

Joyce:

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Kim:

Welcome back to #SistersInLaw with Jill Wine-Banks, Barb McQuade, Joyce Vance, and me, Kimberly Atkins Stohr. You all know we are going on tour in May to Portland, Oregon on May 12th, to New York City on May 19th, and to Washington DC on May 21st. So go to politicon.com/tour to get your tickets because they are selling out fast, so you better hurry. All right, this is the show we've been waiting for. We're going to talk about the indictment. We're also going to talk about some new rules regarding financial disclosures at the SCOTUS and also DeSantis versus the Mouse, the latest battle and the nerdy legal concept behind it. I love that topic. And as always, we will be answering your questions at the end of the show. You can send your questions to sistersinlaw@politicon.com or post them using #SistersInLaw.

All right, but before we get to the big topics of the show, you guys, it's springtime here. The blooms are coming out, and I want to ask you guys, what are your springtime rituals? For me, it's cleaning. I just went through all of my stuff. I'm downsizing, I'm giving stuff away to friends or to charity and just making sure everything is clean. I'm not exactly like, what's her name, Kondo, where I'm getting rid of everything, but I get rid of a little bit of stuff and it makes me feel good. It makes me feel lighter, just more efficient. So what do you guys do in springtime?

Jill:

I assess my garden and look at what's happened over the winter and decide what am I going to plant coming spring, and I love, love being able to do that, but it isn't spring here, I've seen pictures of the cherry blossoms. You guys in DC, it looks gorgeous. Here, we don't have anything. I do have some little teeny spring flowers. I'll take pictures and send them to you, but they're little teeny wild flowers. Otherwise, we have nothing.

Kim:

Oh, it'll come soon. What about you, Joyce?

Joyce:

So my answer is actually the same as Jill's. I've been out in the yard assessing my garden. We had a couple of hard freezes this year, and so it's actually a very sad year. I've got some 25 year old rosemary bushes that died. I lost some gardenias, so yeah, I know it's really sad to do that. But the other good thing is a little bit of extra space in the new chicken coop. And so I am getting, last year I had the trauma of hatching eggs and ending up with a couple of roosters. This year, I am ordering female chickens, otherwise known as Pullets. So I'll have a couple of new little girls in my flock.

Jill:

Aw.

Kim:

Aw. How about you, Barb?

Barb:

Well, I'm all about baseball. Opening day was this week. I've always loved baseball. I'm a big Tigers fan, I guess I should say, these days, a long-suffering Tigers fan. But there's hope springs eternal in the spring, we lost our first game. But even the worst teams in baseball win about 60 or 70 games out of the 162 they play. And you never know which ones they might win. So every game offers hope and possibility. So I love baseball and I look forward to listening. I like to listen to games in the background when I'm working or have television in the background when I'm working. Just makes me happy.

Kim:

Well, you and my mom are both long-suffering together. She is also a loyal Detroit Tigers fan.

Barb:

Oh, good job.

Kim:

Go Detroit.

Jill:

Probably nobody suffers more than a Cubs fan like me. We've gone hundreds of years without a win.

Barb:

Oh, you've won the World Series just a few years ago. You can't win for a while.

Jill:

Yes. Yeah, that's true.

Barb:

Jill, those are some nice looking glasses. Are those new?

Jill:

They are. They're actually not new glasses. I've had a Pair Eyewear glass basic for a long time now, but I just got this wonderful sparkly green topper and they look like they're new eyeglasses and it's so wonderful when it comes to style. It's fun to keep things fresh, so why stick to the same old pair of glasses? And with Pair Eyewear, you can switch up your look and a snap anytime with affordable base frames and customizable magnetic top frames in hundreds of styles and colors.

Joyce:

Not only are they affordable, but they have incredible looks for any type or mood. You can match your top frames for any occasion with only one base frame. They're so easy to switch out. Have hundreds of magnetic top frame styles to choose from. Top frames start at \$25 so you can build a collection that's unique to you. That means matching your outfit, supporting your home team or rep in your favorite superhero in a snap. It's so hard to keep yourself from picking less than a dozen.

Kim:

I love my toppers. They are blue and white stripes, and I just went to France, so I felt like I fit right in. That's a very Parisian kind of look, and they're great, especially given the usual price of frames. It's no wonder most people think that it's better to stick to wearing the same glasses pretty much every day, and that's why we love Pair. With Pair, you can break up the monotony without breaking the bank. You can choose from a range of iconic base shapes, starting at just \$60, including prescription. Then choose from among the hundreds of matching magnetic top frame designs to make it easy to switch up your look.

Barb:

It's spring so I'm sporting my Detroit Tigers toppers, but even better than style, Pair knows vision is essential. Today, more than 200 million children worldwide who need glasses can't get them. And beyond helping you craft the style that's yours, Pair wants to do some good. So for every Pair you buy, Pair provides glasses to a child in need. Get glasses that stay as fresh as your unique style with Pair. Go to paireyewear.com/sisters for 50% off your first purchase. That's Pair, P-A-I-Reyewear.com/sisters. And with Pair Eyewear, it's even easier to find this link to our deal in the show notes.

Kim:

We're going to get right to it today because the news this week was big. The first time ever a former president has been indicted. So let's jump right in.

Barb:

Well, I'll start talking about that, at long last, Donald Trump has been indicted. Joyce, what do we know about it to date? We haven't actually seen the document yet, right? But what is it that we do know about it?

Joyce:

Well, that's right, and it's such an important point, Barb. We haven't seen the indictment. We won't see the indictment most likely until Tuesday. So we know that Donald Trump has been indicted. The judge in Manhattan engaged a limited unsealing order, which allowed the DA to make that comment publicly, still prohibited from talking about any of the contents of the indictment. There have been two small leaks of information. One was in the New York Times original story, that first story that I'm sure if you're like me, right? It happened on your phone and you looked up and the New York Times suddenly out of the blue announced that the Manhattan DA had indicted Donald Trump. And in the lead of that story, there was a line that said that they were felony charges. We've discussed on the podcast in the past that one of the most frequently believed to be involved charges.

This charge involving false business records is a misdemeanor unless it's committed in furtherance of or to conceal another crime. So if the times as reporting holds up and one expects that it will, that means we have felony charges on our hand. The second leak was very specific and frankly, a little bit more surprising. This was the leak that suggested that there are some 34 counts, or I've seen other reporting that says more than 30 counts in the indictment. We don't know their substance. We don't know for certain that this is the case, but I could imagine this sort of leak occurring because indictments when they're under seal are typically taken to the clerk's office. It's possible that somebody may have looked and just seen the count number on the indictment. And so that has been revealed.

Listen, let me issue this caution since we don't know what's in the indictment. This is exactly the sort of scenario that Donald Trump likes to take advantage of four days, no specifics about what's in the

indictment. What do you think Trump is going to do? He's going to come out, condemn the prosecutors, condemn the judge, call everybody corrupt, probably call everybody racist and say that he's innocent and that it was a perfect check that he wrote to Stormy Daniels. I'm sort of making up the last part, but you get the point. Do not let Trump's efforts at disinformation convince you that this case is not a strong one. We just won't know whether it's strong or not until we see the indictment itself on Tuesday.

Barb:

Yeah, that's such a good point, and I want to talk about that disinformation point in a little bit. First, Kim, let me ask you this. Where do you put this case in the cannon of potential Trump indictments? There's the Georgia case that may be coming for election fraud. There's the federal case for attacking democracy or retaining classified documents, and some of Trump's supporters have of course referred to this one as a bookkeeping error. Do you think this case is a big deal? Is it worth charging? If it is, what we think it is?

Kim:

I think that it is important to the rule of law. Look, I can understand completely why a lot of people, particularly people like me, like us, who have been appalled by not just Donald Trump's apparent lawlessness, but also his disregard for the levers that protect our democracy, that the first time he is indicted, it is based on some hush money that he paid somebody. I could see that understand why that might be disappointing to some, given all the other things that he has done. As you pointed out, you're talking about trying to overturn the results of an election and subvert democracy, his part on January 6th. So this may feel like small potatoes, but it's important for the rule of law. I think of it in this way, when a public official, somebody who's a public servant, like a federal employee who needs a security clearance, an unpaid parking ticket can hold up somebody from getting a security clearance because we demand more from our public officials.

If what Alvin Bragg lays out is criminal and he has the facts to support that, and that goes to a jury, it is imperative that if the charges are warranted, if they are proven that he be convicted because nobody including a president, is above the law. So amid all the noise that we're going to talk about, amid maybe some disappointment that this is what the first charges are, we really need to keep that front of mind. Nobody is above the law, and if he broke the law under New York law, he should be convicted. If Alvin Bragg does not prove that case, then he should be acquitted. But the point is we need to let this play out in the courts and let the jury decide because Donald Trump is just like everyone else in that regard, and it's important that we hold him to that.

Jill:

Can I just add to that? Let me just add, because I really think that we're all missing the point when we start ranking these. A violation of law is something that needs to be prosecuted, but this is a particularly bad crime because it was the foundation of his presidency without having kept both Stormy Daniels and Karen McDougal quiet, it could have changed the outcome of the election and then he wouldn't have ever been president.

Kim:

I'm not sure about that. I mean, he [inaudible 00:13:16].

Jill:

He deserves its publication.

Kim:

I get the point you're making, Jill. He also talked about grabbing women by a body part and he was still elected. I'm not sure that that's true, but I do think that it's important to hold any breaking of the law accountable, and that that is important, but I'm not sure that but for this, he wouldn't be president. I don't know.

Jill:

I mean, I certainly agree that any violation needs to be prosecuted and that whatever people are saying about, oh, this is unprecedented to indict a former president, it's unprecedented that a former president commits so many crimes that get investigated, and that's why this is happening.

Kim:

Yeah, absolutely true. That's absolutely true.

Jill:

The way to stop future wrongdoers from trying to do this is by doing an accountability through an indictment. So absolutely, that's right. But I do think at some point before he was elected that if these things in addition to the grabbing you know what, it builds on each other and it could have influenced the outcome. So it's definitely worth prosecuting for all of those reasons.

Joyce:

So I was going to adopt Jill's argument a little bit and say this, we don't really know exactly what charges the Manhattan DA has in mind. They know their criminal code in New York a lot better than we all do, and I bet that they took all their grand jury evidence and rummaged around in the code to see what the best fit was. But I wonder, Jill, to your point, I'm not sure that it matters whether or not what Trump does here, this whole conspiracy that they cook upright, they enter into the agreement that's sort of a completed crime. And then payments are made over a series of months, even including after Trump is already in the White House. I think it's this sort of intent to manipulate or interfere with the election that the DA might focus on in assigning criminality here.

Barb:

And of course, one thing about this, I do hear about, oh, of all the crimes we're charging, this one, it suggests it's part of the Trump framing of there's kind of two teams in the world. There are Trump supporters and the radical left Democrats. These cases are all separate. At some point, Fani Willis may or may not file criminal charges. Jack Smith may or may not file criminal charges. When we look up back on this moment in history, there'll be a whole body of work of the Trump cannon of indictments. And so they're not coordinating. They're bringing their cases when they believe they're ready.

But Jill, the question I wanted to ask you is just in light of your Watergate experience, I know you pushed for an indictment of Richard Nixon at the time, and we also know that ultimately President Ford pardon Richard Nixon for anything that he might have done, any crimes he might have committed relating to Watergate, so there never was a chance to hold him criminally accountable. Do you think that when people are saying things like Mike Pence, it's outrageous that Donald Trump has been charged with a

crime, Ron DeSantis has said, "It's an un-American to charge him with a crime." How do you react to that?

Jill:

I react very poorly, as you might imagine. I would say, first of all, this is a crime for which there have been a number of prosecutions. This is not something that he was targeted for a crime that no one in the past has ever been indicted for. There are dozens of indictments for this kind of business fraud, false reporting crimes, and so he's not unique. He isn't being singled out for political reasons. He committed a crime assuming that the facts match up to the standard of the elements of the crime. It's the New York Penal Code. And remember, I am a member of the New York Bar, so I have some familiarity with this, but the New York Penal Law has a first and second degree offenses, and the second degree is when it's linked to another felony or into another crime when you're doing the false reporting in order to conceal the fact of another crime. And so I think this is a legitimate prosecution, and he's not being singled out.

Barb:

In fact, if you really think about what they're saying is what they really want is for Trumps to get special treatment simply because he is a former president, right? That it's outrageous that you're charging him. They haven't seen the charges, they haven't seen any of the evidence. They just think it's outrageous that you'd be charging a former president as we all went to law school, and how professors like to take hypotheticals to push you way out there on a limb to just demonstrate the fallacy of the argument. And here, it's basically saying, if you can't charge him with this, you can't charge him with anything.

He could stand in the middle of Fifth Avenue and shoot somebody and not be charged. He does not have a right to commit crimes with impunity. And so there'll be a test here, and that will be in court where he gets the presumption of innocence and due process. And a jury will have to find beyond a reasonable doubt that he's guilty, and that's where we'll get that test. Joyce, let me ask you, what comes next? You said he's going to be arraigned on Tuesday, that's the reporting. What will happen on Tuesday do you expect?

Joyce:

Well, on Tuesday, Trump will be booked. There will be a mugshot. He will be fingerprinted, he will be swabbed for DNA just like anybody else. Unlike anyone else, he will go through that process with a Secret Service agent at his side to protect him and keep him safe during that process. It will be unusual in that regard and then he'll be arraigned. As we've discussed, the formal charges will be unsealed and he will enter a plea, presumably a plea of not guilty, and then we'll be sort of off to the races here. There will be discovery, there will be preliminary motions. There may even be an effort to remove the case into federal court. I think we can expect Donald Trump given his history as an aggressive litigant to pull out all the stops here to avoid facing accountability in a New York State criminal court.

Barb:

Yeah, I worry too about acts of violence. There's already been some protesters' assembly outside his home and in New York and other places. I guess that's more about the reaction than about the charges. Kim, how do you think these charges might affect Trump's 2024 presidential campaign? Is this going to be seen as a scar or is it going to be a badge of honor for him to once again claim victimhood and grievance?

Kim:

I think a little of both. I think it depends on the eye of the beholder in these cases. Look, we cannot pretend, yes, everything about this is unprecedented. Nothing like this has happened before so we don't have clear historical examples of what the political impact might be, but there have been times that politicians have been indicted and they survived it politically. People like Ken Paxton in Texas who face fraud charges. I think these charges have still to date not been fully resolved, but it hasn't stopped him from being elected. Or Senator Menendez in New Jersey went to trial on fraud charges.

The jury hung and he was reelected, and it helped galvanize support for both of them among their supporters, that you can have that we're going to beat this and rally. And Donald Trump is an expert at using grievance and victimhood for political advantage. So for some people, we've seen the way he's gotten Republicans, including Mike Pence, including Mike Pence...

Barb:

That's crazy.

Kim:

... to rally around him in condemning these charges. As we mentioned, before they're even unsealed. So will there be some benefits? Sure. Will it be enough to help him win? I don't know. We'll have to see.

Barb:

Mike Pence for political gain, right? That's the only reason he could be defending Donald Trump, he and his family were at... If you don't care about yourself, how about your family? Imagine what it's like at the dinner table at the Pence house only. Are you kidding me? That man tried to kill us, and you're saying all these things. Amazing. Jill, I want to get back to a point that Joyce made. She was talking about Trump's use of disinformation, and it's so interesting. I want to ask you about a piece that our friend, Asha Rangappa wrote in MSNBC daily this week about how Trump uses messaging. And as people may know, Asha is a former FBI counterintelligence agent, and she's now a global affairs professor at Yale, and she studies about information warfare techniques.

And she writes in this piece, we'll put it in the show notes, that Trump is using something called reflex control, which is a particular kind of information warfare. For example, when he said he was going to be arrested last Wednesday, he was setting kind of level setting, setting expectations so that when he was not arrested on Tuesday, people started talking about the delay. Like, whoa, what's wrong? I think they're rethinking it. I think they're reconsidering. What do you think about Asha's theory and what should we do to prepare for more of it? How should we... I want people to be able to identify it when they see it so that we can defeat it by not allowing us to fall prey to it.

Jill:

So first of all, I think what you're saying is really the most important thing, which is to be aware so that you don't fall for it. And based on past history, Asha is absolutely correct. Trump has a real gift for exploiting the rules of the game where journalists and institutions like the Department of Justice or the Manhattan DA cannot speak out of court. So you have a vacuum and he fills it. It's called information asymmetry. And so he'll say something and no one can answer it. So you have this time from the sealed indictment and the time when it is released, which as you said earlier, probably won't be until Tuesday when he's actually arraigned, he gets the first mover advantage just like Barr had in the Mueller case. The Mueller report was delivered to him, but it didn't become public. And during that period of time, he said, no collusion, no obstruction, and first impressions are very hard to change.

So you have another example where victory was announced by Trump in 2020 before the results were even in. And it was something that had been planned for months before the election. Bannon was already announcing he's going to say he won even though it isn't firm or final yet, because it creates the impression and it's hard to change that. So I think yes, it's clear we're in for more of this disinformation and everyone listening right now should be aware of it and not pay attention to it, not fall for it. He said it was going to happen on Tuesday. There was never any evidence that it was going to happen on Tuesday, none. And then everybody said, oh God, there must be a problem in the case. So he would've done it on Tuesday. And so he created this really false impression and he'll try doing it again and then again and again. So there was no delay. I think Bragg operated on his own time zone and don't fall for the baloney from Donald Trump.

Joyce:

All right, no baloney. You heard it here, folks.

Kim:

Hey Joyce, it's springtime and I'm thinking of sprucing up the garden. What should I do?

Joyce:

So I have the perfect suggestion for you. I've got a couple of small Meyer lemon trees I got from FastGrowingTrees. And much to my surprise, not only were they beautiful when I opened them up, I put them in really pretty pots right on our back deck. They actually have little blooms already coming out this early, little blossoms, and I'm so excited. You should get some of those, Kim. But really everyone can breathe some life into their own backyard with FastGrowingTrees.com this spring. From shade to fresh fruit to privacy and natural beauty, let FastGrowingTrees.com help you plant your dream garden with their expert advice and fast, reliable shipping. I've gotten a lot of plants from them, everything from blueberries to citrus trees. And this year, I'm experimenting with sugar cane. I love all of my plants from FastGrowingTrees.

Barb:

Well, Joyce, all that stuff sounds great, but I don't think it's going to grow very well in Michigan. I don't know about lemon trees and sugar canes, but you know what I love is like flowering shrubs. What's a good flowering shrub? They're so pretty.

Joyce:

Quince, I have two of their Quince bushes in our backyard too, and they're great.

Jill:

I would say for our area, Barb, you have to go with something like hydrangea.

Barb:

Yeah, yeah, yeah. Okay, hydrangea. That sounds like one of those things you hear the ladies talking about at the garden club, hydrangea. I don't know what that is, but I'm going to go with it. FastGrowingTrees.com's plant experts curate thousands of easy to grow plant, shrub and tree varieties for your unique climate. Anything from there it is, Joyce, Meyer lemons to evergreens, that might be more about my alley and all that's in between. With happy plants, you have a happy home. We know

sometimes it's hard to know which plants will do best, but that's not a problem, because with FastGrowingTrees.com, you'll get customized recommendations based on your specific needs. Plus their plant experts are always available to help keep your plants growing healthy through the season and beyond.

Jill:

No waiting in long lines anymore. You don't have to haul heavy plants around because with FastGrowingTrees.com, you order online and your plants arrive at your door in just a few days. I love how great my evergreens look in the yard when we still get the occasional snow. The prices were so cheap and the vibe it adds to my home is amazing. We know they will make yours look great too.

Kim:

Yeah, we have a couple of shrubs that we got last year from FastGrowingTrees and they look fantastic. And with FastGrowingTrees, 30 day alive and thrive guarantee, you know everything will look great, fresh out of the box. So join over 1.5 million happy FastGrowingTrees customers. Go to fastgrowingtrees.com/sisters now and get 15% off your entire order. That's 15% off at [FastGrowingTrees.com/sisters](https://fastgrowingtrees.com/sisters). Head there as soon as you finish enjoying this podcast. And you know what else you could do? You can find the link in our show notes.

Joyce:

Hit the link in our show notes.

Jill:

Federal judges, except for Supreme Court justices are subject to strict rules about their conduct and when they must recuse, if there is even an appearance of conflict of interest. This seems obviously essential to trust in our courts. So Barb, why is SCOTUS exempt from these rules?

Barb:

Yeah, I think it's because of their constitutional place in our government. They are subject to a code of conduct, it's just not binding on them. They take the view that they should police themselves. So they're supposed to recuse themselves if there's a conflict of interest, if there's a party in a case that is a family member or someone they know or someone with whom they have a financial interest, but there's no way to police it if they say, no, I don't think I need to. There's no mechanism for enforcing it. And so in other levels of the court, there are and there's discipline for judges who violate the ethics, the ethical standards.

There is the remedy of impeachment for a Supreme Court justice, but that's only going to come in a case of egregious misconduct at the back end. And so the idea of having a code of conduct, I think is really important for judges. But the idea would be if some other branch of government were imposing rules on them, then does that in some way undermine their role as a co-equal branch of government at the top of the judiciary. So I think that's the argument that is in favor of exempting them. I'm not sure it's a persuasive argument though.

Jill:

Okay. And Joyce, tell me what you think. Was this a problem in the past? Is it still a problem? This particularly because it's self-enforcing and there's nothing like the executive and legislative branches have for enforcement.

Joyce:

It's a really interesting question, Jill, because federal law does require judges including Supreme Court justices, just like top officials in legislative and executive branches to file annual forms that detail their outside income and their spouse's source of income. But it allows each branch to set its own reporting standards. So there have always been some issues inside of the judiciary. And the justices, as you've pointed out, are chief among those issues. They all travel, by the way, this isn't just one justice. They all travel, they all speak, they all have outside groups that covered their speaking and that leads to what my father-in-law used to call boondoggles when he was on the 11th Circuit Court of Appeals. He was always opposed to them and he'd say, well, so-and-so is going fishing in Costa Rica. It's a boondoggle. And that's just what it is. But that leads us to Justice Scalia, who is very partial to going on boondoggles and really set some new lows.

He was notorious for going on these trips. The hunting trip that he died on involved a luxury stay at a resort called Cibolo Creek, where he had a huge room at this 30,000 acre spread designed for hunters. And his stay was paid for by a billionaire industrialist. Scalia was there as the industrialist personal guest, which meant he did not have to pay and because he was a personal guest, he most likely would not have reported it or dealt with it for conflict of interest purposes. He took this kind of trip often, I think we're all very familiar with his duck hunting trip with Dick Cheney.

Jill:

Yes.

Joyce:

And there's a lawsuit where the Sierra Club is suing Cheney and they want Scalia to recuse and he refuses to recuse. I actually went back and I read because he wrote this 21 page, just outrage screed, telling the Sierra Club why he would stay on the case. Some of my favorite lines include this. He wrote, "The nation is in deeper trouble than I had imagined if people think a duck hunting trip would be enough to swing my vote." Wow.

Barb:

I do. I think a duck hunting trip is enough to swing his vote.

Joyce:

Well, not only, not only given his pension for hunting, but just the appearance of impropriety. He just acts like that's not a factor. He also writes a rule that required members of this court to remove themselves from cases in which the official actions of friends were at issue would be utterly disabling. Okay, you want life tenure as a federal Supreme Court Justice, you're going to have to have your social life disabled a little bit. Scalia also complained that he and Cheney never were even alone in the same duck blind on this trip with a dozen or so hunters. So where would there be the opportunity for influence? Look, this is a pervasive problem and it's no place worse than it is on the Supreme Court.

Kim:

And they were apparently close enough.

Joyce:

Yes.

Jill:

Yes, yes.

Joyce:

Well, you don't have to be that close to cheetah man, do you?

Kim:

No, I guess maybe not.

Jill:

But federal law does require judges, including Supreme Court justices as well as top officials from legislative and executive branches to file annual forms detailing their outside income, their spouses sources of income. And as Joyce said, each branch sets their own reporting standards. And as part of that, judges, including Supreme Court justices are prohibited from accepting gifts from anyone with business before the court, even their friends, I would say that would mean, and the judicial grants, however, has never clearly defined the exemption for gifts considered "personal hospitality", and recently a committee of the judicial conference, which is the court's policymaking body, internal, so it's not being imposed from an outside branch, just revised the rules to address that ambiguity of what is personal hospitality. And they did it really almost in secret. It was hard to even know about. But Kim, what's the new rule? And does it strengthen the personal hospitality restrictions?

Kim:

Yes. I just want to underscore that point you're making, Jill, is that they made this disclosure rule, but they didn't disclose it. The only reason we know about it is because Senator Sheldon Whitehouse questioned them about it. And it was in the response to Senator Whitehouse that we found all of this out. So that's just the chef's kiss, right? But under these new rules, judges still don't have to disclose gifts, hospitality gifts, things like food, shelter, lodging, or entertainment if it comes from an individual for a non-business purpose. But judges must disclose, including SCOTUS Justices stays at commercial properties like hotels and resorts or gifts of hospitality that are paid for by a third party. So when under these new rules, Scalia would've had to disclose the fact that he was put up in this super fancy lodge that he ended up having a heart attack and dying.

He would've had to disclose that in his financial disclosure form. So it does a little bit. It doesn't do a lot. I think it's important to know one thing that this rule wouldn't cover, and if you remember back last year, I know a lot happened last year, but it was that political report that disclosed a thing called Operation Higher Court where people were literally whining and dining Supreme Court justices in their homes privately and lobbying them on things like religious rights. If it's done in a home, if it's done privately, they still don't have to disclose that. So clearly, these rules don't go nearly far enough in compelling the kind of disclosure and ethics that we really need from our highest court.

Jill:

So I was going to ask Barb about whether the new rule is enough or what else is needed. Barb, do you want to add anything to what you just said?

Barb:

Yeah, I just stop and think for a minute. Does anybody invite you for an all expenses paid trip to a hunting lodge somewhere, or a spa, wherever you might like to go? No. Who does that? Nobody does that because you're not on the Supreme Court. So why do they do it? Because they want to buy influence. They want to put a thumb on the scale, and how could these judges possibly think that it's okay? I would impose the same rules that we had as US attorneys and assistant US attorneys. We couldn't take stuff, period. You did not get stuff for free. You paid your way for things.

If you wanted to go to a banquet, you could get permission to go to one of those things and get a complimentary ticket. If it was believed to be a widely attended gathering, it was in the best interest of the organization for you to attend. Other than that, if you wanted to go to something, you paid for something. I know people sometimes invited me to go sit in a box at a Red Wings game or a Lions game or something like that, and the answer was a 100% no, not permitted. I can't do it. And so the idea that the justices think it's normal, sorry Justice Scalia, your friends don't like you that much, that they want to pay an all expenses paid trip to a hunting camp in Texas. It's absurd.

Joyce:

Wow, Barb, that is harsh.

Kim:

But it's true.

Jill:

No, I think Barb is right. Yeah.

Kim:

But it's totally true. I mean, listen, I'm not even a public official. I am a journalist employed by private employers and every news organization I've worked in, I was prohibited to accept anything from anybody for worth more than either \$5 or \$20, a nominal. If somebody wanted to... If we're having coffee and somebody picked up the coffee, that'd be okay, because I think it would be hard-pressed to say that my coverage would be altered by a cup of coffee. But news organizations don't play around. They want their journalists to be trusted. They want to ensure that there is that level of ethics. So if private businesses can do that, what does the Supreme Court actually think they're doing? I think Barb is exactly right.

Joyce:

Well, to Dick Cheney's sort of I'm sorry to... Let me pumpnickel. Let me say that again. To Justice Scalia's point about cutting off social discourse, I can remember this one time where early in my tenure as US Attorney, I had gone out to lunch with Doug Jones, who had been my boss, who I had known for about a million years at that point. And Doug reached in to pay for lunch at the end of the meal. And I just said, sorry, boss, but for the next four years while I'm here, you can't buy my lunch. And I stuck to that because it's that whole appearance of impropriety thing.

Kim:

Yeah.

Jill:

Absolutely. And it's not just private businesses, but the legislative branch and the executive branch have those rules and they are enforced. So for the Supreme Court to thumb its nose at compliance with those rules is really outrageous. And then speaking of outrageous, Joyce, Ginni Thomas, wife of Justice Clarence Thomas has created a number of conflict situations for her husband. Can you talk about at least the latest reporting of Ginni creating a conflict?

Joyce:

Right. So this is just so outrageous at this point. I think everyone remembers the history of Thomas's involvement in perpetuating the big lie in helping people assemble on January 6th. And nonetheless, her husband continues to sit on cases that are connected to the election, which seems to me to be a clear conflict of interest. Just put it into a different context. It's a business deal. She's involved in helping to line it up. She talks with some of the people on one side of the business deal. Well, no spouse who's a judge in that situation is then going to get involved in a case that's passing on the legitimacy of the business deal. It's very clear to me that Thomas violated ethical rules. And the problem here is the intersection of Ginni Thomas's activities and Thomas's refusal to recuse himself. They just have to pick, I mean, it's fine for her to be involved as long as he recuses from the cases, that's the easiest path forward, but it's not one that they're willing to take.

And now, there's new reporting this week that I think is truly concerning. It suggests that Ginni Thomas over the last three years or so has raised about \$600,000 in anonymous funds for conservative causes. So there are all of these folks who she is in a sense beholden to. None of us know who they are. None of us know if her husband is about to sit on cases where they have a stake. I think it's deeply troubling. I thought that the Chief Justice would try to step up and come up with a solution to this situation a while back. I think increasingly it's clear he just lacks the ability to do that. And Clarence Thomas is going to do whatever he damn well pleases, no matter what kind of damage, reputational damage, the court suffers as a result of it.

Jill:

And Kim, I want to ask you one final question because all of us, all four of us are independent career women. And so it raises the question of whether the actions of our spouses require recusal if we were on the bench. How do you draw that line between an independent spouse having a career in doing her job or his job, and what's required for fairness on the courts for there to be no appearance of impropriety?

Kim:

Yeah, I don't think, and this is an important point, Jill, we certainly are not suggesting that spouses cannot have lives, that they cannot have careers and that they can't have political views. Of course, they can. A spouse of a justice should be able to say, donate to a candidate that they support. That in itself does not create a level of suspect. We shouldn't assume that a justice would train their ideology based on what their spouse does. They can disagree on things, but there is a big difference between something like that and what Ginni Thomas has been doing for decades. I think part of the problem with her is that she's been doing this kind of stuff for so long and the court sort of turned its head and looked the other

way at it that now it's such a terrible problem that when it rises to the level of agitating or advocating for the overturn of election results, it's just like, oh, well, what do we do now?

Because she used to run this group called Liberty Central, which advocated about issues before the Supreme Court. And she would post position papers on this. One was she was arguing that Obamacare was unconstitutional. Well, guess what? The Supreme Court was just about to take up the constitutionality of Obamacare. And the worst part is that Liberty Central, just like this other group that Joyce was talking about, was funded by donors whose identities were not publicly disclosed. So you have people who were funneling money to this group that she runs with an interest of persuading Supreme Court justices by going through her wife.

And just as we talked about before, people are not whining and dining Supreme Court justices just for fun. Not all of them. They're doing it because they want them to rule in a certain way. People are not funding tons of money into Ginni Thomas's organization just for fun either. They're doing so because they think that that can have an influence, and that's the difference. Spouses can have their own lives, but they cannot influence the Supreme Court, nobody, a spouse, a family member, a close friend, nobody should be able to do that. And that's why these disclosure rules are so important.

Jill:

One of my favorite products nowadays is Thrive Causemetics. It is just such good quality, and I have even given it as gifts to friends. Have you tried it, Kim?

Kim:

I recently went on a girls trip with some of my friends, and I think I have some converse because as I was putting on my mascara and look and fly, they were like, what is that? I said, this is Thrive Causemetics mascara. It's fantastic. Thrive makes high performance beauty and skincare products with clean skin loving ingredients. There are no parabens, sulfates, or phthalates. And their products are certified 100% vegan and cruelty-free. The 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.

Joyce:

We love their Infinity waterproof eyeliner, and how it fits any occasion, especially for the four of us when we're getting ready for TV. It's great. It's waterproof, it's smudge proof for all day wear, and you get intense high impact pigmentation in one smooth swipe. Plus, it has a built-in sharpener for creating ultra fine lines and an angled smudge tip for smooth, effortless blending. Imagine rocking new, bold and classic neutral shades that compliment every eye color and skin tone. You can always maximize your unique look. The Infinity waterproof eyeliner has more than 5,005 star reviews for a reason. It deserves every last one of them.

Barb:

Yeah, I'm not much for cosmetics. Less is more for me. But I will admit I do love that mascara. I use it all the time. It's terrific. They have many more amazing products. So you need to get over to Thrive Causemetics and check them out. We truly can't get enough of Thrive, especially the way they contribute to helping communities thrive with every purchase through their Bigger Than Beauty program. They give to more than 300 cause, spanning colleges, cancer research and homelessness along with many more.

Jill:

You have to try Thrive Causemetics to see for yourself. And right now, you can get an exclusive 15% off your first order when you visit thrivecausemetics.com/sisters. That's Thrive Causemetics, C-A-U-S-E-M-E-T-I-C-S.com/sisters for 15% off your first order. And guess what? I want this from all of you on the count of three. The link to the steal also looks beautiful in our show notes.

Joyce:

In our show notes.

Kim:

Show notes.

Barb:

Show notes.

Joyce:

So it is a Friday afternoon now. Yesterday afternoon, Thursday, I went on Twitter as I sometimes do in the afternoons, and saw that something called the Rule against perpetuities was trending. This made the legal nerd part of my little heart go pitter-pat. The rule against perpetuities is something of a joke at our dinner table. We've got our oldest kid as a lawyer, and it's sort of a bad joke. It's one of those law school legends that you learn about briefly that you memorize because it's almost sure to appear on the bar exam when you take it. And then it's never again to be seen in the actual practice of law, no matter how many decades that spans. So suddenly yesterday though, it is trending on Twitter. Lo and behold, the legal nerds who work at Disney World remembered the rule against perpetuities, and they've put it to use, they've put it to use against Ron DeSantis and it's actually pretty sweet. So Barb, can you start out by telling us about the rule?

Barb:

Joyce, property law was decades ago, so I appreciate the heads-up that you were going to ask me the cold call that you were going to call on me in class to recite. And here's the reason. This is such an archaic rule, the rule against perpetuities, it's one of these old common law, English legal traditions. It comes from the days when the cases are all about fox hunting. And if the fox ends up on my property, is it my fox? And it's on your property, they get to keep, all those crazy stuff. But the rule against perpetuity says as follows, no interest in land is valid unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest. Now everybody says, what on earth does that all mean? And so as you say, Joyce, some states have abandoned it or modified it, but the gist of the rule against perpetuities does continue.

And the idea is we don't want a property owner to dictate what's going to happen to a piece of land many generations into the future. So if I want to pass my house onto my child after my death, I can do that. But what I can't say is, and then there's a condition that 30 years after that, it should go to this person. And then 50 years after that, it should go to this person. A 100 years after that, it should go to someone else. Once I pass it on to my child, then my child gets to decide where it goes after that. There are a few exceptions, but that's the idea, just to prevent someone from tying up property for many generations after their death.

Joyce:

So Jill, how is Disney using this arcane rule? And remind us what the dispute that they're using it in was about in the first place?

Jill:

Okay, so it's using it very creatively and wonderfully. This is one of my favorite segments we've ever done. Not only do we get to say rule against perpetuities, but I might be able to say Royal Lives Clause or the Equitable Estoppel. But this stems out of Ron DeSantis fight with Disney over the don't say gay and other issues. And he got mad at Disney and in revenge, he decided that he was going to appoint a board to rule the special district that had been created at the inception of Disney. And it was something that they had all agreed to where the Disney would be able to basically self-govern. And they had a board who was doing all of that. And then he passed this rule that no, from now on, there was going to be this new tourism board that would control all of Disney's operations.

And so that's how he created it. But Disney, and we were all very surprised that Disney didn't say, I have the money to fight you on this. Why didn't they stand up to his outrageous behavior? And the reason is because they very quietly, but very publicly following all the rules of Florida law, they posted notice, they had a public hearing, and the board that was still in existence before this new statute was passed, gave all of its powers back to Disney and left the board that took over basically no powers. They can maybe have something to say about the roads and infrastructure at Disney World, but that's about it. And so it was a very, very carefully crafted, very clever, I think. And right now, the new board, this new oversight board, which was supposed to give moral fiber to Disney who had lost its way according to DeSantis, really is going to have to figure out with some lawyers how they can get some power back. Because right now they don't have any, and Disney has it all. Very smart. I love it.

Joyce:

Kim, I saw that DeSantis in the Orlando newspaper this morning was vowing revenge that the fight wasn't done yet. I love this because I'm starting to view it as the Princess Lilibet rule, but what do you think the political implications are for DeSantis?

Kim:

Yes. Long-lived Princess Lilibet.

Joyce:

Right?

Kim:

So first of all, I mean, to Jill's point, in a past podcast, I was one of these people, come on Disney, you got the first amendment on your side, why aren't you fighting? And Disney was just like, oh, y'all just wait. Y'all just wait. That was some brilliant lawyering. Kudos to the lawyers of Disney. This was really a brilliant way to get at this. And politically, what it does is because DeSantis has been parading around painting himself as the big Disney slayer because of what he was doing, and that Disney wasn't fighting back so much. So he was so focused on the politics, he didn't pay attention and read the fine print on what the board was actually doing before this. So this makes him look so inept, how he was unable to effectuate this little move that he was doing purely for political reasons.

He totally was unable to pull it off. And so I think politically it's got to be embarrassing for him. Of course now, he's coming out and saying, oh, well, I'll fight this and I don't know how. And the greatest part, I love this so much because I'm very pro Harry and Meghan, is that the one way that the little, I guess, catch clause in this provision that keeps it from being struck down based on the rule of perpetuities is that it doesn't have a time uncertain for as long as this power runs. It runs as long as the life of the youngest descendant of Prince Charles III at the time of the signing, which is little...

Joyce:

King Charles, right? King Charles.

Kim:

King Charles, sorry, I'm still...

Joyce:

We're living in the past.

Kim:

Yes, King Charles III. Yes. King Charles III, his youngest descendant who was alive at the time of this, who is little Lilibet of Sussex, as long as she lives, this is in place, which is such a great, just a cherry on top of this. So long live little Lilibet. Hey Barb, what have you done for family farms lately?

Barb:

Well, Kim, it's funny you should ask because I have been doing something for family farms. I have been ordering from Moink. We love how you can support small family farmers and reduce your environmental imprint all while enjoying the highest quality meat on earth. That's why we're so excited about Moink, moo plus oink. Moink is a meat subscription box company on a mission to fight for the family farm. They're located in rural America, run by eighth generation female farmer. Their animals are raised humanely, their employees are paid a living wage, and the quality of their product is better than anything you'll find in a store.

Joyce:

So I am super grateful for Moink right now. Our youngest is home from college, and he may be the youngest, but he has the biggest appetite. I am so happy that I've got Moink delivered, grass-fed and grass-finished beef, lamb, pastured pork and chicken. I got all of it before he came. Also, sustainable wild-caught Alaskan salmon, and it all came straight to my door. Moink farmers farm like our grandparents did. And as a result, Moink meat tastes like it should because the family farm does it better. And the Moink difference is a difference you can taste. And unlike the supermarket, Moink gives you total control over the quality and the source of your food. You choose the meat delivered in every box like rib-eyes, chicken breasts, pork chop, salmon fillets, and much, much more. We are particularly fond of Moink's bacon and you can cancel it any time.

Jill:

And you're not the only one who's really big on Moink's bacon, Shark Tank host, Kevin O'Leary called Moink's bacon the best bacon he's ever tasted. And Ring Doorbot founder, Jamie Siminoff, jumped at the chance to invest in Moink. Plus they guarantee you'll say oink, oink. I'm just so happy I got Moink.

Barb:

I'm so glad you said it.

Jill:

Thank you Barb for laughing with me.

Barb:

Thank you for saying those.

Jill:

I know. But you'll love Moink just like we all do. It's the perfect option for a family meal or dinner party.

Kim:

So keep American farming going by signing up at moinkbox.com/sisters right now. And listeners of this show, get free bacon in your first box. I love free bacon.

Barb:

Who doesn't love free bacon?

Kim:

It's the best bacon you'll ever taste.

Joyce:

Free bacon.

Kim:

But for a limited time, it's free. So it's spelled M-O-I-N-Kbox.com/sisters. That's moinkbox.com/sisters. So start bringing better food to your table when you visit the site. We know you're hungry right now after talking about bacon so much. So you know what you can do, you can find the link in our show notes.

So our listeners know our favorite part of every show, and that's answering your questions. If you have a question for us, email us at sistersinlaw@politicon.com or tweet using #SistersInLaw. If we don't get to your question during the show, keep an eye out on your Twitter feed and if we see your question, we will try to answer them, but we can't promise we'll be able to see it anymore. But that's a topic for a different show. So our first question today comes from Deborah and she asks, what happens if Trump gets indicted and he refuses to turn himself in? When we know he has been indicted, Joyce, but what if he doesn't turn himself in Tuesday?

Joyce:

Right. So I think rather than alarming people, it's important to say his lawyers have said he'll turn in, there's reporting this afternoon that he will fly up on Monday and turn in on Tuesday. But Ron DeSantis has now said that he won't sign off on the governor's warrant that would be necessary to extradite him if he didn't do it voluntarily. And the question is, what would happen? Would he just get to live out his

life inside the confines of Mar-a-Lago or something like that? And the answer is actually no. This is a situation where the federal government helps out its brothers and sisters in state law enforcement.

And so the folks in the Manhattan DA's office would be able to get what's called a UFAP. It's an unlawful flight to avoid prosecution warrant. It would be issued by a federal judge, and the United States Marshals would fly down to Mar-a-Lago and knock on the front door, and they would ask their colleagues at the Secret Service to turn the former president over to them. I guess the Secret Service could go along, but in this sort of ridiculous scenario where a former President of the United States fails to comply with a lawful directive to appear for arraignment, he gets arrested by the Marshals and flown back to New York courtesy of the United States Marshal Service.

Kim:

Well, I guess it's fair enough to say if DeSantis didn't know enough to read the minutes from the board on Disney, maybe he doesn't know exactly how arrest would work in the event of an indictment. So, all right, our next question comes from Julia who asks, could the legislature pass a law that says anyone serving time for an indictable offense cannot hold office? Jill, what do you think?

Jill:

Unfortunately, they cannot because the Constitution sets the qualifications for being president and it lists only three. If you are 35 years of age, a natural-born citizen, and you've lived in the US for at least 14 years, that's it. You're qualified to be president. Well, maybe not qualified, but you are eligible under the rules to run for president. So basically, Congress cannot pass a law that changes the qualifications except there is one way out, which is the Constitution does say that anyone who is guilty of insurrection cannot hold any federal office. So if a candidate were convicted of a crime or if there was some other way of judging that you were guilty of an insurrection against the government, that would bar you from holding office, but that wouldn't be the legislature. That's because the only way the legislature could do it is by starting a constitutional amendment or by relying on the 14th amendment that already exists.

Kim:

That's very interesting. Our final question this week comes from Peter who asks, do members of juries get to ask questions under what circumstances and when in the process? Prosecutor Barb, what's your answer for Peter's question?

Barb:

Yeah, it really depends. It depends very much on the judge. In some courts, it's permitted. In some courts, it is not, where I practiced in federal court in the Eastern District of Michigan, some judges allowed it and others did not, which I thought was really interesting, especially in a longer trial where it might go on six weeks, eight weeks, and it might be very difficult for a juror to remember who testified in week one. Oftentimes, a judge will allow jurors to ask questions. Usually, they make the jurors submit the question to the judge first, because if they just blurt it out and ask the question, it could be very awkward if they're asking a question that might, for example, violate the rules of evidence. And so oftentimes, they'll pass it up to the judge, the judge will read it and decide whether it's an appropriate question, and maybe the judge will answer it, or ask it, or maybe the judge will, during a break, ask the parties how they feel about it.

I will tell you that as a prosecutor or either a party to a case, I'm a little conflicted by it. Because on the one hand, if the jury has a question and I can... It norns to my benefit if I have satisfied them, that the

evidence proves guilty beyond a reasonable doubt. And if there's some question about it, I very much want to answer it for them. On the other hand, when you're a lawyer, sometimes you very strategically lay things out so that this person's going to talk about this one thing and then I'm going to talk about this other thing, and then later someone else is going to talk about it. And it might be that the juror kind of beats you to the punch and the case doesn't come in the way you intended it. But I think overall, I like it because I think if it is a quest for the truth, then you want to avoid any confusion for the jury. And so asking questions, I think, can help as long as the judge is there to play that regulating role.

Kim:

Thank you for listening to #SistersInLaw with Barb McQuade, Jill Wine-Banks, Joyce Vance, and me, Kimberly Atkins Stohr. You can send in your questions by email to sistersinlaw@politicon.com or tweet them for next week's show using #SistersInLaw. And you all should know by now that we are going on the road, we're going on tour. So come and join us as we record the podcast live on stage. We'll be discussing all the legal topics of the day and answering your questions live. We're starting off in Portland, Oregon on May 12th, then going to New York City on May 19th, and coming to where I live in Washington, DC on May 21st.

There are still some tickets available, not many, so you really need to hurry and go to politicon.com/tours to get your tickets today. We can't wait to meet you. Please support this week's sponsors, HelloFresh, Pair Eyewear, FastGrowingTrees, Thrive Causemetics and Moink. You can find their links in the show notes. Please support them as they really make this show happen. And to keep up with us every week, follow #SistersInLaw on Apple Podcast or wherever you get your pods. And don't forget to give us a five star review because it really helps people find the show. See you next week with another episode, #SistersInLaw.

Joyce:

Guys, I'm being invaded by a monster. This is like been my day. Wait, Bob, come and embarrass yourself as long as you're [inaudible 01:05:18].

Barb:

Hi, Bob.

Kim:

Hi, Bob.

Jill:

Hi, Bob.

Joyce:

Bob, come be annoying and get it out of your system.

Barb:

No.

Jill:

This transcript was exported on Apr 01, 2023 - view latest version [here](#).

Hi, Bob.

Kim:

Hi.

Jill:

Brisby's getting excited at Bob being there.

Joyce:

I know. [inaudible 01:05:31].

Jill:

Did you hear him?

Joyce:

Dogs do love Bob, it's okay.

Jill:

It's okay, Brisby. Bob loves you.

Barb:

Look at that. He shows up on the screen, and the dog starts barking.

Kim:

Brisby didn't bark at Snickers, but he's barking at Bob. Okay.

Jill:

Yeah.