. We've now exceeded what the number of votes was a hundred years ago because as of recording this, we were ... McCarthy had lost 13 ballots, which exceeds a hundred years ago, 1923. So, we're not a functioning government. I think this portends that there may not be a functioning government in the House of Representatives for the next two years no matter who the speaker is. That's what's so dangerous.

Barb:

Yeah. Did you guys see that interview that Stephanie Ruhle did with Lauren Boebert where she said, "The American taxpayers are benefiting from this shutdown because we're not spending any money. We're saving taxpayers all that money." Wow. Really?

Jill:

Wow.

Barb:

I mean, you're also not doing your jobs. I suppose that should give us comfort. Joyce, national security is something that I'm always looking at and thinking about, and certainly, there must be some national security consequences of having no sitting Congress. What are the consequences there?

Joyce:

Yeah. So, I look at this from such a democratic institution's point of view because that's what I teach, and it's really interesting. It's an area where your national security expertise and my democratic institutions work really marry up. We are a three-branch government. Everybody knows that, but each branch has unique and essential duties that they have to perform. Right now, as Jill and Kim have said, one just isn't functioning. No new members can be sworn in until there's a speaker. That means something as basic as the committee structure isn't in place.

So, while that temporary respite from congressional oversight is probably greatly appreciated in the White House and the executive branch agencies that are getting ready for the deluge that's about to come, it is not a laughing matter despite all of the great memes when it comes to our national security. The first thing that I think is really important here that it's easy to pass over is the world's perception of American stability, right? Perception has a way of becoming reality. America looks weak right now, and

it looks weak on the international stage. It's clear that despite the growth that we've had in the last two years, we still have one political party, the party of insurrection that can't function and can't lead. That's a real weakness.

That appearance would be bad at any time, but right now, we've got Putin getting increasingly desperate as his fortunes wane in Ukraine, we've got China, which is always looking for an advantage. We are not well-served as a country by the turmoil that's going on inside of the Republican Party. Our enemies can use this to argue against democracy. Oh, look, democracy has inherently failed. Democracy is a bad form of government. Much of the world is at play right now. There's creeping authoritarianism in Europe, and that's true in other parts of the world. We are giving countries that are our enemies the opportunity to argue against democracy. That's dangerous.

So, look. The fact that Republicans were elected to control the House has to increase concern among our friendly nations as well that America may not be a trustworthy partner in the future. That was the big question in 2020. Was Trump going to become a permanent fixture, or could America find its way back? 2020 suggested that maybe we could. Now, friendly nations are looking at this, and they have to wonder about our stability and what might happen in 2024, and that makes sharing and consolidated work across a number of different sorts of issues more difficult. Again, something that's damaging to our national security.

Jill, as you mentioned, there are acts that only Congress can do, and some of those impact national security too. Only Congress, for instance, can make a declaration of war, which frees resources of the United States to combat, for instance, an attack by an enemy. Only Congress can appropriate emergency spending. So, imagine if there had not been a Speaker of the House in place the day of the Pearl Harbor attack. America would've been unable to respond to the attack in Hawaii and other American parts of that part of the world. God forbid something happens, it's unlikely that something like that would happen today, but we would, in essence, be unable to act without a Speaker of the House in place.

The reality is our enemies know that we're vulnerable right now. I'm sure that the intelligence community is on a very high standard of alert. If this dragged on for long enough, it could impact other things, our ability, for instance, to raise the debt ceiling, which will need to happen before not too long, our ability to get a new budget. That impacts not just the United States but global financial security. So, there are some really serious issues here that are tied up in the Republicans' inability to move forward.

Jill:

Can I just add, when you said it costs us our credibility on the world stage, I heard President Biden today say that the last time he said America is back, he was asked for how long, and that is what we are now facing. It does harm us in our credibility. It harms democratic efforts in other countries. So, you're absolutely right on everything you said.

With the holidays just ending, it was so much fun changing the color of my nail polish to match the mood of the week. Even when I was home with COVID, I polished my nails to cheer myself up, and I love Olive & June for that. What about you, Kim?

Kim:

That's so funny, Jill. I had holiday colors for my mani and pedi too over the holidays. It was really fun. I've gone back to my normal natural kind of soft pink, but I had the reds and greens going during the holiday, and it was really fun to do that. Olive & June has everything you need for a salon quality manicure in one box, and you can customize it with your choice of six polishes that you can choose from dozens. Their polish doesn't chip. That's what I love. I'm on a keyboard all day long, and it lasts seven days or more. So,

that breaks down to just \$2 a manicure. It's great to feel confident knowing you'll have salon worthy nails, all done affordably from the comfort of my own home.

I can't tell you how many times I've gotten compliments on the amazing colors that they have and how good they look. We're all on TV. I don't know about you, but I gesticulate when I'm on TV, so people do see my hands, and I have to make a point to make sure that they look their best. Olive & June makes it so easy to really have perfect nails. We know you'll love it.

Joyce:

Kim, your nails always look good. I do notice you gesticulating with your hands on television. My hands always look really bad because unlike the rest of y'all, I'm a chicken farmer, and that involves a certain amount of grit and grime every morning, and my hands never look great. So, here's something that I love about Olive & June. They also have press-ons that look real, last a long time, and come in different sizes, so you can always find the perfect fit. With Olive & June, you can get a quick mani in less than 10 minutes, and it's so much better for you than gel. The nails are non-damaging, and no matter what your preference is, Olive & June has you covered. Plus, with the Olive & June Quick Dry, you'll love how it dries in less than a minute, lasts for over five days and gives you full coverage in only one to two coats. So, stand out, and make a statement with Olive & June.

Kim:

Visit oliveandjune.com/SIL for 20% off your first mani system. That's O-L-I-V-E-A-N-D-J-U-N-E.com/SIL for 20% off your first mani system. You can also look for the link in our show notes.

Jill:

As our regular listeners know, we love your questions. This week, we were inundated with really good ones. Some of them, we're going to have to answer by email or by Twitter on our own personal time, but if you have a question for us, please email us at sistersinlaw@politicon.com or tweet using #SistersInLaw. If we don't get to your question during the show, keep an eye on our Twitter feeds throughout the week. We answer your questions there as much as we can.

This week, let me take the first question, and I'll start with you on this, Joyce, but I think a number of us want to answer this question. This is from Katie. Do you all think women working in the DOJ have a more difficult time in DOJ regarding positions and cases they investigate, et cetera?

Joyce:

So, fast forward, and I think it's significant, right, that by the time I'm towards the end of my career, women are actually increasingly United States attorneys. Under George W. Bush, all three of the United States attorneys in Alabama including my predecessor were women. That had never happened before. So, just the fact that we had those positions ... and it's not for nothing when you have a woman boss, right? The heat regulation in my office went up four or five degrees on my first day in office. As The U.S. Attorney, you control the heating units, and women all over the office rejoiced, but it's more than just the subtle little details like that.

I actually may have told this story before, but it's one of my favorite stories. I was at a community education event that the FBI hosted. It was all of the special agents in charge of the federal law enforcement agencies and me. I was the only woman. Community members were asking questions, and they were sort of defaulting towards the head of the FBI and DEA as people do in those sorts of groups. So, somebody in the audience says, "Well, how do you decide what to do? Who decides what you all are

going to do?" The head of DEA just looked at me, and he said, "Well, Joyce is the boss. She tells us what the priorities are, and we do whatever she says." The other SACs sort of shook their heads in agreement. I really love that because I was able to remind them over the years whenever they maybe didn't want to line up behind those priorities, that they had publicly pre-committed and that I would expect them to honor their commitments, but look. They were a great group of people to work with, and I'm just going to say that I had really good experiences far better than a lot of what I've heard about women in private practice enduring.

Jill:

So, I have to go back in time because I started many, many, many years before you did. I was in the organized crime section doing organized crime cases. I was hired as a trial attorney, and after a year of doing appeals, I realized that my colleagues who started with me were handling trials. I went to my boss and said, "How come I'm not getting any trials?" He said, "Well, because you're a girl, and you'd be more vulnerable in a courtroom. In appeals, it's just lawyers. In the courtroom, you'd be with made members of the mob, and that would be so dangerous for you." I simply said, "And what didn't you notice about me when you hired me as a trial lawyer? I want a trial."

That's how I got my first case. Now, that was at a time when only 4% of all lawyers were women. Of that 4%, very few were in trial work, so it was unusual, and I am so proud that in years that followed, the number of students ... For example, my class was 5% female. Now, it's at least 50% in almost every law school class. When you go into a courtroom, it's very likely that the judge and your opponent are going to also be women. When we look at MSNBC and how many of the legal analysts are female, it's a majority, I would say. I think we can all be proud of the progress that's been made. So, I see it as much less of a problem now than it was back then.

Barb:

Yeah. I think the diversity in all aspects at DOJ is better than in the private sector. I think part of it is the government works really hard to improve its diversity, equity, and inclusion. I certainly don't speak of all private law firms because many of them are doing a very good job in this regard.

I also think one thing that might help is that the Justice Department defends all of those cases about employment discrimination, so I think the lawyers are hyper sensitive to the law, and that probably helps as well, but I also think people are committed to justice. People who work at the Department of Justice care about justice. So, I think it tends to attract people who care about justice in all forms. So, I think I always felt very embraced by my colleagues.

Certainly, we didn't always have a lot of women doing criminal work. Women in the early days, I think, were relegated to civil and appellate work, which is important and essential and difficult work, but I think that was a place where people put women because they thought it was less tough for ... You didn't have to worry about being threatened or whatever it is. I think there were certain stereotypes that kept women out of criminal case work, but I think that's changed. I know in my former office, there are many, many women working in criminal cases, in the criminal division and getting the same kinds of opportunities.

So, lawyers out there, if you're interested, lawyers of all backgrounds, I always made it my goal to hire outstanding lawyers with diverse backgrounds and perspectives because I thought it made us stronger and more effective in our service of the public. So, lawyers of all types, if you want to work in a great place, you should work at the Department of Justice.

Jill:

Absolutely, and it doesn't hurt that there have been a number of women who have been Attorneys General and U.S. Attorneys like the two of you, so it is a great place. It's one of the best places to work. Our next question comes from Lenise in Missoula, Montana. Kim, I'm going to ask you to answer this one. Can you please talk about why hearsay is inadmissible in court?

Kim:

That is a good question, Lenise. So, generally speaking, hearsay, which is evidence of what someone said, it's inadmissible by itself in court because it can't be reliable. If you heard someone else say something, it's difficult to prove whether that is true. That person often isn't present within the court to be questioned or cross-examined. So, as a general rule, there are some exceptions, but as a general rule that is not, by itself, admissible in court.

I think one reason you may be asking that question is because there's been a lot of talk about the hearsay evidence presented by the January 6th committee in their Congressional investigation, which what they're doing is different. That's not a court. They're assembling evidence and facts for the record to put to the public and also to base potential future legislation on to prevent something like January 6th happening again. There's a lot of talk about how, well, it's hearsay evidence. That's not going to be admissible in court, what Cassidy Hutchinson said, for example, is not by itself admissible in court.

Well, that's not the end of the story because, of course, prosecutors, if they are bringing crimes, bringing charges against someone, they're going to have more than that hearsay evidence, right? If you back it up with documents, if there is other support, if there were other witnesses to what was said or what was happening to support that, which we already saw that happening within the January 6th committee as well, a lot of evidence came out that supported what Hutchinson was saying in a court, then that will be admissible in a court. So, just because someone said something by itself doesn't mean that that ties the hands of prosecutors in a court.

Joyce:

Something else that's really interesting since you raised Cassidy Hutchinson is that, here, that rule against admitting hearsay only applies to out-of-court statements that are being admitted for their truth.

Kim:

Right.

Joyce:

Sometimes, people think it's anything that gets said out of court, but that's not the case. So, when she's talking about what somebody said or did next or even if she's talking about what someone said but not offering it to prove the truth of the matter but simply to show a train of events, even then, there's some wiggle room. Hearsay is full of holes, I think, is the takeaway.

Jill:

Great answers, guys. Our last question for today comes from Mary Kay, and I'm going to answer it. Her question is, "If a Republican wins the next presidential election, a new Attorney General will be appointed. Can that new AG put a stop to any outstanding criminal cases involving Trump, et al.?" I assume by the et al., she's referring to all of his enablers and co-conspirators.

The answer is yes, but there is one part that he can't do, and that is anything that's brought by the special counsel, that would take more than just the Attorney General saying you can't proceed. That would have to be notified to Congress, and the Attorney General cannot be fired except for cause. So, those cases that are within the special counsel's purview would probably continue even with a Republican Attorney General.

Thank you for listening to #SistersInLaw with Kimberly Atkins Stohr, Barb McQuade, Joyce Vance, and me, Jill Wine-Banks. You can send in your questions by email to sistersinlaw@politicon.com or tweet them for next week's show using #SistersInLaw. Go to politicon.com/merch to buy our shirts, hoodies, and other goodies. They are really terrific things to have and help support this show. Please support this week's sponsors, Honey, HelloFresh, Helix and Olive & June. You can find their links in the show notes. Please support them as they really help make this show happen.

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Kim:

Barb, I can't nominate you for a Speaker of the House because I've already promised to nominate Jill.

Jill:

She said-

Kim:

She has earned it.

Jill:

Kim said it's the only job I haven't had, so I deserve it.

Barb:

Oh, that's good. You should be Speaker of the House.

Joyce:

I think that that's right. Jill would be a perfect speaker.

Barb:

Yeah.

Joyce:

Jill would take you know what from nobody.

Jill:

That's true.

Barb:

Jill, would you rip up the President's speeches in the State of the Union if you didn't-

Jill:

Oh, it depends. I guess in her case, I think she was right because he was such a liar. You can't leave that in writing but ...

Kim:

Well, you definitely will have a lot of-

Jill:

Remember, I was a Biden delegate. I'm all for compromise. I'm for bipartisanship. I'm in that middle.

Kim:

Well, you would have lots of memes because you know how Pelosi had her red coat and put her glasses on?

Jill:

Yes.

Kim:

You have such a great wardrobe. The memes would be ridiculous.

Barb:

Oh, the pins.

Joyce:

You'd have the best memes.

Barb:

The pin would be the meme.

Jill:

My pins.

Kim:

Oh, the pins. Oh.

Jill:

My pins, and the one pin I haven't bought, which I've thought about is Nancy Pelosi's ... her scepter type pin.

Kim:

Yeah.

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Jill:

It's because it just ... I could never wear it in honor of her. I couldn't. I mean, it's just too powerful for her so-

Barb:

Well, when you become Speaker of the House, Jill, maybe Nancy Pelosi will give it to you, and then you can wear it in her honor. All right?

Jill:

Okay. That would be yes. Yes.

Barb:

That's it. It's happening. Jill Wine-Banks, the Speaker of the House. [inaudible 01:17:02]

Jill:

Yes. Yes. Well, I have a Madeleine Albright pin, so that's my little Congress pin is the same that she has.

Joyce:

Well, Kim, we did forget that Jill hasn't been Secretary of State, so she might have to do that first.

Jill:

Maybe. Maybe. I don't know. Speaker of the House would be third in line, so maybe that's better than being Secretary of State. That's only fourth.

Kim:

Maybe. That's the most powerful. That's one of the most powerful positions in the House, so yes.

Barb:

May I say, if there's a job that's appropriate for Jill Wine-Banks, it's Speaker of the House because girl can talk.