

Barb:

Well, I recently cooked a soy glazed salmon with broccoli, something I never thought I'd be able to pull off, but that's just one of the more than 35 recipe options available from HelloFresh every week. Get 21 free meals plus free shipping with code SISTERS21 at [hellofresh.com/sisters21](https://hellofresh.com/sisters21). You can also find the link in our show notes.

Kim:

Welcome back to #SistersInLaw with Joyce Vance, Jill Wine-Banks, Barb McQuade, and me, Kimberly Atkins Stohr. Today, we will be discussing a bombshell report about the Durham investigation into the origins of the Russia probe. We'll also talk about the special agent in charge at the FBI in New York who got a little too chummy with the Russians. Of course, we'll discuss the charges that were brought in the really horrific case of Tyre Nichols. As always, we look forward to answering your questions at the end of the show.

But before we get started with that, something that's been on my mind and actually made me think of you guys as people who write things and teach things, this whole Chat GPT situation, basically this bot that's smarter than everybody, it can pass the bar exam, it can graduate from Wharton, it can pass medical boards. I just wanted to know what you guys think about this. It's a little worrying for me as somebody who makes a living writing things that the bots are taking over the world. It's like a new episode of Black Mirror, but what do you think about it, Barb?

Barb:

Yeah, I have the same thought in academia. This is all the talk. Everybody's concerned to have the students all figured out a way to ace all of our exams and so there is some thought going into that. It's a great tool. All tools are great, but all tools can be abused. I actually was just playing around with it to see if it could pass an exam. I know you said it could pass the bar exam, which is multiple choice. The multiple choice portion. Law school exams tend to be these kind of crazy hypotheticals where students have to analyze the facts and apply it to the law. I put in what was the subject of an exam I did about two years ago and I typed in, is Alec Baldwin guilty of manslaughter? I had students, it was actually my final exam two years ago when that incident happened on the Rust set.

Kim:

Wow.

Barb:

Because it forced them to analyze mens rea. Is he guilty in of what? It actually came back. It was stumped because it said, I am sorry. I was not able to find any evidence that Alec Baldwin was charged with or convicted of manslaughter, but my data only goes back to 2021. That's the trick. You've got to ask them something recent, although I'm sure that's going to change and going to improve. It's fascinating. It's amazing. I've talked to students about it. They say that it can draft a pretty good letter. It can write up a contract.

Kim:

Oh, that's bad news for the lawyers out there. What about you, Joyce, do you think that it could pass one of your exams?

Joyce:

Well, I'm going to have to make a confession here. I'm a little bit less serious than Barbara McQuade. I know that comes as a shock to people who know both of us. Instead of playing around with my law school exams, I instead asked it if it could write a lifetime movie plot. I actually got a really good plot and I started asking it question. I got a paragraph that was pretty legit. And I was like, what happens if she goes to Quinbrook Portugal to take a job at the university? Then I got a paragraph of the plot there. It was really, really good. I think scriptwriter should be very concerned.

Barb:

Wow. Did it involve a sophisticated city woman who ends up in a small town by accident and meet some hot dad who is widowed with an adorable daughter? Because that's like the plot of everybody.

Joyce:

You know that's actually pretty close. I should go. I printed it out, but that's not bad, Barb. Good call.

Kim:

We know what Barb does in her free time.

Barb:

Yeah. Yeah.

Kim:

What about you, Jill?

Barb:

I've heard the others talk.

Joyce:

You've just outed yourself, girlfriend.

Jill:

The only thing I've taught was trial practice and because that involves standing up and talking and doing responding live, I don't think it's going to interfere with trial work. But I started thinking, could it have written my book? Could it write Barbara's book? That's pretty scary. I don't know. I think we need to learn how to harness it in the proper way. Obviously, academics are going to have to learn how to review student work to make sure that it's actually them doing it. On the other hand, if this is how we do things, maybe if they are good users of this particular app, then that's what matters is that they can use it properly in their law practices even. I don't know. It seems like it's taking away the humanity from a lot of things though.

Kim:

It's literally doing that. I mean, I'm a little alarmed. Even there was an announcement that I saw recently that BuzzFeed is going to use it for their quizzes and stuff, not to replace actual people, but that's where it starts, right? When you talk about harnessing it, that seems like that worries me as a journalist, and so

I hope that people do realize that the humans behind the work that we all do are an important part of the component.

Barb:

At what point do we reveal to our listeners that we're all just a big chatbot? Oh, were we not supposed to say that out loud?

Joyce:

Shhh, Barb.

Barb:

I do want to highlight one other thing before we get started, if I may, Kim.

Kim:

Sure.

Barb:

I noticed that each of us has our little names in our little Zoom boxes here. Mine says Barb, Joyce says Joyce, Jill's says Jill Wine-Banks because you can't refer to her without the whole name. She's sort of like Charlie Brown. Instead of Charlie, so he's Charlie's always Charlie Brown, Jill's always Jill Wine-Banks. But I do notice that Kim has thrown in a little witticism and her name, it just says, has classified documents.

Kim:

Well, everybody does. I don't want to be left out. It's the trend, right?

Barb:

Very right, very good.

Jill:

Every past president, living past president except for Jimmy Carter and every past living that vice president has now been asked to search for documents they might have at home.

Joyce:

Jimmy Carter has revealed that he actually had classified documents that they returned to the National Archives, right?

Jill:

Right.

Barb:

Yeah. He already gave them back some so yeah.

Kim:

Literally everybody's doing.

Jill:

But the reason he wasn't asked was because he's the one who signed the Presidential Records Act. It wasn't a law until after he signed it. It doesn't apply to him. It didn't go into effect until after he was president. They couldn't use that as a grounds for saying, do you have presidential records? It's important to note the presidential records includes non-classified information as well.

I love having a manicure every week and it's really time consuming and expensive. But I've heard about Olive & June and I'm wondering if that would be a way to save time and money. What do you think, Kim?

Kim:

Absolutely, Jill. I save both. I haven't been to a salon in a minute, but I always have a fresh manicure and pedicure with Olive & June that I do myself at home. Nothing is better than giving yourself the perfect home manicure with Olive & June. They have everything you need for a salon, quality manicure in one box, and you can customize it with your choice of six polishes from among many. We love how their polish doesn't chip in last seven days or more. I get closer to two weeks out of nine. When it comes down to it, you're getting great savings because it breaks down to just \$2 a manicure even less from me.

Joyce:

Not only do you get salon worthy nails at home with Olive & June, you'll immediately notice the difference you get when you craft your perfect nails with their mani system. That means no appointments, that's my favorite part, no traveling to find a suitable salon, and it saves you a lot of money when you put your nails on your own schedule. Your friends, family, spouses and coworkers will all be very complimentary. I wouldn't think of using anything else before going on air. Plus they have amazing looking press-ons that go on quickly. They look real. They last for a long time and they have any size you can imagine so you know you're going to get the perfect fit.

Kim:

That means a non-damaging mani in less than 10 minutes that go on much better than with gel. They're even an Allure Best of Beauty winner. With their quick dry, you'll only have to wait a minute and can feel confident knowing they'll last for five or more days with only one or two coats, so visit [oliveandjune.com/sil](https://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/S-I-L](https://O-L-I-V-E-A-N-D-J-U-N-E.com/S-I-L) for 20% off your first mani system. You can also find the link in our show notes.

Joyce:

In 2019, in a seeming response to the Mueller investigation and stories about the Trump campaign colluding with Russia, Bill Barr commissioned his own investigation. It was led by a widely respected, at least up until then, career guide named John Durham. He was Trump's United States attorney in Connecticut and the mission was to dig into his and Barr's shared theory that the Russia investigation was the result of a conspiracy by intelligence and or law enforcement agencies. Before he left office, Barr converted Durham to special counsel status, which is largely why he's still with DOJ today, but he's back in the news. Jill, I thought we would start there. I really thought we had heard the last of the so-called Durham investigation, which wasn't particularly productive. What did he accomplish and why is he back in the news in the last 24 hours?

Jill:

That's good question. What did he accomplish? Hardly anything. He did manage to get one guilty plea and to bring two indictments, both of which resulted in acquittals, and even the guilty plea was from a former FBI attorney who had altered an email as part of his application for a FISA surveillance warrant against Carter Page, and he ended up not going to jail. He had 400 hours of community service and a year of probation. The other two were really weak cases that were presented. One was particularly interesting against an attorney named Sussmann, who was probably only indicted because at one point he had some vague connection to Hillary Clinton and that's why he was indicted. Why is he back in the news? Why isn't he gone? From our perspective, there seems to be nothing to what he was originally assigned to investigate is because the New York Times did some amazing reporting.

Charlie Savage, Adam Goldman and Katie Benner have a front page New York Times piece that really spells out what happens when you misuse the Department of Justice and things like this. It reports things like the Attorney General meeting with this special counsel who was supposed to be independent. That was the reason he was appointed. But they were meeting and sharing information about the investigation, having dinner and scotch in the Department of Justice, which I find, I love that image. Just picture it, guys. It's really good and clear. They were using really conspiracy theories as a predicate for proceeding on this at all.

At one point, which we are now learning way after the fact, it got converted into a criminal investigation because the only evidence they ever gathered, they went to Europe together, Barr and Durham, which of course is the exact reason why he was supposed to be independent is undercut by them flying to Europe together. The only evidence they gathered was from Italy, some intelligence about financial wrongdoing by guess who? Donald Trump, not by anybody that they wanted to find evidence on. My big question now is what's happened to that information? Has there been a thorough investigation of it? Is there going to be any cases brought against Donald Trump from what the Durham investigation uncovered? It's great reporting and it's really a bombshell.

Joyce:

Yeah, it really is something else, and it seemingly just came from left field. Barb, in the report, the time says that the Durham inquiry became, and I'm going to quote from the piece, roiled by internal dissent and ethical disputes. You and I have previously discussed the fact that there was a woman named Nora Dannehy who had worked in the Connecticut office for a long time, longtime colleague of Durhams. He brings her back from private practice to get involved in his investigation and then she resigns with little warning. We had discussed what we might make of that. What did you learn from this reporting that sheds light on what we had really conjecture about in the past?

Barb:

Yeah. It's so interesting to read this report because it does confirm some of what we thought, but provides more details about the circumstances. Nora Dannehy appears to be someone who is a career prosecutor, very ethical, wants to do things by the book. In something like September of 2020, so shortly before the 2020 presidential election, and John Durham wants to do something that is really quite unusual. That is to issue some sort of interim report about what they have found so far, which is a very unusual thing for a prosecutor to do. I mean, really an unheard of thing for a prosecutor to do. There's even a policy at the Department of Justice that shortly before an election, prosecutors should refrain from taking investigative steps so as to avoid interfering with the election outcome. They don't want to taint the reputation of the candidate in the eyes of the voters when they're not yet in a position to defend themselves.

It's not that which would be a legitimate investigative step, sometimes it has to happen anyway. He kind of wants to go out of his way and do something that's totally discretionary and gratuitous and unprecedented, which is to file a public interim report, and she objects to that. She objects to it very strongly, and ultimately it is that over which she resigns and she writes a memo back to the whole team about why this is inappropriate, and then she resigns as a result of that, but Durham did back down from that and did not issue an interim report. You may remember that it sounded like it was coming and then it didn't, and so I think we have Nora Dannehy to thank for that. The other thing that comes out in this is that there were some other members of the team, also career prosecutors who strongly advised against filing that indictment against Michael Sussmann.

You remember, this is the one where there was a very quick acquittal for making false statements to the FBI when he came in and reported information that he heard that was accurate. There was some concern that what he lied about was that his firm, he failed to disclose that his firm represented Hillary Clinton. But even the witness who testified about that from the FBI knew that it was common knowledge that law firm represented Hillary Clinton. That was the indictment. Remember, it's like 27 pages long. It's all about Hillary this, Hillary that, and it really reads like an effort to suggest that the Russia investigation began as a result of some coordinated effort by Hillary Clinton, which we know it's not from the Inspector General's report that it began because of the statement by George Papadopoulos to an Australian diplomat that they had access to stolen emails stolen by Russia from the DNC and the Clinton campaign.

And so a second round when they filed this indictment, two more prosecutors resigned from the team and they talk about actual shouting matches over this. I don't know about you, Joyce, but when I was in the US Attorney's Office, there were times when reasonable minds would disagree about what was appropriate in a case and we would hash it out respectfully. Sometimes people felt strongly about a position, but at the end of the day, we made the best decision possible usually by consensus. If you couldn't reach consensus, there was a leadership chain of command and the leader got to decide. As long as it was ethical and moral, even if you might disagree about whether it was the appropriate charge, everybody supported that decision and you moved on. The idea, how outrageous must it be for them to say, get into screaming matches and leave and say it was unethical. But I think these two steps that we are aware of, the idea of this interim report and also the filing of the Sussmann indictment. I can see why career prosecutors would object strenuously to both of those things.

Joyce:

We have talked so much in the context of the January 6th committee report about the politicization of the Justice Department and the risks that are entailed in that. This is such a reminder that it wasn't just at the point where January 6th happened that the Justice Department was at risk during the Trump administration, that it was really in play throughout that administration. And here's an absolutely glaring example, trying to use the Justice Department to go after your political enemies, because Barb, I think you're dead on the money about the Sussmann indictment. I remember reading it and thinking, wow, who is the defendant here? Is Hillary the defendant?

Barb:

Right.

Joyce:

I mean, really it was just appalling. Now, that we know more about the motivations, it really makes you wonder if somebody's coming for Bill Barr's license to practice law. I think that that's long overdue. And

so there's an interesting tidbit in the reporting, a lot of interesting tidbits. I think this should be mandatory reading for American citizens. But Kim, the one that I wanted to talk with you about, Jill had referenced this and it's utterly fascinating. At one point in this investigation, criminal allegation surface, Durham is not conducting a criminal investigation. He's looking into the origins of Crossfire Hurricane, but he gets a tip that's criminal.

Kim:

Right.

Joyce:

And certainly it's about Hillary Clinton, right? Isn't it?

Kim:

Well, I remember when there was a news bulletin at the time that came out and said, oh, there is a criminal element to this investigation. And we were all like, oh, oh, who are they going to charge? Is it somebody in Hillary's orbit or something? Then I thought that it ended up being, oh, it's about Sussmann. Well, turns out when Bill Barr and Durham were in Europe. But by the way, what a sweet gig, right? This investigation into the league takes you to Europe. That's a sweet gig. Anyway, they're talking to Italian officials and they're asking about the origins of the Russia probe, and they're like, well, I got nothing for you on that, but I do have something else. We have a tip for you that involves some potentially criminal financial dealings that were done by one Donald Trump.

Bill Barr is like, oh, oh. The tip was apparently strong enough that they knew they had to investigate it, but rather than giving it to an investigator during the normal course, he gave it to Durham even though that had absolutely nothing to do with the origins of the Russia investigation, and apparently Durham looked into this. He never filed charges. We don't know how deeply he looked into it. There is still a lot of unanswered questions, but can you believe it? They were there trying to find some dirt for Donald Trump and ended up getting dirt about Donald Trump.

Barb:

Which you love to hear that conversation so we're here to hear about the dirt, about how this whole Russia investigation began. Well, yeah, we got something, we've been waiting for you to call, here it is, it's financial crimes by Donald Trump. Oh, nevermind.

Kim:

Oh, man.

Joyce:

I just hope that...

Kim:

Can't make it up.

Joyce:

... there's not a statute of limitations problem and that those allegations can be properly investigated. I mean, unbelievable. Y'all interim reports bad, but at the end of a special counsel's tenure, they are supposed to submit a report to the Attorney General, right? We all know that. We lived through that with Bob Mueller. Bob Mueller, as you will recall, did not make the entire report available immediately. Instead, kind grandfatherly Bill Barr saved us all from reading the Mueller report and issued a summary that clarified it for us. It explained to the American people that Donald Trump had been completely exonerated. Of course, it was also completely a fantasy.

I mean, Bill Barr tried to sell the American people of Bill of Goods that had nothing to do with reality, because in fact, Mueller uncovered serious allegations of obstruction of justice and indicated he could not determine whether or not there was a conspiracy between Trump and the campaign because so many witnesses had refused to cooperate and there was information that had been inaccessible for them. But that aside, let's talk not about the substance of Bill Barr and how he handled that, but the process, what happens when John Durham is done? Do you think that the full report gets released? Do you think that Merrick Garland will issue a summary that I'm sure will be more accurate than Bill Barr's was? What do you see happening here? Kim, I'll start with you on that one.

Kim:

Yeah, I don't know. I don't think what we'll see is the Russian investigation where you'll have Garland coming out and misrepresenting what it is. I just hope that it is presented clearly and fairly to the American people. I hope that Bill Barr isn't somewhere on the sidelines trying to contextualize what it is before it comes out either on Fox News or wherever, which is a big possibility and I'm worried about that. But I just hope, I think this is an opportunity for Merrick Garland to speak to the American people clearly and plainly about what it is and what it isn't.

Joyce:

Jill, what do you think Garland should do?

Jill:

I think there's a lot of questions here. One is the person who writes the report is Durham. At this point, someone who used to be considered a straight shooting career prosecutor, if you read and I join in saying everyone listening should read that New York Times reporting, anyone who reads that is going to have no respect for Durham. They will think that he has been sucked into the fantasy world of Donald Trump and Bill Barr and whoever Bill Barr is who tried to redeem himself by saying that he told the president that the election wasn't stolen and that it was BS to even think that it was, the real Bill Barr is the Bill Barr that we see here traveling to Europe to try to get dirt that would help the President at the time, Trump. I don't expect Durham to actually write all the things that we would like to see in the report, which is that there was no they're there, would be the first part, and there's nothing about the foundations of the Russia investigation that it was in fact legitimately predicated.

I doubt that he's going to put in about the criminal allegations that he picked up in Italy, and he's not going to show us what he investigated because he probably didn't investigate it. So then the question for Garland is does he have a statement about how surprised he is at how inadequate the report is, or am I wrong? And Durham will actually treat this fairly and put forth that there was no problem with the Russia investigation and that there were allegations credible about Donald Trump. I don't know. It's going to be hard, but Garland is going to be in a hard position if he gets an inadequate report and he has to put it out there. I do not for a minute think that he would pull a Bill Barr and try to falsely summarize it as Bill Barr did with the Mueller report.



Joyce:

Barb, another problem that Garland might face is if Durham, like he did in the assessment indictment, writes a lot of stuff about people who don't get charged. How does he handle that? Would that part of the report get released? Say Durham investigated people and turned up stuff that as you like to say is slime but not crime. Does that all then get exposed by DOJ or can Garland redact?

Barb:

Yeah, I think this is going to be a really tough call for Garland. He's going to have to read it obviously and make a call. But I think his default instinct is going to be release the whole thing. That's the point of having a special counsel. You get this independent look. Everybody's transparent, everybody gets to see what's there and so I think that will be his presumption. But I've been doing all this research on disinformation for my book, and a key way of validating disinformation is by getting a credible voice to repeat it. And so if it's in there and Merrick Garland lets it out and it's a bunch of false claims or innuendos and half-truths and other kinds of things, as you say, the excessive verbiage in the Sussmann indictment about Hillary Clinton, now that's out there and you know that the right wing ecosystem will repeat it as if it's true.

And so there is a real risk of tainting the public. I also think this whole idea of investigating the investigators is really damaging to public confidence in investigators. Every time there's an investigation, that's what we have inspectors general for, to make sure that our investigators are doing their jobs properly or all government officials doing their job properly. When you appoint these political appointments to come in and review what somebody did, I worry that there is an agenda there. For example, Joyce, one of the things I would worry might show up in here are some of these presumptions that William Barr had when he was working with John Durham. Did you read the part where at the beginning of it, he calls Paul Nakasone in, he's the head of NSA, the National Security Agency. He calls him in. This is a guy who does all the Signals Intelligence, and he's like, reads him the [inaudible 00:28:10], you are going to give him everything he needs.

You're going to give him access to all the classified information he needs. He said, all the intelligence committee were just bewildered, like what? Number one, you're not my boss. I have to make my own assessments. And number two, what makes you think I won't be cooperative? They said it was just like the intelligence officials were just bewildered by all this. They even said, I don't know what the phrase was, but I can guess that Barr used a vulgar sexual term to say, you did this to us and don't think we're not going to do it back to you, and the intelligence guys are just looking at each other, like what's he talking about? This guy's kind of... I worry that those are some of the undertones that could come out in this report, this sort of paranoid deep state sort of idea that will get some validity if it is repeated and issued in this formal fancy looking report.

Joyce:

Yeah, so I totally agree with you about that, Barb. And I think that the issue here for Garland is going to be how do you do the right thing and maintain DOJ's credibility at the same time? DOJ goes to the extent in indictments of not naming people who aren't charged, right? If you're not getting charged, DOJ doesn't smear your reputation. That's one of the justifications for not revealing information about ongoing investigations. I think Garland has to redact stuff about people who don't get charged, but I think it's critical that he take an additional step. In my one effort to write in a scholarly vein, I wrote an essay for the Yale Law Journal before the 2020 election advocating for DOJ to engage in what I called radical transparency for DOJ, which is to say normal transparency for anybody else.

But because DOJ can't talk about the substance of the cases, I think that they have to talk about process and explain to people why they do what they do clearly and frequently. DOJ always assumes people know newsflash Merrick Garland. People don't know. You've got to explain it over and over again. I think here he should explain why he's redacting, talk about protecting people, explain that there's nothing nefarious going on, and it's such an opportunity to build trust with people of good faith. There's nothing that you can do about people who don't have good faith. Really the only people he needs to talk to are people of good faith on both sides of the political aisle. If he does that, it's going to be hard for him either way, he's going to take political hits. If he does that, he'll have done the right thing here.

Jill:

I think if we learned anything from the Starr investigation, Ken Starr was the reason for a new independent counsel law was because of how he abused the public reporting. And that could be a fear with Durham and would certainly justify Garland in redacting and protecting the innocent.

Kim:

Hey Jill, my hair feels so good because I've been using a knit cap, which curly hair people generally know that's a no-no. But with Kitsch, I have this really cute bonnet that I can wear indoors, outdoors. It's super cute and it protects my hair. Have you heard a Kitsch?

Jill:

I have because I have their heatless curling set and it's really a quite amazing thing that you can sleep in, and they even show people going out in public with it. I'm not sure I'm quite ready for being in public with my hair set, but it is terrific. This year, 2023 is the year of good, feel good, do good, and being good to yourself. Luckily, Kitsch makes feeling good simple with luxurious game-changing essentials that beauty enthusiasts swear by, whatever your budget, your skin type, your hair type, Kitsch believes you deserve a little indulgence at affordable prices, morning, noon and night. It was started in 2010 by selling hair ties door to door. By the way, their scrunchies are really good and silky, literally just hustle and a dream, it's one that grew, and throughout Kitsch has been a self-funded female founded company and now carried in over 20,000 retail locations.

Joyce:

We've gotten hooked on some of their best sellers, especially while we rest up for a new day. Their satin pillow cases, bonnets and eye masks, all vegan and cruelty free are great for your hair and your skin while you sleep. We love their shampoo and condition bars. It's bars. It's bottle free beauty baby so it's great for the environment. With Kitsch's heatless satin curling rollers, you can say bye-bye to heat damage. There are TikTok videos of people throwing away their \$600 curlers for this. Kitsch's price only \$18. So get inspired. Kitsch also has quick dry hair towels, classic hair ties and scrunchies and so much more. I am really enjoying my bonnet and I'm about to get some pillowcase. You'll love Kitsch too.

Jill:

I can't wait to try the pillowcase, but I'm swearing by this heatless curling thing because it really does save your hair from heat damage. When you think about traveling, it's one lightweight, big thick roll that you roll your hair around and that's all you'd have to travel with. No more electric curling stuff. It's really a great idea. Right now, Kitsch is offering you our listeners 30% off your entire order at [mykitsch.com/sisters](https://mykitsch.com/sisters). That's right, 30% off anything and everything at mykitsch spelled M-Y-K-I-T-S-C-

H.com/sisters. One more time, mykitsch.com/sisters for 30% off your order. You can also find the link in our show notes.

Barb:

This week, a former FBI official in New York was charged in two indictments with some serious national security implications. First, Kim, who is this guy? What do we know about him?

Kim:

His name is Charlie McGonigal and he was the former head of Intelligence of New York's FBI office. That's the biggest FBI office in the country. There, he oversaw really high profile sensitive investigations including those involving say, Russian oligarchs and the counterintelligence and counterespionage. He did that from 1996 until he retired in 2018, and that capped off a 22-year career with the FBI. I think that's why so many people who I know, some of my colleagues that I know from NBC and elsewhere, my work as a journalist who knew him, I don't know him personally, were really shocked. It was sort of a bomb show when it landed because it was someone that they did not expect this kind of news to come from.

Barb:

Yeah, really shocking. Let's talk about each of the two indictments because they're slightly different. There's one out of New York and there's one out of Washington DC. First, Joyce, let's talk about the New York indictment. What is he charged with in that one?

Joyce:

Barb, this situation is really interesting because there are two indictments more or less out of the blue. I mean, it seems clear that there were maybe some inquiries going on. McGonigal had hired his lawyer, Seth DuCharme, who had previously been both in Washington and in the US Attorney's Office in the Southern District of New York. But despite what was going on, low key under the radar screen, for most of us, I think this news came out of the blue, two simultaneous indictments.

The first one is this one in New York that's talking really about behavior that he engages in after he leaves the FBI, but it involves violating something he would've been involved in enforcing when he was at the FBI, the maintenance of economic sanctions against hostile actors like Russian, Russian oligarchs like Oleg Deripaska, who he knew because he was personally involved were on these sorts of lists that prohibited activity with them.

He ends up along with a co-defendant acting on behalf of Deripaska despite the fact that he was under sanction in a way that really is inimical to the interests of the United States. I mean, it's hard to overstate how shocking these charges are because of the nature of McGonigal's work. This isn't an FBI agent who left the bureau and then got pulled into something with old contacts. This is someone who's accused of conduct that he would have known from his time in the bureau was prohibited, and not just that, also very dangerous to our country.

Barb:

Yeah, Deripaska in particular, he's one of these oligarchs, so he's close with Vladimir Putin, but his name came up in the Paul Manafort case. Paul Manafort worked for him. Then you may recall, there was the appearance in some of their communications that Manafort owed him a lot of money and they made

those communications back and forth about the big jar of caviar and all that stuff. It's really interesting that of all the oligarchs, it's him.

Joyce:

Manafort shared campaign information right on the Trump campaign with Deripaska linked individuals, so lots of reason to be concerned here.

Barb:

Yeah, also, Joyce and Jill, I guess I'll ask you this too. I don't know if you've had this experience, but I don't want to smear Mr. McGonigal per se, but so often in cases when you charge crimes, you charge the ones you think you can prove. But you might have three or four other episodes that you're worried about that you're continuing to investigate or you just can't put the proofs together. I worry that it's even deeper than what we see. Well, let's talk about the second case, the DC case, and then maybe we can discuss the significance of these. Jill, can you tell us about the charge out of Washington DC?

Jill:

Yes, it's equally serious. It involves a time when he was still with the bureau and that makes it in some ways even worse. It involves Albania. Kosovo travel to Austria. Again, he was traveling a lot, and he was lying about who he was meeting with. He was lying about where he was going. He was lying about who paid for his housing. As an FBI agent, he has to file annual reports or periodic reports actually so do a lot of other federal employees, and he just flat out lied and so he's charged in DC with false statements and concealing by omission. He's got one charge for not reporting something, some charges for false statements saying that he went for different purposes and one for destruction, alteration, or falsification of records in a federal investigation.

All of his charges in DC have 20 year felony sentences attached to them so he could be put away for the rest of his life, even with sentencing guidelines being less with this many serious threats to the national security. This is really major, and the charges are really serious. It's a very completely written indictment in DC but it's a little hard to follow because it says person A and person B. But if you read it, you really get the sense of he was not working in the best interest of America, that's for sure. This is while he was an FBI agent in charge of counterintelligence for the largest field office of the FBI.

Barb:

Yeah. That reporting says he took something like \$225,000 in cash.

Jill:

Yes.

Barb:

He met with the Albanian prime minister, really, really frightening.

Jill:

Those were the details he left out and he took the 225, 80,000, 60,000, 65,000 in cash. Of course, they lied about what the source of the money was. I'm sure that when you mentioned that there are probably other crimes, what about income tax? Did he report that \$225,000 income while he was an FBI agent? I don't think so. It seems to me there are definitely other crimes that he could be charged with.

Barb:

Kim, Frank Figliuzzi, who is a friend of ours, he's the former assistant director for counterintelligence at FBI headquarters, has written a piece about this, about the damage that could be done and that the FBI will have to undergo a damage assessment. What are the kinds of damages that the FBI will be looking for in a case like this?

Kim:

Well, it's clear just from the start that whatever guardrails that were supposed to be in place to ensure that our intelligent services are not susceptible to this kind of influence aren't working. I mean, this is really, really gobsmacking that what he did after what he's alleged to have done both after he left the office and during, that's a really big problem. Double agents are fun when they're in a movie but not in real life and clearly there is a problem here.

One thing though, in Frank's piece, and we'll link it in the show notes because I think it's really interesting, a point that he makes that I think is important too, is that one charge that wasn't made so far anyway, which is espionage, which suggests that there is no, at least no chargeable evidence that he shared sensitive information or documents with foreign leaders, and that's important too.

I hope it is the case that he did not, I think there's still a lot more to this that we don't know because new details keep coming out. But in that case, it would be even more serious if he did that, and that's not what any of the charges are so far so we'll have to keep monitoring this.

Barb:

Yeah, I mean, I think I'd want to see every classified document he looked at and wonder whether source's named there have been outed or methods of collection have been disclosed.

Kim:

Serious stuff.

Barb:

It's such a sensitive position. It's very concerning. Well, Joyce, one of the things that we are hearing now is never let a good scandal go to waste. Donald Trump and his supporters are alleging that this case means that the Trump Russia investigation was a hoax. There you go, folks, proof, it was a hoax. Is there any merit to that claim?

Joyce:

Well, of course, they're saying that, right, but it's probably meritless. It doesn't make a lot of sense. Trump has always been obsessed with Crossfire Hurricane, hence our earlier conversation. He always wants to disprove. I mean, he's almost obsessively involved in disproving any sense that Russia helped him win the presidency in 2016. But look, objective investigators who've looked at the origins of Crossfire Hurricane like the DOJ IG, have included that investigation was properly predicated. There were some issues with some early FISA coverage of Carter Page and folks have concluded whether rightly or wrongly that that was a mistake. But that's how the IG viewed it as to the investigation itself properly predicated. What would have to be at play here for it to make any sense would be the notion that McGonigal would have been involved in holding something back, that something that should have been investigated didn't get investigated.

Of course, that's pure speculation. There's nothing in these indictments that say that he did that in this case. There is an allegation in the Albanian defendant that he was involved in monkeying with who was and wasn't charged in criminal cases. But once you know that Crossfire Hurricane was properly predicated when it was opened, then the only thing McGonigal could have really done would've been to keep things out of that investigation, and that of course is not the argument that Donald Trump wants to make. He wants to make the argument that the case never should have been open in the first place.

Barb:

But if you want to speculate, there is room to suggest that maybe the other things went the other way, right?

Joyce:

Yeah.

Barb:

I mean, if he's friends with Oleg Deripaska, did he keep things out that might have helped Robert Mueller reaches conclusion?

Joyce:

Absolutely right. I mean, I always go back to the executive summary that Mueller wrote to the first part of his report where he says, there's a lot of information we couldn't get, people didn't give it to us or stuff was kept out of the country. I can't quote the sentence, but it says something like, have we had more access to information, we might have viewed events that happened differently. I think that's the most haunting statement in the entire Mueller report, and there's a question here, right? Because there were always rumors that everything that happened in 2016, Jim Comey's announcement of the decision not to charge Clinton while he damaged her, that was a result of concerns that there might be leaks out of the FBI in New York, the unit that McGonigal ran. Either this is just we live in the world's craziest timeline or there is maybe other shoes here that could drop. I don't want to get too far down that road. I hate conspiracy theories, but sometimes conspiracy theories are true.

Barb:

Well, it's certainly an interesting time for the FBI, Jill kind of yet another black eye for the FBI, with not anticipating the attack on January 6th and maybe minimizing the militia movement, Jennifer Rubin of the Washington Post is very critical of the FBI's director, Christopher Wray. Wray arrived at the FBI in August 2017, and these crimes are alleged to have occurred between August of 2017 and September 2018. They're on his watch, but of course, it's a large organization. Is it fair to blame Chris Wray for this conduct?

Jill:

It may not be fair to blame him for something that started the day he got there, but it went on for a year. So that raises the question of isn't he responsible? But I think more importantly in Jennifer's piece, which we should put in the show notes so everyone can read it. She also points out this isn't his first misstep, and I think possibly the more important one is his failure to pay attention to the intelligence that the FBI had for January 6th, that there was going to be violence and to prepare for that and to take action to prevent what happened at the Capitol on January 6th. Then secondly, to not do an

investigation after the fact to find out why that had happened and that they didn't take action on it. I think for those two things, it is absolutely fair to blame him.

That is something that should have risen to the head of the FBI in an internal investigation or this internal failure of one FBI agent. I have to say, reading the indictment, it sounds like they must have been tracking him and bugging him because they have very specific things about dates and times that he had dinner with the Albanian president, the Kosovar officers. Those kinds of things, it just sounds like they either have a really good inside cooperating witness or they were onto him a long time before this. I think Wray does have responsibility that is worth being looked at and might justify President Biden saying, you should be gone. If you look at his past history, he'll go back to making \$9 million a year at his law firm. I don't know that he'll even care.

Barb:

He may be happy, he may be a great relief. These jobs are difficult. It's easy to second guess people, I think. I'm sure he works if 24/7 is a full day every week, I'm sure he works 25/8 or something along those lines. Well, let me just ask the three of you, your thoughts about could you ever do this? Could you be a spy like this? Could you work for the FBI and then share secrets or help out a foreign adversary? I mean, I assume you're all loyal to the United States, and so the answer to that question is no. But what do you suppose motivates someone to do this? I mean, I guess there's some money, but the consequences are so great and the disloyalty that lead to the United States is so enormous. I just have a hard time getting my head around this. Do you have any theories as to what motivated him to engage in this kind of conduct?

Joyce:

Sometimes people get compromised and blackmailed, other times, as you say, Barb, they're just mercenaries, right? They just want to make money. It's interesting that here, he's involved with two sort of separate entities, right? Albanians on the one hand, Russians on the other. I think that there's the insinuation, although it's not charged, that there was some conversation about him having conversations on behalf of Bosnian interests with people at the United Nations. It looks like he might have just been up for the highest bidder. There is interesting reporting this afternoon in the Insider that suggests that this wasn't the only aspect of his life that was unsavory, that he in fact had an affair while he was still at the FBI with a woman who he told he was no...

Barb:

It's always a woman, isn't it?

Kim:

Oh, man.

Joyce:

Always. Always. Right. Told her he was no longer married or that his marriage was about to end.

Kim:

Well, there you go.

Joyce:

To the extent though, where he knew her dad, where he would go to her house to pick her up with her dad there. The last line of the reporting is the dad saying that after it was all over, he actually called him and apologized for the way he had behaved towards his daughter. I think that there's like a weird personal side show that we're going to see in the testimony if this ever goes to trial.

Barb:

Yes, often an extramarital affair involved. There's usually something that causes somebody to need to hide, make secrets in these kinds of things.

Kim:

Or to get sloppy with it. That tends to be how they get caught, too.

Barb:

Yeah, you get away with it for too long, you get a little arrogant, maybe. Well, it's an interesting case. We will keep an eye on it.

Jill:

I just got some new toppers for my Pair Eyewear and I got a green sparkly one and a red sunglass one, and it is so much fun. I cannot tell you how much I enjoy wearing glasses for the first time in my life. Have you tried it, Barb?

Barb:

Oh, I have, I have a Pair that has the Detroit Tigers on it, and I have another Pair that sort of looks like a globe. If you took a globe and cut it up into little pieces and made glasses out of it, it looks sort of like that. But I've always loved maps and globes, so it's my global look, and the new year, Jill, is a fresh opportunity to redefine who you are, but you have the freedom to experiment with how you express yourself all year. With Pair Eyewear, you can switch up your look in a snap anytime with affordable base frames and customizable magnetic top frames in hundreds of styles.

Kim:

Not only are they affordable, but they have incredible looks for any type or mood. You can match your top frames for any occasion. I like to go hiking. Sometimes it's really sunny if you're outside of the trees. But then you go into the forest and the woodsy area and it gets really dark and it's so convenient. I just pop the sunglass toppers off, put in my pocket until I get back to a sunny spot and you pop them right back on. It's really, really convenient and they're so easy to switch out, say sun tops for blue light lenses, or a bold move to solid colors for neon, sparkles, classic patterns like tortoise and woodgrain and more. They have so many collections. Even Marvel and Harry Potter, if that's your thing, plus lots of limited edition designs. It's hard to keep yourself from picking less than a dozen.

Barb:

Yeah, there's some really interesting ones, you can explore around and look at them. I've got my eye on the technicolor tortoise, which sounds pretty cool to me, but especially given the usual price of frames, it's no wonder most people stick to wearing the same glasses pretty much every day. That's why we love Pair. With Pair, you can break up the monotony without breaking the bank. You can choose from a range



of iconic base shapes, starting at just \$60, including prescription, then choose from the hundreds of matching magnetic top frame designs that make it easy to switch up your look.

Kim:

Even better, Pair knows vision is essential. Today, over 200 million children worldwide who need glasses can't get them. And beyond helping you craft a style that's yours, Pair wants to do some good. For every Pair you buy, Pair provides glasses to a child in need. Experiment with who you can be in 2023 with Pair. Go to [paireyewear.com/sisters](https://paireyewear.com/sisters) for 15% off your first purchase. That's Pair, P-A-I-Reyewear.com/sisters. You can also find the link in our show notes.

Jill:

Shelby County District Attorney, Steve Mulroy, announced on Thursday that five Memphis police officers were indicted and arrested on murder charges after they stopped Tyre Nichols for an alleged traffic violation and then brutally beat him. Mr. Nichols died in the hospital a few days later as a result of his beating injuries that the five inflicted. We are recording this at 2:00 PM on Friday, which is before the video of this police stop and beating will be released. The family, their lawyer, Ben Crump and police officials all report that it is painful to watch, that it is inhuman.

Warning all of our listeners that you may want to protect yourself and think about whether you want to watch this. There's also a warning that it could result in severe reaction from the population that could lead to riots. That's something that we need to take into account as well. The police chief in Memphis said that she condemned the police officer's actions as a failing of basic humanity. That's pretty strong language. Kim, could you describe the facts including who Tyre was and the fact that there was an immediate suspension and firing of the police officers?

Kim:

Yeah, well, not quite immediate, but it did happen fairly quickly. Tyre Nichols was a young father. He had a young child, he was a FedEx driver, and he was pulled over on January 7th, he worked the night shift. It was in the evening, it was about 8:00 PM on his "lunch hour". That's when his break occurred, and he often would go to his mother's house during that break and officers pulled him over about a hundred yards away from his mother's home, which I just think about that because from every time his mother passes that spot, that's going to be her reminder. Again, we're recording this before the video is released, but according to the statements by the officers, there was a confrontation of some sort in which Nichols ran away, which I think is important.

He's running away, officer's pursuit, and there was another confrontation, and that is where this beating happened. That was on January 7th. On January 10th, he died. He succumbed to those injuries. After an internal investigation and the Nichols family retaining Attorney Benjamin Crump, the DOJ announced on the 18th of January an investigation into potential civil rights violations. On January 20th, that's when all five officers were fired after an internal investigation by Memphis Police. On the 23rd, the family was finally able to view the body cam footage before it became public.

Jill:

That takes us to January 25th, Thursday, when they were all indicted. Barb, can you tell us about what each of them was charged with and talk about the intent that's needed for those crimes?

Barb:

Well, the most serious crime they're charged with is second degree murder. Not manslaughter or not felony murder, second degree murder, which requires a knowing killing of another person. Really, the only thing higher would be first degree murder, some sort of premeditated killing. I planned this in advance. I went with the purpose and I killed them. Knowingly means I didn't set out that day to kill them, the scene sort of presented itself and there I was, but I knew that the consequences of my action would be death. That's a very high standard and a very serious crime, but there are additional charges as well. One is aggravated assault, which makes it a crime to intentionally or recklessly assault someone with a result of death or serious bodily injury. And so that either means I intended to inflict harm on you, or I knew there was a risk that you would be seriously harmed or killed, and I did the thing anyway. I committed the assault, anyway.

Interesting charge two counts of aggravated kidnapping, and that occurs when there is false imprisonment and the victim suffers a serious or deadly injury. I think what they're saying there is that they did not have entitlement to arrest or detain him. Two counts of official misconduct, which is the statute under Tennessee law when someone intentionally or knowingly commits an act under color of law that exceeds his power. Then finally, another crime called official oppression, which is not a crime I've heard of before, but it's a crime under Tennessee law that says a public servant acting under color of law who intentionally subjects another to mistreatment or arrest or detention when the officer knows it is unlawful or intentionally denies or impedes the right or privilege of another. That's called official oppression. All of those things could all be true at the same time. They could be convicted of all of them. They could be convicted of some of them, some defendants could be convicted but not others. But those are the charges and they're serious.

Jill:

I want to follow up with you, Joyce, with a two-part question. I think, Barb, to the point about the one sort of strange charge about kidnapping, it may be because we haven't yet seen not only the video of the beating, but the police cam footage of what they are claiming, which was that he was driving recklessly and given the time of day and that he was a professional driver for FedEx, I'll be very interested to see what they claim was the reason for stopping him at all. But for you, Joyce, are there federal charges possible and is there a federal investigation underway? Because Barb mentioned about they aren't charged with premeditated first degree murder, what are the defenses that are being raised?

Joyce:

Yeah, so the answer to whether federal charges are possible and whether there's a federal investigation underway, the answers are yes and yes. There are federal civil rights charges that can be brought, a civil rights conspiracy among the five officers to violate Mr. Nichols rights. Some people have suggested that's not the case because the five officers who've been charged are Black. But it's not the identity of the defendants that matter here, it's the motive. When you have police officers acting under color of law, that's what we say when we mean legally that they're acting within their duties as police officers, that is a primary civil rights crime that the Civil Rights Division has jurisdiction to prosecute. Interestingly enough, in his own statement announcing the federal investigation, the US Attorney in Memphis made a point of noting that they had an experienced prosecutor from the Civil Rights Division on their team.

Theoretically, federal charges carry a lengthier sentence, a class A felony in Tennessee, which is what second degree murder would be, carries a penalty of 15 to 60 years. The federal charges could include a sentence that would be up to life imprisonment, even theoretically there could be a death penalty charge. Although Merrick Garland, I think has said as a matter of policy that the death penalty won't be

sought at this point in time. But to Barb's point and the second degree murder issue, it's not premeditated first degree murder. For second degree murder charges, you have to prove either an intent to kill but not premeditation, not advanced planning of some form. You either have to prove that intent or you can prove malice aforethought, which essentially means showing that someone acted with such depravity, with such indifference to human life that it's tantamount to intent.

Malice aforethought includes those two sort of mental states, either actual intent or a depraved heart, and that's what prosecutors in Tennessee will have to prove. Obviously, we haven't seen the video yet. We don't know all of the facts, but I recall that when George Floyd's murderers were prosecuted, there was concern about whether prosecutors would be able to prove that pretty difficult, pretty serious state of mind. The jury in that case did the right thing. They watched the video and ultimately they convicted and believed that the officers did display depraved heart when they acted. It's important though here to have federal charges as a backup just in case there's a problem in the state case for whatever reason, but also because the federal investigation could vindicate civil rights interests that aren't vindicated by state charges.

Jill:

As a follow-up to the reference to the fact that the victim and the police officers are all African American, the defender had an article under the headline, Tyre Nichols murder shows police culture trumps race. It said, some are stunned that such racist mistreatment can be delivered by the hands of officers of color. But what they fail to realize is that belief in the myth of white supremacy has no color. Its practitioners come in all shapes, sizes, genders, races, and ethnicities. Kim, can you talk about that and what we're seeing in this particular situation where it's not white police officers?

Kim:

Yeah, and this is a lesson that I thought, sadly enough, I thought that we learned this in 2020 with the murder of George Floyd in the street in Minneapolis and other cases that have involved police officers of various racial backgrounds. The point here, and I think the problem is when people hear the word racism, even now after all the lessons that we've learned, after all the things that I've written and other people that I know have written and spoken about trying to educate people about this, we think of this idea of, oh, individual one hates individual number two, because of individual number two's race. That is a form of racism. It's a tiny, tiny form. When you're talking about institutional racism in something like policing, that literally has nothing to do with it. It's an institution. When an entire institution is built upon racist premises, racist ideals, racist concepts, it impacts and affects everyone within that institution regardless of their race.

The problem here is that we have policing in America that is built on the assumption that Black people, particularly Black men, are inherently dangerous in some way. That when you see a Black man, even if he's running away, the imperative is to get him, is to apprehend him at any cost, even his life, right? You would think someone running away, that's the opposite of a threat. What's the worst thing? Somebody is pulled over for a traffic violation and they run away? It's a traffic violation. But no, those officers all had, even without time to talk together to conspire, they all had the same instinct, which is to get him, allegedly. I know this hasn't gone before a court of law yet, but that's the idea. When you have a system that has this presumption of threat, this presumption of dangerousness, this presumption of criminality that is imposed on Black men the way that it is, it doesn't matter the race of the officer because they all act on that, and that's it.

Forgive me if I sound frustrated and angry because I am, because we have been talking about this for almost three years now, since George Floyd died. I feel like if anything, we have gone at the very least

two steps forward and two steps back because there was a shining moment that it felt like people in America were becoming aware of how institutionalized racism works, not just in policing, but in all the institutions in our nation, whether it's education, whether it's the financial system, whether it's housing. There was this effort to address it saying, oh my goodness, we're all sitting here locked down in a pandemic. We're seeing George Floyd being killed in the street, and there was this epiphany that these problems were still existing in America in a post Obama America, in America that a lot of people didn't realize this kind of racism still exists and they wanted to do something about it. The ensuing two and a half years, we have seen efforts to call Black Lives Matter a terrorist organization of some sort, when we really saw what terrorism really looks like on January 6th, 2021 at the Capitol.

We have this push to pass laws in states saying that history can only be taught or race can only be taught in an objective manner, which I guess is from the perspective of the white males power structure, not from the perspective of Black and brown people. We can't even tell our own stories and where we exist in this country and our history. It's this pushback against anything that could get at removing the racism in these institutions, and that's why we get cases like this. I'm tired, I'm frustrated, I'm not going to watch this video because I've been traumatized enough as a lot of Black people have in this country, and we already know what's on it. But I'm also just dispirited because there was a time that I thought, hey, we're doing something. We're making changes here. It's awful we've been through some bad stuff, but we'll come out of this better, and I'm not sure that's the case anymore.

Jill:

I hope you're wrong, and that it is the time that we will come out of this better and that there will be some action because we have seen this picture way too many times, including a Black man running away from the police and being killed. I mean, this is not the first episode of that, and the use of deadly force continues to be an issue. Barb, I want to ask you about deadly force, excessive force. When is it allowed for a police officer to use deadly force?

Barb:

Yeah, we've been discussing this in my criminal law class just recently. It's such a sad thing whenever there is another case of a fatality in policing because we all know good police officers who work hard every day to do things the right way. And yet again and again, we're reminded of the frequency of the abuse of that authority. I think to Kim's point, one of the things that is so sad about the last two and a half years is the way that political operatives have used the false narrative of wokeness and other things to divide Americans instead of working to solve problems and improve policing, which I think we all want. We want to be safe, we need police, but we want them to do their jobs in a way that is fair and safe, and instead it's us versus them narrative. But to answer your question, Jill, of course, police may use force under certain circumstances.

They're to use it only when it is necessary, and they may use only force that is proportional. If someone is getting loud with you, that is not enough to shoot them. They try to deescalate first, and then they're typically allowed to use one level of force greater than that of the person they're trying to restrain because the goal is to effectuate an arrest or to protect the public, and so different departments will have different rules. As you've mentioned, some will prohibit chokeholds, police departments have stopped as a matter of policy permitting car chases, because those can be so dangerous. But all officers have to comply with the constitution, and there are certain constitutional areas regarding use of force. A couple big cases both came out in the 1980s case called Tennessee v. Garner and other called Graham v. Connor. It's a bit of a good news, bad news proposition if you're a motorist, I would say. Tennessee v. Garner, contrary to what maybe we see in the movies.

And so what we are left to think about, stop, police, freeze, and when they run, they get to start shooting at them. The police officer may pursue a fleeing suspect, but may not use deadly force like shooting them just to prevent their escape unless the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. If you're chasing a serial killer maybe under those circumstances and the person has a weapon and they've been shooting at you, maybe you can shoot back at them. But if it is, as you said, a traffic stop and they're running away, the use of deadly force under those circumstances would be deemed excessive. Unless there's a reason to think this person is dangerous, they're firing shots back at you. That's the rule that restricts police officers.

But then there's another case called *Graham v. Connor* that takes back what was given in *Tennessee v. Garner* because what it says is that when we assess the conduct of a police officer, we have to make that assessment based on what a reasonable police officer would do under the circumstances. Then they include all these caveats that I think if you're a juror, would really cause pause, even more pause than guilt beyond a reasonable doubt. Because they say things like, keep in mind that police work is dangerous, that they have to deal with split second decisions under tense and dangerous circumstances in rapidly evolving situations. And so what *Graham v. Connor* says is you have to think about the fact that mistakes will be made when police officers in that situation, which is all true and second guess, but it is kind of, I think what makes it difficult to hold police officers accountable when they do cross that line.

Jill:

This case has been compared particularly to the beating of Rodney King, which led to riots in LA. I'm wondering, Joyce, if you think that this is comparable to that, if we're just, and that's an old case, if we're still repeating a lesson we should have learned back then, and what do you expect the public reaction to be after the videos are released?

Joyce:

Yeah, so this goes back to Kim's comment about that bright shining moment where it looked like there was the possibility of progress and that people in America understood the systemic nature of racial bias in law enforcement and then we took two steps backwards. In some ways, I feel like we're worse off than we were when the Rodney King tapes first came to light, or even then when George Floyd's death was so brutally portrayed on, you could not escape it, right? I don't understand how we are where we are, where five Memphis police officers by all accounts beat a man for three minutes. I mean, that's a long time that sustained physical damage. The family's representatives have suggested that he was treated like a human piñata. There's every reason to believe that when this video is released, that people's emotions will boil over.

The family has asked the community to protest peacefully. The US Attorney made what I thought was a really emotional plea, saying that he was from the community, telling people he respected their ability to protest their right, to express their views, but that he asked them to do it peacefully. I hope the community will do that, because unfortunately, we live in an era where if people are emotional, if there's any violence, then somehow that will be used by people on the right to cancel the legitimacy of the community's anger and outrage over this senseless death. That's like imposing an additional burden on this community, which by the way, is no stranger to police excessive force. This is not the first time there have been concerns about the Memphis Police Department. I see on Twitter that there is video of businesses in Memphis and surrounding cities boarding up, anticipating that there will be riots.

That says so much about how people view the expression of anger about these events. Maybe, just maybe if we made real progress in dealing with what's bad in law enforcement, we wouldn't have to live through this over and over again. I spent 25 years in law enforcement. I believe that there are good people in law enforcement who want to serve. These five officers did not want to serve, right? They clearly did not want to serve. They dishonored their badges. And the problem is law enforcement dishonors communities when it lets these situations be treated as one-offs with prosecutions and doesn't engage in systematic reform, in better training, in better leadership.

We are lucky in Memphis, and I promise I will get off my soapbox, but we are lucky in Memphis that there is a police chief who is widely respected as a reformer, and she drove this process. She drove how quickly it happened, how seriously it was taken, and she will bear a lot of the honor that comes along with doing this right. But it is her department where this happened. There are other officers under investigation. DOJ does not have the resources to reform every police department in the country. They can engage in civil pattern and practice investigations and do consent decrees, but they can't do it with everybody. That responsibility has to come from local police departments and local community leadership, or we are going to be stuck in this rut forever.

Kim:

Can I just underscore one point that you were making, Joyce? If people start talking about bad apples and bad cops and good cops, they're missing it. That's a myth. That is not what this is about. It's about the system, not about the individual action. That's such an important point you made.

Joyce:

If it was just one bad apple, it wouldn't happen over and over again.

Kim:

That's right.

Joyce:

The point that I think sometimes gets lost, I really do promise I'll get off my soapbox, but something that annoys me so much is we live in an era where hate is again on the rise, right? We've seen hate against Jews and against Asians, but we only see police. We only see our government, people that we empower to carry guns and enforce laws, we see them killing Black people over and over and over again, and it's something different. It's coming from inside of the house and we have got to do something about it if we're going to continue to consider ourselves to be a society that aspires to equal treatment and justice.

Barb:

Jill, you seem so, I don't know, calm. What's your secret?

Jill:

Well, it's not getting a lot of sleep. That has never been my secret. And so on many mornings, I wake up on the wrong side of the bed, not really because I'm grumpy, but because I'm still tired. But if 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 no matter what. 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.

Joyce:

Right now, over a hundred million people around the world are using Calm, including #SistersInLaw. 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](https://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.

Jill:

As I said, I don't allow myself enough hours of sleep, so it's really important that when I do get in bed, that I can fall asleep. I can't tell you how many times I've felt the burden of the things I need to still do the next day when I'm trying to clear my mind and fall asleep. But thanks to their 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](https://calm.com/sisters). Go to [C-A-L-M.com/sisters](https://C-A-L-M.com/sisters) for 40% off unlimited access to Calm's entire library. That's [calm.com/sisters](https://calm.com/sisters). You can also find the link in our show notes.

Kim:

We've reached our favorite part of the show, which is listener questions. If you have a question for us, please email us at [SistersInLaw@politicon.com](mailto:SistersInLaw@politicon.com) or tweet using #SistersInLaw. When we can, we will answer your questions right on Twitter if we don't get to them during the show. We have first a question from Katara. The question is, in the event, the Fulton County case results in an indictment and conviction of Trump, Lindsey Graham, et cetera, does the Republican governor have the authority to pardon them? Good question. Jill, do you know?

Jill:

I do, and because we're running along, I'm going to answer it quickly. The answer is no. The governor does not have pardon power in Georgia. It goes to a special independent board.

Kim:

Interesting. I didn't know that.

Jill:

It's safe from the Republican governor.

Kim:

Oh, I learned something today. Thanks, Jill. Our other question, our second question is from Masks, and it says, why hasn't the DOJ searched all of Trump properties? I think that's a great question. Barb, do you know?

Barb:

Yeah, I can understand why it's tempting and I can understand why Masks wants to know the answer to that question. But to conduct a search, the FBI or other agency needs a search warrant. To get a search warrant, you have to demonstrate probable cause that evidence of a crime will be found at that particular location. It can't be just speculation. Now, is there speculation that Trump has documents at Bedminster or Trump Tower? Yeah, maybe. Seems possible. But what you need is actual facts to suggest that they're there. When they got the Mar-a-Lago warrant, for example, it's been redacted, but we've seen a good bit of the affidavit and we know that there were witnesses saying, yes, there are documents here, and Trump asked us to move them from one room to another. And so they had actual facts to support this idea of probable cause, which just means reasonable grounds to believe that a fact is true.

But you need some facts to base that on. And in the instance of the other properties, it's really more speculation. I know there are people who think it's buried with Ivana Trump outside the golf course in New Jersey, but you'd have to have facts about that. A credible witness who says, I saw it or I was there, or I heard it's Trump or someone say it was there. I don't think that's enough, and that's why they may be working to develop probable cause that could happen if they're interviewing people who work in those places, aides to Trump, Secret Service officers, others, who may have seen them. But the fact that they haven't conducted those searches yet, maybe means they haven't found it, or maybe searches have been done and it hasn't been disclosed. The only reason we know about the Mar-a-Lago search is because Trump himself announced it. Typically, the FBI does not announce a search. They announce charges, and that information becomes known in the course of a trial.

Kim:

All right. Our final question is from Barb in Northern California. Not to be confused with Barb of the SistersInLaw, but it's a great name. That question is, it was my belief that special security clearances were required for any workers in the Capitol of the US. How could George Santos pass a background in upper level security clearance after so many instances of lying in having oligarch ties? Joyce, do you know this?

Joyce:

Yeah. This is such a great question, right? George Santos, everybody's favorite, fabulous, could not get a job in the Capitol if he had to get a security clearance for one at this point. But you don't have to have a security clearance to be a member of Congress. If you're duly elected by the voters in your district or your state, there you are. You might need a security clearance for work on certain committees if you have access to certain types of information or briefings. But George Santos, as he is, gets to work compliments of voters in New York.

Kim:

Thank you for listening to #SistersInLaw with Joyce Vance, Jill Wine-Banks, Barb McQuade, and me, Kimberly Atkins Stohr. You can send in your questions by email to [SistersInLaw@politicon.com](mailto:SistersInLaw@politicon.com) or tweet them for next week's show using #SistersInLaw. You can also go to [politicon.com/merch](http://politicon.com/merch) to buy our shirts, hoodies, and other goodies, and please support this week's sponsors HelloFresh, Olive & June, Kitsch, Pair Eyewear, and Calm. You can find their links in our show notes. Please support them because they really make this show happen. And you can keep up with us every week by following #SistersInLaw on Apple Podcast or wherever you get your pods. Make sure you give us a five-star review because it helps others find us. And don't forget to tune in next week in particular because we have a really exciting announcement. #SistersInLaw is going on the road. We will fill you in on all those details. See



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you next week with another episode, #SistersInLaw. Are there going to be bathrooms on the tour bus when we go on tour?

Joyce:

Ooh, I sure hope so. Boy, that could be a long drive.

Barb:

Can we get one of those cool rock band tour buses like painted black with flames on the side or something with our name on the front? That's what I want.

Kim:

Can we get roadies?

Joyce:

When we do that, do we have to sing though? I mean, can Kim do the singing for everybody?

Jill:

Who's going to be the biggest diva?

Barb:

Well, I require white shag carpeting, temperature set precisely 72 degrees, and only Red M&M's in my dressing room. I don't know who the diva is, but just make sure that's in my contract.