

Jill:

This week, I've had some great recipes from HelloFresh. I have made some fajitas that were fantastic with shrimp, and I made a Indian curry as well with chicken. And those are just two of the HelloFresh recipes that make getting dinner on the table easier, and more delicious than ever. Get 60% off plus free shipping with code 'Sisters 60' at hellofresh.com/persister. You can also look for the link in our show notes.

Joyce:

Welcome back to #Sisterliness, with Jill Wine-Banks, Barb Aquacade, and me, Joyce Vance. Kim will be back next week. You all know we're going on tour in May to Portland, Oregon on May 12th, New York City on May 19th, and Washington DC on May 21. There's still time to get tickets. Go to politicon.com/tour and get your tickets before they sell out. Hurry.

Okay, let's get on with the show today. We'll be discussing what's going on with the Manhattan DA's criminal investigation into Trump, in connection with the Stormy Daniels Hush Money payments. Also the recent news about developments in the special counsel's classified documents case. And finally, we'll be taking a look at the motivation behind Trump's decision to hold a rally in Waco, Texas this weekend. And as always, we'll be looking forward to answering your questions at the end of the show. But before we dig into this week's topic, y'all, I've got a question for you.

I'm just back from this dream vacation that we took to Sweden. I've always wanted to go to Scandinavia. We were supposed to go 10 days after the world shut down for Bovid, so this was a little bit of delayed gratification. And I love to travel, it's always fun to imagine yourself in a different place, but I'm a homebody. I'm always ready to come back home. Looking forward to seeing my pets in my own house, but not this time. I could have stayed in Stockholm. I really loved it. I was thinking, who could I find over here that needs a legal researcher, that I could do some criminal justice reform work or teach a class for a semester? And it's really the first time that's ever happened to me. Have y'all ever gone on a vacation where you just imagined yourself staying and not coming back?

Barb:

I don't think so. I'm like you, Joyce. I love to travel. I love to see new places, but I will say I'm a homebody as well. And as much as I love to travel, I also love coming back home. What do you think it was about Sweden that was so different and so special?

Joyce:

Well, it was cold for one thing. It was cold. We were on the water. Sweden, Stockholm is sort of an archipelago, so you're always walking and walking across bridges. People walk and ride their bikes every place and it's super relaxed. It was just beautiful and fun. The food was very... They know where their food comes from. You would order food in a restaurant and they would tell you what farm it came from. Everything about it was really cool.

Barb:

Yeah, sounds great.

Jill:

So I'm going to answer your question in two different ways. One, I am so curious, and I love finding new places. So as much as I love some places, and am sad to be leaving. And I know I'll go back. Like Paris, I

could always go back to Paris, I love Paris, I love London, I love India. I am always happy to come home, but I also go on vacations where everybody goes, "What in the world are you doing in that place?" So I go to places that nobody else in the world would want to go. And I-

Joyce:

North Korea.

Jill:

Well, I actually stepped into North Korea when I was-

Joyce:

I remember that, yes. I remember.

Jill:

And South Korea is amazing and fantastic, but I would put probably New Guinea and Borneo on the list of places that most people say, "You did what?" But I love that kind of adventure. So those are two of my favorite trips, but I wouldn't want to live there.

Joyce:

Well, here's to lots of future adventures for all of us. Hey, Barb, before we get started, I know that you're under the weather and thank you for sticking it out with us today. I hope that as soon as we're done, you can get some extra sleep.

Barb:

Oh, thanks Joyce. Yeah, just fighting a bad cold, but I'll be on the mend and fine in no time. Talking with the two of you will be a balm for the soul, I'm sure.

Joyce:

Now that the sun is coming back out, it's time to get friendly with our razors again. And honestly, there's no better razor out there than the Athena Club razor. Shaving used to be a dreaded if needed chore, but Athena Club's products seriously make it more fun and easy to shave. Not only is it the prettiest razor I've ever seen, it's also really gentle on skin, leaving it moisturized, super smooth and bump free.

Jill:

You're right, and the gentleness is what really matters. Athena Club Razor has thousands of five star reviews from customers, and is designed with built-in skin guards to help prevent razor burn while being gentle on curves. Plus the razor blade is surrounded by a water activated serum, with shea butter and hyaluronic acid, which is a holy grail for skincare. The best part is the razor kit is only \$9, and comes with two blade heads, a magnetic hook for shower storage, and your choice of handle color. The handle color options are so cute, but they even have black and white razors for all of you minimalists out there.

Joyce:

And with the Athena Club, you never have to think about blade refills because you choose how often you want to have your replacement blades shipped to you for free. You'll never be stuck with an

overused blade longer than it should be used for, which has happened to all of us in the past. Athena Club also has the most amazing shave foam. It will leave your skin soft, hydrated and smooth. It is so luxurious and it feels really great when you put it on. Plus it also smells fantastic.

Barb:

Well, as we all know when there's a choice of color, the only correct choice is blue. But you can show your skin care with the Athena Club razor kit. Head to athenaclub.com and use code 'SIL' for 25% off your first order. Again, that's athenaclub.com and use code 'SIL' for 25% off. Athena Club also launched in Target stores nationwide this month, so make sure to check out the shaving aisle to buy their products in store, in real life. You can also find the link in our show notes.

Well, the indictment watch continues. This reminds me of my first pregnancy when I was two weeks past my due date. Every morning I'd wake up and think, well, maybe this'll be the day, and then I'd go to bed that night thinking, nope, no, not today. Well, that seems to be what's happening as we wait for this indictment in Manhattan for the DA's office regarding Donald Trump. I feel like we've been waiting for it now for just weeks and weeks. Joyce, I want to talk about what's been happening while we've been waiting for this indictment.

So last weekend, Donald Trump posted on his Truth social media site that he expected to be arrested on Tuesday of last week, and then that didn't happen. Part of the delay was that at Trump's request, a witness named Robert Costello testified before the grand jury on Monday. Why might that delay an indictment in this case?

Joyce:

Yeah, so I think I'm going to play contrarian here just a little bit and say we don't really know that there was a delay. I think it's just a Trump created fiction, and I cautioned earlier this week in my newsletter that there might not be an indictment this week, that we don't know when these things will happen. And why is that? It's because grand jury proceedings are secret. Prosecutors never came out and said, "There's going to be an indictment this Tuesday." It was Donald Trump. Usually when we in the public hear things about what's going on in a grand jury, it's coming from a witness. Maybe occasionally, hopefully not, a grand jury is talking with someone in the media, but usually this is witnesses or even defendants channeling the news in a way that benefits them. Because they know prosecutors won't talk about what's going on in a grand jury.

Trump, for instance, raised a lot of money off of his, I can't believe that he calls them truths instead of tweets. But he raised a little bit of money off of his untruth and tested his support. Frankly, it was an effort to rally his base again. So look, the bottom line is that Alvin Bragg, the DA in Manhattan, and every other DA and federal prosecutor, they will indict when they are good and ready to do it. We will find out when they publicly present those indictments, but I really doubt that these proceedings were delayed because a witness showed up and called Michael Cohen a liar, right?

Prosecutors knew that that one was coming all along and if there is a delay, if there is some slowdown, my suspicion is, and this is just speculation, so take it for what it's worth. But I wonder if there's not the possibility that they're negotiating with witnesses for cooperation at the last minute. For instance, Weissmuller, Trump's CFO has been sitting in Rikers Island. There's nothing like sitting in prison to motivate a witness to cooperate, especially if he's facing additional charges. There are some other folks involved, people who were involved in the catch and kill scheme. So it's possible that the DA, as it gets down to the deadline, is picking up new cooperating witnesses.

Barb:

Yeah, you raise such a good point because it's so unusual that the public is even aware that there's a grand jury investigation going on. Usually the whole thing is done in secret and just suddenly one day there's an indictment. Jill, I want to ask you, I mean along the same lines, Wednesday the grand jury got canceled. A lot of people were camping out, watching the courthouse to see what would happen. And it turns out the grand jury didn't sit at all on Wednesday, which caused people to speculate what might be going on there. What do you think might have caused the grand jury to be canceled on Wednesday?

Jill:

So again, it would be pure speculation, and I agree with everything that Joyce said, especially that we don't even know that this is a delayed indictment. That it wasn't ever said by anybody other than Donald Trump, that there was going to be something on Tuesday. We do know that the grand jury meets Monday, Wednesday, Thursday, and we know that on Thursday they sat again, but they were on a different matter. It wasn't about the Trump case. So we don't know. I don't think it has any significance that it didn't happen.

There is also a lot of talk about the logistics of having the defendant who said he was going to be arrested, who I guarantee you will not be arrested as anybody in the listening audience would interpret arrest. He will self-surrender, that's a very different thing than having him handcuffed and marched in, or having his door broken down to arrest him. That they are negotiating the logistics of how he would self-surrender, where and when. My concern right now is something we'll talk about later in the show, which is, he has his first campaign rally scheduled for this Saturday. And so that means that whatever's going to happen isn't going to happen until after that. But that doesn't mean there won't be something happening after it.

Barb:

Well, there's been some reporting speculating that maybe Alvin Bragg's getting cold feet. There have been these threats. Trump had this weird thing on truth social where there was a picture of him holding a baseball bat right next to a picture of Alvin Bragg, to suggest an attack, I suppose. It didn't use those words, it just had words that were denigrating to Alvin Bragg. And then Friday there's this report of white powder received by Alvin Bragg as a death threat. Do you think any of those things will intimidate Alvin Bragg, or will have any effect and cause him to stand down?

Joyce:

Nope. Absolutely not. Alvin Bragg is a career guy. He was in the US Attorney's Office in the Southern District of New York. He worked with Barbs and my colleague, Preet Barara. Then he went to the New York Attorney General's office. Now he's the elected district attorney in Manhattan. I think he will do what most prosecutors do with this sort of stuff. He will just shake it off and keep going, and he will do the right thing. It won't influence him to indict if the evidence isn't there. It won't influence him to stand down if the evidence is not there. Bragg is going to just go straight up the middle and indict the case if it should be indicted when he's good and ready to do it.

Jill:

And I agree completely with that. There is no way that any professional with his experience is going to be intimidated by the language. I do think that that photograph, that truth thing that he posted, will possibly play into the penalties that he may suffer when he does self surrender. While it's unusual to

restrict speech, that kind of speech, which could lead to violence, might be something that would be part of his release arrangement. Is to restrict him from posting things like that.

Barb:

Yeah, like a gag order of sorts. Roger Stone had something like that, after he posted that picture of the judge, Amy Berman Jackson, with the crosshairs of a rifle, yeah-

Joyce:

You know the problem is New York is a really different environment for prosecutors. It's much more protective of defendants. And so I was interested, I was looking at the conditions under which a judge could detain someone after they were indicted in the federal system. And in most states it's if you're a danger to the community, and if you're a flight risk. And in New York it's only for flight risk, they don't look at danger to the community. So a very different environment, and I think that means it's less likely that the judge would impose any kind of a gag order.

Barb:

Yeah I don't know if detention is the same as a gag order though. It might not be-

Joyce:

It's different, I agree. It's just the whole climate is very different.

Barb:

Yeah. But you can impose a partial gag order, I don't think anybody can, or probably even should, completely muzzle Donald Trump when he's running for president. But in terms of talking about this case, or talking about it on social media, or posting threats about the prosecutor, I think if I were in the prosecutor's office, I might be asking for that kind of a limited gag order.

Joyce:

It's a tough call, right? Because you run the risk of creating an order on appeal if you do it, and Trump is going to kvetch about it. Maybe it actually plays into the prosecutor's hands, because when Trump starts arguing that the jury was biased against him, prosecutors will be able to say, "Well, if you just kept your mouth shut, you did more damage than anybody else." But I agree with you, Barb. It's tough to try a case when the defendant is trying it on the courthouse steps.

Barb:

Yeah, I just worry about somebody taking the bait and engaging in violence, which I think is a real threat.

Joyce:

Absolutely.

Barb:

Well, Joyce, let me ask you a little bit about the merits of the charges as we understand them. There's speculation that the charge will be falsifying business records with intent to defraud. That's a misdemeanor, but it can become a felony if the purpose of the falsification is to conceal another crime.

We don't know what that is yet, but the working theory, I guess, is that Michael Cohen paid \$130,000 in hush money to Stormy Daniels. That itself is not a crime. But then Trump reimbursed Cohen with checks over a period of months, including while he was in the White House. And then that Trump falsified records about the payments to make it appear that he was paying legal fees to Michael Cohen, instead of paying hush money to Stormy Daniels.

And then to make that falsification a felony, prosecutors may also allege that Trump falsified the payments to conceal another crime. Perhaps this was an unreported campaign contribution, that is that the hush money was paid for the purpose of influencing an election. So it remains to be seen. There's some critics out there that say this is a ticky-tack crime. I think Peggy Noonan wrote in the Wall Street Journal today that, "This is a tawdry act by tawdry people, and it's below us as a country." How do you respond to that? They say they're only going after Trump because it's Trump, that this is small potatoes. She says, "Save the handcuffs for Georgia." How do you respond to that?

Joyce:

People love to make excuses for Donald Trump that they wouldn't make for anyone else. It's amazing to me how often we hear that. First off, we don't know for certain what Bragg is going to charge. I guess there's a universe where he could have charges that no one has even contemplated, because we don't know what sort of evidence his grand jury work has revealed. But I think this is the most likely charge. It's what we've all been focused on, and it is hardly ticky-tacky. It is an effort at manipulating an election. That's what this is about. The Access Hollywood tape already out, Trump has problems, there are lots of people repudiating him. Another story like this could have been devastating to his candidacy. So what does he do? He suppresses it.

Now, look, he could have done that. He could have paid the hush money and let it go at that. It would not have been a crime, at least not a state crime straight up. Whether or not it would've been a federal crime is a different story. Michael Cohen, of course, went to jail for this, went to prison for this, for the federal election campaign finance violation. Trump was not violated in the federal system, and we know that he wasn't prosecuted during his own administration, because his attorney general suppressed further investigation. We do not know why he wasn't prosecuted once Merrick Garland became the Attorney General, but for whatever reason, he was not. The statute of limitations ran on those charges and that left Alvin Bragg to pick up the investigation.

Jill:

Can I add to that? First of all, I think there's another potential escalating factor, which could be that the other crime that would make this a felony, is that he did this for the purpose of getting a tax deduction for the money he paid, because legal expenses are deductible. A hush money payment is not. But I also want to say, I think one of the best answers about why this is not a ticky-tack crime, came from Lawrence O'Donnell who said, "Had he not suppressed this, he might have lost the election. So this is a crime he committed before the election, that led to his election, and that if he hadn't done this crime, maybe we would've all been saved from four years of his presidency." And that makes it a really serious crime, as serious as any of the others pending in the federal cases, or in Georgia.

Barb:

Yeah, this case may have changed the course of history. Well, Jill, I want to ask you about a different aspect of this case. You probably saw that the chairs of three House committees sent a letter to Alvin Bragg. They're all Republicans because the Republicans control the house. And they are demanding that

he come testify and produce documents about his investigation, saying that this is clearly politically motivated. Bragg's office sent a very strong letter in response.

What's your reaction to the committee chair's letter, and Bragg's response? Do you think it's fair game for members of Congress to go after a state court prosecutor, even if they genuinely believe he's engaging in overreach?

Jill:

No and no, I don't believe they honestly believe he's engaging in overreach. First of all, they have no jurisdiction at all over a local prosecutor. That's number one. Number two, there is absolutely no evidence that would support that this is a politically motivated case. This is something that has been in the public knowledge since Michael Cohen got convicted for this crime. And there has been amazement that Donald Trump wasn't indicted at any time before this. He's been out of office for two years, and so there could have been a federal case brought to follow on. So the potential argument that the committees are making is that there might have been some federal money involved in this.

First of all, even if there was, they don't have jurisdiction. But second of all, whatever monies the local prosecutors get from the federal government are for law enforcement vehicles and tactical equipment. It's not for prosecutors. And so there's just really no basis at all for them to be investigating this. And I thought basically that DA Bragg's response was quite controlled. I would've been a lot angrier than he was. I think that he was absolutely right that you cannot call in someone to talk about a pending investigation, even if it was the Department of Justice. You can't ask them about a pending investigation. So the only politics involved is on their side, on the side of the Republican chairman who sent the letter.

Barb:

Yes. I also liked Bragg's letter, Jill. I thought it was strong but respectful. It made the points without engaging in name calling or hyperbole. I thought it was excellent. It was a great reminder of, where are the grownups? Alvin Bragg's a grownup. We all worked in an environment in prosecutor's offices. They were populated by grownups, and that's who makes these decisions. It's why they don't fall over when there's a threat, or they don't engage in these kinds of shenanigans.

And it's so disappointing to see people engaging in this gamesmanship at high level positions, like being the chairs of house committees. But I think Alvin Bragg has been conducting himself with great professionalism, and I'm sure he will continue to do that throughout the course of this case.

Joyce:

Let's stop cutting down trees to make toilet paper. It's true. Humans are cutting down tens of thousands every day just to supply the American need for toilet paper. And the worst part is that when we use trees for toilet paper, it's just one use and done. No recycling, no reusing. It just goes straight into our water system. That's why we've made the switch to real paper. Real is 100% bamboo. So we're using a plant that grows fast, can be harvested, and regenerated just like a lawn, and it doesn't impact entire forest ecosystems.

Reel Paper is truly the best kind of eco-friendly product, because it doesn't feel like you're sacrificing something to help the earth. In fact, the second you try it, you'll realize it's an all around upgrade. We also love how it's always shipped for free to our front doors in plastic free packaging, and you can schedule it on a subscription so that it comes right when you need it. No more forgetting toilet paper at the store.

Barb:

Plus Reel is now partnered with One Tree Planted, so that with every box of Reel you buy, they're funding reforestation efforts across the country. So unlike the other toilet paper that cuts down trees, Reel is helping to actively plant them, cutting costs and increasing growth. That's always a win, especially when it's a big step we can all take to reduce our footprint, and do our part to keep the planet green and clean.

Jill:

Reel Paper is available in easy, hassle-free subscriptions or for one-time purchases on their website. All orders are conveniently delivered to your door, with free shipping in 100% recyclable, plastic-free packaging. If you head to realpaper.com/sisters and sign up for a subscription using our code, 'Sisters' at checkout, you'll automatically get 30% off your first order and free shipping. That's R-E-E-L P-A-P-E-R.com/sisters or enter promo code 'Sisters' to get 30% off your first order, plus free shipping. So let's make a change for good this year and switch to Reel paper. Reel is paper for the planet. Look for the link in the show notes.

Former President Trump plays golf while his lawyers and enablers fight for him in multiple courts, arguing executive privilege, legislative privilege, and attorney-client privilege. On Wednesday, he lost a significant privilege argument when the DC Circuit Court of Appeals ruled against him, and in favor of special counsel Jack Smith. That court upheld the final decision of Judge Beryl Howell as chief judge, in which he referred to the investigation as a criminal scheme. And on that basis, pierced the attorney-client privilege and ordered Evan Corcoran, one of Trump's lawyers, to testify before the special counsel's grand jury. And to produce documents, notes, invoices and transcripts or audio recordings related to the classified documents case.

So Joyce, this falls within the crime fraud exception of privilege. What's the standard for piercing attorney-client privilege that was the basis for this ruling? And is this like the case of Eastman where the judge said it was more probable than not, that the two that is Eastman and Trump were engaged in a criminal act?

Joyce:

Right. So here the judge is being asked to order an attorney to testify. It's similar to Eastman where the judge was asked to order him to turn over his emails. And similarly in that case, and in this one, the privilege was found not to apply. That's because essentially you cannot go to your lawyer and ask your lawyer to either help you commit a crime, or to give you advice that you're going to use to commit a crime. There is some difference in that regard between this situation and in Eastman.

With Eastman, the insinuation was always that he was part and party of the criminal conduct involved in pushing the big lie. Here, there's some suggestion, I think, that Trump may have actually lied to Corcoran, that he does not have criminal exposure and that instead what they're doing here is they're just trying to get Corcoran's witness, or rather his testimony as a fact witness who was lied to. Corcoran's a former federal prosecutor. He knows the stakes. The report is that he was in there for hours this morning. Seems very likely that he told the truth. He knows what he risks if he doesn't.

Jill:

So yeah, we're going to talk a little more about whether he was involved, whether he was a witting or unwitting accomplice. But Barb, let's start with reporting indicates that there were six areas that

Corcoran will have to testify about. What are they, and why are they important to the classified documents case against Trump?

Barb:

Yeah, Jill, the judge was very specific about these six areas. I imagine these were areas that Jack Smith and his team specifically requested, and where they believed there was this indication of use of the crime fraud exception. But one is Trump's response to that subpoena from the Justice Department back in May, where they asked for all the remaining classified documents. And the response was, here you go, this tiny envelope, this is it. This is all of it. And so they want to know about that. There was a signed certification saying this was it. Corcoran says that he drafted the document for the signature of another attorney, Christina Bob, and that got submitted. So wants to know all about that.

Secondly, whether Trump was aware of that response, that they had conducted a diligent search and this is what they had come up with. They want to ask Corcoran to give a step-by-step detail of all the steps he did take, to ensure there were no more classified documents in Mar-a-Lago. Did you really do it? Tell us what you did. They want to know why he believed that all the documents were located in that one storage room. He told prosecutors that's where everything was. Of course, it turns out they weren't, they found some documents in Donald Trump's office. Is it because Trump told him so? Or was there some other reason?

They want to know whether Bob was chosen as the designated custodian, Christina Bob. This is an effort to make her the fall person. And so what communications did Donald Trump have with Christina Bob? And why was she selected as the person to sign this thing? It seems a little strange that he would draft it and he would sign it. And then finally, and I think the one that might be the most interesting, is a phone call that Corcoran had with Donald Trump on June 24th. They have records to indicate that they spoke by phone that day, and that is the same day that Trump received a second grand jury subpoena. This one seeking the security footage that would later show that documents were being moved back and forth. And so what did they discuss that day? I think that is very interesting. So those are the six topics and I think they could be very enlightening.

Jill:

They definitely can be. And before we get to how enlightening they might be, Joyce, you're our appellate lawyer. So I want to ask you, because it's reported that Trump may not appeal and I want your opinion on whether he should. And if so, what appellate avenues he has, because people are saying he only can go to the Supreme Court, but couldn't he go for en banc? And also, we now know that the court has already denied a stay on his testimony and he has, in fact, Corcoran has already testified. So does it matter whether he appeals?

Joyce:

Right. This is all moot now, Corcoran is testifying. He is mid testimony as we're taping this podcast on Friday afternoon. Trump could have appealed. He could, as you point out, Jill have asked the circuit, the DC circuit to rehear the panel's ruling en banc. That would've meant that every active judge in the circuit would've participated, or he could have gone to the Supreme Court. But what he needed was a stay. It wasn't enough just to file an appeal. He would've needed a court to countermand Judge Howell's order and say, "Corcoran doesn't have to testify while we're hearing this one out."

And for whatever reason, contrary to Trump's usual practice, he chose not to play the delay game and not stay proceedings. People are reading a lot of different things into that. Whether he might have just

thought he would've lost, and a loss would've been devastating. Or whether this would've put some of the information that Judge Howell and the appellate court saw, in front of the Supreme Court, and he didn't want them to know what that damaging information was. It's very unusual to see Trump do this, but he's now out of time.

Jill:

So Joyce had mentioned, Barb, that it looked like Eastman was part and parcel of the crime, and that maybe Corcoran wasn't. But there are some reasons to think that maybe he was because he drafted the affidavit, but had Christina Bob sign it instead of his doing it. And so I'm wondering, could he claim the Fifth Amendment now that he can't use attorney-client privilege to avoid testifying? And if he did, would that support the theory that he might have been working with Trump to conceal the documents?

Barb:

Yeah, that's a super interesting question, Jill, because just because he doesn't have the attorney-client privilege, doesn't mean he doesn't have some other privilege. And a privilege all witnesses have is their Fifth Amendment privilege against self-incrimination. Now that can only be asserted if a person believes that their answers could be used against them, and that they have reasonable grounds to fear criminal prosecution.

And so it may be that Corcoran doesn't have any of those fears, or it could be that he was involved in criminal activity. I'm not sure. I think to assert the Fifth Amendment as a lawyer is a very significant thing. I guess it is for anybody. But think about what that might mean to your reputation as a lawyer. If Word got out that you were asserting the Fifth Amendment, it meant that you had a well-grounded fear of prosecution. I think there could be reputational reasons why lawyers might be extra cautious in asserting the Fifth Amendment.

But if he doesn't assert it, and the reporting was that he did not plan to assert the Fifth Amendment, that he intended to testify. It suggests to me that he's likely to go in there and testify against Donald Trump. There's even been some suggestion that Trump was trying to use Corcoran as the fall guy in some way. And so it may be that Corcoran even feels motivated to testify against Donald Trump. But I imagine a lawyer will play it by the book, he certainly does not want to get himself into any trouble with perjury. And the time for loyalty to Donald Trump probably ends when you are being sworn in under oath, and reminded about the penalties for perjury.

Jill:

Yeah. Although at the end of this, I want to talk about Tim Parlatour, who may counter your view that he'll go in and testify against the president. But this whole thing has been so odd and it had a particularly abbreviated schedule, where lawyers had six hours about to file their briefs. One had a deadline of midnight, and the other had 6:00am deadline, and then the court ruled within hours. So Joyce, how unusual are those kind of expedited procedures?

Joyce:

Really unusual. I mean, just literally unheard of. The only time I can think of where briefing schedules even approached this was the Florida Election Challenge, Bush versus Gore, where there was a national interest in getting it done fast. This was essentially asking the DOJ lawyers on the special counsel's team to get a brief at midnight, and file a response at six in the morning. That suggests that something super urgent is going on behind the scenes and I can't wait to find out what it is.

Jill:

Right. And so that leads to the question, Barb, of whether you think Corcoran's testimony and documents, notes, and or audio recordings could be the final and best evidence of obstruction of the classified documents investigation, by the former president? And do you think the reference to transcripts and audio recordings means there are tapes of Corcoran and Trump engaged in a criminal conversation, or is it just Corcoran's... There was some reference to it could be audio notes, that he took his notes instead of in writing, he actually recorded them.

Barb:

Yeah, it's hard to know exactly what's there without seeing them, but it sounds pretty good. If I were a prosecutor, I would most certainly want to see these things, right? Because we know that the judge found that the crime fraud exception applies, and that he has notes and audio recordings. Boy, I'd sure like to see that. And it does seem like Corcoran really is at the heart of this obstruction charge. And I've been thinking, this is not an original thought, I've certainly heard others say it, maybe even you folks have said this. But charging Trump with retaining the classified documents has gotten complicated, in light of Joe Biden's retention of documents, and Mike Pence's retention of documents.

Now the difference, of course, is they gave them back and Trump has continued to cling to his. But if you want to make a clean charge, you could just charge the obstruction of justice, which of course, neither Biden nor Pence has done, or been alleged to have done. And so that makes all of this really important, because it's about lying to the Justice Department about continuing to have these documents. And so if there are phone calls between them, especially this one on the day, the phone call that occurs on the day they're moving the box, or they get the subpoena for the videotape about moving the boxes. It seems like this is it, doesn't it? That this is the key evidence that they would need to be able to prove obstruction of justice.

Now of course, it depends on what the answer to the questions are. But in light of the judge's finding, by preponderance of the evidence, that the crime fraud exception is met, it sure seems like there's some smoke here.

Jill:

It does to me for sure. And I also will note that in checking out prosecutions for the classified document retention, they only get prosecuted when there is something more. Either those documents got sold to a foreign power, or there was an obstruction. So the obstruction is a really important part of this case. But this morning there was new reporting that another lawyer, Tim Parlatore, another Trump lawyer, testified last December, but we didn't know about it until it was released today. And so, Joyce, what's this one about?

Joyce:

It's really intriguing. Obviously we don't know it's grand jury testimony, but he's given us a few hints. And again, this is about what Donald Trump did with the classified documents at Mar-a-Lago. I'm really bullish on this case. I've been bullish as soon as we learned that they had lied about turning everything over. And something interesting is going on with Parlatore's testimony. He testifies in December, it's before Corcoran is ordered to testify. Before this lawyer in Atlanta, who's also been ordered to testify. Parlatore better hope that his testimony syncs with the truth that's now being told by these other lawyers. It's a really intriguing situation.

It may be interesting to our listeners to know a little bit about who he is. In 2014, he represented Bernie Kerick, the disgraced, convicted New York police commissioner, in a defamation lawsuit against Joe Tacopina, who surfaced last week on the Ari Melber Show, as one of the lawyers representing Trump. Which is to say that there's a lot of history here. It gives you a sense of where he's coming from, I think.

Jill:

Yeah. And did he testify voluntarily, or was he subpoenaed? And did he, afterwards, make any criticism of the special counsel and the grand jury?

Barb:

Yeah, he's sort of like Robert Costello, who not only testified, but then gave a little press conference to the gaggle on the courthouse steps afterwards. So it all seems as much performance art as anything else. But yeah, after he testified, he gave a statement where he said that, "Oh, quite happily, voluntarily came to testify here, just to make sure everybody knew President Trump's side of the story, that there's no problems here, nothing to see here, folks."

But then he also gratuitously slammed the prosecutors by saying that he thought they asked him many inappropriate questions. Questions that were disrespectful to the attorney-client privilege, and in his opinion, amounted to prosecutorial misconduct. So we'll see. But he took the opportunity to fire some shots at the special council.

Jill:

So all I can think of is during Watergate, many of the defendants were lawyers, and it led to changes in the legal ethics for lawyers. And it now looks like we're seeing a lot of testimony by lawyers. And some of them may be complicit, some of them may be unwitting aids, but it is a really interesting subject, and I look forward to the outcome of the case, and the investigation, whether there's an indictment and what it's for.

Barb:

Well, you know what our friend Andrew Weissmann says MAGA stands for? Making attorneys get attorneys.

Joyce:

Lomi! It's Lomi, we love our Lomi. How about you, Jill?

Jill:

Well, Lomi is a part of the family, right? I mean, we love Lomi.

Joyce:

Absolutely.

Jill:

Absolutely. We don't want to be feeling any eco guilt after a big meal, so it's amazing knowing you are doing your part to reduce waste. That's why Lomi has become such an amazing part of our daily rituals. Once I got a Lomi, I now have the ability to turn my food scraps into dirt with the push of a button. And

the other sisters have been able to share in the experience. We all love it, including Kim's husband. If you haven't heard, Lomi is a countertop electric composter that turns scraps to dirt in under four hours. There's no smell when it runs, and it's really quiet. Plus it looks sleek and fancy as part of a great kitchen setup.

Barb:

I was visiting with my friend Mojo, she annually serves us this great St. Patrick's Day feast, and we were over there earlier this week, and she proudly displayed to me her Lomi and all the dirt that she had generated with her Lomi. And so thanks to Lomi, we all have way less garbage each week, and we're talking about maybe two or more bags less. That means our waste isn't going into landfills and producing methane. Instead, you can turn your waste into nutrient rich dirt, that we can feed to our plants. It feels great knowing that you're composting and creating soil instead of waste. You'll love the extra supply of dirt for your garden, and it makes cleaning up after a big meal so much easier, and environmentally friendly.

Joyce:

Wow. I don't know if I've seen any of my friends in my neighborhood with Lomis, so neighborhood girls, I'll have y'all over for coffee and a Lomi showing next week, so you can check it out.

Jill:

My goddaughter's coming over to see my Lomi this weekend.

Joyce:

I mean, Lomi is a deal, y'all, if you don't have one. We love it, we're not just fooling around here. And if you want to start making a positive environmental impact, or just make cleanup after dinner that much easier, Lomi is perfect for you. Head to lomi.com/sil and use the promo code 'SIL' to get \$50 off your Lomi. That's \$50 off when you head to lomi.com/sil and use promo code 'SIL' at checkout. Food waste is gross, let Lomi save you a cold trip out to the garbage can. So y'all know what to do, right? What do we do to get our Lomis?

Jill:

You go to the link in the show notes.

Joyce:

You really can. You can find the link in our show notes.

So today, Saturday, March 25th, 2023, Donald Trump will hold a rally in Waco, Texas. You might wonder why Trump is coming to Waco for what's being billed as the first rally of his 2024 presidential campaign. After all, the Texas primary isn't until March 3rd, 2024, almost a year away. And last time I checked, voters don't usually have memories that are that long. We don't know for certain what Trump's attraction to Waco is, but we have some informed consideration on that issue.

Recently in a chapel in Waco, one that used to be the home to a religious cult called the Branch Davidians, the pastor gave an interview where he said, and I'm going to quote, "Donald Trump is the anointed of God. He is the battering ram that God is using to bring down the deep state of Babylon." Waco was also in the news exactly 30 years ago, and it's that history that may have informed Trump's

decision to come to Waco today. So Barb, can you give us some idea of who the Branch Davidian cult, who they were, and what happened in Waco?

Barb:

Yeah, I'm sure some people remember this. I remember this most vividly because Janet Reno was the Attorney General at the time, and she got a lot of heat about this case afterwards. But the Branch Davidians were this cult led by David Koresh. They were in a compound near Waco, Texas, and a standoff began that ultimately led to the death of 76 members of this cult, including 25 children, and four ATF agents were killed. So ATF had a search warrant for evidence of the possession stockpiling of illegally modified guns and explosive devices. And when they came to execute the search warrant, there was a standoff, a gunfight, between members of this Branch Davidian group, and the ATF agents.

And there was a standoff that lasted for 51 days where they were trying to decide what to do, and trying to negotiate with Koresh to get some of these innocent people out. Ultimately, and this is where Attorney General, Janet Reno was the one who said she took responsibility. She initiated a plan for ATF to use tear gas to try to flush them out, and the building started a fire, and that's where 76 members of this cult died. And so as a result of this incident, Waco has become this rallying point for the militia movement, for the anti-government movement, all kinds of conspiracy theories. And this is ground zero for the anti-government, far right, extreme movement.

Joyce:

Yeah, it really has. I mean, it's interesting how sometimes you see these incidents and after the fact, people are wondering how they got dragged into the cult. But not here, right? Here the cult continues to have resonance, even today. And along with another incident, Ruby Ridge, really forms the focus for the modern militia movement. There's even a link to the Oklahoma City bombing. Jill, can you talk about that?

Jill:

Yes. Although before I do, I just want to add one thing to what Barbara said, which is, it's never really been determined what caused the fire. There is evidence that there was some accelerant used, that some of the Branch Davidians had lighter fluid on their clothing. And so it may or may not have been the tear gas canisters that started the fire, but there was a fire that destroyed and killed many people.

Joyce:

So I'm going to get really nerdy here. In my old office when I was a line prosecutor, they called me the arson chick, because I did our arson cases. And in this case, there were a panel of fire investigators who did a cause and origin investigation. And one of the facts that they found out is really compelling. The fire in the Branch Davidian compound started in three separate places. It's possible, and the FBI, by the way, did not have completely clean hands here. It took them some period of time to acknowledge that they had fired a couple of canisters that could have caught fire. It wasn't deemed likely that they could have, but it was possible.

But unless something really weird happened, where those went to three totally different places and caught on fire in all three, it looks like what happened is the fire was set internally. There was accelerant on some of the clothing, as Jill mentions, that was worn by Branch Davidians who survived the incident. And so the panel of arson investigators concluded that it was the Davidians themselves. But I think why what you're saying is so important, Jill, is that in the popular mythology, there's always been this

question mark. And a lot of the controversy here is because there's been an ongoing myth that the federal government attacked these people.

Jill:

Exactly. And in fact, this is... Although I remember it, I was quite an adult at the time. Reading about it now was totally fascinating. And I think our show notes should include some of the links to the history here, because it reads like a mystery story, and it's quite fascinating. But going back to your question, there is a link between Ruby Ridge and Waco, and Oklahoma City. Because McVeigh, who was one of the leaders of the bombing at Oklahoma City, was doing it, supposedly, in retaliation for the deaths at Waco.

He was in Waco, he was selling bumper stickers that were pro-gun, anti-government, and the belief was that Waco was one of the steps of the horrible government in trying to take away guns. And that is what one of the motivations for the bombing in Oklahoma City were, of a federal building where hundreds of people were killed, including children in the daycare center there.

Joyce:

Right, so Oklahoma City happens about two years after Waco.

Jill:

It was actually on the anniversary of Waco.

Joyce:

Yeah, the Waco standoff goes on for 51 days. So there's always this controversy about what the actual anniversary is for Waco, but it's really that entire time period, and there is that linkage. And so that's the history. And Barb, you mentioned that Waco has come to signify more among white supremacists and anti-government groups. How does that play out for us today?

Barb:

Yeah. Well, when you think about Donald Trump sending signals to people like the proud boys, stand back and stand by, and he has loyalty from the oath keepers who were convicted of seditious conspiracy on January 6th. I think this is a real signal that he is one of them, when he holds a rally in Waco on the 30th anniversary of that 51 day standoff. So the period you talked about, Joyce, was February 28th through April 19th, 1993.

So here we are in March, so this is the 30th anniversary of the standoff. 30 years ago, on the day he will hold this rally, there was a standoff going on in Waco. And so there are experts who say that Waco is the biggest symbol for far right extremism. You couldn't pick a better place that have deep veins of anti-government hatred. This is ground zero for all of that. So choosing this as the location is really just playing with fire.

Joyce:

It's really alarming that Trump has chosen to tap into this. I mean, he knows that his words can set his followers off. We know that on January 6th he did this, he refused to walk it back. He refused to quell the violence when people around him believed he was the only one who could do it. And it really looks to me like he's doing it again. I'm very concerned about what will happen when he takes the stage in Waco. Jill, you have this perspective, this long historical perspective here. Do you have concerns?

Jill:

Oh, I'm very concerned. As soon as I saw that, I have been tweeting that I am concerned more about that rally than any possible protest of his arrest. I think that it is not, and I've posted this many times, there's no coincidence that he picked sometime during the 30th anniversary of Waco to hold his very first campaign rally in Waco. It's not a coincidence. It is a danger. As we've looked at and seen the preparations being made in New York for a possible indictment of Donald Trump, I can only hope that Texas is prepared for what might happen this Saturday, this today.

Joyce:

Yeah, I'm less worried about what happens in Waco. And we started out the episode talking about your love of traveling to places most people wouldn't go. Waco is on that list, right? I used to go there in high school for high school debate tournaments. Nobody goes to Waco voluntarily. Sorry. Apologies to our listeners in Waco-

Barb:

Wait, wait, wait. No, you can't diss Waco. You can't diss Waco.

Joyce:

I'm going to diss Waco, it's a dry county.

Barb:

There's a Baylor in Waco.

Joyce:

Baylor is, and that's where we used to go for debate tournament.

Barb:

We don't want to diss everybody who lives in Waco. I'm sure there are plenty of nice people who live in Waco.

Joyce:

The people are lovely-

Barb:

But there is significance to Waco.

Joyce:

But yeah, and the point is well taken, right? Trump is not going there because there's something fun that he wants to do. He's going because of the significance. And what worries me is whoever else is out there. In my district, we dealt with Eric Robert Rudolph, the abortion clinic bomber, who was triggered by all of this same stuff. The Turner Diaries, Ruby Ridge and Waco. Waco always looms large. And so I really do worry that people in this country are at risk, again, because of Donald Trump.

Barb:

Jill, I've been hearing about this fabulous new company called Kitsch. Tell me about Kitsch.

Jill:

Kitsch is wonderful, and I have been using their heatless curling device, which is a tube that you clip into your hair and wrap your hair around. And lo and behold, few hours later, you have curls in your hair. It's quite remarkable. And 2023 is the year of good, feel good, do good, and being good to yourself. And 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, literally just hustle in a dream. It's one that grew, and throughout Kitsch, has been a self-funded, female founded company, now carried in over 20,000 retail locations.

Joyce:

You'll get hooked on some of Kitsch's best sellers, especially the ones you can use while you're resting up for a new day. Their satin pillowcases are great bonnets, eye masks, all vegan and cruelty-free, great for your hair and skin while you sleep. And we love their shampoo and conditioner bars. It's great, right? It comes in a bar form, bottle free beauty, baby. It's great for the environment. And with their heatless satin curling rollers, the ones that Jill loves so much, you can say bye-bye to heat damage.

There are TikTok videos of people throwing away their expensive curlers to use Kitsch. You may may not go that far, but if you do, we want to see your pictures. We'll be inspired. Kitsch also has quick dry hair towels, classic hair ties, scrunchies, and so much more.

Barb:

Well, I don't really know what any of those things are, but what I do know is that right now, Kitsch is offering you 30% off your entire order at mykitch.com/sisters. That's right, 30% off anything and everything at mykitch.com/sisters, that's spelled M-Y K-I-T-S-C-H.com/sisters. One more time, it's mykitch.com/sisters for 30% off your order. And as you know, you can also find the link in our show notes.

Joyce:

Well, it's time for us to answer some of our listeners questions. This week we had a bumper crop of great questions. We've got time for three of them, and we'll get straight to it. If you've got questions for us, please send them to us at sistersinlaw@politicon.com, or tweet them to us at hashtag sisters-in-law on Twitter. We'll get to as many of them as we can during the week.

First up this week, we have a question from Deedee. Barb, maybe you can take this one on. Deedee wants to know who decides how long a statute of limitation should be? Seems crazy there's a statute of limitations on the January 6th insurrection, especially when it's taking so long to bring the big guys to justice.

Barb:

Yes, this is a great question. So statutes of limitation in the federal system are decided by Congress, and in states they get decided by state legislatures. So it's a statute like other statutes, and they decide how long there should be before a prosecution has to be brought. The idea behind a statute of limitations is that at some point, too much time has gone by for a defendant to be able to fairly defend himself. You

can imagine if someone accused you of a crime that occurred 30 or 50 years ago, you would say, "I can't remember where I was on the night of March 25th, 1973." And so it would be very difficult to defend yourself. Or if you had witnesses, they might be dead, if you had documents, they might be gone or unavailable.

There's also this idea that at some point, you should be able to feel free that the time has passed and you can live without fear that you might be charged with a crime. So in most cases, in the federal system, five years is the amount of time that Congress will set for a statute of limitations. That's a good bit of time, really, for a prosecutor to pull together a case. Usually if you want to charge it, that's plenty of time to get it done. And there are some wrinkles about extending those. A few crimes actually have longer statutes of limitations. So murder cases often have no statute of limitation. Child abuse often have no statute of limitation. Terrorism crimes have a longer statute of limitation.

And so it may be that at some point there is a bar in the January 6th investigation, but not for a while. That occurred in 2021. We're only two years out, so they've got three more years under the statute. I think what's more concerning is, and why the clock is ticking, is I think they want to get this case completed before there's another presidential election, or a new president is sworn in, in January of 2025.

Joyce:

So that's a really interesting answer, and something that I think, as lawyers, we take for granted. Great to get questions that give us the opportunity to explain those sort of issues. And here's a similar one from Maureen. She says, "I've heard a grand jury issues a true bill," and she asks whether that's one word or two, "When the jury indicts a person. Please explain the term, and it's origin, and if I have that correctly." Can you weigh in on that, Jill?

Jill:

Absolutely. Ann Maureen, you do have it correctly. A true bill is basically another word, and it is two words, by the way. True bill is another phrase for indictment. So the jury either votes a true bill, meaning that a person is indicted because there was enough evidence to make them stand trial. Or they vote a no bill.

There's another way that you didn't ask about, but I'm going to throw into the mix here, called an information. Which is another way that you can bring someone to court for a trial. It's usually only available in the case of a misdemeanor, but sometimes a defendant can waive a right to an indictment, and information saves time because you don't have to go to a grand jury. So it's the grand jury that issues either a true bill or an indictment, a no bill, or the prosecutor who has an information. And all of them lead to trials.

Joyce:

Our final question today comes from Kimberly in Kauai, Hawaii. She says, "Let's say Donald goes to jail. Will the Secret Service have to accompany him in jail?" This is another one of those unprecedented sort of things that we'll have to consider as the cases against Trump move forward. But the basic answer is yes. The first time that we'll see this happen will be, if Trump is indicted, he will be booked following his indictment, and in advance of his arraignment. And in that booking process, he will be accompanied by an agent from his Secret Service detail, who will accompany him in order to protect him.

And then if he is convicted at trial, or if he's detained pending trial, there will be a team of agents from his detail who will stay with him around the clock. This is, of course, it's unprecedented. It's a very

difficult thing to contemplate because it will involve inserting armed federal agents into a secure jail, or prison facility. That's very complicating for the law enforcement officials involved. But we saw some suggestion that this process was already under consideration. There were reports that there were some meetings being held between federal, and state, and local law enforcement in New York earlier this week. That Secret Service was being read in on the plan, and this will just be part of the new complications that we'll see as the result of Trump's criminal conduct.

Thank you for listening to hashtag Sisters-in-Law with Barb McQuaid, Jill Weinbanks, and me, Joyce Vance. Kim will be back soon. You can send in your questions by email to sisters-in-law@politicon.com or tweet them for next week's show, using the hashtag Sisters-in-law. As y'all know by now, #Sisterliness are going on the road. Come and join us as we record the podcast live on stage, we'll discuss the legal topics of the day, and answer your questions. We start off in Portland, Oregon on May 12th, New York City on May 19, and Washington DC on May 21. There's still some tickets available, but hurry, because they're going fast. Go to politicon.com/tour to get your tickets today. We are really looking forward to meeting all of you in person.

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Did you guys see that I am on George Takei's blog this morning? I am so excited. I answered five questions for him, and you guys are Star Trek nuts, right? You know who George Takei is?

Barb:

I know who he is.

Jill:

No.

Barb:

I'm not a Star Trek nut, but I know who he is.

Joyce:

We were big Star Trek fans. When my father-in-law was alive, we used to watch Star Trek every Sunday night. So being on George Takei's sub stack is like a dream come true for me.

Barb:

Good for you.

Speaker 4:

Make it so.