

Barb:

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Jill:

Welcome back to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, Barb McQuade, and me, Jill Wine-Banks. I'm very excited. We have great topics today. We're going to talk about the Republican Congress's investigation of the Department of Justice, whether Jane Roberts is the new Ginni Thomas, and the expansion of abortion restrictions to medicated abortions. And as always, we look forward to answering your questions at the end of the show. Before we get to those exciting topics, I want to talk about something that's even more exciting and that's that we're going live on tour. All four of us, yes, we are. We're going to be in Portland, Oregon. We're going to be in New York City and in Washington DC and I'm really excited. The dates start on May 12th for Portland, May 19th for New York City, and May 21st for the District of Columbia, my old hometown. And Kim, for your current hometown. So are we all really excited about this?

Joyce:

I can't wait, you guys. We get to see each other in person

Jill:

And our audience. We get to talk to our listeners.

Joyce:

That's always the fun part.

Kim:

Yeah, we do love getting questions from our listeners, but it will be so much more fun to answer questions from our listeners live at the venue during our live tapings. It's going to be so much fun.

Barb:

We had a chance to do a live show in Austin, Texas and that was so much fun to meet some of our listeners and chat with them, which is certainly part of what I hope we get to do on our live tour.

Joyce:

Did I hear that with our VIP tickets, people get to actually have a little bit of an opportunity to talk with us too, we'll just get to know each other and chit-chat?

Jill:

Yeah, you got that right. For a VIP ticket, they will have very special opportunity for individual questions with us and to meet and greet after we record the ads, our most fun part. People love those ads and only the VIP ticket holders will get to hear that part of the podcast being done live.

Kim:

Selfie time.

Barb:

All I want to know is whether we're going to get a big tour bus like the rock bands get with flames on the side so that our groupies can find us.

Joyce:

You are very intent about the bus, Barb. Is there a story there?

Barb:

No, just always been part of the dream.

Jill:

Maybe to get from Portland where we'll be at Revolution Hall. Well, I guess it's a long drive to maybe from New York, Gramercy Theatre, on the 19th to get to the Howard Theatre in DC on the 21st. Maybe a bus is the answer.

Barb:

I'm game.

Joyce:

Only if Kim's going to sing Beyonce. Right?

Kim:

Well, listen, I did hear that Beyonce's going on tour too. I hope she wasn't just doing it to steal our thunder. I like Beyonce a lot and it's a world of plenty. You can try to get your Beyonce tickets but also get your tickets to see us too. You can go to politicon.com/tour and before Sunday night you can use the code sisters to get the tickets pre-sale. They go on sale on Monday, but you can get a jump on it by going to politicon.com/tour and using the code sisters. We really can't wait to see all of you. I'm so excited and I'm excited to see the three of you again too. That will be so much fun.

Joyce:

Hey, Jill, our listeners can't see you, but I can and you look great. Your lipstick is fabulous and your eyes look wonderful. What are you using? Would it be Thrive by any chance?

Jill:

It certainly is. I am a longtime user of Thrive. Their mascara has been my staple for many years now. Thrive Causemetics makes high performance beauty and skincare products made with clean skin loving ingredients. There are no parabens, sulfates, or phthalates, and their products are certified 100% vegan and cruelty free. Cause is in the name for a reason. We love how every purchase supports organizations that help communities thrive and their products are perfect for any look.

Kim:

We 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. The same way that we all prepare for the podcast every week. It's a luxurious cream to powder highlighter stick that brightens and opens the eyes giving you an instant eye lift. Use it as an eyeshadow for perfect daytime glow or apply the metallic shades for easy smokey eye. Another tip that I do sometimes if I just have lip gloss on and you just want to give it in a little bit of extra shimmer, I'll just put a little on my lip and put on a little on my finger and tap it on my lips too. It's very cool. 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 eyes to look like you've had plenty of restful sleep even if you have it. Something tells me Jill has used this trick.

Jill:

I use it all the time for TV especially. I line my inner lower eyelid with the white pencil and it goes on smoothly. It doesn't hurt, it doesn't tug, and it really makes your eye look much wider open. So in addition to the fabulous mascara that doesn't smudge or come off at all, I think it's great, but we can't give away too many of my secrets. But since we're on the subject, another one is their infinity waterproof eyeliner. It's waterproof and smudge proof for all day wear and gives you intense high impact pigmentation in one smooth sweep. And the effortless mistake proof formula glides onto lids seamlessly. Plus Thrive's new bold and classic neutral shades compliment every eye color and skin tone using the semi-permanent technology used in microblading brilliantly reimagined for an eyeliner.

Kim:

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 over 300 causes spanning colleges, cancer research and homelessness along with many more. And now is a great time to try a Thrive Causemetics for yourself. Right now, you can get 15% off your first order when you visit thrivecausemetics.com/sisters. That's [thrivecausemetics, C-A-U-S-E-M-E-T-I-C-S, .com/sisters](https://thrivecausemetics.com/sisters) for 15% off your first order. Or you can look for the link in our show notes.

Joyce:

Sometimes there can be truth on both sides of an issue and one of the places where there are different people with different equities that need to be balanced is when we're talking about Congress engaging in oversight of the executive branch. Sometimes Congress has legitimate functions to perform in some of the parts of the executive branch that they're trying to oversee aren't really interested in having that level of scrutiny applied to their mission. So legitimate goals on both sides in those situations. And Jill, were about to watch the 118th Congress gear up to have just one of those situations because Congress has indicated that they want to conduct investigations. They have their eyes set on DOJ already, especially in regard to these now two special counsel investigations looking at classified documents found at Mar-a-Lago and in Joe Biden's home and office. And this is clearly going to be a heated battle. What is it that Congress wants to get out of DOJ?

Jill:

There are a couple of things and one of them is the actual documents that were removed by both presidents, Biden and Trump. And I assume although it hasn't been mentioned, they would have to include Vice President Pence who had documents in his home as well. And their reasons for asking for the documents really don't make a lot of sense to me. They don't really affect their oversight rule, but they're also going beyond that and they're asking questions, particularly the house under Jim Jordan is

asking for things that relate to how the department has investigated these removal of documents and they are not paying attention to prior practice. So they're both geared to President Biden and that is of course to me distressing is that they're really not talking about the same evidence for President Trump when he had the documents. That I think is the thing that we need to keep in mind that both the House and the Senate are requesting particularly documents related to President Biden and that makes it look a lot more political.

Joyce:

Yeah, I agree. That's interesting. I read this really carefully assuming that the requests would be for all three, but at least what we've seen so far, maybe there's more coming seems to be focused on President Biden. Barb, how has DOJ responded and do you think it's the right response?

Barb:

More politely than I would have, I guess, is how they... They wrote one of these letters like we really want to help you out and we believe in good faith negotiations. We understand the committee's needs to conduct oversight, but the Department of Justice also has institutional needs which include protecting the integrity of ongoing investigations. And that is time immemorial, a rule that the Justice Department observes. The idea of sharing evidence, even classified documents that are evidence in a case is just a non-starter. They have concerns about compromise if any of that should get leaked or shared in the public domain. Questions about their investigative strategies is an overreach into the separation of powers. I think ultimately they can look at these and see what they were, if they want to assess whether the Justice Department did it an adequate job in investigating the case. But for now, for the moment, I think it's just an absolute non-starter.

And in fact, it almost feels like some of these requests by these congressional committees are sent knowing that that's going to be the answer just so that when they get that inevitable response that, no, we're not producing documents in a pending investigation, they can feign outrage. I know Senator Mark Warner has joined in this request and I imagine his interest is legitimate and they are genuinely concerned in seeing what these documents are. But these are executive branch documents. The intelligence committee is involved in conducting its damage assessment. And so I think that the right answer is to decline to produce these documents, at least for now.

Kim:

And Barb, can I just add one thing? I think that there is a difference between the Senate Intelligence Committee, which you're talking about, which is shared by Senator Warner and Senator Rubio is the ranking member on the Republican side. They at first asked for the information. It not necessarily the documents themselves, but they wanted to know whether there was any sensitive information that could be damaging that was released. And then when they got stonewall on that they started pushing further. Their requests feels to me very different from the ones coming from some of these house committees and house special committees and house super special committees that are just going after Biden's documents and not mentioning Trump's. And that just feels really, really political and I think it's important to separate those two.

Joyce:

That makes so much sense to me and something I hope our listeners will pay attention to is this controversy because it's certain to be a controversy evolves is what the house in particular wants. I think we're going to hear them say, "Well, of course we get classified documents. We did during the early

Russia probe." And that's right. Members of Congress are entitled to look at classified material when it's properly protected. This situation is different because here the classified documents, they form the central core of evidence that prosecutors are using to make out their case.

And so I think I've said apples to oranges about a million times in the last month, but yet again, we've got a situation where some members of Congress will try to make something too simple and we'll try to turn this into something that it isn't. But I think to Barb's point, there are long-standing principles here and they make sense. Nobody in Congress should want to see Congress kneecap a criminal investigation into misconduct. And I think that ultimately Republicans need to be held accountable for that. And that, Kim, is my question for you because obviously where politics involved, the law sometimes gets lost in the shuffle, right? And I'm curious what you think about the political spin that we'll see Congress put on this and whether you think DOJ can stick the landing withholding the principle in light of the political firestorm that's coming.

Kim:

Well, I hope that they do and I think it's very important that they do. I'm with Barb. I would like them to be more forceful with it and just explain as we are what the law is, what the rules are, and why they're important and stick to that and Congress is going to Congress, the Republicans in the house are going to throw everything that they can to make this look like Benghazi on steroids. And it's important for Merrick Garland to resist the political uproar and the fact that it's going to be the top story on certain conservative networks every night and stick with the law and make it a clear case for the American people to understand. I think he can do that and should do that.

Joyce:

Kim, can I steal your line? I love that Congress is going to Congress.

Kim:

Sure.

Joyce:

That's great. Barb, I think one of the things that's inevitably coming here is the whole Trump witch hunt. That stuff that we hear every time there's an investigation that involves the former president, but this isn't a situation where DOJ is doing a special rule because Trump is involved, right? Longstanding principles are involved here.

Barb:

Yeah. Joyce, you wrote an outstanding piece on this in your civil discourse Substack and you referenced what gets referred to as the Linder Letter, which we have referenced from time to time. The Linder letter was one addressed to Congressman John Linder in 2000. He was the Chair of the House Rules Committee at the time. And this was a letter sent by the Assistant Attorney General for the Office of Legislative Affairs at the time, Robert Raben. And he documented the reason this letter gets trotted out from time to time is he spends some time in that letter describing the history of how the Justice Department has responded to these things going back a century, citing things from the administration of FDR, of Ronald Reagan, and all the way back and talking about the need for the Justice Department to safeguard matters relating to pending investigations.

And so when it comes to open matters, it is just a non-starter in terms of what the Justice Department is going to do. It lists other categories of information like internal deliberation and privacy and other kinds of things. But here I think the most pertinent part is this long-standing policy that we're not going to give you open access to our files that will compromise the investigation and is part of the president's duty to take care that the laws be faithfully executed. This is not just because we're hoarding information, it's because we have a duty to protect it so that we can conduct an investigation with integrity. Maybe later but not now.

Jill:

And Barb, if I can add to that, I just want to say they do make a distinction between an open case and a closed case. So while it's pending, anyone should be able to see how damaging that would be to our system of justice and to the appearance of pressure from Congress on the Department of Justice if a pending case were released to them. And they make clear that at some time, this could be released. And they also point out, you mentioned this, the privacy rights of people who may be under investigation but who never get indicted because it turns out that there was really no substantial evidence and you don't want to hurt someone who will never get indicted. It would be like going back to the Comey announcements that should never have happened because everything at the department is done under grand jury secrecy and FBI secrecy and should be. So the letter draws a very, very sensible distinction that protects the Department of Justice and the executive branch's interests but recognizes the needs for congressional oversight and says at some point your oversight role will get this information.

Joyce:

I think that's such a good point. This is about balancing the equities on both sides. And I don't read DOJ's letter is saying you can't ever have this information. It's a question of when Congress can have it more than of whether they can have it for the most part. Maybe there's some stuff within the scope of executive privilege, but DOJ seems to be interested in being pretty forthcoming here at the right point in time. But let's put some flesh on the bones of Jill's comment here. We all talk about, well, it'll impact the integrity of the investigation if DOJ turns this over. DOJ is about to take a serious political hit, Merrick Garland likely to take a personal hit if they stand fast here and refuse to turn this over. So what would actually happen? What would the damage to DOJ's cases look like if they improvidently were to do an about-face and say, "Okay, Congress, here it goes, you can have everything. Here's all of our evidence. Take a look."

What are the bad things that happen in that situation? Kim, I'll start with you. So let's put some flesh on the bones of Jill's comment because DOJ is, I think, about to take a serious hit in the press and with conservatives for standing fast to this Linder Letter approach and refusing to turn over information about ongoing cases. Let's help our listeners understand what are the bad things that would happen if DOJ didn't do that. What if Merrick Garland does a sudden about-face and says, "Okay, Congress, here's all of our evidence in these two ongoing special counsel investigations, take a look."? What's the nightmare that follows from that?

Kim:

Can I answer for one standpoint and I can let the prosecutors answer from another about how it'll affect the case? But we don't know what's in these classified documents. It very well may be that they're not that sensitive, but if they are, we have no idea what the impact could be because we don't know what's in them. There was a reporting in the case of the Trump documents that some of them involve really sensitive national security information. They involve information about the security of foreign countries.

Letting that out could have very dire consequences. There's a reason why we have classified documents in the first place. So that's just the beru, let alone what can happen to the investigation itself, which the prosecutors can speak to.

Joyce:

Kim, are you suggesting the possibility that there could be leaks from a congressional committee?

Kim:

I'm not saying that at all. No, I want to be super clear. I want to be super clear because I don't want to hint at that is what the goal is here. I don't. I just want to underscore how potentially dangerous releasing these documents in a way just to gain political... I think what they want to do is not leak them. I think they just want to put them out and that could be potentially dangerous.

Joyce:

But I think it's also fair to have concerns. I mean, look, not to be naive here, we lived through an era where Devin Nunes, a congressman, left congressional briefings and went to the White House and talked with them about stuff. There are other instances. Clearly, this country has a problem with protecting its classified documents and maybe this is a time for us to do better. So I agree with you. I wouldn't count dispersions on any individuals, but it does make sense to be proactive now that we know that we have a problem. Barb, do you think that this could impact the investigation in a real way?

Barb:

Well, sure. I mean, the more people who know about the underlying documents, the more risk there is for some sort of compromise. To the extent, there are witnesses who are out there whose identities become known. That can cause a compromise in a case because they could be subject to undue influence, they could be intimidated, they could be enticed to shade their testimony in one way or another. Knowing the subject matter of the documents, one could try to minimize or overstate the matter that's included in the documents. I think it could cause the second guessing of the investigation. I suppose there could be people in Congress who would say that a decision to charge or not to charge is the wrong one based on the content of the documents. And those are all within the province of the Justice Department. So I think so. And even if Congress ultimately should get these and they can, as Jill pointed out, the difference between an open investigation and a closed investigation, they can have them someday, just not now.

And by the way, the Justice Department has offered to give a verbal briefing about the general nature of the documents. And so they're looking for a compromise. And this idea of negotiation and accommodation is the way these disputes are usually resolved. It's just that in recent years, we have seen these political standoffs in an effort to look tough or go to war over these things and make threats like we're not going to confirm your judges until you produce these things. These are the ways these things have been negotiated in the past, half a loaf instead of none with a promise to get all of it later.

Jill:

And there's an issue I think beyond just the actual classified documents themselves, there is an issue about all the other documents that the department has, witness statements for example, or declination decisions, all of those kinds of things that would definitely impact if let's just say a defendant was able to get this in advance. It could lead to changing testimony to coincide with the known facts that the

department already has. But it would also show where the gaps are, where the weaknesses are. In good memos, prosecutors will write what is our strong point, what is our weak point, where are the gaps.

Those are the kind of things that you never want to be released. And I think that people need to see this as more than just do they ever get to see these classified documents. And the other question is, what is their purpose in seeing them right now? The intelligence agencies are doing what they need to do to do the risk assessment and mitigate it. And the Department of Justice is doing what's in its proper role. So what else would Congress do even if they had them? I keep hearing the ads for Moink and I was suspicious until I tried it and found it was really great. Joyce, you're a person who probably cares a lot about the small family farm. What do you think about Moink products?

Joyce:

We really like Moink. We get a shipment every couple of weeks. We get lamb, we get beef. I even got bratwurst one week and it was absolutely fabulous. It's all really good. And here's the best thing about Moink. It lets you support small family farmers and reduce your environmental imprint all while enjoying the highest quality meat on earth. When you join the Moink movement, you can do all of that and more. Their animals are raised humanely, their employees are paid a living wage. That doesn't always happen in the agriculture community and the quality is way better than anything you'll find in stores.

Barb:

Moink delivers grass fed and grass-finished beef and lamb, pastured pork and chicken, and sustainable wild caught Alaskan salmon straight to your door. The Moink Farmers' farm the way our grandparents did and as a result, Moink meat tastes incredible. The family farm does it better and the Moink difference is one you can taste. Unlike the supermarket, Moink gives you total control over the quality and source of your food. You can choose the meat delivered in every box, everything from rib eyes to chicken breasts, pork chops to salmon fillets, and much more. Plus you can cancel any time. And I'm not a big bacon eater, but some came in my box and I have to say it was the best bacon I've ever had in my life.

Joyce:

It really is, right? Absolutely the best bacon of all time. Shark Tank host Kevin O'Leary called Moink's Bacon, the best bacon he's ever tasted and Ring doorbell founder Jamie Siminoff jumped at the chance to invest in Moink. Plus, they guaranteed that you'll say, Jill, I know this is your favorite part, so say it with me, oink, oink, I'm just so happy I got Moink. You'll love it like we do. It's the perfect option for a family meal or dinner party.

Barb:

Man, I'm so glad you guys are here to say that. But all of you can keep America and farming going by signing up at moinkbox.com/sisters right now. And listeners of this show get free fillet mignon in every order for a year. That's one year of the best filet mignon you'll ever taste. But for a limited time, spelled M-O-I-N-K [box.com/sisters](https://moinkbox.com/sisters), that's moinkbox.com/sisters, or look for the link in our show notes.

Kim:

This week brought news of an ethics complaint connected to the Supreme Court, but this one involves claims made against the chief justice's wife. So Jill, tell us who is Jane Sullivan Roberts and describe her job and why she said she took that job.

Jill:

So Jane Sullivan Roberts is a attorney and now a legal recruiter, someone who recruits lawyers to high powered law firms. She was a partner at a very prestigious firm and is now a partner in an equally prestigious recruitment firm. She is also the wife of Chief Justice John Roberts. And so she is using her knowledge of the legal profession and of the government agencies to place high-powered lawyers in high-powered firms where they will make somewhere between a million and seven million dollars a year. Her fee on that is 25 to 30% of their annual income. So she has reportedly received millions of dollars in fees for these placements to firms that have cases before the Supreme Court. So that's where the issue comes in is is her work creating a conflict of interest for her husband who is sitting in judgment on the arguments from those law firms?

Kim:

So she has said in the past that one reason she became a recruiter is that once her husband became chief justice, it felt weird, awkward, I think is the word she used practicing law when her husband was the chief justice. So she decided to do something different in this case go into legal recruiting. So now who is making an ethics claim against her and what is he alleging?

Barb:

Yeah, it's a former colleague, a man by the name of Kendal Price. He's a lawyer in Boston and he used to work at this search firm where Jane Roberts worked. She's no longer there. She has moved on elsewhere, but they both work together at this really high powered legal recruiting firm called Major, Lindsey & Africa. It really is the go-to place. When Joyce and I were leaving government or colleagues who wanted to go into private practice, all use this firm and they deliver. They will get you those kinds of salaries that Jill just mentioned. But Mr. Price, her colleague, was fired in 2013 and he sued the firm and he sued Jane Roberts over his dismissal and he lost that case.

So whenever you have someone who has lost some litigation, I think there's always some concern that they may have an ax to grind. And so he is the one now who is taking some of the documents he obtained in that litigation and sending it to Congress and the Justice Department suggesting that she has a conflict of interest because a big part of her practice was helping people coming out of government land in these big high paying law firms.

And these firms appear before the Supreme Court. Always asking for really is disclosure that the fact that she got these huge fees be disclosed as opposed to any other action. So I don't know that such a disclosure rule would be crazy, but it also really doesn't neatly fit under any current rules.

Kim:

So Joyce, what do we know so far from the way Congress has responded and the court? And we haven't heard from the DOJ yet, but what role, if any, would the DOJ play here?

Joyce:

Yeah, it's so interesting. There have really been crickets about this. Maybe folks have learned in the wake of Ginni Thomas becoming a headline for so many news cycles in a row that the best thing to do is to pretend that it's not happening. But Jane Roberts, as Barb points out, has represented a lot of people on both sides of the aisle. She is supposed to be very good at what she does, she has a lot of friends and that may mean that people don't want to speak out here as vigorously as they might otherwise.

I think ultimately what happens is that this will revive the debate about whether the Supreme Court needs to have some sort of formal enforceable ethics rules. And to the point of the lawsuit and also to what DOJ might be contemplating, we don't know really to what extent they're looking at this, if at all. But it might be that the court adopting a simple rule about disclosure would be enough to ring the bells here so that litigants would be able to make an informed decision about whether they thought a judge had a conflict. That might be one way that this could go forward with without a lot of dissent.

Kim:

And the court essentially said, look, no rules were broken here that the chief justice and his wife considered the rules that were in place before she took this job. And they didn't see that as violating it a law at all. So nothing to see here.

Joyce:

But, Kim, isn't that a little bit of the issue here because it involves how you characterize her payments, right?

Kim:

Absolutely.

Joyce:

She says it was just a salary. And the contrary argument is no, she's really getting a commission from these law firms that then turn around and appear in front of the Supreme Court. And what you're supposed to do as a judge or as a lawyer is to err on the side of doing too much to be ethical, right? You're supposed to err on the side of caution. So it seems that disclosure here would really be appropriate.

Kim:

So Jill, Noah Feldman wrote what I thought was a pretty compelling piece for Bloomberg News. And listen you all, in the interest of full disclosure, my husband also works at Bloomberg News, but he in no way influenced my decision to reference his colleague in this discussion. Okay.

Barb:

Are you getting hefty commission, Kim?

Kim:

I got not a dime. Okay. But Noah's piece essentially says Jane Roberts is no Ginni Thomas. I tend to agree. Do you, Jill?

Jill:

I sort of agree, yes. And I think that your comment about the disclosure that your husband also works at Bloomberg News is really raises the same issue, which is in today's modern world, the spouses of important people have equally important work. And you cannot say to somebody that if you take a government job that you can no longer have a spouse who works. So there has to be some balance. And certainly Jane Roberts is no Ginni Thomas. The difference is quite clear to me. Ginni Thomas was advocating for a position that her husband then sat in judgment on in a Supreme Court case that she

had a definite interest in. That seems to be a clear conflict under any of the rules that you could talk about and not so much financial as just in interest in the outcome, a bias about the outcome, which is to me a really serious conflict.

Jane Roberts has income from people who are arguing in front of the Supreme Court for cases that she may have a personal interest in, not at all and not even have an opinion on. So it's a very different circumstance to say that you cannot have members of the Supreme Court or any other court for that matter, totally cut off from society. That would be a bad idea. Their friends before they became justices were lawyers and they will continue to be lawyers and their spouses may often be, as is the case in the current court, Justice Roberts is not the only one with a lawyer husband, it goes back to Justice Ginsburg's husband was a lawyer.

Amy Coney Barrett, I think her husband is also a lawyer, is he not? And Justice Jackson's husband is a doctor, not a lawyer. But what if one of his patients had a lawsuit before the Supreme Court? Would that be a conflict of interest? So I think there's a very complicated question with this. And Jane Roberts probably doesn't rise to the level that it is an egregious violation of the code of conduct that we would like to see imposed, whereas the Ginni Thomas one is.

Kim:

I would feel differently if Jane Roberts was recruiting for, say, Google and Google had interest is going to be before the court that that would be problematic. She is representing law firms, the lawyers for litigants who will go before the court. I think that's so many steps removed and I think as we've already discussed it doesn't evidence any interest that she personally has. She makes the money when these people are hired regardless of what cases they handle. So I just think that there are so many steps from this. I wonder if this complaint is a little bit of sour grapes from somebody who is disgruntled, who was fired, who lost his case. And I really worry that making too much of this case will actually make it more difficult to explain why the case of Ginni Thomas is so troubling. And so I really think my sense is that this is much to do about nothing.

And also to your point, Jill, look, Jane Roberts and John Roberts were both attorneys. They were both successful. I think if we go overboard with ethics rules, it will mean that the spouses will have to give up their careers. And I would not have wanted to give up my career because I got married. And I don't think that Jane Roberts should do that. She completely changed her career after she got married. And I'm not sure that pushing people out of the law when legal circles are small, there's only so many jobs you can take when you have these credentials is necessarily fair. So Barb, what do you think that the SCOTUS should do? Because it is the case right now that trust in the court is low, that they don't have enough ethical rules, that they don't have enough disclosure rules. We saw the whole fiasco about the leaking of the Dobbs opinion and learn just how little safeguards there are there. Joyce said more disclosure is necessary. What do you think?

Barb:

Yeah, it's an interesting time at the Supreme Court and I get the feeling that Chief Justice Roberts is bewildered by the whole thing. Why don't people just trust us to do the right thing the way they always have for hundreds of years? And I think the world has evolved and the court has not kept up. I can remember a time, I'm curious what your experiences were, but because we're lawyers, I think we're probably not representative of the general public. But at least before I went to law school, I couldn't name all nine justices. I might have known a couple of the big names, but I couldn't have named all nine. And now I feel like a lot most well-read Americans can name all nine because these hearings are televised. And so the scrutiny that the court gets today is much greater than it ever has been.

And so I think when there's more scrutiny, there's going to be more second guessing. But when you have an institution whose credibility and public confidence is so important, I think that you have to figure out what you might need to do differently to ensure that you have public confidence. The leak of that stolen whatever it was, the leaked opinion in the Dobbs case, I think the court's boomerang move on how it's treating precedent has contributed to some concerns about its trust. I think some of the comments that justices have made in their public speaking, attacking reporters and making comments that are sort of political does not help. And so I think maybe they do need to reexamine the way they do business. Certainly the concerns about the people who are joining the courts historical society and getting access to the justices and having private dinners creates some concerns. And maybe that has always gone on, but now we know about it. And so I think perhaps they need some additional rules to tighten up their extracurricular comments and speeches and they're hobnobbing and elbow rubbing with people who are trying to gain influence.

Kim:

So listen, none of us are Supreme Court justices, but we all are married to successful people. And has this issue come up for you guys at all? So for me, I actually met my husband when we were both reporters at the US Supreme Court, but he is a news reporter for Bloomberg News. I am an opinion writer, and so I'm very cognizant to make sure that there is a separation between the work that I do so that nobody is under the impression that when I write an opinion piece that that can be attributed to him. He is an objective reporter who covers the news of the Supreme Court. So for example, you see, sometimes I'll tweet his news stories, but he very, very rarely tweets my opinions because he's careful too. He doesn't want to make it seem like he's endorsing my... I think the only column of mine he tweeted was the one when I wrote about taking his name after we got married, that one he endorsed. But what do you guys do? How do you keep that line professionally and personally very separate?

Jill:

So mine's really easy because my husband is an oriental art dealer and appraiser, and there really is no way that our careers ever could create a conflict of business.

Kim:

Oh, come on, Jill. If it's a Jill approved piece, wouldn't the value just skyrocket? I mean, come on.

Jill:

Well, maybe if it's previously owned by me, the provenance gets at a higher price. But no, and I guess I certainly wouldn't have allowed that while I was at the Department of Justice or the Deputy Attorney General of Illinois. But now as an opinion person for MSNBC, it would be okay, so I don't have a problem now.

Joyce:

So I had something that was more akin to what Jane Roberts had to work through when my father-in-law was still alive and was an 11th circuit judge and I litigated including cases that went to the 11th circuit, as did my husband. And so Bob's dad had a hardened fast rule, which was that he would not hear any cases that came out of our law firms because even if we weren't personally working on them, we still stood to financially benefit if the firm were to prevail in a case. And that was just an absolute bright-line rule.

He did not believe it was a waivable conflict, so he simply recused himself. I think that that's the right thing to do and that may be why Jane Roberts backed away from her career as a lawyer. It's also a little bit more difficult when you're one of nine Supreme Court justices to recuse from a significant number of cases, leaving an evenly divided court when pop recused. It just meant that a different judge was substituted for him on the panel. So I think all of the complexities of the issues that they encounter are magnified because of his role as chief justice of the court.

Barb:

So my husband and I had a conflict when I was the US attorney and the Justice Department does not play when it comes to conflicts of interest. And so we were both assistant US attorneys together and I could not supervise him even indirectly, and they didn't even want him in the office being supervised out of Washington in some way. So he went for through his eight year, what he calls exile as a political prisoner working out of the Northern District of Ohio, US Attorney's office.

What a partner I had to do that for me, certainly it's a wonderful office in Toledo, Ohio. But he spent his whole career at the US Attorney's Office in Detroit. And so he made that sacrifice for me for eight years. And then when I left, he came back to the Detroit office. But the concern was that there could be favoritism in directing cases his way or even just office politics. We had worked together really without incident for 12 years. But I suppose when you become the US attorney, there are concerns and they didn't take any chances. So out he went. And the same thing happened with our colleague in Colorado whose wife was an assistant US attorney in that office.

Kim:

The things we do for love.

Many years ago I resolved to stop wearing anything that's not comfortable, and that goes for shapewear actually, especially for shapewear. I stopped wearing shapewear all together because it just never felt good. And that's why I was really excited to find a shapewear that actually is really comfortable. So support for today's episode comes from Honeylove. Honeylove has revolutionized compression technology so you no longer feel like you're suffocating while wearing effective shapewear. You'll immediately feel and see the difference. And for a limited time only, you can get Honeylove on sale. Get 20% off your entire order with code sisters at honeylove.com. Support our show and check them out at honeylove.com and use the code sisters.

Joyce:

We love Wearing Honeylove's bestselling SuperPower Short, it has targeted compression technology that distinguishes between those areas where you want more support and the areas where you need less compression. I love how comfortable they are. It's just like Kim says, they'll make you feel confident and comfortable at the same time. I know the other sisters feel the same way. Then there's Honeylove's signature X that targets and sculpts your midsection without squeezing your natural curves. It's designed to work with your body and not against it. Plus, they have many more products that work to shape and sculpt any part of your body. You'll be able to go out with the boldness and the feeling that you look your best no matter where you're going or what you're doing. All their products have the perfect amount of compression so you get the look you want without feeling crushed by your clothes.

Jill:

But it doesn't stop there. Honeylove has more than just sculpt wear. They have incredibly comfortable bras, tanks, and leggings for everyday support. Speaking of leggings, Honeylove's Legging 2.0 is another product that's getting a lot of attention. They hold you in without the too tight feeling, think compressive, cooling and comfort. So whether your New Year's resolution is to get up and active or spend more time at home lounging, these leggings are the go-to for an everyday look or a workout at the gym. If you're like us, your workouts will never be better.

Joyce:

Honeylove is just as easy to put on as it is to take off. Shapewear shouldn't be hard to wear. These products make you look good and feel good, whether it's for a wedding event or an everyday boost of confidence. Honeylove is the perfect plus one. Treat yourself to the best shaper on the market and save 20% off at honeylove.com with the code sisters. Use code sisters at honeylove.com. Cinched, snatched, and lifted. It's hot girl season thanks to Honeylove. Look for the link in our show notes.

Barb:

Well, there's a new front in the abortion wars since the Dobbs decision overturned Roe v. Wade. Last year, 18 states have banned abortion and most of those bans focus on medical procedures to end pregnancies. But of course, abortions can also be carried out by medication. And in fact, more than half of all abortions now are medication abortions. And so some states now are starting to ban abortion pills. Last week, a manufacturer of abortion pills sued the state of West Virginia over its ban on the pills. Jill, can you tell us what this lawsuit claims?

Jill:

Yes. It claims that the state ban is a constitutional violation that no state law can take over for the FDA's approval of a drug. And so it comes down to really impart federal versus state powers. But it also is obviously involved in the complicated questions of the Supreme Court having said that states can control the right of a woman to have an abortion. And so that's where it gets really complicated. But it is simply a case of a drug manufacturer of a legally manufactured drug that's been approved for a long time as an appropriate treatment for not just termination of a pregnancy, but for management of miscarriages and other legitimate legal purposes, medical purposes.

Barb:

So this federal versus state conflict comes up in other context. And Joyce, I know this is one that you handled when you were US attorney in the immigration context. So what's the argument that the FDA approval can override a state law banning a particular medication? Can a state outlaw a drug that's been approved by the FDA?

Joyce:

Yeah, so it's a really interesting question. Maybe too interesting in inside baseball among appellate lawyers like me. So I'll try to oversimplify just for the purposes of clarity here. But typically when you have a question of who gets to make the law, the federal government or the state government, the federal government will win if it's an area where either the Constitution assigns responsibility to the federal government or the federal government has engaged in what's called preemption, Congress has passed laws, the federal government is regulating. And so that's essentially the argument here with the FDA that they can trump what the states might do to the contrary. There are always issues about when preemption has occurred and to what extent, and that's not always clear, but in our immigration case,

for instance, we were able to prevail by saying that the Constitution assigned the federal government obligations to do things like national defense.

Congress had litigated. And so instead of having a patchwork quilt of 50 states with different laws that a foreign country would have to try to navigate, it made sense to let the federal government have its way and you might think that that same analysis would apply here on an issue of safety where the FDA is uniquely qualified to pass on these decisions. But I think that that may not be the case. We've seen the court be very results oriented when it comes to abortion kind of issues, and I think that there's a serious risk that they will let the states make their own decisions here.

Barb:

Wow, that would be really interesting insights, Joyce. And also, I can't help but add, I'm a little jealous that the case you always get to talk about from your time as US attorney is this one where you won a really important case. And the one that people ask me about all the time is when we lost on seditious conspiracy.

Joyce:

Yeah, but Barb, I know you better than that. I know a lot of cases that you won, and I always remember that on your first day in office as the US attorney, you took down a terrorist who is trying to fly into Detroit. So you have nothing to be ashamed of.

Barb:

All right. The end of our bomber, we'll talk about him instead. So Kim, if this lawsuit succeeds, would that provide sort of a loophole for all of these abortion bans in every state?

Kim:

Yeah, I think it will be really important. It would be a really important statement that when there are drugs available, when they are FDA approved to be used in a certain way, and it's up to healthcare professionals to do that, that states really can't step in and be their own little FDAs and try to unregulate, to regulate out these sort of drugs from being available. And I think it's certainly important in places that have specifically authorized the use of these sorts of drugs. It's specifically important in places where there are restrictions like there are in North Carolina and certainly in places where there are bans, but I think it goes beyond abortion. I fear if this case isn't successful, that it will allow states to do something like outlaw vaccines or outlaw certain procedures that they don't want given to children or people under the age of 18.

I think it can open the door to states really going nuts with these kinds of regulations if they think that that would happen. And listen, this is a basic tenet of law school, even before law school, that when there is a tension between federal and state law, the general rule is that the federal law will win. Because when you have agencies, when you have the federal law setting the standard nationwide, there are reasons behind doing that. The vast majority of laws are set at the state and local level, but there are some that really need that consistency. And I think if states can just pierce that without any sort of consequence, that is a big problem not only for protecting abortion rights, but also protecting a whole bunch of other things.

Barb:

Right. Supremacy clause, right? That's the big phrase, the trump card. Well, Jill, if the lawsuit fails, what do you think would be the impact on people seeking abortion access in states where the sale of pills is banned?

Jill:

So as you mentioned in your introduction, almost half of all abortions in this country are already done by medication, not by medical procedure. So that means that a substantial number of people will be denied what is an easy and safe and inexpensive way to do this. It would also create an inconsistency because in almost, well, there are a few states, but most states allow a termination of a pregnancy up to at least some time. So let's say it's 12 weeks. If the pill is completely banned, even during that 12 weeks, you would have to have a medical procedure, an operation, rather than using a safe and proven method using the pills because the pills would be illegal even though an abortion would still be legal up to a certain time.

So that would be, I think, a very big impact. And then you'd have the impact of people seeking abortion trying to get the pill from out of state. And then you would have the states trying to interfere with interstate commerce through mailing of the pills from a state where it is legal into the state. And that has already happened in... There have been suits that have tried to make a criminal case against the person who mailed the pill as well as the person who took the pill. So there would be serious consequences if this lawsuit fails.

Barb:

Yeah. Joyce, let me ask you about another case related to this. It's pending in Texas, and that one kind of goes the other way. It's challenging the FDA's approval of the abortion pill. What's that lawsuit about and what do you think is the likelihood that that lawsuit will succeed?

Joyce:

So I think this case is ultimately the most frightening one that we're looking at right now in the overall landscape of what's left of abortion rights, because I think this case is more risky for women's rights than even Dobbs was. Dobbs people will recall left the decision about whether abortion would be legal or not up to each state. That's why we have different rules in different states now. This Texas lawsuit though, it's brought by a coalition of individuals and groups who are opposed to abortion. And essentially it could result in a ruling that amounts to a nationwide ban on medication abortion. The impact would be much greater than Dobbs, and a ruling is expected relatively soon.

Of course, once there's a ruling, it will go up on appeal through the court system. But given the way the Supreme Court has reacted to these cases from the SB 8 case in Texas on there's every reason to believe that the court will not grant an injunction that it would let this ruling go in effect making it impossible for women to access the medication that they need. In this case, [inaudible 00:57:16], and that would really be, I think, very difficult. It could happen suddenly because courts rule without a lot of advanced warning, we could then have the court say, okay, this can be the law while everything is litigated on appeal. And ultimately, again, we have a results-oriented Supreme Court at the top of the chain of command here making the decisions.

Barb:

So Kim, paint the picture for me. What would that look like? I guess we shouldn't predict, it strikes me as this one is less likely to happen, but if it does that the consequences could be more dire than any other.

What would that look like if there were a judge to impose a nationwide injunction in Texas that would stop all medication abortions?

Kim:

Right. Well, that would give these local judges that are meant to preside in cases that come before them, the power to really set rules and essentially set the law for the entire country. We've already seen that happening in other cases where we have local judges, federal judges granting temporary injunctions, basically stopping or keeping it or stopping really most of the time some federal law. Well, that's not how it's supposed to work. That's not what they're supposed to do. These temporary orders are meant to deal with the case before them. And I think that would be like that on steroids in this case if states are able to do this. And that gets back to my federalism idea and the reason that we have that in the first place. We should not by lawsuit be able to make national law. That's just not how this is supposed to work. And of course, the impact on people seeking abortion care, reproductive care would be immense.

Joyce:

But it's not an accident that this case was brought in Texas. That was a deliberate decision because that means that no matter what the ruling in the lower court is, it goes to the Fifth Circuit. The Fifth Circuit has been very conservative on these issues. Barb, I wish I had your optimism because I think legally absolutely this should be rejected. But I feared that in the current climate in the Fifth Circuit where judges have done some very squirrely things, and I think that's charitable on abortion, there is a lot of risk and that's why they chose this forum to litigate in.

Jill:

We all love to answer listener questions and we look forward to it every week. If you have a question for us, please email us sistersinlaw@politicon.com or tweet using #SistersInLaw. If we don't get you 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. And this week, as always, we had a hard time picking three to answer, but the first one comes from Bonnie in Springfield Township, Michigan. My 19-year-old son has just received a jury summons for a case. I wondered if you guys had some practical advice such as what to expect should he be selected? Barb, that's an obvious question for you since it's from Michigan.

Barb:

Oh, I'm so happy to answer this, Bonnie. I too have young adult children and I hope they all get to serve on a jury someday. And I hope your son is not interested in getting out of jury duty because I think it's an important responsibility for all of us. Yeah, I'm sure we all get that question a lot like, "How do I get out of jury duty?" And now he says, "You should step up and answer the call." And typically it's pretty hard to get out of jury duty, they will often allow you to defer once. So a family crisis or a prepaid vacation, they will usually let you get out of it once for that, but then they'll call you the next time. And I've been called for jury duty. I very much want to serve. But oftentimes lawyers get excused because other lawyers on the case are concerned that the lawyer who is on a jury will become a jury of one because others will defer to their choice.

And so I've been struck from juries and I'm not surprised, but what can he expect? Well, first he will be paid a modest fee to show up for jury duty. So that's a nice aspect of it. There's a lot of waiting. Usually you show up and you wait around because many cases resolve, but they resolve in part because they know that there's a jury there waiting if the case doesn't resolve. And so even showing up for jury duty,

even if he's not selected, serves an important purpose in the system because it encourages litigants to reach a resolution of a case. So even if he shows up, he should bring a book or something else he can do while he is waiting that can be productive. But if he actually sits on a jury, I hope he will listen with rapt attention. I hope he will listen with an open mind.

I hope he will heed all of the instructions that a judge gives him and his fellow jurors about the law and the evidence. And then I hope he will go in and bring his common sense and good judgment and lived experience to contribute to the conversation. Because the reason we have 12 jurors and not one juror is we want to have all of those different perspectives consider all of the evidence and all of the witnesses, and think through whether it's a criminal case and the standard is guilt beyond a reasonable doubt, or it's a civil case where the standard is preponderance of the evidence that he will seriously consider that.

And even if all 11 other jurors, or if it's a civil case, other number of jurors disagree with him, I hope he'll stick to his guns and vote his conscience and try to persuade others to come over to his side of the case because cases really are decided by jurors and it is what gives legitimacy to the system and what stands between the state and the accused in a case. So I hope he goes and I hope he gives his all to this process. It may most trials only last a day or so, and then there are those rare cases that go on for many months. So either way, I hope he has a wonderful experience.

Jill:

And Kim, I have a great question for you from Judy. If probable cause is needed to do a search for classified documents, why did the FBI search Biden's Rehoboth Beach home and find nothing? And yet, to the public's knowledge, they have not searched Trump's other homes and locations.

Kim:

So first of all, Judy, I just love it when our listeners have picked up on things like criminal procedure and understanding probable cause and why that's necessary for a search So good for you. As to the second part of your question, I have to say, I don't know, and I think only the folks within the DOJ know why other properties of Donald Trump's have not yet been searched if there was a plan to do that or what exactly was the basis for their search. Keep in mind in that case, there had already been a request for these documents to be returned and Donald Trump refused them for any number of reasons saying that they were his, saying that he declassified them with his mind, any other excuse, and so that had risen to a much higher level by the time that search was conducted.

You are absolutely right the probable cause is needed to do a search of homes, including the president. The reason that they searched his Rehoboth Beach home is because he gave them permission. So in that case, when anyone, if the police knock on your door and say, "Can I come in?" and you say yes then they can come in. Permission was given in the case to search that home. And based on the reports that I've seen, you are correct that no documents were found, although they did take some handwritten notes and other evidence with them.

Jill:

Our last question for today comes from @erinmharris, and so it's for you, Joyce. Her question is, would you trust a contract written by an AI tool? Would it be legally binding? Could it be disputed in court the same way a human written contract can be?

Joyce:

This is such an intriguing question, Erin, and it's very much of the moment with all of the talk of AI chat being used to write all sorts of different documents. So I think the question that you ask first is would I trust it? Let me say this, that AI would have to make a believer out of me. But I think that for a basic contract, it's entirely possible that we could see something like this happen where basic contracts, just like now lawyers have forms that they use from case to case. This would maybe be a little bit more evolved where the AI could tweak something. I think you're going to, for the most part, accept in very basic settings, need to have a human being, a lawyer who's looking over it, tweaking the details, making sure everything is good. I think at least right now with this being so early, people won't be comfortable without that level of human oversight.

But certainly this could make it less expensive to get to a contract as far. As enforceability goes, as long as both parties are comfortable with the contract and sign off on it, it then becomes a binding contract. The law is silent about how contracts come into being. It really rocked the legal world when LegalZoom opened their doors and began to generate these sort of pre-done wills and contracts and other legal documents for people to use. This is, I think, the next logical step there. And although the legal profession will push back because it does take away their work in some sense, it may also help the legal profession be leaner and more efficient in a way that benefits clients in the long run.

Kim:

But can I just do one caveat for people who are listening? Get a lawyer to look at your contract because what the contract says is really important, and even if you agree, my fear is both parties will agree to it will be binding and in it will be something crazy that you never contemplated.

Joyce:

It's so interesting though, right? That's what people said when LegalZoom started out, and I'm still of that view. To be honest with you, I would not sign any form of serious contract without a lawyer looking at it, but a lot of people don't do that. So I think your caution is an important one. Let the buyer beware you get what you pay for when it comes to legal matters.

Jill:

Thank you for listening to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, Barb McQuade, and me, Jill Wine-Banks. You can send in your questions by email to sistersinlaw@politicon.com or tweet them for next week's show using #SistersInLaw. We are so excited that we are taking #SistersInLaw on the road. Come and join us as we record the podcast live on stage, discussing the legal topics of the day and answering questions from the audience. We're starting off in Portland, Oregon, New York City, and Kim's hometown, Washington DC. We have a special pre-sale just for you, our listeners. Go to politicon.com/tour to get your tickets today using our code sisters. We can't wait to meet you. And to keep up with us every week, follow #SistersInLaw on Apple Podcasts or wherever you listen, and please give us a five star review. It really helps others to find the show. See you next week with another episode, #SistersInLaw.

Joyce:

Plus they guarantee you'll say, Jill, say it with me. I know this is your favorite part, oink, oink. I'm just so happy. We have to do it one more time.

Speaker 5:

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How can you be so bad at that? [inaudible 01:09:04] Awful. Okay.