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Jill:

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Barb:

Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Jill Wine-Banks, and me, Barb McQuaid. Joyce is away this week, but we look forward to her return next week.

Today, we'll be discussing the new special counsel investigating the Biden documents, the legal status of abortion pills and ethics for the Supreme Court. And as always, we look forward to answering your questions at the end of the show.

Well, before we get started, I saw a bumper sticker this week that I really wanted to discuss with Joyce. I'll have to talk with her when she's back, but the bumper sticker said, I wrote this down, "I believe in a better world where chickens can cross the road without having their motives questioned."

I thought that's a good one. I want to ask Joyce about that.

Kim:

That's perfect.

Barb:

But I love bumper stickers because I think they can tell you so much about the person who's driving the car. In fact, I used to ask prospective jurors what if any bumper stickers they had on their car. It was not an original idea by me.

Jill:

How interesting.

Barb:

I learned it from somebody else. But you can learn about people if their bumper stickers say things like, "I'm the NRA or COEXIST." It's very telling when I think about somebody. It doesn't make the best prosecution juror when they've got the COEXIST bumper sticker. How about you, guys? Do you have any bumper stickers on your cars or do you like bumper stickers?

Jill:

I have none because I hate them. I think they are just tacky and look awful on a car. And you sent out this wonderful, I don't know, a hundred different bumper stickers that I could pick a favorite from. And I went, "I didn't even laugh once. "I mean we're like-

Barb:

Man, Jill, I had you pegged this crazy bumper sticker lady at no surprise.

Jill:

I don't have, any.

Barb:

I have some bumper stickers.

Jill:

The only one that I picked out of your list was I bought this bumper sticker to cover up a Dave Matthews Band bumper sticker that was here when I bought the car. I don't like Dave Matthews Band.

Barb:

I think it was like, wow.

Jill:

Oh God, I hate them.

Barb:

All right.

Jill:

I hate them. And I asked my husband for his favorite and he told me two. And I was like, "And you thought that was funny?" I don't get it.

Barb:

What about you, Kim? Do you like bumper stickers?

Kim:

Well, I used to have bumper stickers. But they can be perilous. So here's a story. When I lived in New York a while ago now, my goodness, two decades ago now, I was working as a reporter. I was parking on the street in Manhattan because I was that broke because it cost more money to garage a car in Manhattan than my car was worth.

So one day, I was walking, I wasn't even going to my car, but I passed by my car where it was parked on the street. And I saw the window was broken and I thought, "Oh gosh, somebody broke into my car." So I walk over to it. And as I approached, I realized the broken window was the least of my problems. The entire back end of my car was charred, like-

Barb:

Oh man. [inaudible 00:03:28].

Kim:

... completely burned, totally torched. I realized that the windows were broken probably by the firefighters who were putting the fire out. And so, the fire marshal actually came out and looked. And he determined that he believed that the trash that was on the curb somehow caught fire. And it was right next to my car and the car behind me both caught fire as a result. Someone flicked the cigarette or something. But I have my doubts to that theory because even when I was living in New York City, I was an avid baseball fan and my team was the Boston Red Sox. And I had a Red Sox bumper sticker on that car.

Barb:

So, motive

Kim:

Did somebody do it purposely?

Barb:

Fighting [inaudible 00:04:14] New York.

Kim:

I have questions. I have questions. So yeah, be careful with your bumper stickers, y'all.

Jill:

[inaudible 00:04:20] story.

Barb:

Well, you can't offend people. For example, as a Detroiter where we proudly drive our American-made vehicles, I always chuckle when I see somebody with the buy local bumper sticker on their Honda or Toyota vehicle. That always gets me. But I have some favorites. I really love one that says my karma ran over my dogma. That's a good one. Always me laugh. And then my all time favorite, which I always threatened to put on our cars when my children were learning how to drive, was, "If you don't like the way I drive, stay off the sidewalk."

Jill:

I do like that one. I do. I did. Yes. But I'll have to send you a Vienna hotdog sticker to put on your car and see what happens to you in Detroit.

Barb:

So Kim, my daughter keeps stealing my OSEA products. What do you think of them? Are they worth stealing back?

Kim:

Yes. Well, you definitely need to get them back because they're really great or you can give them to her. And then, you can both enjoy the great results that you get from using OSEA. Now is the time to join us by making small changes that have a big impact, like making a habit of using clean vegan skincare products on your face and body. Luckily, OSEA makes it easy to achieve your skincare goals. When it comes to clean beauty, OSEA is the pioneer. They've been making seaweed-infused products that are safe for your skin and the planet for over 26 years. We love how refreshed their products make us feel. When you use OSEA, you're always left ready to face the day, even if there's going to be some TV cameras. Jill, you know what I'm talking about.

Jill:

I do. And they are wonderful. They also make the perfect gift for yourself or for your loved one. So Barb, your daughter could be that loved one who gets the gift. It feels great knowing you're using clean

products that connect you with the environment. And we've discovered that their seaweed-based ingredients are a game changer. Using OSEA is a habit worth keeping all year round. And all of OSEA's products are clean, vegan, cruelty-free, climate neutral, enrich with seaweed and made in California, so you can feel good about what you're putting on your skin.

Plus, they're clinically proven and consumer tested, so you know they work. And OSEA's TikTok famous Undaria Algae Body Butter is next level body care. It really is. It uses ingredients normally reserved for your face like seaweed and ceramides to transform dry crepey skin into smooth, soft, and supple. Its thick, unbelievably rich texture absorbs instantly and feels fantastic on skin.

Barb:

I will admit I really like the body butter. It smells so good. It smells like a dessert. I want to eat it. But I know not to do that. You too can start the new year fresh with clean vegan skincare and body care from OSEA. And right now, we have a special discount just for our listeners. Get 10% off your first order Sitewide with code sisters at oseamalibu.com. You'll get free samples with every order and free shipping on orders over \$60. So head to O-S-E-A malibu.com and use code sisters for 10% off. You can also find the link in the show notes.

Well, we have a new special counsel, Attorney General Merrick Garland appointed Robert Hur to investigate the mishandling of classified documents by plot twist, Joe Biden, I really did not see this coming.

First, Kim, can you give us a timeline here? The news has kind of dripped out over the past week. But the events have actually been going on since November. And I have found it kind of hard to keep track of how the documents actually were uncovered and how they were alerted and up until the time that Merrick Garland announced this special counsel on Thursday. Can you just provide us with that timeline?

Kim:

Yeah, I'm with you, Barb. I had to kind of draw myself a little diagram because I was trying to put the timeline together. And right after Garland's announcement, I actually misunderstood the timeline. It wasn't until after that I got it straight. So this is what happened.

November 2nd is when these initial documents were found. There are about 10 documents that were marked as classified, and they were found in a Downtown DC office that President Biden used for a period of time after he left the Vice President's office. And they were discovered by one of his aides who immediately notified the National Archives and DOJ of this discovery. Well, of course, now, we all know that there was a second set. There were more documents found at Joe Biden's home in Delaware in a garage next to a Corvette.

But that revelation came out like hours really before Merrick Garland made his announcement. And I didn't know whether that sort of spurred that decision to make a special, to have a special counsel in place. And initially, when Garland was speaking, it was clear that he had been working on this decision. He had made this decision sometime prior to announcing it. And I thought, "Oh, perhaps he made this decision after the first documents were found."

But no. Turns out those documents in the garage were found on December 20th. So he had knowledge of both sets of this, which makes more sense. I would think that with those first 10 documents, maybe the DOJ would be able to handle that inquiry alone. Once you have a second location where documents are, I think at that point, he had no choice in order to protect the integrity of this probe and of the office

and ensure public faith. I think he really needed to appoint that special counsel. So I think this was in the works before we knew all of the details, but it makes a lot more sense now.

Barb:

Yeah. And then, I think there was also that one additional stray document that was found Monday in his library at his home in a room adjacent to that garage. And there's no good answer here for Joe Biden other than to say, "I didn't know about it. I'm shocked," and to acknowledge that it's a big deal.

I thought one comment he made to minimize it was ill-advised. He said, "Well, it was locked up with my Corvette, and I take good care of that. So no worries, folks." Classified documents, especially top secret, which it turns out at least one of these documents is, must be kept in a skiff, a sensitive compartment in information facility, a special room. So there's no good way of explaining why it's in the room even with your Corvette, Joe Biden.

So Jill, by now, we've been through special councils a bit, right? We've had Robert Mueller and Jack Smith. And now, this new one. According to the regulations, under what circumstances does the attorney general appoint a special counsel?

Jill:

So, of course, there are different laws that have applied. When we go back, I operated under one set of rules. And then, you had Ken Starr who operated under a completely different set of rules. And the current rules are the ones that are guiding the current two and Mueller also. And those say that you appoint a special counsel when the Attorney General determines that criminal investigation is warranted. And in this case, the Attorney General Ashley got a Trump appointed US attorney, the US attorney from my district, Northern District of Illinois, Lausch, to make that initial determination.

And then, he has to decide in addition that the Department of Justice or a normal US attorney's office can't do the investigation because of a conflict of interest and that it would be in the public interest to appoint a special counsel. So that's how you get to having a special counsel.

Barb:

Yeah. And so now in this case, I think it's still in the early stages that we don't have all of the facts. But certainly, Joe Biden's critics are equating his conduct with the conduct of former president Donald Trump, who has been under investigation by a different special counsel, Jack Smith, for retaining classified documents at his home, at his Mar-a-Lago Resort. Kim, based on the information we know that is in the public domain, do you see these two cases as being equivalent?

Kim:

Certainly not. Certainly not. I will start by saying, look, it is a serious matter. When classified documents are any place other than where they're authorized to be, that is problematic. That is unlawful, and there's a reason for that. So I am in no way saying that what Joe Biden did was fine. It was sloppy. And depending on who could have had access to it, it's always potentially dangerous when that happens.

It could be a matter of national security. Now with that said, there is a difference between having mistakenly put classified documents somewhere, which is unlawful. But that's generally what we call an administrative matter. That means that whatever agency is involved would have ways to deal with that. And might there be some sort of repercussion? Sure. There's a difference between that and willful mishandling of classified documents and certainly obstruction of justice, which are both criminal. And that seems to be more in line of what happened at Mar-a-Lago based on what we know. This seems so

far by Joe Biden to be inadvertent, if sloppy, but inadvertent. So those are really different clear lines that can be drawn here. We will have to wait to see what the special counsel ultimately finds out. But so far, these look like apples and orangutans.

Barb:

Yeah. Not just apples and oranges, but something even more than-

Jill:

I think it's apples and rotten apples.

Barb:

Well, let me just say, it brings to mind to me what Jim Comey said when he recommended that the FBI, it was the position of the FBI that Hillary Clinton not be charged with violations for mishandling classified information based on her private email server.

And what he said at that time was that they had reviewed every prior case that the Department of Justice had brought against someone for mishandling classified documents. And what he said is the department has never brought a case unless it involved an aggravating factor because when there is a mistake, as Kim said, perhaps, there's an administrative remedy like termination, suspension, loss of a clearance, something like that.

But for a criminal violation to be prosecuted and subjected to prison, it required the presence of an aggravating factor. And those factors included willfulness, obstruction of justice or disloyalty to the United States. And so far, as Kim just said, I don't see any of that evidence with regard to Joe Biden for Donald Trump. Willfulness and obstruction seem apparent. So we'll have to see how these facts played out. So Jill, do you think Merrick Garland made the right call in appointing a special counsel? I mean, what are the pros and cons for Merrick Garland of appointing a special counsel here?

Jill:

Well, there's legal, and there's political issues at stake here. And politically, I think he made the right call. And as Kim pointed out, there were two and now three different revelations of documents in three different locations, although I want to point out that the total number is under 10 versus the over 300, including cartons of documents that were taken and the obstruction, as Kim pointed out, that happened with Trump.

So the two are very different. But I think you have to view things in context. And in the context of a special consult being appointed for an investigation of documents that we can all agree, both were wrongfully removed and put in places they should never have been. So when you start with that basic similarity, it would look really bad if you have a special counsel for one and not for the other, even though the distinctions, I believe, outweigh the similarities.

So, yes, I think he made the right call in appointing a special counsel. And the only main pro in favor of this is that it makes it seem to anyone looking that there is equal treatment. It takes away any possible view of it looking like it is a conflict of interest for the department that is appointed by the president to investigate the president.

On the other hand, the current regulations about appointing a special counsel and the current regulations of how a special counsel operates means that ultimately the decision to indict or not is made by the Attorney General. And so, you don't really, in fact, get the independence that used to exist. And

so for me, in a sense, the pro and the con kind of balance themselves out because it's only maybe slightly effective in eliminating a conflict or an appearance of conflict.

Barb:

Kim, do you agree? Do you think Mayor Garland did the right thing by appointing a special counsel?

Kim:

Yes. Under the circumstances, yes. So given, and Jill is really right to separate the legal aspect, what the regulations for special counsel are from the... And I think it's more than political. I think I would call it an institutional issue after the Trump's special counsel was done. I've said on this podcast before that Special Counsel was appointed that I didn't think it was necessarily necessary in the Trump case.

And what I wish had happened is that it happened either in the Biden case right away as soon as the disclosure of these documents happened or not at all, because the way that it happened, it was they waited until after Trump declared his candidacy for 2024 to do it. It looked that made it look political that actually undermined the DOJ, I think.

So it would've been better if they did it right away. Since they did that, I think especially with the Biden confidential classified information found in multiple places, they really had no choice for all the reasons that Jill said, in order for the American public to have faith in the Justice Department that they're acting without fear or favor, and that this is on the level, I think, it was really necessary, particularly once these documents were found in more than one place.

Jill:

And Barb, I just want to add that while I answered, yes, I think he made the right call, I don't think it was legally essential that he'd do it. I don't think that it was one of those things I like you have a love of the Department of Justice where I found great integrity. I loved being part of that organization. And I think that the lawyers in the department could have independently and without political bias handled this investigation. But particularly in the context of there was one for already Trump, I think that it was a good call and that even though not legally required, it was the right thing to do. Did I-

Barb:

Yeah. I think I agree with that. I think Merrick Garland recognizes that we live in extraordinary times when everything you do is going to be criticized by your political opponents. And even if it was the right thing for the DOJ to investigate this themselves, critics will howl. And here's a way to make sure that the Justice Department enjoys the confidence of the public, which is an important part of its work.

So I think so. The other thing, I keep trying to put myself in the head of Merrick Garland because he knows something we don't know, which is the likelihood of an indictment against Donald Trump. And so, one thing that might motivate him is if you know an indictment of Donald Trump is coming, then, you need to do all you can to insulate yourself from the kinds of criticism that is no doubt going to follow. And so, does this make it more likely that an indictment is happening?

Not that this is dictating it, but that Merrick Garland knows it's coming. And so, oh man, I better get a special counsel in there because I know this criticism's coming. I also saw someone point out that this is a strategic move because by having a special counsel, he is avoiding congressional oversight, a congressional hearing where they're asking Garland questions about all of this. Now, we can say, "Hey, it's part of an ongoing investigation. We don't talk about ongoing investigations and it's not me. It's the special counsel." So maybe, there's something to that. Well, we have a special counsel now whether we

agree with it or not. And so Kim, what do we know about him? His name's Robert Hur. Who is Robert Hur?

Kim:

Well, Robert Hur is somebody who has a sufficient amount of Republican bonafides, which I don't think was by accident. So most recently, he was working in the private sector at a large respected law firm called Gibson Dunn. But before that, he was a US attorney for Maryland. And this was during the Trump administration. Before that, he worked in the DOJ. He was among other things, one of the deputies of Rod Rosenstein, who we have talked about on this podcast before.

He also worked in the criminal division under Christopher Wray, who is now the FBI director. These are all Republicans. And even after law school, he clerked for the late Chief Justice William Rehnquist. So I think this was an important and pretty smart move by Merrick Garland. He's also someone who has... I've heard praise about Rob Hur's work from both Democrats and Republicans. He seems very competent, very serious. And I think Merrick Garland didn't want this to look like there was some Democrat sort of putting the thumb on the scale in favor of Joe Biden. So I think that it was a smart choice.

Barb:

Yeah. No. I guess the risk, Jill, since you've seen these different independent counsel and special counsel investigations and all the different iterations, there's always the risk that it can spiral out of control. Ken Starr, with the Whitewater investigation, started as one thing and ended as something else. There's always the chance they find a blue dress. Any concerns there that they may look for Joe Biden's classified documents and find Hunter Biden's real laptop? I don't know. I mean, is there a risk?

Jill:

Well, they're already linking it to Hunter Biden. That is the Congress. They're saying that Hunter Biden was in that house. So he had access to those top secret documents. So in terms of the rules under which people operate, there was an intent to try to limit what happened with Ken Starr, which really did get out of hand, not just in terms of what he investigated, but of how he communicated it to the public and to Congress.

So the new rules were intended to restrict it. But basically, the new rules make the special counsel. And I was a special prosecutor then in between was the independent... I'm sorry, the special... Yeah, the independent counsel was Ken Starr. Now it's a special counsel. So there are different rules for all of them. And the new rules make him more like a US attorney, give him the powers of the US attorney.

And the US attorney of course is free to define whatever he investigates. So even though he was appointed to investigate the possession of these classified documents or documents marked as classified, and there seems to be a distinction being drawn by the media between those that are marked and those that are classified information, it could go beyond that if they find something in the course of a legitimate investigation of those documents.

So it doesn't worry me because I don't think there's anything there. I don't have any reason to worry that there is something that will be uncovered, but it would be an unpleasant circumstance. And we already have the Durham stuff and all these other extraneous investigations. It's just not good for the country. And then, you have Congress doing the same thing.

Barb:

Yeah. I think all in all, it's probably good. And it's probably healthy for our country to scrutinize potential misconduct by the president. But it does remind me of words of my mother who often says, "I don't want to go to the doctor for a checkup." They might find something wrong with me.

Kim:

Also, can I just say, please, Obama, Clinton, Carter, Al Gore, check your garage. Just check it now. I feel like this slow drip every week, there's a new one. Everybody go and look at your files and just get it all out of the open now.

Jill:

That's such great advice. And it does remind me during Watergate when the White House first told us that there were missing tapes, they said there were two missing tapes. And about a month later, they went, "Whoops, we forgot there's a third that has an 18-and-a-half-minute gap."

And just in terms of trial strategy, in terms of being a lawyer, it's really bad for the drip, drip, drip. If everything comes out at once, if all three caches of documents that have now been discovered have been found at once, you could have said, "Less than 10 documents have been found," and that would've been the end of it. But doing it drip, drip, drip is really not a good way.

Kim:

It really isn't. So [inaudible 00:27:11] check between your paint, your easels.

Jill:

Hey, Kim, my goddaughter's daughter was just visiting me. And that family is so eco conscious that I was so proud to show off my Lomi and let them know that I was doing everything I could. We don't want to be feeling any eco guilt after a big meal. So it's amazing knowing you're doing your part to reduce waste.

That's why Lomi has become such an amazing part of our daily rituals. Once I got a Lomi, I now have the ability to turn my food scraps into dirt with the push of a button. And the other sisters have been able to share in the experience. We all love it. If you haven't heard about Lomi, it's a countertop electric composter that turns scraps to dirt in under four hours. There's no smell when it runs. There's no sound when it runs. Plus, it looks sleek and fancy as part of a great kitchen setup,

Kim:

Jill, Lomi has become a part of our family too. It's become a regular part of just cooking dinner and the family gets fed and so does Lomi with the food scraps that we have left over. We have way less garbage each week, which is great. And we're talking two or more less bags of garbage. That means our waste isn't going into landfills and producing methane.

Instead, you can turn your waste into nutrient rich dirt that we can feed to our plants. We do. We put it out back. It's really wonderful to have that, to know you're doing good things in two ways at least. We feel great knowing that we're composting and creating soil instead of creating waste. I have basically a limitless supply of dirt. It's true. I cannot wait for the spring. We are keeping it all in a container. And come spring, we're going to go planting things and it's going to be really great. And it makes cleaning up after a big family meal so much easier and environmentally friendly.

Jill:

So if you want to start making a positive environmental impact or just make cleanup after dinner that much easier, Lomi is perfect for you. Head to lomi.com/sil and use the promo code SIL to get \$50 off your Lomi. That's \$50 off when you head to lomi.com/sil, and use promo code SIL at checkout. Food waste is gross. Let Lomi save you a cold trip out to the garbage can. You can also find the link in our show notes.

Kim:

The anti-abortion movement is going where it used to avoid going before suggesting that those who seek abortive care may themselves face criminal punishment. That's what Alabama's Attorney General suggested when he said that pregnant woman could be prosecuted for taking abortion pills under the state's abortion ban. We don't have our resident Alabaman this week to explain what's happening down there. But we do have Jill Wine-Banks who is probably more qualified than anyone to talk about the protection of women's rights. So Jill, can you explain Alabama's law and what Steve Marshall is talking about?

Jill:

I will. And I'm only qualified because I've been fighting this longer than any of you by mere fact of my age that this has been a lifetime issue for me that went away after we had Roe. And now, it's back in full force. And the Alabama law is one of the strictest in the country. It's really, really strict because it basically bars any kind of abortion with no exception for rape or incest, only for the life of the mother is there an exception. It bans 100% of abortions after conception. That's from the moment of fertilization, you cannot have an abortion. So it's basically no abortions.

And it was originally viewed as protecting the person seeking the abortion. But it is now under what he's saying, it could lead to prosecution of the person seeking the abortion for taking the pill either because that induces an abortion and is therefore an abortion or because they're talking about using the Chemical Endangerment Act, which would, again, this treats the fetus as an unborn child and makes it illegal to harm it through taking a chemical.

Kim:

And so, Barb, his guidance comes after federal authorities did a couple of things. One, the FDA authorized retail pharmacies like CVS to distribute the abortion pill in states where they are legal. And also, the Department of Justice gave guidance that said the post office can deliver pills to any state regardless of the law there. Republican state officials in Alabama and elsewhere saying, "No. No. We will enforce our laws no matter what the feds say." This sounds like a big old federalism fight. How do you think it'll shake out, Barb?

Barb:

Yeah. I think this is going to be the new battleground area between the federal government and state governments because this is a relatively new development, the abortion pill where you don't need a provider. And so, if providers are going to be prosecuted criminally for performing abortions, well, here's a much easier way to achieve an abortion. It's through a pill.

And so it is, I think, forcing leaders in Republican states who are anti-abortion advocates to look at different ways to address it. But currently, most of the laws on the books make it a crime for providers to perform abortions. If instead a person is simply taking pills to achieve an abortion, then, there is really no provider there to do it. And so, I think it will require, and we'll start to see some new statutes on the

books in these states, but currently even in Alabama, as Jill said, there isn't a law on the books that makes it a crime to abort a fetus through medication.

It's instead a crime to expose a fetus to dangerous chemicals. And it was put in place for methamphetamine labs when fetus were exposed or young children were exposed to meth in those labs. And so, it would extend it there. But I think that we could see places where they make it illegal for pregnant people to either use or possess these pills. Currently, we see pharmacies can sell them and postal workers can deliver them. And so, I think it might really come down to, are they willing to prosecute the pregnant person, which has always been outside of the target range for the anti-abortion advocates.

Jill:

And I should point out that it's a 99-year felony for this violation. So that would really be a significant penalty.

Kim:

And, Jill, talk a little bit more about the point that Barb made, the anti-abortion movement used to steer far clear. They always say, "No, no. We would never prosecute a pregnant woman." Why is that changing? And what could this mean for other states and what comes next because could this lead to personhood laws?

Jill:

The answer is yes to all of that. When I was listening to your question, if I'm not mistaken, I remember someone interviewing candidate, Donald Trump, who said absolutely that we would have to prosecute the woman seeking an abortion.

Kim:

Yeah. I remember that.

Jill:

And so, this may be... Right. So maybe he's the start of all this. But yes, I think personhood laws are something that is coming and that would give the fetus all the rights of any other person, even though that fetus cannot live anywhere but inside of a woman's body. There are people who are specialists in Virginia, Mary Ziegler, a law professor at the University of California at Davis, specializes in abortion issues and is concerned about what's happening with the possibility of prosecuting the person seeking reproductive healthcare. And basically, it would lead to a premise that anything is child abuse or child neglect if it happens during pregnancy, while it's only capable of living inside of a woman's body. Yeah. I would say it is a legitimate concern that we have that could lead to very strict expansion, not just the loss of the Roe rights.

Kim:

It's really wild to think about the direction this is headed. But, Barb, not all southern states are in line with Alabama. Last week, South Carolina's highest court issued its own decision. It was essentially a state level Roe versus Wade. What happened there? And could other states follow its lead?

Barb:

Yeah. This was a really interesting development. South Carolina in the heart of the South, the Supreme Court found that there is a state constitutional right to privacy that protects the right to an abortion. And you could very well imagine other states following this lead. Now, it's going to be a little different in every state because every state has its own constitution. Roe versus Wade, of course, was based on the US Constitution.

And so, now some states are beginning to look at their state constitutions. And in South Carolina, they found that this privacy right protected that right. And so, that is likely to be a battleground now that other states might try. And one thing that is interesting, when you get past these Republican legislatures, there are a lot of people in conservative states who want to protect the right to an abortion. I mean, we had that ballot initiative in Kansas that overwhelmingly approved the right to an abortion in Michigan.

In November, a constitutional amendment was voted by the people in overwhelming fashion to amend the constitution, to protect the right to an abortion explicitly. There had been an argument that it was implicit in other rights, but a specific provision. So I think that gives, I think, some hope and some strategy to people who are seeking to protect the right to an abortion in certain states to try those state constitutions. And they're going to vary. No one's bound by either the language or the interpretation of the Supreme Court of South Carolina, but certainly a victory there is likely to be empowering to advocates in other states.

Kim:

Well, let's hope that we see more of that with other states following their lead.

Jill:

Either that or some more state ballots, some state initiatives like in Michigan where they were successful in passing support and I think Kansas and other states have had the same.

Kim:

Jill, sometimes, I get really wound up talking about all the things that are going on in the world. And I find it really hard to wind down. What do you do?

Jill:

Well, it's not just winding down. Some mornings, you just 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. Calm helps you stress less, sleep more, and live a happier, healthier life. Their 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.

Barb:

I've always thought that I didn't have time for things like Calm, right? I'm too busy to be calm. But I find that if I recharge, then, I have more energy to be more productive when I am focused on things. So it's one of those counterintuitive things that actually helps you save time and feel better. And right now, more than a hundred million people around the world are using Calm.

Even if you've never meditated before, you'll get the support you need to reduce stress, improve focus, and uplift your mood. We love how their sleep stories help you drift off quickly to recharge your brain.

And they're also great for getting kids to calm their minds at night, 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. And new content is added every week. So relax. Calm's got everything you need for a happier and healthier you.

Kim:

That's such a great point. I do like using Calm. And I can't tell you how many times I felt the burden of things I need to do the next day when I'm trying to clear my mind and fall asleep. That's when my mind races the most. But thanks to Calm's amazing content and narrators, I'm able to find deep relaxation and be ready to take on the challenges ahead of me. For listeners of the show, Calm is offering an exclusive offer of 40% off a Calm premium subscription at calm.com/sisters. That's 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.

Jill:

Well, we've talked about Justice Thomas's refusal to recuse from cases where his wife's public statements of interest in the outcome create an apparent conflict of interest. We've talked about how rich people make their views known to the Supreme Court and maybe even learn about decisions before their public by making large contributions to the Supreme Court Historical Society. But with the public opinion of the court now at record lows and Chief Justice Roberts having failed to deal with any of these issues in his annual report, I think we have to talk about another issue that raises ethical issues for SCOTUS. And that is the million-dollar plus advances that Supreme Court Justices have recently received for their memoirs and for some speeches they've given in political settings. I want to start with book contracts, Kim. Your husband wrote a terrific expose on this issue, which will be in our show notes. But could you tell our listeners the facts of who wrote what and how much they made and why ethics attorneys consider it a breach of ethics rules?

Kim:

Yeah. It's an interesting and fascinating subject. So it came about because the newest justice on the court, Justice Ketanji Brown Jackson, just inked a book deal. We don't know all of the details of it, but it looks like the advances in excess of a million dollars for her to write her memoir.

That is actually not even the highest amount that a justice has recently received in an advanced book deal. Amy Coney Barrett, when she ascended to the court, got a book deal for still yet to be released book, but she got a \$2 million reported advance for her book.

Now, people write books all the time. Supreme Court justices write books. What's the big deal? Well, it depends on how those books are sold and marketed. You have one issue, for example. What if say, CPAC or the Republican National Convention did what they did with Donald Trump Jr's book, which is by a whole heap of copies to put in the little swag bags of the attendees. But buying all those copies were meant to boost book sales to get them on the New York Times bestseller and also to [inaudible 00:43:56] pockets. He makes money off of each of those books that are sold.

And if the same thing is done for Amy Coney Barrett by say The Federalist Society or Justice Ketanji Brown Jackson by the American Constitutional Society, for example, does that mean that these justices are making lucrative deals off of special interest groups? And that essentially creates kind of a loophole in the financial disclosure rules that they're subject to. And it can be an ethical concern. Is it in every

single situation? I'm not sure. But there could be some there, there. And it's at least something to think about. And that is one of the issues that Greg highlighted in his story.

Jill:

And, Barb, do you think it is an actual conflict of interest for justices to be selling their memoirs for huge sums of money? Do you think it's unethical or is it just a bad look for the court?

Barb:

I think it is one of those perceived conflicts of interest. Now, I suppose it could be an actual conflict of interest if as Kim just described, some particular group buys up thousands of books and lines the pockets of the justice, and then, the case comes before the justice and they rule in their favor. Justice should be required to recuse, I suppose, at the very least in an instance like that.

But I think in terms of public perception of the court, it's a problem. And I don't think that's a made up problem. I think it's a real problem. The legitimacy of the court matters. It's taken some hits in recent years with the shadow docket. And it's disregard for precedent. And now, if we see justices cashing in and getting rich off of their titles, I think that's a bad look. That is a conflict of interest because it is something that diminishes the stature of the court and public confidence in the court.

So I don't know what the solution is because I do think justices have stories to tell and unique insights that are useful. When politicians write their memoirs, it's usually once they've left office. And so, that doesn't bring with it the same kinds of potential conflicts. But because justices served for life, if they are going to write memoirs or other books and some do. Some write about legal jurisprudence or about the history of the court.

It creates this issue. I'll tell you, one of my favorite books of all time is Sonia Sotomayor's Memoirs. I think they're fantastic. But she got big money for that. I don't know if there's some way to maybe have their profits go into a trust. The ethics rules say they're allowed to earn a reasonable profit from it. Maybe, you cap their profits at a couple hundred thousand dollars, and the rest goes into a trust of some sort. I don't know. But you don't want to disincentivize them from sharing what could be useful information in the world. But at the same time, I think it undermines public trust when you see them either getting rich off their story or exposing themselves to compromise by groups who will buy their books in bulk to carry favor.

Jill:

So maybe just barring people with things before the court from buying huge quantities of the book, because we do want to know who the justices are. I think one of the mistakes Mueller made was making sure that nobody knew who his prosecutors were. And one of the good things that the special prosecutor in Watergate did was letting America know who the prosecutors were and that we weren't with bad motives. But, Kim, what is the exact language of the ethics rule about outside income? Is there some special thing that it says. And does it apply to the Supreme Court?

Kim:

So these are very interesting questions. I am literally looking at the language right now on the US Court's website. And it is murky. It is not entirely clear. It makes clear that Supreme Court justices do have to file financial disclosure statements, which they do every year. Sometimes, they come late. I believe usually Justice Alito is always the last to file his, because his finances are so complicated.

But essentially, they're required to make financial reports. And if you've ever seen them, they list how much the justices make, and the general sources of it. Again, if it's something like a book deal, it would just list how much they made from a book. It wouldn't list who bought these books and how those sales were boosted. So that creates a loophole. And it also says that these rules are subject to whatever code of conduct applies to the judicial conduct, to the judicial official.

Now, that's where the rub is because the ethical rules that govern the Supreme Court are entirely different than those that govern other federal judges. Essentially, the Supreme Court is self-governing. There are no ethical rules that apply directly to them. So it's up to them to decide what to do in these circumstances.

And I think that this is just one aspect of a bigger problem. For example, there, I was talking to someone who looks at this issue of transparency very seriously. And, for example, Supreme Court justices don't even have the same requirements as members of Congress, for example, who if they are put up at a hotel by someone, a member of Congress needs to disclose that. If they get lots of gifts from someone, a member of Congress needs to disclose that in a way that Supreme Court justices just don't.

So I think there should be an overhaul. What's the solution? I think an overhaul of the ethical rules that make it clear what the Supreme Court Justices must do and has some enforcement teeth is a good place to start. I think that's common sensical. And it should, at the very least, mirror what other federal judges and perhaps members of Congress are required to do as well.

Jill:

So it's really interesting because the ethics rule seems to say something about they have a right to outside income that would be comparable to other people similarly situated. So, Barb, since you're writing a book now, give us your perspective on whether the amounts that they are receiving for advances and royalties you would consider to be comparable normal.

Barb:

So one million and \$2 million advances, I guess I will say that despite my incredible celebrity status, I was not offered a one or \$2 million advance. So it sounds a little high to me. I actually did a little research to find out what is the average advance for a debut author, and it is \$57,000. So the one or two million is quite a bit by a factor of 20 or, what, 40 depending on which of these advances you want to look at. So it does seem high.

Now, I will also say these are not ordinary debut authors. They're selling their name. They're selling their story. And that is what capitalism is all about, Charlie Brown, right? The people are willing to buy it in the same way Barack Obama and Michelle Obama are able to sell, get big advances and sell a lot of books. People want to read their stories. So I don't know if you can compare them to normal people.

Kim:

And I will just say this, and these are not easy questions. Does the first Black woman to sit on the US Supreme Court have the right to tell her story the way she wants to? Yes. Are there lots of people, as Barb pointed out, who look up to her and want to read about her story? Yes. Are there a lot of people who want to read about Amy Coney Barrett's story, the youngest justice on the court, the mother of seven who's juggling that and being adjusted at the same day? Yes. Does she have the right to tell it? Yes. So how do you draw those lines? What do you do? It would be nice if the justices on their own volition said, "Hey, beyond a certain point, I'm going to donate this money to this cause, or I'm going to do something else with it."

So, it doesn't seem like there's something nefarious going on there. On the other hand, Justice Sonia Sotomayor, we talked about how popular and lucrative her book was. When all of the financial disclosures came out, when she ascended to the court, she was making no money and she had a ton of debt. She had worked her whole life in the public sector and she was the least wealthy of all of the justices. So part of me is like let a sister earn some cash. It's okay. At least all the other justices were millionaires. Let her catch up. I mean these are hard questions. It's not hard and fast rules, but I'm glad that we're talking about the issues that they raised. I think that's important.

Jill:

It is important. And you started on this, Kim, as to what could be done to improve the public's opinion of the court, which is, as I said, at its low point. Barb, is there anything you want to add to what maybe the court or Congress could do?

Barb:

Well, one, I would love to see them stop doing so much on their shadow docket. We've talked about this before, sort of the administrative docket where usually it's a place for stays and emergency orders and things. And it seems like more and more, they're putting substantive merits decisions there in a way that doesn't get the same kind of argument and vigorous briefing that other things do. I think that would be one.

I also feel very uncomfortable whenever they do these speeches to outside groups, like Alito went to Rome and talked to a group. And you get the sense sometimes that maybe they are pandering to the crowd and saying things for cheap applause that can impact public confidence in their decisions.

So I don't know if you want to prohibit it altogether. I mean, again, I've seen Elena Kagan speak and thought it was amazing. I've seen Sotomayor speak. I saw Justice Steven speak. I've seen Chief Justice Roberts speak. Many of them, Ginsburg. And I loved it. But I just worry that when they travel to these exotic locations, I don't know who's paying those fees. And they're there and generating cheap laughs from a partisan group that doesn't in some way diminish the public perception of the individual justice in the court as a whole. And so, I think there should be something there that looks at that about public speaking fees.

Kim, are you using Thrive Causemetics mascara right now? Kind of looks long and luscious. I'm thinking that looks like Thrive to me.

Kim:

I put on Thrive Mascara as soon as I get up in the morning, Barb. I'm never caught without it. Thrive Causemetics makes high performance beauty in skincare products made with clean skin loving ingredients. There are no parabens, no sulfates, no phthalates. And their products are certified 100% vegan and cruelty-free. Cause is in their name for a reason. We love how every purchase supports organizations that help communities thrive. And their products are perfect for whatever the day might throw at you.

Jill:

You're just like me. I use their Thrive Mascara every single day. It never flakes off and causes problems for my contact lenses. It's really great how it comes off easily. But I also love the brilliant eye brightener. There's nothing better to give you a fresh look after a long night of preparing notes for a big day ahead. It's a luxurious cream to powder highlighter stick that brightens and opens eyes, giving you an instant

eye lift. Use it as an eyeshadow for a perfect daytime glow or apply the metallic shades for an easy smoky eye. It's foolproof. And the eyeshadow highlighter stick makes it extremely easy to apply and blend. Just apply it to the inner corner of your eye to look like you've had plenty of restful sleep even if you haven't.

Kim:

Jill, that must be your secret because I know you don't sleep, but you always look great. That's good to know. Let's not give away too many of our secrets But since we're on the subject, another one is Thrive Causemetics Infinity Waterproof Eyeliner. It's waterproof and smudge-proof for all day wear and gives you intense high impact pigmentation in one smooth swipe. And the effortless mistake proof formula glides onto lids seamlessly. I appreciate that because, sometimes, I know y'all know what it's like. I have a TV hit and I'm trying to... I do one side perfectly. And then the other side, you can't get it right and you do it 14 times. It's so much easier with this. Plus, Thrive's new, bold and classic neutral shades complement every eye color and skin tone using the semi-permanent technology in microblading, brilliantly reimagined for an eyeliner,

Barb:

We can't get enough of Thrive, especially how they contribute to helping communities thrive with every purchase through their bigger than beauty program. They give to more than 300 causes, spanning colleges, cancer research, and homelessness along with many, many more. So now is a great time to try Thrive Causemetics for yourself. Right now, you can get 15% off your first order when you visit thrivecausemetics.com/sisters. That's Thrive Causemetics C-A-U-S-E-M-E-T-I-C-S.com/sisters for 15% off your first order. You can also look for the link in our show notes.

Well, now comes the point in our show that is our absolute favorite, the part where we answer listener questions. And I will tell you that before we start recording, we spend a lot of time debating which questions to answer because we get so many good ones. So we chose three. But man, there's so many to choose from. It was difficult. We almost came to blows. 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 where we'll answer as many of your questions as we can. Our first question comes to us from Hal, from Euclid, Ohio. And Hal asks, "Does the fact that the Supreme Court left the New York Gun Law in place mean that it is likely to uphold it?" Kim, you were up on this issue last week. You wrote about it. What do you think about Hal's question?

Kim:

Yeah. That's a good point. And we mentioned in last week's podcast that there could be some tea leaves to be read there. Well, I'm sorry to inform you, Hal, that the fact that they let the law stay in place is actually the least number of tea leaves they could give us. That's generally the protocol in a case where the Supreme Court is not yet ready to get involved. They will let stand the most recent lower court opinion, which was the Second Circuit, which let that law stay in place.

It overturned the lower court that put a temporary pause on it. So we don't know. We don't know what the Supreme Court can do. Maybe, they are not yet ready to go beyond brewing in the First Amendment, but maybe, they just want to see what the Second... The Second Circuit hasn't even ruled in case yet. So maybe, they just want to keep their powder dry, no pun intended, to see what the Second Circuit does before they get into this. So I don't think we really know one way or another.

Barb:

All right, because I remember we did think that we could read some tea leaves with the abortion decision when the Supreme Court left intact that Texas law. That made me feel bad with that.

Kim:

That's different though. No. Well that was different though. I think if the Supreme Court stopped this law from going into effect, that would tell us a lot. But the fact that they left it in place, they left the status quo, doesn't tell us anything.

Barb:

Right. I see. Good point. All right. Our next question comes to us from Donna in Boise, Idaho. And Donna asks, "Like many of your fans..." Oh, thank you, Donna. "I am impressed by how you seem to do it all. And I've heard all of your great tips on how to stay organized, but to make us mere mortals feel better. Do you ever procrastinate? How do you fight against the tendency?" Jill, what do you say to Donna?

Jill:

Donna, I am a big procrastinator. I absolutely am. I don't even try to fight against the tendency because mostly what I do is not do something until I'm really ready to do it. So I'll procrastinate. And at 11 o'clock at night, I'll feel motivated to start doing my work. And so then, I'll just work straight through till two or three in the morning and I get it all done really fast if I wait until I'm really ready.

So for me, procrastination is really just spending time relaxing until I'm ready to do the tasks that I have to get done. But I always keep in mind when there's a deadline and I never miss a deadline, I do things like, oh, my desk needs to be cleaned up. Well, there's no deadline on that, except if someone's coming over and my desk is disgusting looking and it's in the kitchen and they're going to see it, that's my deadline. Then, I'll clean it up usually by throwing it all in a box and putting it away somewhere until I can throw it away, because most of it is so old that it just gets thrown away. But yeah, I love to procrastinate. Now, I wonder, Barb, Kim, do you ever procrastinate?

Kim:

I'm so excited that I share this trait in common with Joe Wine-Banks because I am 100% deadline driven. I actually had to tell my editor who will say things like, "Hey, can you look into this issue?" I'm like, "Yeah, I can look into it. I can look into it for the next four years. " You need to tell me I need this piece by Thursday at 2:00 PM. You need to give me a hard deadline. And then, I'll always get it done. I'll always make it. But without that, I will spitball for years.

Barb:

Yeah. I think all of us have that tendency to procrastinate from time to time, especially things that are unpleasant, just putting them off, hoping that somehow they'll go away. But I sometimes also have the opposite problem where I just want it to be over with. And I want to get something done. And I think it is also worth resisting that tendency.

I actually talk to students about a concept. I like so many good ideas. I don't remember where I got it. But it's not original. I heard it from somewhere else, which is the need to exercise strategic patience. So for those of you who are procrastinating, you can just call it strategic patience and maybe feel a little better about it.

Kim:

Strategic, [inaudible 01:02:44] I like it.

Barb:

For example, if you are negotiating something and you just want it to be done, you shouldn't go twice in a row, right? You've made your offer. And you might be frustrated by how much time it's taking because you want to resolve the matter. Maybe, your client's even asking to resolve the matter. And so you say, I'm exercising strategic patience.

I know it's hard to wait. But it's best to wait. Sometimes, when you wait, things do go away, the need to do things. They find out that they got the answer to the question or the need for the thing went away. So there is value in strategic patience. And even if it's not, if you call procrastination strategic patients, you can make it sound a whole lot better. Our final question comes to us from Arlene, who asks, "Does the proposed subcommittee to the House Judiciary Committee, which will allegedly investigate the weaponization of the federal government by reviewing ongoing criminal investigations violate the constitution's separation of powers?"

Arlene, the answer, I think, is absolutely yes. The Constitution creates this three branch government, which has the judiciary, the legislature, and the executive branch. And it is within the domain of the executive branch to conduct criminal investigations. In fact, there is kind of standard language that the Justice Department asserts whenever Congress asks for information about ongoing criminal investigations and will typically assert executive privilege and say, "This relates to an ongoing criminal investigation. We cannot comment on it. We will not provide answers to your questions. We will not provide documents."

It was on this basis that Eric Holder, when he was Attorney General, was held in contempt for refusing to provide documents about the fast and furious investigation about guns out of the District of Arizona, and they pushed for it. So I don't know that this will cause the Congressional subcommittee to back down and accept that answer.

In fact, Joyce Vance wrote about this in her Substack, Civil Discourse, which I recommend everybody for excellent reading. You can find it online for free or subscribe if it moves you. But she wrote about this about this very standard process of asserting executive privilege when this happens. And she and others have speculated that this may all be subterfuge for holding Merrick Garland in contempt or even impeaching him because they know this as well as anybody does.

So this is theater. This is a charade, and it is just so that when DOJ inevitably refuses to comply and provide documents and witnesses in response to these questions, then, they'll be held in contempt or impeach. So watch this space and see how that plays out.

Thank you for listening to #SistersInLaw with Kimberly Atkins Stohr, Jill Wine-Banks, and me, Barb McQuaid. Joyce will be back next week.

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

Kim:

This transcript was exported on Jan 14, 2023 - view latest version [here](#).

I think the title of this episode should be Let a Sister make Some Cash.

Jill:

No.

Barb:

Yeah, that's good. And Sister has to be spelled S-I-S-T-A.

Kim:

S-I-S-T-A.

Barb:

We have an organization at our law school called Race Sister No Quitter, and it's-

Jill:

Oh wow.

Barb:

... [inaudible 01:06:38] organization.

Kim:

That's a good one.

Jill:

Fabulous. That is excellent.

Kim:

I haven't heard one before. I feel like all of the Latin phrases have been done. That's a good one.

Barb:

I know. Isn't it good?

Jill:

I love it. That's one of my favorites I've ever heard.

Kim:

Oh, the sister speaks for herself.