

Jill:

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Barb:

Welcome back to #SistersInLaw with Jill Wine-Banks, Kimberly Atkins Stohr, Joyce Vance, and me, Barb McQuade. As you all know, we are going on tour in May to Portland, Oregon, on May 12th, New York City on May 19th, and Washington DC on May 21st. So go to the show notes for the link, politicon.com/tour, to get your tickets. They are selling fast and there aren't many left, so please hurry because we'd really like to see you at the show. Let's get on with today's show when we'll be discussing the Trump indictment, compelled witness testimony in some significant cases, and Clarence Thomas's fabulous vacation photos. As always, we look forward to answering your questions at the end of the show.

Before we start, I want to ask you guys a question. This week, like some other weeks but, boy, this week especially, was this amazing news week. There was just so much happening every day. There was the Trump indictment, but also all this other stuff going on in the news. I don't know how you keep up with it all. I really try. I listen to NPR and MSNBC and I read the papers, but primarily I subscribe to a lot of these news subscriptions. I get the headlines from the New York Times and the Washington Post and the Wall Street Journal and the Boston Globe and other publications. But I find in a busy news week like this, I just can't keep up. I read them on my iPad. There was one evening I started reading, and it was like, "You have 186 more of these email messages," each of which contain dozens and dozens of headlines. It just can get so daunting. How do you guys keep up with the news? Kim, you're in the business. What's your secret to keeping up with the news?

Kim:

It's funny that you mentioned newsletters because another thing that I have been doing recently is reducing the scroll. It has nothing to do with the person who bought Twitter. Even before that, I found that just my habit of constantly scrolling, and that was a way that I would get a lot of my news sources, just was having an adverse effect on my life. The less I scrolled, the happier I was mentally and the more I was focused on the things in my actual life that matter. But as a result, that also sort of took away the way that I used to get my news.

So now I've been very intentional, and newsletters are a real crucial part of that. I subscribe to a bunch of newsletters that I like, so they're all there in my inbox waiting for me when I wake up. Then just in one box on the homepage of my homepage, I'm such an old person, right on my screen on my cell phone, I have a folder with all of my news sources that I trust and I just go through quickly. I thought that that would be a big pain, especially without using Twitter. I've found that I've gotten it down to a science now. I just sort of go through, I'm able to read a lot of the news publications, including places like the Post will have an audio version. So if I'm out walking in the morning or going on a hike or putting my makeup on or something, I can even listen to stories instead of reading them. I have found that to be really good.

Also for context, two of my favorite newsletters aren't just about giving the news but giving crucial context that I find really helpful. One is by Jamelle Bouie, at the Times, who is just really brilliant in the way that he dissects, just distills down an issue and makes you listen to it in a unique way. Another is my

colleague, Renée Graham, at the Boston Globe has newsletter. It's relatively new called Outtakes. I recommend that people get that, subscribe to that because that's also a good example of that.

Barb:

Well, that's great. But now I've got more things I have to read. They do sound amazing, so I'm going to add them to my list. Speaking of good newsletters, Joyce, you have your Substack, Civil Discourse, which is excellent. I add it to my list, and I subscribe to a few other Substacks as well, which are great. Have you come up with any strategies for being efficient in your consumption of the news?

Joyce:

Our text loop, because we usually alert each other to big developments.

Barb:

That's true. [inaudible 00:04:50].

Joyce:

I rely very heavily on you guys. I'm exhausted listening to Kim, and I bow down to the way that she handles this. I think it's a really important decision. I think it's important to be deliberate. I'll tell you a zillion years ago when Twitter was new, and you and I were US attorneys, Barb, so we never posted on Twitter, I stumbled across it and thought, "Wow, this is great. This is a place where I can amalgamate all of the newspapers that I like to read." I sort of have weird reading habits. I would like to read, for instance, from Haaretz the Israeli newspaper, and from some of the European newspapers like the German newspaper. On Twitter, I could actually just subscribe to them. So for whatever that was, eight, nine years, my Twitter feed was maybe 20 different news sources that I subscribe to, and I would read them on Twitter. I really loved that. It was really helpful to me.

You're right. The news moves so fast now, and it's so difficult that that's hard to do. So I use a sort of hybrid. I have some reporters who I really trust and rely on. One of them is your husband, by the way, Kim. When they tweet, I get an alert, and I will try, within reason, to go ahead and immediately read their new reporting. You can't always do that. If you're in a class or doing something, they pile up, and then you read them all at once. But something I do consistently is I start my morning by reading the news. I still use that same collection of newspapers. Now I've added some journalists who I really like to hear from. It sounds sort of silly, but I start most mornings with a couple cups of coffee sitting down at my chicken coop, and I try to read without interruption to start my day.

Barb:

Well, those are inspiring stories. How about you, Jill? You always know what's going on. How do you manage to stay informed?

Jill:

It's not easy. Part of it is a psychological mindset because sometimes, like this week when you're just deluged with news and not all of it the news you want to hear, I have to sometimes just take a break and either go and cook something or take a break and watch a rerun of Stephen Colbert or something like that. But I think the way that I do it is I have curated a list, much like all of you. There are three newsletters that I rely on, Joyce's, of course-

Joyce:

Thank you.

Jill:

... Hubbles as well, and Heather Cox Richardson's. All three of those are at the end of the day though. So how do I stay current during the day? It's really by Google alerts, and I follow a lot of columnists whose opinions I really rely on. Of course, I get alerts from all the newspapers I read. That's how I stay current.

Then one of the best ways, as you've mentioned, is the text that we exchange. Also, I have a group called the Quince, and they are always alerting me to great articles, great news stories. When I say great, I mean important because they aren't all great. A lot of them are horrible. And a newer friend who is a journalist and who sends me some of the best information. In fact, she's the one who sent me the statement of facts. When all of us were focusing on the Trump indictment, she sent me the information that was really the key piece, which was the statement of facts. So it's friends and newsletters and just taking a break so that I can then absorb all of it.

Barb:

Well, I'll try to take all that good advice to heart. Thanks.

Jill:

Also, it helps if you don't need sleep.

Joyce:

Can I just echo what Jill's saying about friends because I do find that talking about the news with my friends, and like all of us, I have a couple text groups on my phone of friends from different parts of my life. Really, I think that there is value in talking this through with good friends, which is sort of why we do this podcast, right?

Barb:

Yeah, I think that's right. Get a reality check in the sense of normalcy sometimes when the world seems like it's careening out of control. I know I enjoy processing all of it with all of you. Hey, Kim, it's late winter/early spring and my skin is like sandpaper. Do you have any advice for me?

Kim:

I have had really good luck with Osea skincare products, especially when my skin has been transitioning between the seasons. I really like their seaweed serum that I put on with my moisturizer, and it really makes my skin feel great. Spring is the perfect time to refresh your skincare routine and for us, Osea's Ocean Eye Serum was a great place to start because nothing says refreshed more than bright, wide awake looking eyes. Jill has even convinced us she went to bed before midnight. I still don't believe it, but she looks like she did.

Jill:

Well, you're right. I didn't go to bed before midnight. But I can say that's Osea's Ocean Eye Serum checks all the boxes for me. It brightens, smooths, depuffs, and awakens the entire eye area. It's like a wake up

call for your eyes. And the texture feels amazing. You're going to love applying it and watching the results and your skin in real time.

Joyce:

I'd even say it's like a shot of espresso for your eyes. The cooling roller ball brings energy to your face right away, and the Ocean Eye Serum is clinically proven to brighten, reduce the look of crow's feet and under-eye bags, while diminishing puffiness and dark circles and smoothing fine lines and wrinkles. It uses high-performance ingredients such as hyaluronic acid, peptides, and Undaria seaweed, so you know it works.

Barb:

Did you say a shot of espresso for your eyes?

Joyce:

Isn't that just what you want from your cosmetics and your skincare products? Espresso for your eyes. It's amazing.

Barb:

All right, I'll settle for espresso for the mouth, but I guess that's for another day. Another thing that's really important is that Osea is a one-stop shop for clean, nourishing, clinically-proven products for face and body. But even better, they've been making seaweed-infused products in California that are safe for your skin and the planet for more than 27 years. Never choose between your values and the best skincare. So spring into your most radiant skin yet with clean, vegan skincare and body care from Osea. Get 10% off your first order site-wide with code Sisters at oseamalibu.com. You'll get free samples with every order and free shipping on orders over \$60. Head to O-S-E-A malibu.com and use code Sisters for 10% off. You can also get your skincare on when you go to the link in our show notes.

Kim:

We have now had several days to digest the first indictment of a former US president. So I just want to start things off this week by asking the three of you your thoughts about where things stand after this indictment from the Manhattan District Attorney and what could come ahead.

I'm going to start off by saying I personally hated this indictment. I hated it. We've talked about speaking indictments. This indictment did not speak to me. I felt it was very silent. It should have had a lot of things to say, especially since it's the first one, the first one ever of a former US president. I understand that in Manhattan, they charge things in different ways, that they don't put everything in the indictment as a matter of procedure, that they also have the statement of facts, and they also have other information. Like, District Attorney Alvin Bragg gave a press conference soon after and gave even more information that was neither in the complaint itself or in the statement of facts.

I just think for the American public with this being the first indictment that it should have been so clear. It should have been spelled out in a way that really set the table. To me, Alvin Bragg's table was bare. But I want to get your thoughts on it. Joyce, why don't we start with you? What did you think about this complaint? Do you disagree with me? Do you think I'm full of it? You can feel free to tell me that. What's on your mind?

Joyce:

Honey, you are never full of it. I think that your reaction to the indictment is very understandable. Something that we have to appreciate is how the prosecutors looked at it because they were not there to speak to the public as much as we really wanted them to do that for us. I had said in my newsletter before it was unsealed that I hoped it would be a speaking indictment.

What the prosecutors in Manhattan did was they conformed to their local practice. That's very important because consistency is a virtue for prosecutors. Treating Trump like they'd treat any other case matters. This is their form indictment for these kind of cases. They used a statement of facts like they often do. What I've learned more about in talking to friends who are litigating in that jurisdiction is that when things really open up is during discovery, when defendants, in essence, will get something very close to open file discovery. That means they'll see all of the prosecutor's evidence. They'll learn more about underlying charges, which has been a big bone of contention here.

I think the important news for everybody who's seeing this wild back and forth on whether the indictment is a, quote, "good indictment" or not is that this is done properly from a legal perspective, which means that any convictions the office obtains can be affirmed on appeal. That's the important thing here.

Kim:

Jill, what do you think? I take everything that Joyce just said, and that's all very important. But on the day that this complaint dropped, I spend more time looking at this kind of stuff than most. I have read complaints. I've written complaints as an attorney. The fact that I read the complaint multiple times and then read the statement of facts and I was still texting with you guys, as we mentioned earlier, about how we get information about like, "Wait, what's the underlying...? Is it state tax? Is it federal tax?" I still didn't know after reading the complaint and the statement of facts and watching Alvin Bragg's press conference exactly what was going on. Jill, do you have any concerns about the way it played out?

Jill:

I do. I would say in between what Joyce said and what you're saying, I completely agree with you that there was a missed opportunity and that it was important that they stay with the law and the practice in New York, as Joyce said. But it also was important that they make this seem to be a case of magnitude, of importance. They had the opportunity to do that. If, for example, they had just released the statement of facts first or had referred to that first and made it more important... Because, of course, as soon as it was announced that he had been indicted and we were waiting and waiting and waiting, and as soon as it was unsealed, the first thing that was unsealed was the actual indictment, which, as you point out, doesn't really grab your attention or make the case.

If you look at the statement of facts where it starts with "The defendant, Donald J. Trump, repeatedly and fraudulently falsified New York business records to conceal criminal conduct that hid damaging information from the voting public during the 2016 presidential election," that puts it all in a very different context for me. So it really is maybe a question of sequencing. If they had put that out first or stressed in advance, you can't read the indictment without reading the statement of facts, it would've made a difference. I think that, while it's important to make a case that is like every other case, this is not like every other case. You have to take that into account and that it was important to communicate with the public. Even if that had been to say just to journalists who were going to be covering it, "When you get these documents, look at the second one first," that would've helped. So I think they did miss an opportunity.

But this is New York practice. It's worked in every other case, and he's gotten convictions in all the other cases. Ultimately, it gives more flexibility. As a prosecutor, I have to say, this is really a good method because you don't actually have to declare what the elevating crime is until your opening statement. I couldn't believe that. But I talked to Dan Horowitz, who's now a new MSNBC commentator and is the son-in-law of one of my law school classmates, and really came to understand how it works and how this benefits the DA and does not hurt the defendant because the defendant will get the discovery and have everything that they need.

Kim:

I appreciate that, and I do understand that. I've talked to other folks, other lawyers who said, "You know what? This is good. This gives the district attorney a lot of flexibility. They're able to make their case, and they don't have to do it right now." But at the same time, I worry that that would only give more fuel, whether or not it's warranted, to these claims from Trump's side that, "No, they're making this up as they go along. This is just a political attack, and they don't even have their theory of prosecution straight yet. They just wanted to charge Trump." Barb, what did you think about it?

Barb:

Well, I think it's an absolutely valid prosecution. Alvin Bragg, in his remarks, talked about how, since taking office, he's charged this particular crime 29 times. They consider it a serious crime in New York to falsify business records. New York is the financial capital of the world and having integrity in business records matters. They would charge anyone else with this crime. So the mere fact that this is a prominent political person should not prevent them from charging Donald Trump in this instance. So I think the fact that they charged him is absolutely valid.

I think the fact that it comes first is only because that's the way the cases fall out. They're not coordinating with Fani Willis and DOJ about who gets to go first and which one. I think by the end of this, we will see the case in Georgia and federal cases, if they're going to be charged, charged before this case comes to trial. So eventually, I'm not sure anyone's going to care which one came first. I hear that criticism a lot, and I'm not sure that that's one that ultimately is going to matter.

I don't like this charging convention in New York. I've looked at New York case law, and there actually is a case called *People v. Mackey* that says, "A prosecutor does not need to articulate the underlying crime." That was in a burglary case. As you all know from law school, burglary is defined as breaking into a dwelling with intent to commit a crime therein, a felony therein. In a burglary case, New York prosecutors were not required to define what that felony was. They said it would cause confusion by the jury and hair-splitting as to what intent is required because they want the jury to focus on the intent with the breaking and entering, and they don't want to have to do a double intent thing with what's the mens rea required for the underlying crime that he intended to commit inside. As a result, it's not required in New York.

But the idea that, "Don't worry Trump, you're going to find out by the time of the opening statement," strikes me as not the way we want to conduct criminal prosecutions in this country, providing fair notice to a defendant so that he can prepare his defense. So I don't love it. Imagine if this were a felony murder case, if you're charged with a felony, you can also be convicted for a death that results. Could we charge someone with felony murder without specifying what the felony was like? I don't think so because you have to be prepared to defend yourself. So I don't love this. I know it's the way it's done, and I know it's kosher under New York law. I don't know if it's going to fly. It might even be a violation of federal due process. I don't know if it's ever been examined and scrutinized in the way that it will be in this case. So

we'll see how that comes out. But in terms of the fact of the prosecution itself... I also think those problems can be cured and likely will be cured by the time the case comes to trial.

Kim:

I agree with that. I agree with all that. I just want to be clear, I'm not saying that I don't think these charges should have been brought. I do. I absolutely support the bringing of these charges. Barb makes a great point that Alvin Bragg has charged this many, many times, dozens of times before. This is not selective prosecution. I just wish, just given the fact that this is the first prosecution of a former US president, that it was all already laid out as clearly as possible for the American people just for the sake of the rule of law. But we can move on.

One thing that I want to ask you guys as former prosecutors, because it was a point that I didn't think of until Wednesday when I was talking to another former prosecutor who brought up the fear that, well, it doesn't matter which one of these things come first. Except, now that this one has been charged, these other cases that we're waiting for, the election interference out of Georgia, which is very serious, of course the January 6th case that is being considered by Special Prosecutor Jack Smith, and also the classified documents case, that all of those cases can be pushed off by Trump's legal defense team if they're saying, "Oh, we're inundated with these discovery requests and all the things out of Manhattan now. We can't possibly get to this right now. We have to push this off." Effectively, that can be used as a delay tactic beyond the election. Do any of you guys have fears about that?

Joyce:

In a normal case, this wouldn't worry me. I repeatedly had the experience of prosecuting police excessive force cases where the state would file charges before I did, and then I would come in and file charges. Then by agreement, we would suspend their case while I went forward. So that is not something, or I should say, that is something prosecutors know how to do and work out. This is of course not the normal case. For that to happen would depend upon, for instance, judges and defense lawyers to agree to let whatever case is going to go forward first go forward. That could be a real problem here. So I don't think that this is an unreasonable concern. But judges are going to want to see these cases get tried, and I don't think that Trump gets to play the delay game he usually plays.

I'll just share one case I've been thinking about. It's not a perfect example. It's a civil case where the presidential candidate actually filed the case, so different from this where Trump is a criminal defendant or a civil defendant. Pat Robertson, when he was running in the Republican primary, had filed a defamation case, and the defamation case came up for trial on Super Tuesday. The trial judge in the District of Columbia gave him the choice. Robertson said, "Oh, I need a delay. I can't go to trial. I must be doing everything for Super Tuesday." The judge said, "Sorry, no dice. You're going to have to pick what you want to do." Trump's situation is different. I think the thoughtfulness that the judge gives to the situation is the same. You don't get to play games when you're a defendant in a criminal case. Get your ducks in a row and go to trial.

Jill:

Well, I want to go back to first the earlier question about everyone saying, "Gee, I wish this wasn't the first case." Imagine if it was the last case. Everyone would be saying, "Oh, why bother? Look at all those other great cases. This shouldn't be brought." I'm of the viewpoint that every crime deserves to be prosecuted. It doesn't matter what it is. Just because you commit murder if at the same time you're beating up a different victim, you don't get a pass on the person who you beat up because you also

murdered his colleague. In the same way here, you don't get a pass on this crime because you committed other crimes that people somehow think are more important.

To answer this question, I do think it could be an issue where there will be some resolution that will be agreed upon. Whether this one is going to be a quick and easier case to try and will go forward first and be done with... Don't forget, by the time any of these come up, assuming that there are three other potential indictments coming, there are still two civil cases pending right now that are going to take a lot of time. Is he going to use those to say, "I can't defend myself against crimes because the attorney general of New York has a case against me where I could lose a lot of money, and I have a case where I could be declared a rapist as well as fined for defamation"?

He's got his hands full, there's no question. But just because you're a multiple serial criminal doesn't mean you don't have to go to trial on everything that you've done. So it's going to have to just be worked out in a way that is good. If the DA feels that the Georgia case is something that should go forward first, or if there should be an insurrection case, which could be something that would bar him from running for office, everybody might say, "I'm holding off on my case," and I don't know that a judge wouldn't agree to that. So I think it's something that can be resolved.

Kim:

Barb, do you think that Trump's team will be interested in not using this as a delay tactic?

Barb:

Oh, I think they're going to use a delay tactic as much as they can. If they can get it right up until the eve of the 2024 election, they can say, "We don't want this to be an issue." Then of course if he wins, then he's the president, and you can't charge a sitting president and all that sort of stuff.

I will add one thing about this though that might be useful for people to know is that, unlike some of these investigative proceedings where we saw Trump utilize the appellate process for delay... I remember when Cy Vance was trying to get these records from Mazars and Trump would appeal all the way up to the Supreme Court. Then even when it got remanded, he would push the test of what they had articulated and sent it up to the court again, and years went by, which is part of the reason it took so long to charge this case. When it comes to a charged case, there's something known as the final judgment rule. That means that, for most matters, the defendant cannot appeal interlocutory, kind of intermediate issues. So if he files a motion to dismiss and he loses, for example, all those appeals just get saved up until the end. So that's one way that once a case gets started in a criminal case, it does not drag out sometimes the way we see other pretrial matters, investigative matters, or civil matters.

Kim:

Just lightning round, if Donald Trump is on the ballot before these cases resolve, this is a question that we've gotten from a lot of listeners too, if these cases are not resolved yet and he's on the ballot, what happens? Barb?

Barb:

He runs. He's a candidate. Nothing prevents him from running or even being elected president. So I imagine he will use it as a campaign tactic, and there's nothing in the law that prevents him from even winning and serving as president.

Jill:

Barbara's right. In addition, he can serve as president from jail. There is nothing that bars him from that, except for the good sense of the American people not voting for someone who is under indictment for multiple cases. But nothing in the law would prevent it.

Joyce:

Barb and Jill are dead on the money. I saw you sort of blow back in your chair, Kim, while Jill was talking, which is everybody's reaction to this notion of convict president. It's just so beneath us as a country. I'm just going to have a moment of optimism here. I have so much faith in voters in America. Look, we have a lot of ways of holding people accountable: the criminal justice system, which has as of yet not succeeded in holding the former president accountable; the people who succeeded at that were the voters in 2020 who refused to return him to office. American citizens who turned out, who voted despite incredible impediments that Republicans in red states tried to impose on their right to vote, they kept that man from staying in the White House. I am confident that Americans will do that again. Jill, I could really use a good night's sleep. What do you think?

Jill:

Yeah, couldn't we all with the news coming in the way it is? But I do have an answer that will definitely help. You can find your perfect mattress by going to Helix. You take their two-minute sleep quiz. It'll match you with a customized mattress for your body type and your preferences for the best sleep of your life. When I took the Helix quiz, I matched with the Helix Midnight Mattress, and it was exactly the right thing for me. I've had great sleep ever since. Even though I don't get as many hours as I should, when I'm in bed, it's a really good sleep. So buy one tailored just for the way you sleep. It's the best mattress I've ever slept on.

Helix knows there's no better way to try out a new mattress than by sleeping on it in your own home, so test yours out for a 100-night risk-free trial and see how amazing your rest is. If you don't love it, and I know you will, they'll pick it up for you and give you a full refund. Plus, Helix mattresses are American made and come with a 10 or 15-year warranty depending on the model.

Kim:

Everybody is unique, and everyone sleeps differently. That's why Helix has several different mattress models to choose from. Each is designed for specific sleep positions and feel preferences. Their memory foam layer models provide optimal pressure relief if you sleep on your side, and it cradles your body for essential support in any sleeping position from back to stomach with enhanced cooling features to keep you from overheating at night. If your spine needs some extra TLC, they got you. Every Helix Mattress has a hybrid design, combining individually wrapped steel coils in the base with premium foam layers on top. It's the perfect combination of comfort and support.

Joyce:

My kids love their mattresses. They all have one. No matter how you like to sleep, Helix has you covered. The Helix lineup includes 14 unique mattresses, including a collection of luxury models, plus mattresses for big and tall sleepers, including kids like mine, grown, with one who likes a super soft bed, one who likes it really firm, all different kinds of folks. Helix has been awarded the number one mattress pick by GQ and Wired Magazine. It's even recommended by leading chiropractors and doctors of sleep medicine as a go-to solution for improving sleep. Now Helix is offering up to 20% off all mattress orders and two free pillows for our listeners. I really like the pillows. Go to helixsleep.com/sisters. This is their

best offer yet, and it won't last long. With Helix, better sleep starts now. That's helixsleep.com/sisters. You can also find the link in our show notes.

Jill:

As if the 34 felony count New York District Attorney indictment wasn't enough bad news for Trump this week, there's more. Trump lost an appeal to prevent Meadows and other top aides from testifying before the January 6th, Mar-a-Lago special counsel grand jury and lost a separate appeal to keep Pence from testifying. Plus, in related news, Fox lost its bid to prevent its executives and its anchors from having to testify as witnesses for Dominion, the plaintiff in the case. That's starting on April 17th, and they're going to have to testify.

Let's start with Trump's loss on executive privilege grounds to keep top aides, including his former chief of staff, Mark Meadows, from testifying. Other aids who the judge said had to appear included Dan Scavino, his deputy chief of staff and head of social media, Stephen Miller, the head of all things evil, I'm sorry, well, that's not his title, but he was a senior advisor, and White House director of speech writing for Trump, John McEntee, who served as Trump's personal chief and personal aide, Nick Luna, another personal aide, Robert O'Brien, the National Security Advisor, and John Ratcliffe, the director of National Intelligence, and Ken Cuccinelli, who served as acting Deputy Secretary of Homeland Security. So, Barb, Trump lost at the trial level, appealed, and lost again. How significant is this ruling on this particular executive privilege claim, which seemed to me to be just another US v. Nixon crime fraud exception, sort of set law, frivolous to have appealed.

Barb:

I think that's right. But every time we get one of these rulings, I think the law becomes more deeply ensconced, that this is the law of the land. You were there for the Nixon case when the US Supreme Court held and first recognized that executive privilege exists. It is not in the text of the Constitution, so I don't know what all these textualists are doing saying executive privilege is even a thing. "When it helps me, of course there's a thing, and when it doesn't, I don't see those words in the Constitution."

But the Supreme Court said, "Yeah, it's all part of the executive privilege. We need presidents to be able to receive candid advice from their aides. So ordinarily those conversations will be privileged and you can't talk about them later." But the court in Nixon said it's a qualified privilege, which means in some circumstances they will be outweighed by more important matters. It's the country's interest that we look at, not the interest of an individual who happens to serve in the office of the presidency. So as in Nixon, they said there there was another adage that came into play, which is the government is entitled to, as they said then, "Every man's evidence, every person's evidence." That was a stronger interest than this qualified privilege. So in Nixon, the privilege had to yield because a grand jury was interested in the information.

Now what we're saying is Trump is just kind of etching that law deeper into the stone because he's raised this issue many times now, and each time a court has rejected it under that same reasoning of US v. Nixon. I think, as you say, to raise these arguments now is now becoming kind of frivolous. We know where the law is on this. I suppose there's always some value in a court assessing the value of the privilege in a particular case so that there is not some frivolous request to pierce the privilege. But I don't think any of these can be described in that way at all. There's a legitimate grand jury investigation going on. These aides were people who were present with the president at the time all these events were being discussed. So I think getting these people in the grand jury is a really significant milestone in the case.

Jill:

I'm hoping, of course, that this will prevent Trump from trying once again to take this up again for an emergency order from the Supreme Court to further delay this case and that it'll finish this claim of executive privilege in criminal investigations. Let's move to assuming that it doesn't get further delayed, how significant is the testimony that we can expect? What kind of questions do you think these witnesses are going to be asked, and what are we going to learn from them?

Barb:

I think that many of the things they'll want to ask them about their conversations with Donald Trump. I mean, Mark Meadows, my gosh, he's the chief of staff, and he is present at all of these meetings between Donald Trump and key influencers like John Eastman and Mike Pence. So I think that he is very likely to have information that could be useful. The same with Stephen Miller, Dan Scavino was the deputy chief of staff, all of these people.

I also think that even if they don't have new information that is not already known to the team, it is still critically important to put these people into the grand jury to lock them into their story. What you don't want to happen is you think the whole story and you proceed with the trial, and then one of these people testifies on behalf of the defense and says, "You never asked me about any of these things. I've got a brand new defense you've never heard of before." So this locks them into a story now before they can all get together and come up with some cockamamie defense that no one has ever explored before. So very important, even if they have nothing new to say, just for that purpose alone.

Jill:

Excellent. Joyce, let's look at the efforts to keep former Vice President Pence from testifying. Trump tried to stop him on executive privilege grounds, and Pence used a different argument. He used a legislative privilege, claiming he was now part of the legislative branch because he was going to be president of the Senate on that day. Trump, of course, lost, and the court struck it down quickly. I'm hoping that that's the end of it. Maybe we should look more at what happened with Pence's argument because he didn't lose completely. He actually was vindicated, at least in part on that argument. He lost it in part. He's now said he won't appeal. He, Pence, won't appeal the ruling.

I'm just curious what you think about how broad the privilege that he gets is. I actually am concerned that at some point it's going to be argued, "Well, everything that led up to the advice that I was given about how to behave on January 6th," which would include information from Eastman, information from the president about how he should behave and how he should rule would be part of how he was going to do his job in the legislature. Do you think I should be worried about that? What do you think the breadth of it is?

Joyce:

Look, I think it's a rational fear given the way these folks have historically litigated. Looking at what's going on here, I am optimistic that we are at the point where Jack Smith gets Mike Pence's testimony. Pence is not going to appeal. We know that the judge's order contained what sounds like a narrow carve out for Speech and Debate Clause privilege. It's important to say, we don't know exactly what happened here because this is grand jury litigation. It's still under seal. But the New York Times and others have had reporting. The basic notion is that the judge affirmed the idea that Pence has some protection under Speech or Debate, but that's very limited to his role in overseeing operations on the floor of the Senate that night and that Pence will have to testify about any potentially illegal acts committed by the

former president. I think to Barb's point, this gives Jack Smith the opportunity to get what he needs. Will it involve some litigation and some back and forth over what questions Pence will answer? Only time will tell.

But here's the political reality if you're Mike Pence, and I don't mean to be a political commentator because I'm not one, Mike Pence, I think though, it's dawning on him that he is not going to emerge from the primary as the Republican Party's nominee. He has only one path forward to having a legacy, and that's telling the truth here and helping to end this sad administration, Trump administration that he was a part of. He can be, 20 years from now, John Dean, who was the hero, or he can be one of those footnotes that folks talk about in whispers who permitted a corruption of our government. That's the choice he faces right now.

Jill:

I agree with you. I think that is very well put. Kim, I want to go to something completely different, which is the Fox-Dominion lawsuit. It's a different set of witnesses that have been ordered to testify. This time it's the defendant's executives, Rupert Murdoch and Lachlan Murdoch, and board member, Paul Ryan, the former Speaker of the House in a different era, and also the chief legal and policy officer of Fox who will be ordered to testify in person, but also Fox's top, and I'm saying this in quote marks, "talent" including Tucker Carlson, Sean Hannity, Maria Bartiromo, and Laura Ingraham. The judge said that they were relevant, and he would not quash subpoenas. He also ruled that Dominion does not have to prove that Fox lied because it was, and he capitalized this, crystal clear that the statements Dominion is suing about are false. So all they have to prove is that Fox acted with malice or reckless disregard and the amount of their damages. Kim, you're our civil litigations expert. Tell us how do defendants, executives, and employees get to be called by the plaintiff in this case?

Kim:

It's important to know that in civil cases that the parties have the ability to make requests that witnesses be subpoenaed, just as in criminal cases, and a judge can order them to appear. If they refuse to do so, there could be penalties that could be paid including being held in contempt of court. That happens in civil cases the same way that it can happen in criminal cases. If a judge finds that the testimony of a particular witness is crucial, is important to a civil trial, they can be compelled to appear just as anyone else.

These people are claiming that they shouldn't have to appear at trial because they've already given depositions. In some cases, that could be enough if whatever they are witnesses for, whatever point they are trying to prove. If a judge says, "We have enough evidence to prove this point, they don't need to come in." But in this case, the judge is saying, "No, they're essential here. What they said, what they believe, their knowledge as to the falsity," I'm guessing, "of these statements is a central component to this trial and they should be compelled to appear and not only answer direct questions but also be cross-examined in front of a jury." That's an important thing. So that's what I think is happening here.

I think the fact, Jill, as you pointed out, that this case has already passed what is called the summary judgment stage. So before trial, the parties will move for summary judgment, which basically means each party is saying, "You know what? From what we've seen so far, the judge should be able to rule as a matter of law. We don't need a jury here. Either I've won or I've won," because they filed cross motions. What the judge found was they did not give any summary judgment relief to Fox or its parent company, but it did give partial summary judgment to Dominion in saying it's already clear here beyond a matter of fact that defamation happened here, that a false statement was made on Fox about Dominion and that they were harmed by it. So all that is left to be proved at trial is a) whether the

statement was made recklessly or knowingly by Fox, and what the amount of damage that Dominion suffered was. These are the things that have to go to a jury to be proven. The judge is basically saying here that these witnesses are crucial in determining those questions.

Jill:

It's interesting to note, Kim, that Judge Davis in ruling on this said Fox and Dominion have made these four parties very relevant. It's not the corporation that raises its hand on the stand. It's their officers and directors. That's why he ordered them to have to testify. Even though they're part of the family of the defendants, they aren't the defendants. They are the representatives of the defendants, and they get to testify. Given that they are now ordered to testify, what do you expect Dominion to prove through all of these witnesses?

Kim:

The key factors here both for proving their actual damages, in this case as we've specified before, and also punitive damages, which is something that's on the table here, is whether there was actual malice, which is whether the statements that were made were either made recklessly without regard to their truth or falsity or were made knowingly. A lot of what we've already seen come out through the discovery in this case get right to this question. They paint a very clear picture that the people who were on air, the Fox hosts, as well as Fox executives knew very well that the claims of the people that they kept putting on the air were false, that they were defamatory, and that they could hurt Dominion. So I think that's why they want them there testifying on their own behalf being cross-examined about this. This is the crux of the case. The potential punitive damage award could be absolutely massive on top of whatever actual damages Dominion can prove they suffered as a result for this. So these people are right at the heart of the remaining issues in this case.

Jill:

It will be a fascinating trial. I can't wait to follow it.

Barb:

Well, sometimes you have a long day at work and there's still more work to do when you get home, or you can't keep up with the news and it seems like it's an unending litany of more bad events occurring around the world. Well, you never know what type of day you might have, but Calm can help you handle every day. Calm helps you stress less, sleep more, and live a happier, healthier life. Their Guided Meditations, Sleep Stories, relaxing music tracks, and daily movement sessions are all designed to give you the tools to improve the way you feel.

Jill:

Right now, over 100 million people around the world are using Calm. Even if you've never meditated before, you'll get the support you need to reduce stress, improve focus, and uplift your mood. We love how their Sleep Stories help you drift off quickly to recharge your brain. They're also great for getting kids to calm their minds at night so you can rest assured they're getting the sleep they need. If you go to calm.com/sisters, you'll get a special offer of 40% off a Calm premium subscription. New content is added every week. So relax. Calm's got everything you need for a happier and healthier you.

Kim:

I take my meditation seriously. I sometimes joke, because my husband's name is Greg, that sometimes I'm Dharma because I do believe very much in meditating and taking care of that side of me, and Calm is the perfect way to do it. I can't tell you how many times I felt the burden of the things that I need to do the next day when I'm trying to clear my mind and fall asleep. But thanks to Calm's amazing content and narrators, I'm able to find deep relaxation and be ready to take on the challenges ahead of me. For listeners of the show, Calm is offering an exclusive offer of 40% off a Calm premium subscription at calm.com/sisters. Go to C-A-L-M.com/sisters for 40% off unlimited access to Calm's entire library. That's calm.com/sisters. So keep calm and find the link in our show notes.

Joyce:

Something we've done on the podcast is a lot of analysis of the Supreme Court and the ethics issues, maybe challenges is a better word, that they've been facing. But a new piece of reporting that was released Thursday morning had us blowing up the #SistersInLaw text loop well before 7:00 a.m. The reporting is from ProPublica. It's about Clarence Thomas. It's detailed, it's lengthy, it's well researched, and it is jaw dropping. I have to say, I don't surprise very readily anymore. This was something else. Kim, tell us about it. What did Justice Thomas do?

Kim:

Well, for the past 25-plus years, Clarence Thomas has had a friend named Harlan Crow, which he can have his friends. That's okay. Well, it turns out that Harlan Crow happens to be a very deep-pocketed conservative Republican donor who has, over the course of these 25 years, brought Justice Thomas and his wife, Ginni, on boondoggle vacations, on yachts, private planes, opulent accommodations all over the globe from New Zealand to the Greek Isles to Indonesia and elsewhere. And, oh, by the way, there have been other people in the company of these friends along the way, people like Leonard Leo. Our listeners should know who Leonard Leo is. If you don't, he is literally the architect of the Republican plan over the past several years to install very conservative judges across the federal judiciary, including at the Supreme Court. Remember that list that Donald Trump had of potential Supreme Court nominees? Leonard Leo made that list up. He is part of the reason why the court is the way that it is. These are people who were hobnobbing with Clarence Thomas.

The report says there is no evidence that there was any influence at all being exerted on Clarence Thomas during these trips, to try to influence his decision in these cases, which doesn't even pass the giggle test. I mean, to sort of commemorate, Harlan Crow, his opulent estate called Topridge, which is where a lot of these gatherings took place, has a painting from a gathering between Clarence Thomas, himself, Leonard Leo, and others, of them all sitting out smoking cigars. They made it into a painting, and now it hangs in Harlan's home-

Barb:

A painting.

Kim:

... that basically, it reminded me of... Remember Tony Soprano and the Horse? It's hanging like that in his home to represent everything that this means. Another point in this is that, if not the stays at Crow's private estate, if that was not meant to be disclosed, which it seems under the very lacking ethical rules right now that it's not, Clarence Thomas, according to experts, should have disclosed the jet plane flights, should have disclosed the cruises, and also stays at any commercial properties over the past 25 years. And he did not do that.

Joyce:

It's just unbelievable. This is obviously bad stuff for a Supreme Court justice to be doing. You don't have to be a lawyer to look at this on its face and have questions about ethics. Barb, what's the problem here? What kind of rules could Thomas be violating?

Barb:

Wait, what? You mean you guys don't have portraits of yourselves with prominent people, paintings, I should say, smoking cigars hanging in the [inaudible 00:54:49]?

Kim:

I can't let somebody buy me a sandwich as a journalist.

Barb:

I know, right?

Kim:

I can't let anybody give me anything.

Barb:

Joyce, I think about the rules we had as US attorneys. I know you and I have talked about this before. We physically bought the coffee that we would serve because we did not want to accept anything. As you said, Kim, we did not accept lunch from people. We accepted nothing. It was all taxpayer dollars, and we knew that anything that we accepted would raise an appearance of a conflict of interest.

Joyce, to answer your question specifically, as a Supreme Court justice, Clarence Thomas and others are supposed to be governed by the judicial code of conduct, all judges are. It refers to things like conflicts of interest and recusal rules and other kinds of things. But unlike every other judge, the Supreme Court says that they are only advisory to the Supreme Court because it would be a separation of power's problem for any other branch of government to tell them what to do.

Although, as a judicial officer, they are subject to financial disclosure requirements like every other government official. So there are rules that require justices and judges to report financial transactions, including gifts. One of them is any gift that aggregates more than \$415 in value. I don't know why that's the number, \$415. It's kind of an interesting number. They're allowed to receive some gifts, but that includes travel-related expenses and reimbursements from any one source.

I don't know the value of these trips, but a yacht trip to Indonesia, a trip to the Greek Islands, a trip to New Zealand that even ended up with an inscription in... Clarence Thomas wrote in his own book, *My Grandfather's Son: A Memoir*, by Clarence Thomas, he hand wrote into the top to his friend, Harlan Crow, "Thank you so much for all your hard work on our New Zealand adventure. I wish you all the best, Clarence Thomas." It's a gross violation of this rule of reporting. He says that, "When I first took the bench, I talked to a bunch of friends, and they said, 'You don't have to report this sort of travel stuff.' But I've been friends with Harlan Crow for 25 years, and so we're friends and all this stuff." Joyce, you probably remember, when did Clarence Thomas take the bench?

Joyce:

I think it was before he met Harlan Crow, Barb. Would that be the answer?

Barb:

1991. Now, I went to law school because they told me there'd be no math. But this is 2023, so even I can tell you that 25 years ago is about 1998, so he comes along long after he is on the court. The idea that "I had no idea I was supposed to report these incredibly lavish trips that were being showered on me and that it in no way affected my impartiality," as Kim said, doesn't pass the giggle test, or in my case, the weeping test.

Joyce:

I always remember my mother-in-law used to love to tell me privately, and since she's passed away, I will repeat it publicly, but she would say the morning after my father-in-law was confirmed as a federal judge, she suddenly had like a hundred new best friends, like people who wanted to drive her carpool for her and all of these other nice things. That's great, right? This is a little bit more than driving somebody's carpool. At the point where billionaire industrialist, Harlan Crow, cozies up to new Supreme Court Justice Clarence Thomas, all those red lights should have been going off. Something that you do, no matter what if you're a government employee, is you err on the side of caution because it's all about avoiding the appearance of impropriety. So the fact that Clarence Thomas reports this stuff for a few years and then decides he's not going to report it anymore, wow, that's a real red flag in my mind.

Jill, Kim has set up the giggle test as our standard for evaluating the claims that are being made here. Is it credible for Harlan Crow to say that no one, not Harlan himself, and none of the rich, wealthy people who were also on these trips with them who had litigation interests in front of the Supreme Court, none of them ever tried to influence Justice Thomas in any way, so of course, it's okay? Isn't it okay? Why is there a problem here if they've said that to us?

Jill:

I use the red face test, and this does not pass the red face test or any other test. No one listening to this podcast could possibly think that there wasn't at least the appearance of conflict of interest, the appearance of impropriety. It's especially hypocritical because you know all those videos he recorded saying, "I like the simple life. I prefer the Walmart parking lot to the beaches. That's the kind of guy I am." Sure. By the way, Barb, you said you didn't know how much it cost. ProPublica did estimate the cost of one of the trips, and it was one half million dollars for that particular trip. That's just one that he did over multiple numbers each year for over 20 some years. So the amount of money he's collected from this new friend, new friend who said, "Oh, Supreme Court Justice, bet I could get him," and then puts him into a room with what are only some of the most active campaigners for right-wing positions. So, no, it isn't credible to say that it didn't appear bad or that it wasn't bad.

We talked last week about the newest rules that have been imposed. It is absolutely clear now that, even if someone is your friend, you have to report transportation by yacht or by private aircraft, or for that matter, I suppose, even if they reimbursed you for commercial, it's no longer that it's just personal hospitality. So he's clearly violated the rules in the past and is certainly violating the rules now.

Joyce:

There's a wonderful column this morning in the Washington Post from Alexandra Petri, who I think is a lawyer in recovery. She writes in Justice Thomas's voice based on what we've learned in this reporting. She concludes her piece by saying, "I prefer to be where the rest of you, the rest of us love to be, which I assume from how much time you seem to spend there must be the parking lot of Walmart or an RV park. Yes, that's all I wish, the simple life. So you see, I could not possibly disclose any of these things for

they were not blessings but curses. These are the weights I must bear in my position. If someone with the power I wield were not meant to accept these heavy burdens, surely we as a court would've adopted a formal ethics code." So just straight from the Justice's mouth.

Wow, this is just a shocker though. Kim, Justice Thomas issued a statement today, and that's something very unusual for him to do. Doesn't ask questions on the court, doesn't justify anything he does in public. But in this statement he said he followed the rules. If new rules were passed, he would follow them too. What do you make of that?

Kim:

I want to read two parts of this statement, which I find-

Barb:

We're doing a lot of reading today.

Kim:

... really interesting. Part of it, he says, quote, "Early in my tenure at the court, I sought guidance from my colleagues and others in the judiciary and was advised that this sort of personal hospitality from close personal friends who did not have business before the court was not reportable." This is back to me speaking.

Joyce:

Wait, who do you think he went to for guidance on whether he could take trips with friends?

Kim:

I don't [inaudible 01:03:11].

Barb:

Could it have been-

Kim:

I don't know.

Barb:

... Justice Scalia? "Hey..."

Joyce:

Antonin Scalia, absolutely-

Kim:

He's like, "It's fine.

Joyce:

... he could've gotten the advice from.

Kim:

It's fine."

Joyce:

Scalia was like-

Barb:

Oh yeah, I do it all the time.

Joyce:

... "Knock yourself out."

Barb:

[inaudible 01:03:23].

Kim:

"I might even die in one of these junkets with some friends that are putting me up at fancy places. Who knows?" He doesn't say who it is, people in the judiciary. He said, "Colleagues and others in the judiciary." He doesn't even say who he talked to. Again, that to me says we need strict, clear ethics rules for the Supreme Court. He also later said he's endeavored to follow those rules, as Joyce said. These guidelines are now being changed by the Judicial Conference. He goes on to say that he would adhere to the new guidance as he did in the past.

First of all, this is important to note. The guidance was not changed. It was clarified that, yes, you too, Supreme Court justices must follow this guidance that was already in place that said you must report transportation. You must report when you stay in a commercial lodging place. You must report all of these things. If we weren't clear enough before, we are now being explicitly clear. That means that he violated these guidelines.

The problem is there has been no enforcement at the court. There is still no enforcement at the court. At most what the Judicial Conference was doing, this board was saying, "Hey, we know we can't make you, but we're just at least speaking up and saying this is what you are supposed to be doing. This is what you always have supposed to be doing, and this is something that you ought to do from this point on at least. There's nothing we can do to stop you if you don't. But this is what you ought to be doing." So I think Justice Thomas is trying to be a little too cute by half here.

Jill:

I think we need to put a link to the painting on our show notes because it is an amazing painting in which a bare-chested Native American man is reaching to the heavens standing above this group of people smoking cigars. The fact that it's a painting, it's not a photograph-

Kim:

Right?

Jill:

... it's an actual commissioned painting-

Kim:

Yes!

Jill:

... it's so outrageous. It is so ridiculous-

Kim:

Oh my god.

Jill:

... the fact that he's gotten away with it for all these years and that he is going to keep on getting away with it because Justice Roberts isn't going to do anything about it, are you Justice Roberts?

Barb:

I don't think Justice Thomas is being too cute by half. I think he's being too cute by half a million.

Kim:

Whoa.

Joyce:

It makes me so sad that all we can do is laugh about this. If we didn't laugh, we'd be crying, right? The Supreme Court's reputation with the public has bottomed out. The Chief Justice doesn't seem to know what to do about it. Thomas, I think, is by far the worst, but he's got some runaway justices. Here's looking at you, Sam Alito, and your lovely trip to Italy last summer. It is really a sad time when we need to have confidence in this institution. Instead, we've just got guys who are milking it for all it's worth.

Jill:

When a leader of the Federalist Society is in these private resorts with a member of the Supreme Court, that's all you need to know.

Barb:

Today's episode is sponsored by Honey.

Jill:

I have the best app on my phone and my computer, because these days, who doesn't want to save money? It's called Honey. If you haven't tried it, you really should. What about you, Barb? Have you tried it?

Barb:

Oh, yeah. I've got the Honey app on my phone because Honey is the easy way to save when shopping on your iPhone or your computer. It feels great to know you're getting a deal, and it also means you're smart. Saving is the perfect gift to yourself when you're the type of person who loves to maximize their opportunities. Thanks to Honey, manually searching for coupon codes is a thing of the past. Honey is the

free shopping tool that scours the internet for promo codes and applies the best one it finds to your cart.

Jill:

Just imagine you're shopping on one of your favorite sites. When you check out, the Honey button magically appears, and all you have to do is click Apply Coupons. Then you wait a few seconds as Honey searches for coupons, wherever it can find them, and it has to be for that site, of course. If Honey finds a working coupon, you'll watch the price drop.

Kim:

It's so great. I was recently, we talked about in the spring, how I go through my wardrobe, go through things, give things away that I haven't been wearing, but you also buy a couple pieces that are missing from your wardrobe, and I did that. I'd forgotten all about Honey, but I literally got to the checkout, and I saved something like 25% of what I was buying. It's great because these are things I was going to buy anyway, and then you just get an additional savings. So it was like a great little gift that pops up right on your phone. The best part is it's so easy. In case you weren't sure, Honey doesn't just work on desktops. It works on your phone. I was surfing, shopping on my iPhone like I usually do. Just activate it on Safari on your phone and save on the go.

Joyce:

Honey makes me feel incredibly virtuous. I'm shopping, and all of a sudden I get to check out and I'm saving money. How can you not feel good about yourself when that's happening? If you don't already have Honey, you could be straight up missing out. By getting it, you'll be doing yourself a solid and supporting our show. Get PayPal Honey for free at joinhoney.com/sisters. That's joinhoney.com/sisters. You can also get that Honey by using the link in our show notes.

Barb:

Now we come to our favorite part of the show, 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, please keep an eye on our Twitter feeds throughout the week where we'll answer as many of your questions as we can. Our first question comes to us from Kyle in Madison, Wisconsin, who writes, "Voting to expel members of the Tennessee legislature seemed like a gross overreaction to their protest of inaction over gun laws. Is this a violation of any First Amendment or Equal Protection rights?" Joyce, let me start with you on that because I know you wrote a great Substack newsletter on this very topic. Pretty shocking events in Tennessee over the past couple of days.

Joyce:

There's very clear case law, a unanimous Supreme Court decision that says you can't do what Tennessee did. It violates the First Amendment rights of the state legislators. I don't want to make that precedent seem more clear than it is because in that situation, which involved a Georgia legislator named Julian Bond, he was voted into office, and the legislature refused to seat him over some comments that he made that were against the Vietnam War. So it's a little bit different of a situation, but I think the case law holds up very well saying that the First Amendment is not meant to cut off political debate, that our elected representatives need to have at least the same amount of free speech that citizens have. It seems clear to me that this would not hold up in court if there were a challenge.

Interestingly, in the Julian Bond case, there were also race claims. Look, in Tennessee, they expelled the two Black legislators. The white woman who's standing alongside with them, they don't expel. So it's tough to see that as anything other than race-based. In Bond, the court does not consider the race argument because they don't have to. They've already ruled in Julian Bond's favor on the First Amendment argument. I think independently, though, there's a race claim this would hold up to. What Tennessee did was wrong.

Barb:

Jill and Kim, you have any thoughts on this one?

Jill:

I'm completely outraged, I just have to say. My blood pressure went up. Watching the proceedings yesterday was one of the worst things I've ever had to watch. The racism was obviously quite clear when the white lady stays and the two young Black legislators are removed for the same behavior. At first, I looked at the Julian Bond case and thought, "Well, this is absolutely precedent, no difference." But Joyce is right, not even so much because it was a question of not seating someone, but because this was a question of they apparently may have violated some rules of the legislature by taking to the podium when they weren't allowed to. But if so, all three of them did it.

Joyce:

Well, that's just a question of whether it's speech or not, right? It's just a question of whether it's speech. So I think it's coextensive with-

Jill:

Right, exactly.

Joyce:

So I think it's coextensive with Bond.

Jill:

I think that Bond is good law for this, and the language of the court in Bond is very persuasive. But mostly, I just want to call people's attention to this because we have a new justice elected in Wisconsin. The legislature, which has a super majority in the Senate, is talking about impeaching her before she's even taken office and getting rid of her because they don't like her views. We have other examples that are just as bad. I think that this is where democracy ends if we don't come out and stand up to this. I've tried to reach out to Indivisible to see if there's going to be a mass protest like there is in Israel or in France over issues because I want to be on the front line of this fight. I am outraged that this could happen in America, that someone who was elected by their constituents is put out of office by a opposite party majority. It's just outrageous.

Barb:

Hey, Kim, I'd love to hear your voice on this. Do you have a view?

Kim:

I do, and it's what Jill and Joyce have already said. I can't think of anything else that I can add that they haven't already covered it. It is awful.

Barb:

I get that you can have rules and say the decorum and the rules of the House, "Here's who gets to speak and the order in which you speak and you're out of order." But the idea that that would result in expulsion strikes me as in incredible overreach.

Joyce:

There's actually a Tennessee provision that permits legislators to protest. So I think it's very arguable whether this actually violated the rules in the House or not in the first place.

Barb:

Well, I think it's not the last we're going to hear about this. Let's hope not. Our next question comes from Linda in Bethesda, Maryland, who asks, "What is the significance of Friday's court ruling that the attack on the US capitol was illegal under the Obstruction of Justice Law?" Well, I think this is an important ruling. Now, if the court had ruled the opposite way, it probably would've been even more remarkable.

You may know that there have been a number of different judges who have been asked to decide this question. Many of the January 6th defendants have said that, "My physical attack of the Capitol does not violate the Obstruction of Justice Statute. That can only be violated by using financial documents." Every judge who looked at this said, "Absolutely not. Of course what you did was an obstruction of an official proceeding. You're guilty." But one judge in the District of Columbia agreed and dismissed a case on that basis. It was that decision that was appealed. Now the DC Circuit Court of Appeals have said, "Of course it's a violation of the Obstruction of Justice Statute to disrupt Congress on the day they're counting the votes for the presidency." So it helps in those particular cases assigned to that judge. I think the real significance is it makes it very clear that this is a crime that could potentially be used against Donald Trump when Jack Smith goes forward, if he does, on the January 6th investigation.

Our third question comes from Robert in Canada who writes, "Given the development of a bill in Georgia, the state legislature there, would this bill potentially allow for the state legislature to remove Fani Willis as the lead prosecutor in the Trump case?" Jill, you want to take a stab at that one?

Jill:

The bill is not just a question of removing her as the lead prosecutor in the Trump case. The bill would allow her removal as the elected officer that she is in the same way that a case in Florida where the governor removed Andrew Warren as the elected district attorney on grounds that he wasn't going to prosecute rape cases. I'm sorry, abortion cases, I think was what he wasn't going to... He was going to use his discretion in setting his priorities.

This law, which is likely to become law, doesn't actually take effect until 2024. So in terms of the actual Trump case, if Fani Willis hasn't indicted Donald Trump before 2024, then she's never going to do it. So it's not going to actually have any impact on the prosecution of Donald Trump for interfering in the presidential election. But it is something that gives power to the legislature to remove elected officials for reasons that I don't think fall within what would be constitutional for them to do.

Barb:

Thank you for listening to #SistersInLaw with Kimberly Atkins Stohr, Jill Wine-Banks, Joyce Vance, and me, Barb McQuade. 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. We'll be discussing the legal topics of the day and answering your questions. We're starting off in Portland, Oregon, on May 12th, New York City on May 19th, and Washington DC on May 21st. There are still some tickets left. 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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Kim:

... ticket machine that everybody was trying to use to buy a ticket out, and I'm just like, "Oh, this is never..." I see somebody in an Amtrak uniform walk by. I'm like, "What do I do? I just want to get to DC. I need to get to DC." They go, "Oh, well, it'll either be this door or that door. When the train arrives, just get on the train. Buy the ticket on the train." Cool. Literally five minutes later where I'm standing, it says, "Next train to DC boarding here." I go downstairs. I get on this train. I had not bought a ticket. I didn't have anything. I get a seat. The train is so packed. People are in the aisles. They over-packed this train to get people out of...

The train starts moving, and I hear the conductor going through. People who don't have a ticket, they're like, "We can't get you a ticket on here. You're going to have to get off. You're going to have to get off at Newark and buy your ticket there." I was just like, "Oh my God." Everyone's arguing with him. Everybody's mean and nasty. So I'm just sitting there, and he finally gets to me. He's like, "Where are you going?" I say, "DC." He says, "Do you have your ticket?" I say, "No." He said, "Just hold on." He goes down and is dealing with other people and keeps doing that. We pass Newark, we pass Metro... whatever the thing comes after Newark. Every time he comes by for me for the ticket, I'm just like, "I have a credit card." He's like, "Hold on." I get all the way to DC. I get off the train. I got to DC for free because I'm nice, and I was not arguing with the conductor like everybody else was.