

Jill:

Welcome back to #SistersInLaw, with Barb McQuade, Kimberly Atkins Stohr, Joyce Vance, and me, Jill Wine-Banks. By now, all of you know we are going on tour next month to Portland, Oregon on May 12th, New York City on May 19, and Washington, D.C. on May 21st. Go to the show notes for the link for [politicon.com/tour](http://politicon.com/tour) to get your tickets. They are selling fast, so please hurry. We want to meet you there.

Okay, let's get on with the show where, as always, it was hard to pick just three topics, but we did and they are great. Today we'll be discussing the Dominion lawsuit, which is going to trial and has had some really big developments this week. We've... going to talk about Tennessee, where the two expelled legislators have been restored and talk about what it means in terms of democracy and civil rights, and then we'll talk about Shanquella Robinson and the decision of the Department of Justice not to indict anyone in her case, and talk about whether someone could be extradited from America to Mexico to be tried there.

Lastly, we look forward to answering your questions at the end of the show. But before we get to those topics, I want to talk about something that has been on my mind a lot lately, and that is, how do you give yourself permission, and how do you escape, refresh and recharge in a limited amount of time when your taxes are due and the news, your job, your life just won't stop? So, Joyce, let's start with you. Do you give yourself permission to take a break, and what do you do when you do that?

Joyce:

I really do, and I do a lot of different things. I keep a yoga mat in my studio. If I've got just 20 minutes, I'll do yoga, but I keep knitting by my side all the time. It's sort of my happy place, and I have a car project, and an office project, and a project that's sitting about six inches away from me right now, because I always knit when I podcast. You're talking about stuff that's stressful. We all have to take good care of ourselves and make sure that we de-stress, whatever it is, so I think it's just a question of finding something that you can pick up or jump right into in the moment. What about you, Barb?

Barb:

Well, I find exercise is my go-to, and it can be anything, but I think just moving physically gets my mind off things. It releases my mind to think through things, and I just feel like I'm in a different place when I'm done. Running, swimming, playing tennis, any of the... riding my bike, any of those kinds of things makes me feel better. I think there's science that talks about movement just makes you feel better. Even going for a walk. Any of those things, and depending on how much time you have, but I do make time in my life to do all of those things, and I think it helps. How about you, Kim? Do you have any de-stressors?

Kim:

I do. I am a big meditator. I do believe in that. I even keep energy crystals, something like rose quartz or jade or something, in my purse, so if I just get a few moments and I just want to zone out a little bit, I can put one of those in my hand, recenter myself and refocus on what I'm doing. On the other end of the spectrum, I also, I think I've mentioned this before, I do enjoy watching trash television shows. Actually, when you mentioned taxes, Jill, while I was doing my taxes this week, I was watching this Netflix show called Love is Blind, in which people get engaged before they see each other. I mean, it's ridiculous. It's ridiculous, but I mean, it helped me get through doing my taxes, which is no fun. It made it a little more fun. We do all the things that we can.

Jill:

Yeah, those are all good advice. I sometimes will take a break to cook, because I find it's really satisfying to mix and measure and stir and then put out something that's really tasty. The best thing though, for me, is I go for a walk with Brisbee and my husband, and that really is a way of getting away. Planned exercise, getting on a treadmill, just doesn't do it for me. That's sort of like I'm thinking of all the things I should be doing instead of doing that, but being with Brisbee and Michael really takes me out of my world and lets me relax. So that's what I do.

Joyce, I have re-upped with Noom because, after about six, eight months away from it, I feel like I need a refresher course.

Joyce:

With two of my sons... One of my sons has now lost 40 pounds using Noom. He did it really quietly, didn't announce that he was doing it, but he's in his thirties, he's a lawyer, he was leading a little bit of a sedentary life. Now he looks fantastic. Trends and fads come and go, especially when it comes to health and wellness, but Noom, it's just not a fad. They use psychology, not trends, to help you make intentional and sustainable choices that are aligned with your values and weight loss goals, and build lasting results. Noom Weight's psychology-based approach empowers you with the knowledge and support to build more sustainable habits and behaviors. It uses scientific principles, like cognitive behavioral therapy, to help you understand your relationship with food so you can align your lifestyle with what you want.

Barb:

I've been on Noom now for two years. I started in April, two years ago, after I put on a lot of COVID pounds and was being very sedentary, and I really think it's life-changing. I'm still on it. I read my little remarks every day. I log my food, I log my exercise, and it just makes you more cognizant of the way you're living your life, what you're eating, what you're doing. The program helps you understand the science behind your eating choices, and why you have cravings, and your daily lessons are personalized to you. Whatever your health goals are, the flexible program focuses on progress instead of perfection, which means, from time to time, you can have dessert or whatever it is you want, as long as it's not too much, and you can choose your perfect level of support. From five minute daily check-ins to personal coaching. It's helped changed our habits, because Noom Weight shows you how to pursue the goals you set for yourself, and it gets you to them.

Jill:

I listen to that and it sounds too good to be true, but it isn't. It really, really works. First-time Noomers lose an average of 15 pounds after being active in the program for just 16 weeks, and 95% of customers say Noom is a good long-term solution. They've even published a peer-reviewed scientific article describing their methods and effectiveness. So, get empowered and stay on track with Noom.

You'll get nourishment, not restrictions. Stop chasing health trends, and build sustainable, healthy habits with Noom's psychology-based approach. Sign up for your trial today at [noom.com/sistersinlaw](https://noom.com/sistersinlaw). That's N-O-O-M.com/sistersinlaw, to sign up for your free trial today. Also, check out Noom's first-ever book, The Noom Mindset, a deep dive into the psychology of behavior change, available to buy now wherever books are sold. You can, of course, also find the link in our show notes.

Barb:

Well, trial gets underway Monday in the 1.6 billion, with a B, dollar defamation case filed by Dominion Voting Systems against Fox News. As we know, a judge already granted summary judgment that Fox reported false claims that Dominion voting machines were used to rig the 2020 presidential election of Joe Biden. The key issue is whether Fox had the intent necessary to make out a defamation claim. Kim, what's the legal standard that Dominion will need to prove, in this case, to establish liability for Fox? It's a pretty high standard, isn't it?

Kim:

Is a high standard. Generally speaking, it is not easy to win a defamation suit against a media organization. It's one of the hardest things there is to do, because you have to prove something called actual malice, which, even if it is a false statement, that's not enough. You have to show that the people in charge at that media organization either knew the statement was false when they broadcast it, or that they acted with reckless disregard as to its truth or falsity. One reason I think this case is moving to trial, it hasn't been settled, is because of the tidbits that we've received from the discovery that's happened, that I think paints a really strong case that there was actual malice in this.

I mean, everyone from Rupert Murdoch himself, to Fox hosts, to producers, have said that they knew that the claims that were being made by people, they kept repeatedly putting on the air and talking about Dominion, were false. This is very different from saying... reporting something and doing due diligence, and it turns out somebody gave you bad information and you didn't know. This seems like they knew, and I think that this is going to be a case that it lies in the exception. Where, usually, libel cases fail against media organizations, I think this one has a good chance of winning.

Barb:

Yeah, there's been some real good smoking gun emails and deposition testimony that, for instance, that they knew that Biden won Arizona, and people wanted to stop reporting that because they said it was bad for ratings. "We're losing viewers, we got to go back to talking about the fraud claims."

Kim:

Yeah.

Barb:

So, yeah, I think it's going to be really interesting to watch that play out. Joyce, just this past week, the judge in the case ordered sanctions against Fox News for failing to comply with some discovery obligations in the case. What was the violation, and what do you think about the sanctions?

Joyce:

It's such an interesting situation, because piggybacking off of Kim's conversation about actual malice, what we learned this week is that Fox withheld important information, both about Rupert Murdoch's management status with Fox, but also there are audio tapes that people have probably heard by now. It started out on Alex Wagner's show on MSNBC, and it's Fox staff members and hosts having conversations with people in the Trump campaign, or with lawyers, and during those conversations there's an acknowledgement that no problems were found with Dominion's voting machines. Pretty damaging stuff. The judge was pretty righteously angry. The problem, though, is what do you do about sanctions when the trial is about to start? Delaying the trial to sort it all out would benefit Fox, not

Dominion, and so the judge wisely didn't do that, but he said he's likely to appoint a special master to look into what went on here with discovery.

There's the possibility down the road of sanctions against Fox. I suppose the lawyers could find themselves referred to their bar associations for some sort of disciplinary action if there's evidence that they were involved in that sort of delay. For now, the problem that can't be fixed, is that if Dominion had access to this evidence earlier, it might have won a full summary judgment in this case. The judge ordered a limited summary judgment and said, "Look, Dominion, you don't have to prove at trial. Normally you would have to prove, but now you don't have to prove that these statements Fox made were false. I'm finding, as a matter of law, that there is unequivocal evidence and no material issue of fact that Fox was putting false information out." What Fox has to prove to the jury at trial, and this is what Kim talked about, is this actual malice concept. Knowing falsity or reckless disregard for truth of the material.

Perhaps the ultimate sanction against Fox isn't the one that the judge imposes here. It's the fact that Dominion now has this evidence, which is really compelling evidence of actual malice, and ultimately the penalty that Fox may pay is a more grievous loss at trial, perhaps greater punitive damages, because I suspect that the judge will let Dominion, at trial, get into the idea that this information was delayed in discovery, which really will buttress any conclusion that Fox was dilatory here, and that they were dilatory because they knew that the information that they put on their airwaves was false at the time they did it.

Barb:

Jill, let me follow up on something Joyce just mentioned. She said that Fox misled the court about the role of Rupert Murdoch. They said he was an executive of the Fox parent company, the Fox Corporation, but not an executive for Fox News, and that turned out to be inaccurate. What is the significance of that revelation, and do you think Fox is in more trouble as a result of that?

Jill:

It's hard to imagine Fox being in more trouble than it already is, honestly. They have already had so much evidence released of their malice and their knowledge that they were acting with false information, and there's many more possible things to come out. I think what's important here is that it did restrict discovery that might have been broader if they had answered the question honestly, and the penalty that's being imposed on them, which is, okay, there'll be more depositions and you're going to have to pay for them, Fox News, it'll be something that Dominion can do and you're going to pay for, but it really doesn't correct the evil that was done. It doesn't correct the issue, and I think, as Joyce said, the problem is, any delay to allow them to fully explore this, really hurts Dominion. They want to get this over with and want to get the verdict, so it isn't really a good option, and they're just going to have to settle for doing more depositions, getting more evidence.

Barb:

Yeah, I think one of the things the judge said is, to Fox's lawyers, that they were having some serious credibility problems with the judge. Which is a classic understatement in light of both of these issues.

Jill:

And that will hurt during the trial, because the judge really is not trusting the lawyers. One of them is a very, very well-respected lawyer who was a former U.S. attorney in the Northern District, and I just... It's

hard for me to believe that they allowed this to happen. These were things that were really pretty much... should have been well-known, and so it's a really horrible situation, and they have lost credibility, and I think Joyce is right. The Dominion people will be able to use that as further proof of the malice.

Barb:

Yeah. Kim, I want to ask you about one of the defenses that the judge excluded from evidence against Fox. Fox wanted to assert something called a newsworthiness defense. What is that defense? I'm not familiar with it. And why did the judge disclose it? Do you think that's going to cause any problems for Dominion down the road on appeal, or you think the judge got it right?

Kim:

Yeah, I do think the judge got it right, but I do expect if Fox loses that this will be one of the areas where they will appeal. Essentially, when I said it's really tough to win a libel suit against a news organization, for one reason, is because it is the job of a media organization, a news organization, to talk about things that are newsworthy, and sometimes that... those reports can include falsehoods. For example, if we report Donald Trump saying that when he was arraigned that the people in the District Attorney's office in New York were crying and apologizing to him, as he did, he did say that, you can't be sued for that. Even though, I think, it could be proven perhaps that that is not exactly true.

If he says something, if he lies tens of thousands of times, as the Washington Post has reported, by reporting that lie, that's not defamation, even though it is a false piece of information, because he's a President of the United States. The fact that he is saying things that are provably false is newsworthy, and Fox is trying to say that was exactly what was happening here. You had people like Sidney Powell who were in Trump's circle making these claims, and that in itself was newsworthy, and they can't be sued for that. That isn't true here, because they kept putting her on in the assertion of the truth of that statement, knowing that it is false. The newsworthiness exception doesn't go that far.

Barb:

They didn't frame it that way, right? Like, "Well, Sidney Powell is saying a bunch of crazy lies."

Kim:

No, right. Exactly.

Barb:

Let's watch her go. It's interesting to watch her go. They promoted it as if they were saying what she was saying was valid, right?

Kim:

That Dominion was flipping votes with their machines-

Barb:

Yeah, to try [inaudible 00:17:45].

Kim:

... and really asserting it. Yeah, I think that's the big difference here. So I think Fox will appeal, but I think they'll probably lose.

Barb:

Yeah. Jill, this case is... appears to be perhaps only the start of Fox's legal woes. A Fox shareholder filed a lawsuit against Fox this week. What's that case about, and what do you think about the merits of that one?

Jill:

That is a really interesting development, and this is an area of law that it's very difficult to have shareholders suing the board and having the board held liable. Without getting into all the details of the Caremark standard that allows a suit to be brought, I think this case may meet that standard, because you have a prolonged knowledge of the falsity. You had them being notified of the falsity and they did nothing, and their core mission is, of course, honest news. And so, I think that this shareholder's suit could really withstand a motion to dismiss, which is how they... Many of these cases end up being dismissed before going to trial.

I don't think that's going to happen here. I think the evidence that the board knew what was going on, that they didn't take proper measures to prevent it from happening, that they didn't have the standards in place and didn't implement those standards or use them properly, is pretty much a possibility. The board... In fact, one board member, Paul Ryan, the former speaker of the House, actually wrote... and we have evidence that he knew things were false and he was saying, "We got to do something about this. We can't let this keep going on." And yet they did, so I think that's pretty much how it's going to end up.

Barb:

Yeah, and Joyce, I wonder if this is just the start, the tip of the iceberg. If we're not going to see more and more. Do you think that all these lawsuits are just the cost of doing business for a network like Fox? If we're going to be out there reporting things that are edgy, I'll say, at the least, we're going to get sued. Or do you think that, if there are enough of these lawsuits, they can actually take them down?

Joyce:

It's a little bit hard to assess until we see the first one and see what the damages numbers look like. I mean, but who are we fooling? This is got to be very nerve-wracking if you're at Fox. It's hard to see how they survive this, I think. The compensatory ask is 1.6 billion as you pointed out, Barb, with a B, and your little finger at the corner of your mouth, right? \$1.6 billion. Punitive damages could be really crippling here. The compensatory damages, the 1.6 billion, is for what Dominion says they've lost in business, but punitives are meant to punish Fox, and so an angry jury, who knows what they could do? Fox News, their revenue, has ranged from 12 to 14 and a quarter billion dollars a year over the last four years, so that gives you some sort of a barometer. That's their growth for what sort of damages they could withstand.

Right behind Dominion, there's a similar lawsuit brought by another voting machine company called Smartmatic. That's getting ready for trial. As you just pointed out, we've seen the first, but probably not the last of the shareholder lawsuits. There's a really... a very real chance this starts to add up and put pressure on Fox. There's also the possibility of some sort of FCC regulatory action designed to inquire into the propriety of their conduct in a regulatory sense, which could have implications for how they do

business. Lots of very interesting problems all adding up to, I think, this data point. At some point, did their advertisers desert them because they're worried it's bad for their brands to be associated?

Barb:

Hey, Kim, have you been doing much cooking lately?

Kim:

Just last night I made balsamic tomato herb chicken over pasta from HelloFresh, and it was such a crowd-pleaser in my household. I have a household with people who like different things, and everybody loved it. It was a big hit. With HelloFresh you get farm-fresh, pre-portioned ingredients and seasonal recipes delivered right to your doorstep. So skip trips to the grocery store, I've mentioned before that I hate the grocery store, and count on HelloFresh to make home cooking easy, fun, and affordable. That's why it's America's number one meal kit.

Barb:

Yeah, you know what, Jill? You're going to be jealous. I just got a shipment from HelloFresh that included barramundi, which I know is your favorite and mine.

Jill:

Ooh, I love it.

Barb:

I can't wait to make it. If you are looking for more ways to save this spring, HelloFresh is cheaper than grocery shopping, and 25% cheaper than takeout. Plus, HelloFresh keeps your taste buds on their toes with 40 recipes and more than 100 seasonal and convenient items to choose from each week. With so much variety, there are options for everyone and every lifestyle. We know you'll love them as much as we do.

Joyce:

And HelloFresh works, even with your crazy schedule. Their plans are flexible, and you can change your meal preferences, update your delivery day, and change your address with just a few taps on the HelloFresh app. Imagine getting fresh, quality produce from the farm to your door in less than a week. It allows you to enjoy the flavors of the season right from home.

Jill:

So Barb, I actually had the barramundi last week, but this week I tried something that is maybe my new favorite, and you have to try it. It's the scallop and shrimp cioppino.

Barb:

Oh, I got that one too. I haven't made it yet. That just came. It was in the same box.

Jill:

Oh, you will love it. You'll love it. You'll love it. It's fabulous.

Barb:

Oh, good. Yeah, I usually go for seafood stuff, fish-

Jill:

Fabulous. It's fabulous.

Barb:

Can't wait.

Jill:

And of course, I always choose the calorie conscious-ones. All of you listeners, go to [hellofresh.com/sisters50](https://hellofresh.com/sisters50) and use code Sisters50 for 50% off your first box. It's ships free. Again, go to [hellofresh.com/sisters50](https://hellofresh.com/sisters50), and use code Sisters50 for 50% off, plus your first box ships free. You can also look for the link in our show notes. It's HelloFresh, America's number one meal kit.

Joyce:

So both of the Justins are back in the Tennessee House where they belong. State Representatives Justin Jones and Justin Pearson were both voted in as the temporary replacements for the seats they were ordered to vacate until a special election can be held, and they seem destined to win those special elections too. This experience, I suspect, has only served to focus attention on their commitment to serve the people that they were elected to represent. Interesting, even though that's resolved for now, the focus on Tennessee remains. The lid has been ripped off of the box for everyone in the nation to see that it's still a place full of racism, fueled by a desire to keep the good old boy network in place. I'm wondering y'all, do you feel... I mean, I'm sort of feeling it, this cautious sense of optimism. This thought that maybe Tennessee is the start of something. That the truth sets people free, and that shining a little bit of sunlight on bad past practices can be a good path forward.

I'm old enough, unlike you Barb and Kim, you guys are the young ones, I'm old enough to remember the civil rights protests in the sixties. I'm getting a little bit of that same feeling up in Tennessee this week. Jill, why don't we start just by thinking about whether there are additional legal repercussions from the decision to remove the Justins from office, before their local bodies voted to restore them. Senators in the United States Senate have now asked DOJ to get involved, and to take a look at what happened. What do you make of this? Any future in that DOJ investigation?

Jill:

Before I answer about DOJ, I want to say I think the political repercussions of this are going to be dramatic, that... And I definitely, I remember, I was in college during the civil rights movement, so I was an active participant, and I do have the sense that this is one, elevating the two Justins to a role of leadership in a new civil rights movement, and that it's going to have dramatic impact. In terms of the civil rights movement, there is a possibility of a civil rights case, because here you had three people who engaged in the conduct considered not to fit with the decorum of the Tennessee Senate. One is, as she describes herself, a 60-year-old white woman, and the other are two young Black legislators, and they engage in very similar conduct, and she is not expelled and the two Black legislators are.

So there is a clear appearance of racial animus in the decision, and I think that that is something that could lead to a civil rights case that might impact going forward in this. I think, beyond racism, there is a real fear for me of what this is doing to democracy, and I think we have to look at... I think you said it,



Joyce, is that exposure or sunlight is the best disinfectant. What's happened from all of this is that we've seen it firsthand. There's some unbelievable reporting about how the legislature runs in Tennessee.

I do think that, while there might not be an injunction to stop future efforts, and they of course learned a lesson enough that they seated these two legislatures when they were voted back in by their own communities, and not to continue to try to fight to keep them out, but I do think there's been enough about how the legislature will not have roll call votes when roll call votes are necessary. They will take a voice vote, and you'll hear yay and nay, and the yays will have it and the chair will say, "The nays win." Then someone will say, "Voice vote," and there won't be a... I'm sorry, a roll call vote, and there won't be, so I think there's a lot that's going to be coming forward in Tennessee, and one of them may be a civil rights case.

Joyce:

Yeah, I'll be interested to see what DOJ finds. I don't think there's ever been a pattern or practice proceeding directed against a state legislature. That's probably not something that can happen, or that should happen, but it'll be interesting. DOJ has, technically, criminal jurisdiction over conspiracies that are designed to violate civil rights. Again, I think they would be very hesitant to do something that would have such overt political tones on the criminal side of the house, but you don't know what the evidence is until you investigate, so it's a fair request.

Barb, Jill references the political side, which is, I think, where we all expect for there to be more progress and more fallout. What happens next? There are plans for a moral Monday session. Reverend Barber will be in Nashville on Monday. Lots of pressure in the area of firearms laws, which is probably a good thing, because Tennessee's laws are notoriously lax, permitting permitless carry. What do you think the political landscape looks like?

Barb:

Yeah, it's very interesting. I wonder if, as you were suggesting earlier, the Tennessee Legislature didn't do a big favor to the gun safety movement in this case, because what could have been sort of a quiet matter within the state of Tennessee has now become a national cause celebre in the same way... You often talk about the civil rights activities that occurred in Alabama, Bloody Sunday. People were so outraged, you're seeing the fire hoses with the dogs and all that sort of stuff, that it creates political pressure to do the right thing, when perhaps if the abuses had continued quietly, they might not have. I think it's going to bring a lot more public attention to the issue. Nashville just suffered this awful shooting with children at a school, and they're... but yet their law is moving toward being more lenient. They already have no... permitless handguns. They're moving toward permitless for all firearms, which would include assault weapons. As a result, Smith & Wesson is moving their headquarters from Connecticut to Tennessee.

I think that there are people who are rightly outraged that their gun laws are moving in the wrong direction. I think that we may see some political repercussions here. I don't see any criminal charges coming here. I don't think DOJ wants to get in the middle of the sanctions that a political body puts on its own members, but it is troubling to see the expulsion of these legislators, and I think it is a relic of the Donald Trump era that, if it's not criminal, it's not wrong. So often we talk about the difference between lawful and awful, and as long as it's not a crime, then we can do it, but the response here of expelling these two members of the legislature because of a protest... Sure, maybe they violated rules of decorum and there are other sanctions that may be appropriate. They have to leave. They can't participate in debate for a period of time, whatever it is, some sort of censure, but to immediately expel them is such an overreaction.

I don't think it's a crime, but I think it's just highly inappropriate, and so I guess the repercussion would be, for the people of Tennessee, to speak through political consequences. I don't know if that's going to happen in Tennessee, but I think that there will be a lot of national pressure, now, for Tennessee to think carefully about whether it wants to continue down this road of making it easier to get dangerous assault weapons in their state, or to put in place some common sense reform that will protect children and others from these assault weapons.

Joyce:

I'm sorry, did you say common sense? We don't use that down here in the South when it comes to guns. I think it's remarkable, actually. Most gun owners that I know favor licensing measures. They favor training requirements. It's really strange. You have to wonder what could possibly be inducing our elected leaders to do this sort of stuff, unless maybe some of the gun manufacturers are managing to line their campaign finance funds, which I think it's one of those follow the money things. Look, I agree with you, by the way, about the legislature. I think that, in the criminal sense, it's lawful but awful. I wrote a column on Substack right after all this happened, pointing out that there was a 1966 case coming out of Georgia, where Julian Bond was elected to the Georgia Legislature, a Black man who spoke out against the Vietnam War, and they refused to seat Julian Bond in Georgia.

The case made its way up to the Supreme Court and the Supreme Court said there are race claims here. Julian Bond was a Black man, but we don't have to decide the race issues because they clearly violated his freedom of speech. I think that case is still good precedent here, and if the Justins hadn't been reinstated, I think that they would've had a good civil case, both on the speech and the race claims, and that both of those claims really hang over the Tennessee Legislature's head moving forward. They may survive this little bit of damage. If they do it again though, I think that there will be legal repercussions. Barb, our former boss, Eric Holder, who's involved in this now representing, I think, Justin Pearson, made the point on Twitter that what's going on in the Georgia Legislature, or rather in the Tennessee Legislature, is only possible because of gerrymandering. It's only because of the heavy gerrymandering in these districts.

There's some reporting being done that suggests that the Tennessee speaker of the House may be vulnerable. It's possible that he no longer lives in the district that he represents, that he's purchased a home in Nashville and moved his family. Jill, back to our sun sunlight conversation, I think sometimes you shine a little light, there's no telling what people will learn about. The interesting thing here is that these events happen. It's a juxtaposition of gun violence, of race, and of institutional dysfunction, and Kim, there's an interesting historical context here. Sunday is the 60th anniversary of Martin Luther King's letter from a Birmingham jail. Student marches followed in the wake of that letter. That's a history that's not all that widely remembered outside of maybe just Birmingham, certainly the deep South, but it was young leaders that provoked change. Do you think that there's some reasons to be optimistic with what we see happening in Tennessee, or is that too much?

Kim:

No, I think it's absolutely true. I think that's one reason why we have seen this profound response to these lawmakers, and what has happened to them. I think that's why we have seen the protests and the marches and the acts of support. I think it's everything that you all have talked about. It's because of the recognition of the racism that is going on here, for sure, and the deep history of that in Tennessee. I think it's also the claim by the people, the Republicans who opposed these lawmakers. Liking... likening them to insurrectionists after what people saw on January 6th was just absolutely repulsive in a way that it in itself seemed like an attack on democracy, and people have seen how fragile democracy is and

how important it is for it to be upheld. I also think it's the point that you made about freedom of speech, The First Amendment.

Part of the First Amendment isn't just the freedom of speech, but it's the right to petition the government for redress, which is exactly what they were... I think it's wild that how the First Amendment, the only part of it that some Republicans seem to like is the part that protects religion, but only white evangelicals, not all religion, but just the part that protects the white evangelicals, and all the rest of the First Amendment, forget it. Let that go. I mean, that just doesn't work, and that doesn't work with the American people, so I think... And it certainly doesn't work in the eyes of young people. They see clearly what's happening here, and I think that that is a big reason to be optimistic here.

Joyce:

I love article. I'm that mom who furnishes her kids' first home.

Kim:

Yeah.

Barb:

Will you be my mom?

Joyce:

Of course I will. I love doing that. I'm not good at it, but I love doing it. Kim, I just got the nicest rugs from Article couple of runners that I'm going to put up in my upstairs hallway. Have you heard about Article?

Kim:

Whether it's an indoor space, like a Zoom room, or an outdoor space where you might want a great open concept area, there is so much potential there. Why not make your space really work for you? Article believes in delightful design for every home, and thanks to their online-only model, they have some really delightful prices too.

Joyce:

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Jill:

I have some favorites too. I just ordered a wonderful hassock for my husband, he is really looking forward to getting it, and a terrific outdoor lamp that will be really good when we're having dinner and it starts getting dark. I'm really looking forward to it. The best part is that Article offers fast, affordable shipping across the U.S. and Canada, plus they won't leave you waiting around. You pick the delivery time and they'll send you updates every step of the way. Article's knowledgeable customer care team is there when you need them, to make sure your experience is smooth and stress-free.

Barb:

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Kim:

Some disappointing news came this week, at least for me, and I think also some of our listeners. The Justice Department announced it is no longer pursuing federal charges in the death of Shanquella Robinson, the 25-year-old woman who went on vacation with so-called friends in Mexico, and never came home alive. If you recall, these so-called friends initially told Shanquella's family that she died of alcohol poisoning during the trip, but then a video of her being viciously beaten by one of her vacation mates surfaced, and then an autopsy initially indicated that she suffered trauma. The FBI later said the cause of death was inconclusive.

The fact that her assault and death happened in San José Del Cabo created a host of issues, some of which I'd like to flesh out with you all, because I have so many questions about what happened here. Barb, I want to start with you. You have experience dealing with cases and investigations that cross international borders. Initially, Mexican officials said that they were investigating this case for something called femicide. I think that's how they categorize it in Mexico. Then U.S. officials became involved and were investigating it, but now, here we are. Nothing is happening on the U.S. side. I don't see any movement on the Mexican side, as far as we can see. Talk about the challenges that U.S. prosecutors had here in this case.

Barb:

Yeah, whenever you're dealing with events occurring outside the country, the prosecutors have to rely on treaties, and there are two treaties that come into play. Extradition treaties, and mutual legal assistance treaties for the collection of evidence. Sometimes those can cause some significant delays. I know sometimes the most significant delays we had, when I was investigating cases, were just right across the river from Detroit and Canada, where things could just move very, very slowly. You have to go through diplomatic channels to access evidence. Even if you know somebody in the police department, as I sometimes did in Canada, you have to go through diplomatic channels to get evidence, and so that can create delays. In this case I believe an autopsy was requested, and there was significant delay that may have actually compromised the ability of the United States to determine the cause of death.

Apparently the autopsy was not done until after she had been embalmed, which I think makes it very difficult for a medical examiner to determine that. The other issue, besides collection of evidence, as I said, is extradition. The United States and Mexico have extradition treaty that permits each to extradite to the other country, so that can be useful. It is a federal offense for someone to murder an American citizen on foreign soil, and so if the Justice Department wanted to charge someone in this case, they could, and then the question would be, can they get the suspect back in the United States? In this instance, any possible suspects are in the United States, so that wouldn't be an issue.

I think that's why the lawyer for the family seems to now be focused on prosecution in Mexico, and is focusing efforts on making sure that the United States will extradite an American back to Mexico if charges are filed in this case. I believe that they would, unless there's some reason to think that the prosecution is unsound, but it's really not the job of the prosecutors to look at anything other than the four corners of the charging document. They don't assess the evidence. If there's a valid prosecution, an

indictment gets filed. It is one that we would request extradition for. It's a crime in this country, then the U.S. would extradite into Mexico.

Kim:

Yeah. Joyce, you have experience, too, with a high-profile murder case that took place outside of the United States. What similarities and differences do you see between this case and that of Natalie Holloway?

Joyce:

Right. Natalie Holloway, for people who don't remember this case, although it got an enormous amount of national attention, international attention, I find a lot of people actually still know her name. She was a high school graduate from a wealthy Mountain Brook, Alabama family. The kids at her high school went on a post-graduation trip to Aruba, and Natalie Holloway, the morning they were supposed to leave, didn't show up, subsequently could not be found, and although they've never recovered her body, she's believed to be dead. She's actually been declared legally dead at this point. This happens in 2005.

It's different than Shanquella's case, because obviously there's no body, but there was a suspect, and that was the interesting thing. In that case, a Dutch man named Joran van der Sloot was believed to be the murderer. There was significant evidence against him, but we couldn't do the murder prosecution because we didn't know the story of the murder. We didn't have a body. Ultimately, when I was U.S. Attorney, some years later, five or six years later, we prosecuted van der Sloot. We filed an indictment against him for extortion. I can't take any credit for that, that was my brilliant appellate chief's legal theory, and unfortunately van der Sloot committed another murder and is currently in custody in Peru, with our indictment sitting as a backup behind that, if he's ever released by Peruvian authorities.

It's difficult to maneuver in a foreign country, and sometimes you have to have a creative theory. I wonder if DOJ might not be able to do something like that here, even if they can't charge the murder straight up, but, I mean, persistence pays off. Look, here is a big difference though, between the two cases. Natalie Holloway was young, white, wealthy, very attractive, and the case garnered sustained attention in the press. There was a real focus that, frankly, made it easier for us in my office to do our job, because people called in tips, we got information. That's how we ended up with that prosecution.

We know that it's a problem. We know that Black girls and Black women, when they go missing or when they're victims of crimes, they don't get that same level of attention in the press. Whether that's explicit bias or implicit bias is something that people who are experts in those areas can debate. I think it's something that we should be open about, and candid about. This case, this victim, deserves justice, just like Natalie Holloway deserved justice, and I hope that it won't simply be allowed to fade into the dust. Into the woodwork.

Kim:

Yeah, that's such an important point, Joyce, because I think in this case, as initially has been the case in other cases, it is sustained attention within the Black community, within Black media, on Black Twitter that brings cases like this to the forefront in the first place. Even Breonna Taylor's case was not initially gaining national attention until Black communities pushed it to the foreground telling... saying, "Say her name." She is one of the people who is a victim of police violence, and I do think in this case there has been much more energy among Black people on social media, and in Black media platforms, than there has been.

Of course, there's been some coverage in the national media, but nowhere near as much, and I hope that that does not affect prosecuting decisions. Thank you for making that point, Joyce. Jill, the Robinson's family attorneys say that they are disappointed in the DOJ decision, but not deterred. If you were advising them, what... the family, what would you say? Are there other avenues? How likely, for example, do you think extradition, as Barb laid out, can happen here? Are there other means, maybe civil suits? What would you say to the family if you were advising them?

Jill:

I would say three things, and they have very good lawyers advising them, so they don't need any extra advice, but since we don't know what they're being advised, here's some things that might happen. One is to try to understand why DOJ did it. Their announcement doesn't really make clear. They just said no federal offense at this time, and that they would keep looking at evidence. There are two other routes that they could go, and one, as Barbara mentioned, it is possible to extradite a U.S. citizen to a foreign country for prosecution. It has happened in other cases. There's a fairly recent one where a person who was a producer for the TV show, Survivor, was extradited in 2012 to Mexico for the killing of his wife in Cancun. And so, it can be done.

What it requires is that there be probable cause. The U.S. will look at the documents, the charging documents, and any other evidence they have, to establish that there is probable cause that this crime happened and that the person whose extradition is sought is possibly involved in it. So that's a possibility. The U.S. opens a lot of extradition cases every year, but that includes both our request to foreign countries and their request to us, and some of the requests to us are for return of a citizen of that country, not U.S. citizens. I don't know exactly how many there are, but there are... It's not one or two. It's more than that.

The other thing, the third thing that you could do, and remember O.J. Simpson, he ended up recovering... Not he, the family of Nicole Brown and Ronald Goldman, got 33.5 million in damages, and that judgment is still pending, because it hasn't been paid off. It's been extended through 2025, which, when it was extended, seemed like forever, but since we're in 2023 is starting to look like, well, will it need to be extended again?

A civil court has a different standard of proof. They only have to think that the person charged did the crime beyond a reasonable doubt. No. Beyond a reasonable doubt is for the criminal case. In this case it's just by a preponderance of the evidence that the jury has to find that it's more likely than not that the defendant did this, and so in this case, although there was an acquittal in the criminal case after... I mean, I don't know how many of you remember the trial, it was quite the trial of the century, and if the glove fits, you must acquit. Or if the glove doesn't fit, you must acquit. But in the civil case there was an easy verdict against O.J. Simpson, so that would certainly be something that they could try.

Kim:

Well, I hope that the family is able to get some sort of closure here, because I can only imagine that the decision by the DOJ, even if it was the only decision that they could make, given the evidence, I'm sure that that compounded their pain in this case. I appreciate you all for helping me understand it better, and hopefully helping our listeners understand it better too.

Barb:

Jill, you know I'm not one for manicures and the like, but your nails always look beautiful. What's your secret?

Jill:

Well, it's really important to me. I feel so much better when I have a fresh manicure, and it's something I learned, you're not going to believe this, from my father. He was a CPA who felt that his clients would see his hands a lot when he was writing down stuff, and that he had to look really good. He was a gardener and a big athlete, but he really took care of his nails, and so I have always done that. Nothing is better than giving yourself the perfect home manicure with Olive & June. They have everything you need for a salon-quality manicure in one box, and you can customize that box with your choice of six polishes. We love how their polish doesn't chip, and lasts seven days or more, and when it comes down to it, you're getting great savings because it breaks down to just \$2 a manicure.

Kim:

That means no appointments, no traveling to find a suitable salon, and it saves you money while putting your nails on your schedule. Your friends, family, spouses and coworkers will be as amazed as Barb is. I wouldn't think of using anything else before going on air. Plus, they have amazing-looking press-ons that go on quickly. They look so real, and last so long, and they have any size you can imagine, so you know you're going to get the perfect fit.

Joyce:

That means a non-damaging mani in less than 10 minutes that goes on much better than with gel. They're even an Alure Best of Beauty winner, and with their quick-dry, you only have to wait a minute and can feel confident knowing they'll last for five or more days with only one or two coats. Look, when you're like me, I'm sort of klutzy in the mani-pedi department, that quick-dry and good look means a whole lot. Visit [oliveandjune.com/S-I-L](https://oliveandjune.com/S-I-L) for 20% off your first mani system. That's O-L-I-V-E-A-N-D-J-U-N-E.com/S-I-L for 20% off your first mani system. You can also find the link in our show notes.

Jill:

It's time for our favorite part of the show, answering your questions. If you have a question for us, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com), or tweet using #sistersinlaw. If we don't get to your question during the show, keep an eye on our Twitter feeds throughout the week where we'll answer questions, as many of them as we can. We had some great questions this week. Barb, I'm going to ask you the first one, from Greg in Peabody. How can it be that a 21-year-old airman has access to classified information about military secrets that can be spread over the internet?

Kim:

Barb, before you answer, if Greg is from Massachusetts, it's pronounced Peabody.

Barb:

Wait, what?

Jill:

Okay, say that again.

Barb:

That was fast. Peabody?

Kim:

Peabody. Peabody.

Barb:

Peabody?

Kim:

Yes.

Jill:

All right.

Kim:

Well done.

Jill:

Okay. Well, it doesn't say Massachusetts here, so we don't know.

Kim:

All right.

Jill:

It could be Peabody in some other state.

Kim:

It could. All right.

Jill:

Greg, let us know where you're from.

Barb:

All right, in the spirit of Massachusetts, we'll say Peabody, is that how you say? But yeah, no laughing matter. Serious case. A young man named Jack Teixeira, who's 21 years old, and an airman, as Greg says, has been arrested and expected to be charged today with violations of the Espionage Act and illegal retention of classified documents. If people haven't kept up with this, this is the guy who appears to be responsible for sharing on social media, a small gaming group that met on Discord, with all kinds of military secrets about Ukraine and Russia, and some very significant secrets. The question Greg asks is, how could it be that this young man had access to it? Well, he was an IT professional, and so I imagine in that role he had access to these things.

It's an interesting problem, because as we live in this digital world, we have to have IT professionals who take care of the computer systems, and it gives them access to all kinds of things that 40 years ago no one would've had access to, no one person would've had access to, except maybe the president, but even he had to ask other people for it. Now, the ability to just put things on a thumb drive, or just



download endless numbers of documents. Also, I think this is very much a consequence of one of the problems identified in the 9/11 Commission Report, which was that our intelligence community was too siloed. That each one was very protective of its information and didn't share with each other. As a result of that, there's been a lot of improvement, so to speak, in information sharing where various agencies share information with others, but of course the consequence of that is, now people can access things that were stovepiped before.

I think it's a real problem, and one that our federal government, especially the defense department, is really going to have to reconsider about who gets access to these things and making sure there's just a need to know, but when it's an IT professional who's taking care of the various systems... Now, they caught him. He's presumed innocent, of course, but it appears that the FBI thinks they have the right person, but nonetheless, the harm has been done, and it's some pretty consequential harm.

Jill:

It's such an interesting question and answer, Barb. Listening to you, it made me realize, back in Watergate, when we were trying to figure out who Deep Throat was, we would, as something would come out in the newspaper saying Deep Throat said da, da, da, we'd go, "Well, here's five people who know that piece of information." Then you'd get to the next one, you'd go, "Well, only one of those knows this information. Maybe that's Deep Throat." Then you'd get to the third, and that person wouldn't know that, and it never occurred to us to look at the FBI director, who would have all of that in his purview.

That's the same thing you're saying here, is these IT professionals can get into anything. That's very interesting. Our next question is one that I think Kim will be able to answer. It comes from Ben. Can you explain the blue slip process that appears to be holding up the appointment of judges in certain states, and have both parties equally utilized and/or abuse the process?

Kim:

Well, yes, Ben, I can explain the blue slip process. Like many things, including things like the filibuster and other rules, it has to do with racism, okay? Generally speaking, the blue slip process was created when there was a nominee to the federal judiciary, as sort of a courtesy to the lawmakers, the members of the Senate, from where that judge nominee comes from. It's a little blue slip, and it gives them the opportunity to either write something nice and that they think that this nominee is great, write something and say not so great, or say nothing at all. They would pass this along, and it really wouldn't have any consequence. At most it would mean that, when the Senate Judiciary Committee voted on this person, they may vote for them unfavorably, but it was... the nomination would still go to the floor for a vote.

Well, that was until about 1950 when a senator who chaired the judiciary committee, named James Eastland, of Mississippi... This reminds me of that Nina Simone song, Mississippi. He was the first person to use the blue slip process as a hold, as a stop, on judicial appointments if one of the senators from that state objected to that nominee. The reason that he did that was to use it to stop judges who would uphold civil rights directives, things like desegregation, and keep them from ascending to the bench. At the time, it was used both for federal district and appellate judges. It has since no longer been allowed to be used for appellate judges, but you can still use it for trial level, for district court judges, and they are being used right now by Republicans to try to slow down Joe Biden and his ability to appoint judges to the bench. So, it's rooted in racism, but it's being used right now, and yes, it has been used by both parties over time, but it is rooted in racism.

Jill:

And our last question comes from Jennifer in St. George, Utah. A beautiful place near some of the greatest national parks ever. What's the latest in the case involving the medication abortion drug?

Joyce:

So we are taping the podcast Friday afternoon, and while we have been taping, word has just come down that the Supreme Court has entered a stay of Amarillo, Texas Judge Matthew Kacsmaryk's order, which would have essentially ended access to misoprostol, one of the two drugs used for medication abortion. It is not the stay, though, that the Justice Department or the drug manufacturer had asked for. They had asked, and our listeners will remember that what's going on in this mifepristone case right now, this isn't a final decision on the merits of the case. This is just an early squirmish over whether there's going to be an injunction that will lock in the status quo while the litigation is ongoing. Interestingly enough, Justice Samuel Alito, the Circuit Justice for Texas, has entered a stay, but it will only last until next Wednesday. He has said that he will give until Tuesday as a timeline for the defendants.

These are the proportions of taking mifepristone off the market to respond to DOJ's application for a stay. What this sounds like, to me, is the Supreme Court is teeing it up for a fairly quick decision on the issue of whether there should be an injunction. I wonder if what we might not see is a decision by them to take this case out of the hands of the lower courts, right? It's not just the Texas ruling. There's the ruling in the Ninth Circuit that conflicts with this ruling in Texas, ordering that in at least 17 states in D.C., mifepristone has to stay on the market. That order may even be a little bit broader at this point. Lots of confusion, lots of good reasons for the Supreme Court to take the case, but not a great sign that they wouldn't agree to enter a long-term injunction that would last throughout the course of the litigation.

Jill:

Great news to hear that there's at least a temporary additional stay on this decision from Texas. Thank you, Joyce. And thank you all for listening to #SistersInLaw, with Kimberly Atkins Stohr, Barb McQuad, Joyce Vance, and me, Jill Wine-Banks. You can send in your questions by email to [sistersinlaw@politicon.com](mailto: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 will be discussing the legal topics of the day, and answering your questions live, right there.

We're starting off in Portland, Oregon on May 12th, New York City on May 19, and Washington, D.C. on May 21. There are still some tickets available, but hurry, they are going fast. Go to [politicon.com/tour](http://politicon.com/tour) to get your tickets today. We can't wait to meet you. And please support this week's sponsors, Noom, HelloFresh, Article, and Olive & June. You can find their links in the show notes. Please support them, as they really help make this show happen. To keep up with us every week, follow #SistersInLaw on Apple Podcasts, or wherever you listen, and please give us a five star review. It really helps others to find the show. See you next week with another episode, #SistersInLaw.

Joyce:

So y'all, I had so much fun this week. I was feeling sorry for myself because I've had a lot of writing to do, and so I had... don't tell anyone, don't share this, I had run out to my favorite local chocolate maker, Chocolata, in Birmingham, to pick up... I knew that she had some apricots, dried apricots, dipped in dark chocolate. They're amazing. So, I go in to pick up a few of these for myself, and I decide to get Bob some

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chocolate for his birthday, and the woman who runs the store says that she's excited about us going on tour, and she asks if she can send little boxes of chocolate along with me for the rest of you.

Kim:

What?

Joyce:

And it got me started thinking, I'm so excited about being with y'all in person, and bringing chocolate, right?

Kim:

Oh my gosh.

Jill:

That's fabulous. Now we're going to all have to find some local goodie. I'm bringing Chicago hotdogs.

Kim:

You're going to bring Chicago hotdog on the plane?

Barb:

I'm bringing peanuts. They may or may not be from the plane.

Audio:

(singing)