

Kim:

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Barb:

Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Jill Wine-Banks, and me, Barb McQuade. Joyce will be back next week, and we already miss her. By now all of you know that we're going on tour next month to Portland, Oregon on May 12th, New York City on May 19th, and Washington, D.C. on May 21st. Go to the show notes for the link for politicon.com/tour to get your tickets. They're selling fast, so please hurry, we want to meet you. Okay, let's get on with the show where, as always, it was a hard week to choose just three topics, but we did and they're great. Today we'll be discussing the upcoming trial in the E. Jean Carroll case, the wrong place shootings that we've been experiencing over the past week, and Jim Jordan's road show. Then of course, we look forward to answering your questions at the end of the show as we always do. But first, Kim, I want to ask you, I know last week you were giving a speech at your alma mater, Boston University Law School, a keynote address. How'd it go?

Kim:

It went really great. It was a really wonderful event that was put on by the Women Law Association at Boston University School of Law that brought together some really wonderful people. We talk about a lot of things that can be depressing, on this podcast, and a lot of them have to do specifically with things that affect women. It can feel like it's a tough and very discouraging time, but when you come together in fellowship with people who are students, young people who are eager to change the world, professionals who are in the trenches every day doing good work to bring about better justice, and you're able to talk to them, that always feels really great. But I did give a keynote speech about my experience in law school and beyond, and I get so nervous whenever I address people like that. It's different just chatting with you guys, I forget people are listening. But what do you guys do to get over those jitters of public speaking? I know you both have given plenty of public addresses, Barb, what do you do?

Barb:

Well, I'll tell you one thing that I have developed over time is I used to get really nervous also, and as a result, one crutch I used to use was I would write out my speech. I would try to learn it well enough that it didn't look like I was reading my speech, but it was still a very scripted speech. I think really it's just repetition, over time, having done a lot of speeches and realizing, you can flub and people will still like you. In fact, if you flub, people might like you a little more. You don't have to be perfect, you really just have to be human.

So I have taken to really writing speeches, it's just a list of points I want to make. It might be just a list of a few words down a page that just is a prompt to remember to cover a particular topic. I don't worry so much about whether I choose just the precise right word or I have a couple of ums and errs and I stumble, because I think that's just what makes you human and it's okay. I think about when I'm listening to speakers, I'd really rather hear them speak from the heart than read something. I think just that has enabled me to not worry so much about being nervous that things aren't just perfect. I don't know. How about you, Jill? You do a lot of public speaking.

Jill:

I do. I have to go back a ways, which is I used to be uncomfortable, but I've never been nervous and I don't know why. I mean, it'll take years of psychiatry that I don't have time for to ever figure out why I didn't feel nervous. But I did certain kinds of preparation. I use the technique you use, which is I usually just do three by five note cards, because they don't make noise, they aren't like pieces of paper where they rustle. I just write down an outline of points so that I make sure I cover things, but I don't write the exact words that I'm going to speak because then it looks like you're reading it and it's not natural. I came to a point where when I was the CEO of the American Bar Association, I had to do a lot of podium speeches on subjects I didn't know, written by other people, and I was uncomfortable with that.

I took a course in how to do that, where it was... The best course I've ever taken, it told me to write the speech out... that is something that is written out, in big letters with big spaces around the margins so that you didn't speak too fast, to put smiley faces occasionally so that you would look up and smile at your audience. I swear I still do this. I use a special kind of folder they gave me where I can slide the pages so that you never hear a rustle. That's what I do for the speeches where it's a subject that's not mine. But most of my speeches now are things that I know. I gave one at the now infamous Chapman Law School, it wasn't famous at the time so much as it is now, where I decided... I was in the middle of writing my book and I had adopted a voice for my book, which was me speaking to friends. It wasn't a formal kind of thing.

I decided to try it out on the audience. It worked so well that it wasn't a formal way, it was just as if I was talking to you, but I was talking to this big audience. That has worked very well. I try now to always be authentic and speak in my own voice. I think being on television is the thing that really got me over any residual fears. Plus, in that speech, people laughed when I wanted them to and I loved it, because I don't think I have much of a... You're the witty, clever one, Barbara, and you always make me laugh. I love listening to Kim sing particularly, that always makes me happy. But when they started laughing when I wanted them to, it was like the greatest sense of power. I loved it. So now I'm very comfortable doing it.

Kim:

Well, I have to remember next time I speak in public to imagine the two of you enjoy sitting there and that you're the only people, and I'll just talk to you.

Barb:

Yeah. I think people would be surprised to hear you get nervous, Kim, because you sound like a pro whenever you're talking with us or on television.

Kim:

Oh, you're very kind.

Jill:

Absolutely. Now you're making me nervous because I'm giving a commencement address at my alma mater-

Kim:

Oh, wonderful.

Jill:

Now I'm really getting very nervous about it, and it's the day after our Oregon show, so it's like I'm taking the red-eye back in order to get to the University of Illinois on time. It's going to be quite a challenge, but you'll give me the confidence, guys, when we're together in Oregon.

Kim:

You'll do great.

Jill, you always look great every time I see you on camera. What are your secrets?

Jill:

Well, you are too kind, Kim. But one of my secrets is Thrive Causemetics. I have been using their mascara and it makes a huge difference. I look wide awake when I put it on, even when I haven't had enough sleep. Thrive Causemetics makes high performance beauty and skincare products made with clean skin-loving ingredients. There are no parabens, sulfates, or phthalates. Their products are certified 100% vegan and cruelty-free. Cause is in the name for a reason. We love how every purchase supports organizations that help communities thrive, and their products are perfect for any look.

Kim:

We love their sheer strength hydrating lip tint. That's because now that the sun is coming back out, it hydrates your lips with a hint of tint that applies evenly and lasts up to six hours. It defeats air conditioning and heating too for those places that still need heat. There's no mirror needed and the application is effortless. Thrive's lip tint glides on smoothly for color that's comfortable to wear all day. Plus there's six amazing tints to choose from. You'll enjoy your days so much more with this lightweight, balmy, non-sticky formula that hydrates lips to make them visibly softer and smoother.

Barb:

Thrive has so 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 how they contribute to helping communities thrive with every purchase through their Bigger Than Beauty program. They give to more than 300 causes, spanning colleges, cancer research, and homelessness, along with many more.

Jill:

You have to try Thrive Causemetics to see for yourself. 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. The link of course is in our show notes and it is a great deal to help you look beautiful. Go to our show notes.

A civil trial against defendant Donald J. Trump starts next week in federal court in Manhattan. It's for defamation of E. Jean Carroll under New York law by Mr. Trump last October after he was out of office, at which time he basically repeated a defamation he had made earlier while he was president. It's also for alleged rape of Ms. Carroll by Mr. Trump under a new New York law that allows civil rape claims years after the incident, which in this case happened in the mid '90s. Barb, it's under New York law, both the defamation and the rape, and the event happened in New York, so why is it in federal court?

Barb:

Yeah, I think this goes all the way back to a decision made courtesy of William Barr when he was the Attorney General of the United States. You may recall that the initial claim by Donald Trump came while

he was president, he was standing outside the White House and said all those awful things about, "She's a liar. She made this up. It's all about selling books. She's not my type." All of those awful things that he said. At the time, William Barr is the attorney general, said, "He's the President of the United States, so I'm removing it to federal court and arguing that he is immune from suit." That has been proceeding kind of on its own, the Second Circuit, the D.C. circuit, and elsewhere. Meanwhile, Trump is foolish enough to repeat the claim last October. So his lawyer very strategically said, "All right, we'll go again. He's not the president anymore." So filed another claim for defamation based in the October one. But because of this pending case, it's kind of a companion case in federal court, filed it there. Now it's that piece that is going to trial next week.

Jill:

Excellent. Kim, this case is not the original case that Ms. Carroll filed. That was for defamation in connection with comments he made on the White House grounds. It's been removed, as Barb said, to the federal courts. He argued that it was part of the scope of his job as president when he defamed her and that you couldn't sue him for that. What's the status of that original case? Is it still pending?

Kim:

It is still pending. That case, as many civil trials do, particularly ones that involve Donald Trump, often have a lot of things which are called interlocutory appeals. You're appealing certain issues, you're not appealing the whole case once the trial is done. That's a regular appeal. But they go up and down to the appeals court and back down to the trial court. That's been happening there and it's stuck on appeal at the moment to consider things like whether the president was acting within the scope of his job narrator here. It is not the job of the president to defame someone or to comment on their looks or anything like that, so I think that's going to be a tough case to make. But again, we've really never been in this situation before where we had somebody who was a sitting president committing things that could be torts and lead to lawsuits, and then afterwards saying, "Well, no, I was acting within the scope of my job." The case law here I assume is quite unsettled, so we'll see what happens.

Jill:

Well, for me, that argument doesn't pass the red face test. I can't imagine arguing in front of a judge that it was in the scope of his job to defame her. It's ridiculous. What's interesting is the D.C. Court of Appeals got it on referral from the Second Circuit to get their opinion as the most expert in whether it was the scope of his job. They've declined to answer whether he was acting within the scope of his job. It really is just sort of hanging out there, and we'll have to wait and see what it happens.

But let's go back to the case that's starting next week, because I think next week that's going to be a big focus of attention. So I want our listeners to all know about it. There were several major developments in the last week or two, and they're important to how the trial's going to turn out. First, the trial judge, Judge Kaplan, denied Trump's lawyer, and we all remember Tacopina from his appearances multiple times on TV. He requested a delay in this trial for four weeks. Barb, what were the reasons that Tacopina argued he deserved a delay?

Barb:

Yeah, this is great. You have to give this lawyer credit for just having the sheer nerve to file these things that if I were the lawyer I'd say-

Jill:

Probably say in my language.

Barb:

"Yeah, yeah, there you go, that's fine. That's a perfect word." Yeah, yeah. This would be, Jill, "There needs to be a cooling off period because after all, Donald Trump was just indicted by Alvin Bragg in Manhattan, the very same city where this case is pending, and there was all that adverse publicity, Donald Trump's name was in the news so much. We need that to die down. So we want to have a delay before this trial starts." The judge, wisely I think, sagely said, "Are you kidding me? Donald Trump being out of the news? That's never going to happen. In fact, if anything, I think it's only going to get worse as publicity continues in that criminal case. There's all kinds of other cases pending. If we wait until the publicity about Donald Trump dies down, we're going to be here forever. So let's get it on and get it over with."

Jill:

Also, I think the judge noted, "You caused it. You're the defendant, you're the one who made all this publicity." Anyway. Next, there was a ruling that Ms. Carroll could introduce the Access Hollywood video and testimony from two other women. I guess I'm going to say it, I've never said this on television, I thought the pussy remark would end his campaign when he first said it. I obviously was very wrong on that. Now it's going to be introduced as the video of him saying that, will be part of the evidence that Ms. Carroll is allowed to introduce. Kim, can you talk about this video and the other women's testimony and why it's powerful evidence that will be admitted here?

Kim:

Yeah. In this case, E. Jean Carroll is suing civilly Donald Trump for two things. One, the defamation that we've already been talking about, and also bringing a civil action for sexual assault under a new law in New York that allows sexual assaults that were committed so long ago that the criminal statute of limitation has long passed. It gives alleged victims one shot at bringing a civil action in order to get some sort of recompense. That's what she's doing here. In that case, and I also think for the defamation case, honestly, that this could be probative.

Essentially she's saying, "Donald Trump just admitted, he admitted to Billy Bush on camera what... or on recording exactly essentially what I said he did to me, and that this is evidence. That if he has done this before to other women, that that is essentially like an admission to bad behavior that he has committed this kind of behavior before." I suspect Donald Trump's team will say, "Well, no, no, it has nothing to do with this case and it can be prejudicial if it's let in." But I think I would agree with Carroll's attorney on this case. I think that's, if not a smoking gun, you can at least sense that some gunpowder had been in the room very recently. That's pretty direct evidence to me.

Jill:

I might have been wrong about it ending his original campaign, but maybe, maybe it'll have something to do with stopping his 2024 campaign. But there's-

Barb:

That's adorable.

Jill:

There's other interesting rulings as well, Barb, including Judge Kaplan's denial of Trump's requests for special instructions to the jury explaining that Trump was not coming to the trial because it would impose logistical burdens on New York. It's true that neither the plaintiff or the defendant in a civil suit needs to be at the trial. I mean, of course, why wouldn't they be? But they don't have to be. But what did the judge rule in this case?

Barb:

Yeah. This is another one of those chutzpah motions, Jill, like, "Really?" What's really interesting about it is that Trump framed it in the motion that, "You know, it's such a burden for the city of New York and the courthouse to have me show up because I'm such a big deal. We have to have Secret Service there. We have to have special security precautions. There's probably going to be a lot of cameras, you know how they like to follow me." Which is all true.

"As a big favor to all of you, tell you what, I won't come. In fact, you should instruct the jury that the reason I'm not there is I'm doing a big favor to the city of New York and to this courthouse. You should tell the jury that they should consider that in this case and explain that's why I'm not there." The judge has said, "No. You don't have to be here, it's your choice. Be here, don't be here. But you're not getting an instruction that you should get credit for not being here." Which is the ultimate chutzpah. "Not only am I not going to show up, I want it to enure to my benefit."

Jill:

Right. It was so ridiculous. First of all, I loved E. Jean Carroll's lawyer, Roberta Kaplan said that, "This instruction request taxes the credulity of the credulous." I just love that phrase. It's so ridiculous that he would ask for it. The judge also pointed out how often he travels and that if the Secret Service can protect him when he's on a campaign tour, the very third day of the trial, which is set, they could equally protect him while he's there. So he totally rejected it. Kim, in another ruling this week, it's amazing how many rulings there were, Judge Kaplan said, "Trump will get an anonymous jury in Carroll's case." Why is that being done? Is it good? Is it necessary? How often does that happen where you get a anonymous jury?

Kim:

Yeah, it's not very common. Usually jurors are allowed to... During a trial, jurors are normally not disclosed who they are, but the parties know who they are and it's usually afterwards they have the ability, as we saw in the Georgia Grand Jury case, to speak to the media if they want want to. There is a concern in this case that there might be attempts to pressure members of this jury, intimidate members of this jury, that they could be endangered perhaps by people who support the former president. We saw what happened in the January 6th hearings, throughout it. We heard that people, witnesses in that case were being intimidated in real time. The chair and vice chair of that committee kept saying that during their live hearing. I think there is a big concern that that could be at play here.

Jill:

Exactly. Last, I just want to ask both of you a couple questions. Which is, we just had a big debate about cameras in the courtroom in the Fox case, which of course ended up not going to trial anyway. But are there going to be cameras in the court as we saw in the Murdaugh murder trial in Savannah and the Derek Chauvin trial? Would they help? Are you betting on the outcome of this case?

Barb:

Well-

Jill:

Let's talk about cameras and the outcome.

Barb:

This is federal court, so there won't be any cameras. Are you saying what would it be like if we did? I don't know. I think they can be-

Jill:

Well, no, I was actually getting at, there's not going to be cameras because federal courts don't allow it, and then maybe discuss whether they should.

Barb:

Yeah, I don't know. I have some sort of mixed thoughts on that. On the one hand, I feel like they should be exposed to transparency just like everyone else. But I've gone back and forth with this. There's a time when I thought, "No." Then I thought, "Absolutely, yes." I might be coming back around to, no, just because of the way it gets used on memes and social media in a way that is so mocking, that I worry that it diminishes the stature of the court. I don't know. Most recently it was the view that it is a way for the public to be able to participate and see what's going on in court, and to learn about what's going on in court. But I guess I have mixed views about that. I don't know. Kim, what do you think?

Kim:

I'm a little of mixed minds here because on the one hand, I generally believe that cameras in the courtroom is important for transparency because most people cannot see what is happening in closed courtrooms. I've talked about this a lot with the Supreme Court. But there is a little bit of a worry, particularly if Donald Trump testifies, that there will be the kind of grand standing that will only serve to be disruptive to the case. Perhaps even worse. We've seen the things that he said when he gets a microphone, when he feels under threat, exhibit one, January 6th. So I could see a ruling like that going either way. But I think as we've said, in New York, the chances of cameras in the courtroom are pretty slim. I think the only place that it's harder to get cameras in a courtroom is Washington, D.C., so I don't think it's going to happen.

Jill:

Yeah, there's a big issue about whether the Supreme Court should allow them. I have a different view than both of you because I... I mean, look at what happened in the Murdaugh murder trial and in the Derek Chauvin trial. I think that the outcome was accepted by more people because they saw the evidence. Cameras are now completely non-invasive. When this first issue arose, cameras were like a big clunky things. Now they're little, teeny, hidden cameras that no one plays to because they forget they're on camera, in the same way that people on the street forget that they are being recorded by hundreds of cameras all the time. I think the benefit outweighs the negatives. Last question is, what do you think the outcome of this case is going to be?

Barb:

Well, I think facts matter. I think it's difficult to be able to predict that without seeing the evidence. It's a civil case, so E. Jean Carroll has to prove her case only by a preponderance of the evidence, which is different from guilt beyond a reasonable doubt. I don't know about the underlying rape, but the part about lying and saying that... Well, I guess you have to believe one to believe the other, don't you? I guess I don't know. I'd be curious to watch it play out. I mean, I guess that's why we have trials.

Kim:

Yeah, I don't predict anything anymore. I have no idea what's going to happen. I'll be watching along with everybody else.

Barb:

How about you, Jill? You got a prediction?

Jill:

I can't wait to see the outcome. I don't because I'm like Kim, I don't like predicting anything, especially something that we'll know within a matter of days or weeks. No point in predicting it. I think it'll be an interesting trial. I will predict that. I also agree with Kim that Donald Trump testifying could be the circus that is something that we don't want to see, but it will be with or without cameras. I don't think that it will matter. The part that's going to be played on Fox News is going to only be his side of the story, and his people will believe it no matter what. But I do believe in juries, and so I trust that a jury will make a fair evaluation of the facts presented in the courtroom. I can't wait to see the outcome.

Kim:

Jill, one thing that I'm really terrible at is trying to keep my passwords changed frequently and up to date. I know I should do that because I, unfortunately, in the past have been a victim of identity theft and it was such a pain. It's really disconcerting. What advice do you have for keeping your information safe, especially if you're someone like me and it's hard to remember all those passwords?

Jill:

Well, my husband recently had a problem getting his bank account hacked, which is really serious. So we have started looking at what is the best way. Did you know that your personal information is out there for anyone to find? Data brokers scrape public tax records and sell that information legally, making it accessible to anyone. So we all need to fight back. I think it's really important. One of the best ways to do it is through a company called Aura. Kim, Barb, how important is it?

Kim:

As we've been discussing, privacy is paramount, so we're thrilled to partner with Aura. Aura is an all-in-one online safety solution that helps protect you and your family from identity theft, financial fraud, and online threats before they happen. With Aura, you can rest easy knowing that someone is looking out for you. The app scans the dark web to look for your email addresses, passwords, social security numbers, and other sensitive information malicious actors might have. If anything is found, you'll receive an alert in real time. If you're a victim of ID theft, their experienced white glove frauds resolution team will help you navigate credit bureaus, help you initiate credit freezes or locks, and work with you around the clock to resolve it.

Barb:

The security is such a great feeling. Aura offers a suite of tools to protect you and your loved ones, including real-time alerts on suspicious credit activity, computer virus protection, parental controls, a VPN, and a password manager, which is great when it's hard to keep track of all those passwords. It's what allows you to have different passwords, Jill, so you don't have to keep using password as your password. It's got a comprehensive safety solution that provides almost every tool you'll ever need, all in one place. Aura also helps reduce annoying robocalls, telemarketers, and junk mail by sending takedown requests for you automatically and regularly. For a limited time, Aura is offering our listeners a 14-day trial, plus a check of your data to see if your personal information has been leaked online, all for free when you visit aura.com/sisters. That's aura.com/sisters to sign up for a 14-day free trial and start protecting you and your loved ones. Again, that's A-U-R-A.com/sisters. Certain terms apply, so be sure to check the site for details. Of course, you can also find the link in the show notes.

Kim:

Ralph Yarl, Kaylin Gillis, Payton Washington, and Heather Roth, they're all young people in three different parts of the country who did the same thing, they mistakenly approached the wrong house or the wrong car. The result was eerily similar, they were shot. Ralph survived and is recovering physically, so are Payton and Heather. Kaylin sadly lost her life. Whether or not the shooters face criminal liability depends on state laws that allow homeowners and people driving cars to use deadly force. Barb, I want to start with you. There are a couple principles at play here in this case. Explain the castle doctrine.

Barb:

Yeah, this is one of these things you learn about in law school, first year criminal law. It goes back to the origins of your home is your castle. The idea is that you can use force, even deadly force, to protect yourself in your home. If you find an intruder in your home, you're allowed to use deadly force. Now you have to believe that the person is coming into your home to commit a violent felony inside the home. It could be a home invasion and you don't have to wait for them to hurt you. If you catch an intruder in the middle of the night, you actually can shoot them without incurring any legal liability of your own. But usually you have to act reasonably. You don't have to wait for the person to actually cross your threshold if you think they're about to. It has to be imminent. It has to be necessary. There are a few restrictions to it, but generally that's the rule.

Kim:

Jill, there's a similar principle that I think our listeners remember from the Trayvon Martin case, and it's called stand your ground. Remind us what that is.

Jill:

That takes the castle doctrine, which is a common law principle, it's something that has been made into statutes that extends the castle doctrine to anywhere you are. If you feel threatened, you can kill someone. In the Trayvon Martin case, you had Zimmerman who was the person who shot and killed Trayvon feeling like, "Oh, he's a dangerous person, and I don't have to retreat even though I could safely retreat." Because retreat is part of what used to be self-defense laws. You were required to retreat if it was possible, not to engage and use deadly force. Now there's laws that say, "No, you don't have to retreat. Even if you're outside, you can do this."

Kim:

Yeah, it really varies from state to state depending on the state of the law. These three cases that we're talking about today occurred in Missouri, New York State, and in Texas. Barb, in Missouri, what does the stand-your-ground law look like there? How does it expand the castle doctrine? Do you think that the shooter in this case could successfully be prosecuted?

Barb:

Yeah, so in Missouri, they do recognize the castle doctrine and they extend it to your vehicle. That pertains to one of the other cases. But of course in Missouri, that was the Ralph Yarl shooting case where Ralph Yarl came to the door, rang the doorbell looking for his younger brothers, happened to be at the wrong house. As he was on the front porch, the shooter, the homeowner shot him there. One of the things about Missouri law is that it requires that the shooter act reasonably before he may use deadly force. Some states say it's enough that the person personally subjectively, genuinely believed that they were at risk of danger. In Missouri, it is a reasonable person's standard, objective standard. You have to say, "You know what? A reasonable person under the circumstances have felt in fear for his life at the time he fired these shots."

I think for that reason, he is not going to have a valid defense. I'm sure the prosecutor looked at that defense when they were thinking about it. This case actually reminds me a lot of the Bernard Goetz case. Do you remember that case from the '80s when Bernard Goetz was on a subway and there were four teens who approached him and said, "Give me some money," kind of aggressive panhandling. He immediately just pulled out a gun and opened fire on them and shot them all inside the subway car. It was kind of a cause célèbre at the time. He was ultimately charged criminally and acquitted at trial, but they had the same reasonable person standard there, which is, you look at it, "What would a reasonable person do under these circumstances?"

I think based on that, the idea that some 16-year-old comes to your door and rings your doorbell, really I think it is not a reasonable response to open fire on the kid. According to the evidence, no words were exchanged. He just saw a young man who the prosecutor said he believed race was a factor, a young black man, the homeowner was 85, an 85-year-old white man, pulled out the gun and fired not once, but twice. Once through the door, and then came back out on the porch and shot him again. I don't think he's going to have a valid defense at trial.

Kim:

Jill, the New York case is just as... Well, I think all three of them are inexplicable, honestly. Where some young people, including Kaylin, pulled into the wrong driveway. Literally made a wrong turn, pulled into the wrong driveway. Never got out of their car. So what's the state of the law in New York? How might the castle doctrine apply there?

Jill:

Not only did they not get out of their car, they were retreating. They realized their mistake and were leaving when he shot them. I want to go back before I answer your question to say that the race has had a huge impact on statistics. If the person shooting is white and the victim is black, twice as often the white person is acquitted. That's something that we have to consider. In New York there is no stand-your-ground law. State law explicitly imposes a duty to retreat before resorting to deadly force outside the home. In the New York case, this is a clear loser. I think the shooter is going to be indicted and convicted, and the law is pretty clear.

Kim:

In Texas, of course, I doubt that there is a stronger stand-your-ground law anywhere in the country than Texas, save maybe Florida where the Trayvon Martin case was. That would generally be available as a defense. Although I think in this case, in the facts of this case where there were two friends, two cheerleaders who were coming out, they were looking for their friend's car. One gets into the friend's car, the other gets into the wrong car that she suspected to be the friend's car. Immediately realizes her mistake. Gets out of the car, then goes and gets into the friend's car. The driver of the mistaken car gets out of his car and opens fire on the other car. I mean, I just... I just...

But again, I don't make predictions here because it's Texas and I just cannot imagine a law that would allow stand-your-ground to be a defense in that case, I think if he had shot her, God forbid, had shot her before she got out of the car, I think it might have been a tougher case factually. But in this case, I mean, my goodness. I just want to ask you both, these rash of incidents make me think about, for example, when I was a young reporter, I as a matter of course would knock on people's doors who were not expecting me, trying to get comments or quotes from people on a story I was working on. They had no idea who I was. Why do these sort of laws, these stand-your-ground laws expanding the castle doctrine exists to give homeowners or car owners such broad discretion and have this explicit defense if they shoot someone just for knocking on a door?

Barb:

I think one reason for all of this is our gun culture. I think ordinarily you have a duty to retreat if you can do so safely. I think the idea of stand your ground is, the other person might have a gun. If I run away, that's not going to do me much good because they'll just shoot me in the back. So I get to stay here and defend myself if they are the initial aggressor. I think all of this, all of these shootings come about because people are just so gun crazed. They've got a gun and they've got an itchy trigger finger. If we didn't have guns, none of these shootings would take place. There'd be perhaps some verbal altercation and then they'd work it out, and they'd give the person directions to the place they're actually looking for and be their way without a deadly encounter. But I think so many of our problems in society are driven by our abundance of guns. Police shootings, police officers are freaked out that everyone they pull over in a traffic stop is going to shoot them. So it causes people to do very irrational things.

Jill:

I agree with Barb completely, but I would add that it's not just that we have so many guns, it's that we have these terrible stand-your-ground laws because people think it gives them immunity and protection that really they aren't thinking about, "Is it reasonable?" That they might be convicted. It goes beyond your house and your car. Trayvon Martin was shot in the street, a public street, not on someone's property. He was on a public sidewalk. George Zimmerman was someone who was out protecting the neighborhood, a neighborhood watch guy. I mean, that's terrible. Your example, Kim, made me think about, well, first of all, when I was writing my book, I was trying to get information on Rose Mary Woods and I was calling people and they were hanging up on me because they thought that I had made her look bad.

Bob Woodward said, "You have to stop calling. It's too easy to hang up on you. You have to go knock on doors." The first door I knocked on, I got the door slammed in my face. Which given the option of being shot, I guess I'm glad it was slammed. But it challenges people who are... What about all the Uber drivers who are delivering food? What about people who are doing political canvassing? What about just so many other times, like last night when I had to drive through someone's circular driveway uninvited, but I was pinned in and had no way to get out of the street I was in, and I really sat there for

five minutes saying, "I can't do this. What if that person kills me?" The fact that we're so afraid of that is just something that we shouldn't live with. I just am sorry that we have these laws.

Barb:

Hey, Kim, I've got a question for you. What have you done for the planet lately?

Kim:

Well, all around our house there are products from Blueland which provide things like hand soap and laundry detergent, and allows you to keep yourself and your things clean while being good to the planet. Did you know that an estimated five billion plastic hand soap and cleaning bottles are thrown away each year? If that's not bad enough, most cleaning formulas are 90% water, which is heavy to ship leading to excessive carbon emissions. Plus those products are often filled with nasty ingredients like chlorine and ammonia. That's a lose-lose situation for you and the planet.

Like us, we're sure that means you know it's time to make a difference, and that means Blueland. Blueland is on a mission to eliminate single-use plastics by reinventing cleaning essentials to be better for you and the planet. Their idea is simple. They offer endlessly refillable cleaning products with a beautiful cohesive design that looks great on your counter. I really do love the hand soap. Not only is it attractive, as they said, but it gets your hands clean without feeling like you're using too much. I really enjoy that. Also, the dish detergent works really great and I know that I'm doing a lot less damage to the planet.

Barb:

Just fill your bottles with water, drop in the tablets, and wait for them to dissolve. You'll never have to grab bulky cleaning supplies on your grocery run. Refills start at just \$2 and 25 cents. You can even set up a subscription or buy in bulk for additional savings. From cleaning supplies, to hand soap, to bathroom cleaners and laundry tablets, all Blueland products are made with clean ingredients you can feel good about. Try their Clean Essentials kit, which has everything you need to get started, three bottles of cleaner plus a bottle of hand soap. It comes in beautiful light scents such as iris, agave, fresh lemon, and eucalyptus mint. You can even put on a splash or two behind each ear and wear it as a cologne.

Jill:

Blueland has an offer just for our listeners, get 15% off your first purchase of any product. To get 15% off your first order, go to blueland.com/sisters. You won't want to miss this, blueland.com/sisters. That's blueland.com/sisters, or you can find the link in our show notes.

Barb:

Well, it was an interesting week in New York as Congressman Jim Jordan brought his road show to New York to conduct fact finding into Alvin Bragg's work as a state prosecutor, as the Manhattan District Attorney. Of course Jordan chairs the House Judiciary Committee and a subcommittee to investigate the "weaponization of government." It seems that this hearing was sparked by Bragg's indictment of Donald Trump. Jill, how can a congressional committee go out into New York and investigate the work of a state agency? What is the scope? What is the limit of a congressional committee's powers to conduct hearings?

Jill:

Well, if you ask Jim Jordan, it's pretty much unlimited. But the reality is that Congress has the power to do oversight, and it's just that the Republicans refuse to cooperate with any oversight by Democrats, but now they want to extend their power to look at anything that they might possibly legislate on or anything that involves federal funding. To some extent, that is a correct definition of the scope of their powers. What Jim Jordan is saying in this case is that the federal... There was some federal funding used and he points to some statement in the lawsuit that Alan Bragg filed that says that he did use that federal funding.

He's saying, "Well, we want to look at that. The other thing we want to look at is whether we need to pass a law that says, 'No former president can ever be investigated or indicted.'" Which it seems to me is beyond the scope of anything Congress could ever do because states have their own independent sovereign laws and their own independent powers, and the federal government cannot really stop them from investigating. It's questionable to me whether there is a legitimate legislative purpose, but a judge has found that there is a legislative purpose.

Barb:

All right. Well, it is pretty expansive, I think, the ability of Congress to look into anything that it might theoretically be able to investigate or legislate on. Kim, one of the things that Jim Jordan did in the scope of this hearing is he served a subpoena on Mark Pomerantz, who we will all remember is this former assistant district attorney. He'd been in private practice. Cy Vance brought him in specifically to work on this case, and then he resigned when Alvin Bragg came on and said he didn't think the case was ready and he wanted to do further investigation.

So before Pomerantz testified, Alvin Bragg, the current Manhattan district attorney, responded to that subpoena by filing a lawsuit against the committee and asking for an order by a judge saying that these subpoenas would be quashed and that the congressional committee had no business investigating the work of his office. Pomerantz though of course complicated things by writing a book about his work on the Trump case. What do you make of all it? Do you think Pomerantz is fair game because of that book? Or do you think Bragg did the right thing by trying to stop this inquiry?

Kim:

I mean, first of all, just this whole courage of people to tell the truth only when they're getting paid for it in the form of book royalties is just amazing. But there are two points happening here, which I think might be competing with one another a little bit. I think you're right, I think the fact that Pomerantz wrote this book... I mean generally speaking all... Take away all of the context around it. Someone called to be a witness, someone seeks to quash that testimony, but this person has already written a book about that very substance. I think you'd be hard-pressed to find a judge who would quash that subpoena. I mean that's just like, "Come on, you literally asked for it. You've already spilled the beans, you can't try to put them back in the bag now."

But the issue here, and the reason why I understand why Bragg filed that motion or filed that lawsuit is because of the principle that Jill was talking about before. This is a local prosecution by prosecutors. The idea that Congress can swoop in and start telling local governments how to operate, violates the fundamental principles of federalism upon which our laws are based. I mean I can't explain how crazy that is. Is there some room here just to back up and take that into consideration and saying, "Look, can you please let this investigation by this district attorney complete itself and then afterwards subpoena who you want? But right now, this is not the time to do that." Is there space for that? I don't know. I

don't know the intricacies of the law enough to know how the court might rule. Nobody may know it because this sort of thing is another thing that hasn't happened before. But I understand why Bragg did this. I also understand why it might not work

Barb:

Yeah. Hypocrisy is just dead, right? I mean-

Kim:

I mean, Hillary Clinton would like a word.

Barb:

Yeah, right.

Kim:

I mean as to the point-

Barb:

No kidding.

Kim:

That's the point that you said, Congress does have broad powers and Hillary Clinton sat there for, what was it? 11 hours and endured the whole thing. But that was her official role that Congress had a clear jurisdiction to at least ask questions about. This is something completely different. This is bonkers.

Barb:

It's funny you raised the Hillary Clinton thing because I remember the day she was testifying. I happened to be traveling to Washington and I'm getting on my flight in the morning and there she is testifying at the airport. I kind of see it peripheral vision. I go to Washington. I get off and then she's still testifying. I'm getting on my flight to go back home and the TV's on and she's still testifying. I get back home and she's still on the air. She's just like, "Bring it on." She's sipping her water, looking at her watch yawning. "Yeah. What else you got?" It was unbelievable. I'm like, "She's still testifying. How can this be?" She's warm right down. Well, Jill, let me ask you this. The judge in the case actually did enter an order directing Pomerantz to appear before the committee to testify. What did you think of her opinion?

Jill:

Well, I didn't think a lot of her opinion. There were some points in it. It looked like a normal opinion, it went through the right steps about standing and other issues, and the court's jurisdiction. It cited a lot of... There was almost two pages I think of the opinion is devoted to quotes from Pomerantz's book. That does present, I think, a unique challenge in this case that may not exist, because if they were limiting their questions to the case that he is talking about, that he has knowledge of, you run into the problem of he can't reveal anything he learned through grand jury or other methods of investigation. That would be totally improper for him to go forward on. On the other hand, he has waived a lot of privileges and the judge made it clear that because Bragg's office didn't try to stop him at any point, that maybe they've waived their rights to complain. But it's sort of irrelevant now because the Second Circuit

has stayed the stay, or has stayed the order to cooperate. She said Pomerantz has to testify. As of right now, the Second Circuit stayed that decision.

Barb:

Kim, as Jill said, I want to pick up where she left off. Bragg appealed that order to the Second Circuit Court of Appeals and they entered to stay. I'm wondering where you see this going, because there's a possibility that the court applies the Supreme Court's decision in that Mazaras case. Remember when there was a subpoena to Donald Trump about his business records and his tax returns, the court held that before Congress can subpoena a president, it has to make certain showings such as there's a legitimate legislative purpose, and that there's a particularized need for the information, and they're unable to get it anywhere else. Do you think that when you've got this sort of situation, a federal investigative committee looking at a state executive branch office, that we could see some other kind of either Mazaras standard or new standard articulated?

Kim:

I think that's very likely a possibility. First of all, it's the Second Circuit, which is the type of circuit that might want to say, "Okay, I want to weigh these interests. We want the prosecutors within our jurisdiction to be able to do their job, but we understand that Congress has a role to play too." Try to balance out those interests there. Mazaras wouldn't apply directly because Pomerantz is not the president. But he is a former prosecutor, and I think that there is a really good public policy argument that could be made to say, "Look, you don't want to stop current investigations or draw in other people while an investigation is going on. So a higher standard should be necessary here." I think that's very much a possibility. Now, if that gets appealed, what would happen at the SCOTUS? I do not know.

Barb:

Yeah. Well, I think it's really going to be interesting as a legal matter to pay attention to all of that, but I'm sure a lot of this is all political gamesmanship. But in the end, there's some important legal issues at stake.

Jill:

I've become so concerned about food waste and the impact on the environment, but on all the stuff that we have to recycle. I am so happy to report that I have found a new way to help with that. No one wants 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. The other sisters have been able to share in the experience. We all love it. If you haven't heard of Lomi, it's 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:

Thanks to Lomi you can have way less garbage each week. We're talking two or more fewer bags. That means your waste isn't going into landfills and producing methane. Instead, you can turn your waste into nutrient-rich dirt that you can feed to your plants. I know it feels great when 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 family meal much easier and environmentally friendly.

Kim:

I care a lot about the environment. Nobody cares more about the environment than my husband. He is the Lomi master. He has Lomi running all the time. I can't throw out a shaving of carrot, I have to put it in the Lomi. We are a Lomi household for sure. If you want to start making a positive environmental impact or just clean up after dinner in a way that's a lot 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 L-O-M-I.com/S-I-L and use promo code SIL at checkout. Food waste is gross so let Lomi save you a trip out to the garbage can. You can find the link in our show notes.

Barb:

Well, this is the part of the show that we enjoy the most, the part where we answer your questions. If you have a question for us, please email us at sistersinlaw@politicon.com or tweet using #SistersInLaw. If we don't get to your question during the show, keep an eye out on our Twitter feeds throughout the week. There we'll answer as many of your questions as we can. Let me ask, Jill, we got a combo of questions that relate to military law. As our military expert, former general counsel of the Army, I'm going to send these your way. First from Vicky, "When is a person tried in regular court, federal or state court, versus a military court? Stealing classified documents while on duty would seem like a military offense. Is it either or, or both and?" Then we get SueNR1295 who says, "Can you explain why Air National Guard members are not subject to any court of military justice?" I think they have in mind this airman who was charged last week with disclosing classified information. What do you say?

Jill:

Well, it's complicated of course, but let me just lay out in general what the rules are. The possible prosecutions here would be either from the UCMJ under military law or the Department of Justice at the federal level. Both of those are federal. But there could also be, in certain cases, state crimes. Whether you get court marshaled, tried in federal court or state court, depends on in part a memorandum of understanding between different jurisdictions, different sovereigns, and in part on who has the most severe penalties, who can try the case faster, and on a negotiated arrangement between the different jurisdictions. In this case, I would say that the federal law of espionage probably trumps all the other possible cases so that someone would be tried for that violation in a civilian court rather than as a court marshal. But it is possible.

Then as to whether or not he was... He's an Air National Guardsman and he is actually subject to military law, but only if he is under orders from the federal government. I don't know the facts. They haven't been made public. If you are in the National Guard, either Army or Air Force, you're under the UCMJ if the president has called you up. If the governor calls you up to say, for example, plow the streets because of a huge snowstorm, you would not be under military law. If you're called up to fight in someplace or to do intelligence work in someplace under Title 10 by the president, then you would be under military law. So we would need to know how he was serving, what kind of active duty he was on to know whether or not that was the case.

This is a serious case because there may have been breaches of sources and methods. If you can remember back to Robert Hansen, who was a spy who leaked stuff, there's a direct link to deaths of agents because he leaked the information to the Russians and he gave them names of people who were killed. So it's a serious case and I think right now the federal government is going to work it out as between whether it's military or DOJ. Whether the state has any interest in this is questionable in terms of these particular federal documents.

Barb:

All right. Our next question comes to us from Mary in New Mexico. Mary asks, "Are there IRS ramifications for Clarence Thomas's shenanigans?" Shenanigans is Mary's word, legal term of art, I guess. Kim, you want to take a stab at that? I think we know what Mary's talking about when she refers to the shenanigans.

Kim:

Yes. I think our listeners know as well. I think the answer to that question is we don't know. Potentially, based on the facts as we know it now, where Justice Thomas was given these lavish vacations and this house was sold to this wealthy billionaire who wanted to make a museum out of it, I don't see a lot. The vacations, hospitality is not taxable income. That would not be an IRS matter. Gifts, things of value being given, that could be seen as that. If Clarence Thomas received something that under the IRS code constitutes income and he did not... Even if he reported it on his financial documents but did not report it to the IRS, yes, that could be an implication here. That house sale, he claims he didn't report it in his federally required financial disclosures because he took a loss. In that case, if he actually took a loss, then no, there would be no tax liability on that. But we don't know. We don't know anything, so it's hard to answer that question. So the answer is, maybe.

Barb:

Yeah, all those people don't want them to hire those 87,000 new IRS agents. Might go poking around in your trips on a super yacht. Don't want that. Our final question comes to us from Fred, who asks, "Can you explain how it was possible for the DOJ to track down an arrest Air National Guard technician Jack Teixeira in just a few weeks, while it is almost two-and-a-half years since former president Donald Trump took classified documents after leaving the White House and still nothing from Jack Smith, Merrick Garland, and the DOJ?"

Yes, Fred, I feel your pain. I too am growing impatient waiting for something to happen here. But what I will say is they're very different cases. In the case of Jack Teixeira, they were able to, I think, find the documents online where they just had absolutely no business being. They were able to trace that back and identify... I think even confirm that the photos of the documents matched up with the photos in his kitchen. But they're so often an electronic paper trail to find out that he was the one who had posted them there. It's actually really quite a simple case. They don't belong on social media, the Discord channel. It appears there's at least probable cause to believe he is the one who took them from their proper place and posted them on Discord. It's a fairly simple case.

In the case of Donald Trump, however, it is slightly different because as a former president, there was a time when he actually had the ability to access this information and he took it home with him, which is improper. But you have to show that the person acted willfully, which means contrary to most crimes where ignorance of the law is no excuse when it comes to possessing classified information, you do have to prove that the person committed what's known as a willful violation. That is that you knew what you were doing was illegal.

If he says, "I thought I could take them. I'm the president, they told me I could take them." That can actually be a potential defense. What they have to prove in his case is that he didn't really believe that. That there are people who told him, "No, you have to give these back." I also think there's some evidence of obstruction of justice here that they pretended to be complying with the subpoena and lied about how many additional documents they have and those kinds of things, which is the kind of aggravating factor that can make this a much more serious crime than simply mishandling documents.

In the Teixeira case, there's just no legitimate explanation for him posting these things online. So it's just a much simpler case. I think we know what happened in the Trump case, but it's really proving that criminal intent that I think is trickier that might meet the eye. I think that is what is taking so long. But it does seem that the end is near because they have put Trump attorney Evan Corcoran in the Grand Jury and have gotten a ruling from a judge that his testimony is not protected by the attorney-client privilege. Perhaps, Fred, our long wait is almost over.

Thanks for listening to #SistersInLaw with Jill Wine-Banks, Kimberly Atkins Stohr, and me, Barb McQuade. We look forward to having Joyce back with us next week. You can send in your questions by email to sistersinlaw@politicon.com or Tweet them for next week's show using #SistersInLaw. As you all know by now, #SistersInLaw are going on the road. Come and join us as we record the podcast live on stage where we'll discuss the legal topics of the day and answer your questions. We're starting off in Portland, Oregon on May 12th, New York City on May 19th, and Washington, D.C. on May 21st. There are still some tickets available, but hurry, because they're going fast. Go to politicon.com/tour to get your tickets today. We can't wait to meet you.

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Jill:

Hey, Kim. Listening to our discussion about the dangers posed in ringing someone's doorbell reminded me of a story that I haven't thought of in a long time. I was with some of my best friends on a trip to Key West, and I went snorkeling and somehow got separated, was by myself, and suddenly looked up and I could not see my boat. I didn't panic, and I kept swimming. I saw another boat, which I knew wasn't mine. It was much bigger and it had a ladder that went down. I took off my flippers, I climbed up the ladder and said, "Excuse me, is there anyone here? I'm lost." It was in Florida. Oh my God, think about the law in Florida. I was really endangering myself. Then they said, "Well, yeah, take a look." I could see my boat in the far distance.

I got back in the water. As soon as I got in the water, knew that the waves were too high. I could not see the boat once I got in the water and I should have gone back on that boat and said, "Please, take me there." But I didn't. Luckily, I obviously, as you can tell, because I'm here, I made it back to my boat-

Kim:

Wow.

Barb:

Wow.

Jill:

... because one of the girls knows how to do that cab whistle where you put your fingers in your mouth and you... I can't do it, but she was whistling and yelling my name and I swam to her voice. Otherwise, I don't... I mean, it was really actually in retrospect quite scary to be in the middle of the ocean and not see your boat. But I made it back, but I wouldn't have gotten on that other boat in today's world.

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Barb:

Well, we're glad this was in simpler times and you weren't lost at sea.

Jill:

Yeah. I was swimming, looking at all the beautiful fish, and I was following a barracuda. I didn't realize how far it had gone away from my boat that I could no longer see my boat. It was just really dumb, especially because I shouldn't have been following a barracuda anyway, they're dangerous.

Barb:

You should hear the stories the barracuda says about you.

Kim:

Ah.

Jill:

Yeah, right.