

Barb:

I just made a delicious honey Dijon trout, and if I can make it, so can you. That's just one of the delicious HelloFresh recipes that can help you take the hassle out of mealtime this spring. Get 50% off plus free shipping on your first box with code Sisters50 at [hellofresh.com/sisters50](https://hellofresh.com/sisters50). You can even find the link in our show notes.

Kim:

Welcome back to #SistersInLaw with Barb McQuade, Joyce Vance, and me, Kimberly Atkins Stohr. Jill is away, and we miss her, but she will be back soon. Also, by now all of you know we're going on tour next month. We're going to go to Portland, Oregon on May 12th, New York City on May 19th and DC on May 21st. You can go to the show notes for the link or go to [politicon.com/tour](https://politicon.com/tour) to get your tickets. They're almost gone, so please hurry. We cannot wait to meet you live.

Okay, let's get on to the show. Where, as always, it was hard to pick just three topics. We were debating it right down to the wire this week, but we chose some pretty good ones. So today, we'll be discussing the Discord classified legal case, ethics at the Supreme Court and the E Jean Carroll trial. And lastly, we look forward to answering your questions at the end of the show.

But before we get to that, you guys, this is a big dress up weekend. This weekend is the White House Correspondence dinner where people here in DC get all dressed up and in New York it's going to be the Met Gala where everybody dresses up with Anna Wintour. And I just, thinking about these big gala events now, that we are, I guess the pandemic is over and we are gathering again, do you guys like dressing up? I mean, I'm a little excited to put on a gown again for the first time since the before times and go to the Correspondence dinner. Do you guys like dressing up or do you think that the pandemic taught us that we should do a more casual thing? What do you think, Barb?

Barb:

I have two modes of dress. I have the business suit and I have the, I'm cleaning out my garage today. So when I have to go to something that's really fancy, I kind of cringe a little. But I am with you that if you're going to go to something like that, you should dress appropriately. And so if it's a fancy event, if I'm going to a wedding, my goal is not to stand out because I've underdressed for the event. I don't want anybody saying, "I can't believe she wore that." I just want to go, I want to have nice conversations with people, I want to have a good time, and I want my dress, whatever it is, to be a non-issue, to be unnoticed. I'm the opposite of people who dress to make a statement. I am dressing to make no statement at all. So I agree that getting dressed up is important in certain circumstances for fancy events, and I would do it, but my preference is to dress in one of those two modes and to attend the kind of events where one of those two modes is appropriate.

Kim:

Joyce, what about you?

Joyce:

For what event is cleaning out your garage wear appropriate? Because I'm really curious.

Barb:

Well cleaning out your garage, of course.

Joyce:

Can you come down here and do mine?

So look, I'm afraid Barb is going to silently criticize me as I say this, but she knows because we were together right before this happened, that I was a victim of circumstance. I broke my foot last spring right before the White House Correspondence dinner, and I ended up going to the dinner in a really lovely ballgown. However, I had to wear a pair of shoes or to be precise, one shoe that leveled out the boot that was on my broken foot. And the only pair of shoes that I had that was a good fit was a pair of Golden Goose tennis shoes. And they're really fun. They're sparkly. They have silver crystals on them. They're great shoes. And so I ended up wearing that with my ball gown to the Correspondence dinner.

And I reflected by the end of the night how comfortable I was, even with my broken foot. And I thought about earlier years. There was one year, and Kim, I bet you remember this, where MSNBC handed out flip-flops, just cheap flip-flops when you walked in the door to their after party because everybody's feet hurt so much at that point in time, and you just ended up carrying your heels, and wherever you went with the flip-flops on. I think that my going forward approach is going to be dressing fancy, I do love to dress up, but wearing the right footwear to stay comfortable all the time. Are you judging me, Barb?

Kim:

I am.

Barb:

Never, Joyce. Never.

Kim:

I'm judging you a... No, I'm not really judging you. Everybody has to do what's right for them. But to me, there was a couple months ago, there was a gala that I attended where the theme was that everybody wore sneakers with their gowns and tuxes and I wore stilettos. I was just like, "No." Either you do the thing or you don't. I'm not going to show up in a gown and some sneakers, that's just antithetical to me.

Joyce, if your foot is broken, I can totally see you had a reason to do that. But I say just buy shoes, fancy shoes that are comfortable and fit your feet mean. The shoes that I plan on wearing to the White House Correspondence dinner are some of my favorite. There were these gold Versace shoes. I actually wore them to my wedding reception and I wore them all night and I never took them off once and my feet felt fine. They're five inch stiletto heels. I can't wait to get back in them. They're some of my favorite shoes, and I'm glad I have an occasion to wear them.

So I don't know. I'm a dress up girl. I'm a fashion designer. Maybe that's it. I grew up watching my mom get dressed up to go out to dinner and just loving when she put on her heels. And so to me, that's what it's all about. So everybody has their own thing.

You know what, I can bring home the bacon. Actually, no, I get it sent to me from Moink. We love how you can support small family farmers and reduce your environmental imprint all while enjoying the highest quality meat on earth. And that's why we're so excited to tell you about Moink. That's moo plus oink, Moink is a meat subscription box company on a mission to fight for the family farm. They're located in rural America, run by an eighth generation female farmer. Their animals are raised humanely, their employees are paid a living wage, and the quality of their product is better than anything you'll find in a store.

Barb:

Moink delivers grass-fed and grass-finished beef and lamb, pastured pork and chicken and sustainable wild caught Alaskan salmon straight to your door. Moink farmers farm the way our grandparents did, and as a result, Moink meat tastes the way it should because the family farm does it better, and the Moink difference is a difference you can taste. And unlike the supermarket, Moink gives you total control over the quality and source of your food. You choose the meat delivered in every box like rib eyes or chicken breast, pork chops to salmon fillets, and much more. Plus you can cancel anytime.

Joyce:

Shark Tank host Kevin O'Leary called Moink's bacon, the best bacon he's ever tasted. And Ring doorbell founder Jamie Siminoff jumped at the chance to invest in Moink. Plus, they guarantee you'll say, where is Jill when I need her, "Oink, oink. I'm just so happy I got Moinked." You'll love Moink like we do. It's the perfect option for a family meal or a dinner party. So keep American farming going by signing up at [moinkbox.com/sisters](https://moinkbox.com/sisters) right now. And listeners of this show, get free bacon in your first box. It's the best bacon you'll ever taste. It really is. For a limited time, go ahead and sign up now. Spelled M-O-I-N-K [box.com/sisters](https://moinkbox.com/sisters). That's [moinkbox.com/sisters](https://moinkbox.com/sisters). Start bringing better food to your table when you visit the site.

Speaker X:

We know you're hungry now. So go and find the link in our show notes.

Kim:

While we await a ruling on whether Jack Teixeira, the Massachusetts Air National Guardman accused of leaking highly classified military documents will remain in custody or be released pending trial, we have learned a lot in court filings for that detention hearing, and I have a lot of questions for my sisters, the veteran prosecutors about all of this. Joyce, there is a lot to unpack here, but let's break down the basics first. Remind us of what Teixeira is charged with and tell us what the standard is that the judge will apply in making the ruling in terms of pretrial detention.

Joyce:

Sure. So it's interesting. We don't know exactly what the final charges will look like. He was arrested on a complaint on April 13, charged with two counts that both relate to the unauthorized handling of classified materials. He had access to sensitive documents on a computer. One of the counts in the complaint is a traditional espionage act count, and then one is an 18 USC 1924 removal of classified documents counts. But this is a complaint. Prosecutors have not been to the grand jury yet, and so these charges are really just placeholders. They're a way to arrest the defendant and to keep him in custody because obviously people were really concerned about what was going on here and the imminent risk of damage.

So we don't know yet what charges the prosecutors will seek in front of the grand jury. They've suggested in these pleadings though that he could be looking up to 25 years in custody, which suggests that they will be very serious charges, possibly including obstruction of justice. And so now the judge will have to decide whether to detain him pretrial and essentially the law asks the judge to decide whether he's a flight risk or a danger to the community. If the government can prove either one of those, then the judge will keep him in custody.

Kim:

So Barb, what stood out to you most about the information contained in the filings in this pretrial detention hearing?

Barb:

Well, DOJ filed this motion, so of course it had to include some facts and some evidence as the basis for its argument that he's a danger to the community, that he is a risk of flight. And in that, they revealed some things about his background that I found really appalling for someone who had a top secret security clearance.

When you get one of these clearances, they do a background investigation of you. I mean, Joyce and I had top secret clearances and they came and knocked on the doors of our neighbors. They checked into everything in our records. I was just talking to a man who was the principal of my children's school at the time, elementary school, and he told me how the FBI had come to meet with him and sat down with him for two hours to talk about me back when we first started that in the Obama administration.

And the idea that this young man who's 21 years old got a top secret security clearance when it disclosed that when he was in high school as a sophomore in 2018, he made alarming comments about the use of Molotov cocktails and other weapons, he trolled the internet for information about mass shootings, he engaged in regular discussions about violence and murder on social media. That information was flagged by the police when he applied to get a firearms identification card.

All of these things are so disturbing. It really makes me wonder, are they really being as rigorous as they should be to give out these top secret clearances? He's 21 years old, so it hasn't been that long since he was in high school and these things have happened. It made me wonder, are they so desperate to get IT people, right, he's an IT specialist in the military that they're willing to overlook things that really should be precluding people from getting a top secret clearance.

Kim:

You know, Barb, I share that concern. I mean, back when I was on dating apps, it seemed that the only people that I met here in DC, were either attorneys or contractors, IT contractors for either the Pentagon or the State Department who had security clearance. And some of these people, I was like, "Really? They gave you a security clearance?" I mean, it made me wonder if there was some reform that needed to happen based on who had them. But Joyce, what about you? What stood out to you about this?

Joyce:

Yeah, exactly the same thing that Barb is talking about. Every agency is responsible for doing its own background clearances, and we've all seen this information about how difficult it is for the military to recruit in this day and age. But this suggests to me not just that there needs to be reform, and I expect that there will be after this case in how they vet folks for security clearances, especially top secret security clearances. It also maybe suggests that the military should be a little bit more picky about who they let in. I mean, I understand that there are supply and demand issues, but nonetheless, this is a guy who should have never been in the United States military based on what we're learning.

Kim:

So Barb, prosecutors claim that Teixeira may have far more classified documents than is presently known. Let's take a minute to talk about the national security implications of that. Explain to us what the danger of that is? And is there any way to contain that threat?

Barb:

Yeah, so this is one of the things that the intelligence community undertakes every time there is a leak or a spill of classified information, and that is to do a damage assessment. So one is just finding out the whole universe of documents that he compromised and then finding out where he put them. He put them on the internet. That means anybody in that group might have then shared them further. So I would imagine a big part of what they're doing is talking to him to find out what he'll tell them, looking at all of his accounts to see what he had access to, and talking to everybody in that discord group that he was a part of, and trying to find out whether that group posted them further. We know one of them did, which is how this case came to the attention of the government, and then figuring out what's out there.

So for example, the things that are most often concerns in these disclosures are sources and methods. You'll hear that phrase used a lot. Sources are people who provide information. Sometimes, these are foreign nationals living in foreign countries. Sometimes, they are our own spies in foreign countries. And if it turns out that their names and identities have been exposed based on something that got disclosed, their lives could be in danger. So it might be bringing people home who are positioned overseas or taking them out of a situation where their lives could be in danger.

The other is methods, which is methods of collection. There are all kinds of secret ways that the government intercepts and collects classified information. There're devices and there are locations and people who are collecting information that is unknown to our foreign adversaries. And so if there is some method that has been disclosed, we might have to watch out and make sure somebody isn't doing what's called a false flag operation, that is deliberately putting false information in one of those streams so that we bite and we think that thing is true, when in fact it's not, talking about plans for Russian invasion in Ukraine. We're going to go eastward, when in fact they're going westward to try to fake us out. So you have to figure out which streams have been compromised so that we no longer use those. So it's a big undertaking and it can be really disastrous for the intelligence community and our military capabilities if these things have been compromised. But it's a very urgent task that I'm sure people are hustling around to figure out right now.

Kim:

And Joyce, some of the comments that Teixeira is alleged to have made that Barb outlined, some of the violent comments that he's made. He's also made, allegedly made racist comments. How might that factor in this case? Why might that information be pertinent?

Joyce:

So it certainly goes to the detention question that we were talking about earlier, right? That'll have an impact on how the judge evaluates his dangerousness to the community. But it really goes beyond that to this entire question of how does this person intend to use this information that came into his possession? There is so many unanswered questions here. I think we'll get a little bit more information when we see the complaint.

But this is a troubling sort of a situation when you think about it in the context of what we learned during January 6th where there were a lot of members, people who had military connections, who were at least loosely affiliated with some of the domestic terror groups. And so we have to look at this person as an individual, but also think about what this means and whether the military's review... You'll remember, we actually talked about that, the military had a 30-day stand down so that they could

evaluate what was going on in their ranks. And I think the question is was that successful or do they need to reevaluate? Is this just a one-off case or does it have larger implications?

Kim:

Yeah. And we saw a lot of discussion around in the past about people in the military and recruitment of folks who possess some really abhorrent views and how that was a problem. So I want to ask both of you this one thing, we're talking about classified documents here. What, if any, clues can we glean from whatever happens in this case to how a potential charge against, say, Donald Trump for his alleged intentional retention of classified documents? Are there any tea leaves here or am I getting way ahead of my skis? What do you guys think?

Barb:

Well, I'll say one thing, but then I want Joyce to make a point that she made with us earlier because I think it's a really great insight. But the one thing I'll say is I think it demonstrates that the government, the intelligence community, and the Department of Justice take these cases very seriously. This is not some bookkeeping error, overdue library book kind of a situation. Top secret classified information is by definition information, the disclosure of which would cause exceptionally grave harm to the national security of the United States. It is why they're engaging in that frantic investigation to assess the damage from this spill. And it is why they're aggressively prosecuting Jack Teixeira. He's not getting a pass here. And I think in the same way, those who minimize what Donald Trump did are failing to understand the gravity of this kind of offense. But Joyce, you had an interesting analysis of how this case puts in context the Trump charges relative to Biden and Pence that I thought was interesting.

Joyce:

Yeah, I mean I think it really is sort of educational to see this case at this moment in time because something that we know is that when DOJ goes ahead and prosecutes espionage act cases, they're not looking for people who inadvertently held on to classified material. They're looking for people who had some sort of harmful intent or who carelessly handled the information in a way that compromised security.

And so here, the thing that sticks out in some of these pleadings is the fact that Teixeira was actually trying to obstruct the investigation. He wasn't just on his own trying to, I think, mangle his calms so that they couldn't be tracked. He was reaching out to other people on Discord and asking them not to talk to law enforcement when they were approached. That's obstruction of justice. That's one of those plus factors that merits prosecution.

And that's precisely what we have in Donald Trump's situation, is this active effort to obstruct justice. I think it's also worth noticing, and this is maybe on a less serious level, but in this case with the airman, we have a situation where he really, if you believe some of the reporting, just wanted to brag about how important he was to his friends. "Oh look, here's all of this classified material I have." And that sounds so much like the former president who loved to show this. I mean, there's some reporting, right? Biographers, newsmen, random guests at Mar-a-Lago, "Hey, come on into my office and look at my classified documents."

It's funny, it's pathetic, but it also, Barb, as you say, I mean this material is not for nothing kind of stuff. This is material, the disclosure of which could do grave damage to national security. So if Teixeira gets a prosecution, I think that that will help people understand why Trump gets prosecuted.

Barb:

Yeah, I think that's such a great insight, Joyce.

I just got two new great rugs for my upstairs hallways. They're those runners and I got them from Article. Kim, have you've gotten anything from Article?

Kim:

I've ordered a new chair from Article and I can't wait for it to arrive. And I'm thinking about getting more since the weather is getting warmer and I'm eyeing our outdoor space where we like to spend a lot of time. And the great outdoors is the ultimate open concept area. There's so much potential there. So why not make your outdoor space really, 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:

Article's curated assortment of mid-century, modern, coastal, industrial, Scandi, and boho designs makes furniture shopping simple. It's easy when you love the prices and it all looks great. That's because Article's team of designers are all about finding the perfect balance between style, quality, and price. Article is dedicated to thoughtful craftsmanship that stands the test of time and looks good doing it.

I'm waiting on a delivery from Article right now. I've ordered a little storage chest that goes at the end of a bed and it looks great. Storage always looks boring. We live in an old craftsman style house with no closet space. This is just the perfect add-on for one of our bedrooms.

Barb:

The best part is that article offers fast, affordable shipping across the US 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. And Article's, knowledgeable customer care team is there when you need them to make sure your experience is smooth and stress-free.

Joyce:

Article is offering our listeners \$50 off of your first purchase of \$100 or more. To claim it, visit [article.com/sisters](https://article.com/sisters) and the discount will be automatically applied at checkout. That's [article.com/sisters](https://article.com/sisters) for \$50 off your first purchase of 100 or more. You can also find the link to amazing decor from Article in our show notes.

I am really glad we're going to get a chance to talk about this next topic because it's something that's been weighing on me heavily. I'm an appellate lawyer by trade. I have always had enormous respect for the Supreme Court. It's where we send our most difficult to resolve disputes for authentic voices, people with integrity to resolve issues. And it would be an understatement to say that we're all being forced to question the Supreme Court's standing these past few weeks.

So Kim, let's start with sort of the basics of where we are because this week the Court took steps to repair its damaged reputation. At least I think in the minds of nine justices, maybe they thought this would work. They released a statement. They all signed it. They stressed their commitment to ethics principles. Talk about what was in that statement. And I'm so sad that our listeners cannot see the look on your face right now as I'm saying all of that because-

Barb:

Can you hear her eyes rolling?

Joyce:

I mean, oh my God, that look was priceless.

Kim:

Well, I did post on Instagram the dog sitting in the house that's on fire drinking coffee and saying, "This is nice"? I said, that's John G. Roberts right now. That is the Chief justice. "Everything is fine here. I don't know what you're talking about." So yes, the Chief Justice released in response to a request to appear before the Senate Judiciary Committee, this statement, this joint restatement about ethics at the Supreme Court. I want to be absolutely clear. This statement creates no new standard. It breaks no new ground. All it basically says is, "Look, this is what we've been doing and that we promised to do and we all signed it, so we agree that we're going to keep on doing what we're doing." So it was basically the Chief Justice saying, "This is fine," as he sips his coffee in the burning building, in my opinion.

So basically what it restates is are some things that we've talked about here before. The Supreme Court is not bound by any ethical code of conduct, the way that lower court justices are bound, but they have agreed to consult. The wording they use is so important because they don't agree to be bound by these code of conduct. They agreed to consult it as they decide what they do when it comes to recusing from cases or filing these financial statements, which they actually are required to do. Like other judges do, they have to disclose their income or other forms of gifts, other things that they get of financial value, they do do that.

But beyond that, when it comes to most things like recusing from a case, deciding what amounts to a gift that they disclose, it's really up to each individual justice to make that determination. So by and large, the Supreme Court is not bound by anything other than their word.

And so I guess what this statement was supposed to do was restate that, "Hey, we double pinky swear that we are doing everything on the ethical up and up." And I just think that the Chief Justice is not reading the room. Public confidence in the court is plummeting. People do not trust the court. They see, especially after the overturning of *Roe v. Wade*, after any number of justices that were appointed who are now in the court's majority said "*Roe v. Wade* is the law of the land in their confirmation hearings." They have no intention in adhering to it. That, and not to mention justices being taken on extraordinary vacation junkets around the country, justices speaking before groups that have interests before the US Supreme Court, all kinds of ethical norms being broken in real time right in front of our eyes. And the Chief Justice says, "Trust us." I'm not sure how we can.

Joyce:

Yeah, I think that's dead on the money. It's sort of the convergence of those two events for me, right? You've got a court that's reversing longstanding precedent. It takes a lot of confidence in the court's integrity to accept that. And right at the same time that they're doing that, you've got Justice Thomas, who it's now documented, is hanging out with rich guys who had interests in litigation. And the Chief Justice's response is to muster all nine of the justices so that they can all say, "But really you should trust us no matter what Justice Thomas was doing," even though Justice Gorsuch had property that had been on the market for years that suddenly sold nine days after he was confirmed to the bench. I mean, it just defies belief that they expect us to take them on faith at this point because it's not like their legal conduct. And when I say legal conduct, I mean their decisions in cases have been fully above board.



Barb, so something else happens on the same timeline where this letter gets released. The Chief Justice declines the Senate Judiciary Committee's invitation to testify in front of them. I mean, he declines. He sends them this letter signed by the nine instead, and confidence in the court continues to erode. So we've discussed this before. It's not a theoretical problem. It can become, in the wrong conditions, a real problem. Do you think that the Chief Justice should have just failed to appear here?

Barb:

No. So the letter just cracked me up. It's from the Senate Judiciary Committee and it isn't sort of like, "Hey, if you feel like it stopped by, it's like we have some concerns. We'd like you to come testify." And he's like, "You know what? Thanks, I'm good. Nope, I think I'm not going to do that. Nope." As you know-

Joyce:

I don't want to go out on a date with you, Senate Judiciary Committee. I mean it felt like a teenage girl, right?

Barb:

It really did. And he even said things like, "The only time really Chief Justices have appeared before Congress was on mundane things. And I guess since this is important, I better not come." I mean, really? I thought it was, as you said, a failure to read the room. And I think it had the opposite effect of instilling confidence that it's unnecessary. It makes it seem more necessary that he's refusing to come in and talk.

I can imagine one justification might be if he discussed this with anyone, what he might say, "If I go in there and I testify, it will become a circus and there will be people trying to play gotcha and trying to trick me and make me look bad. And it will further undermine public confidence in the court." That is certainly a risk. But if you accept the premise that the court is already suffering from a crisis of public confidence, then you can't miss this opportunity to go in and reassure the public that things are under control.

And if they're not under control, you should welcome that. I just finished reading, I don't know if either of you read the book Steve Vladeck wrote on the Shadow Docket. It's an excellent book. I recommend it to anybody who's interested in the Supreme Court. And one of the points he makes in it that I think is so interesting is that this court, more than any other, has treated the public not as the people they serve, but as a nuisance or a threat to be kept at arm's length. And we don't want cameras in the courtroom. We want the doors to be closed. You're not coming in the main doors. We're putting up a big fence. And although they have legitimate security concerns, they need to remember that they serve the people, and they're not doing that.

And the other point he makes, there's a lot of good history in the book, is that there has been congressional involvement in the way the court conducts its business throughout our history. It's actually only recently since 1988 that there has been this real hands-off perspective that the court needs to be left alone to maintain its independence. I mean, they set their salaries, they appropriate their funds. They've decided over the years how many justices there should be. Nine's not any magical number in the Constitution. That's set by Congress. And so if we have this concern about ethical rules, then Congress certainly has the authority. Yes, it is a separate and co-equal branch of government. That's how checks and balances work. They oversee what's going on in the executive branch and they should also oversee not the merits of the decisions, but things like ethical rules of the Supreme Court justices. So I thought this letter was really either ill-advised or reflects his fear.

Joyce:

I really agree with your point that Roberts missed the moment here. He could have gone over. There could have been a hearing. He could have offered explanations. He could have begun the process of restoring confidence in the courts. And not to beat a dead horse, but you guys know me and I do love to do that on occasion for rhetorical purposes. I mean, who enforces the Supreme Court's decisions, Barb? How does that work in an environment where people are unhappy with them?

Barb:

Well, the court really relies on the public trust to just obey and comply with its orders. We respect the court, we respect its authority. Its orders have the force of law. And so we comply with it. We talked about this last week, I think that shocking phrase in Justice Alito's dissent in the mifepristone case about how he had no confidence that the Biden administration was going to comply with one of its orders. Really? It's kind of unheard of. But I suppose if we see this continued erosion in public trust in the courts and its legitimacy, then that's the end of the game. At some point people say, "We don't trust you and just because you said so, no, we're not doing it." And then chaos rains, we can't have that.

Joyce:

I confess, I was on a plane flying back home when that opinion dropped, and I actually had an audible response when I got to that point in Alito's opinion. It was a little bit embarrassing because I was like sitting there surrounded by really nice people and I think I sort of just threw one hand up in the air and made an exasperated noise.

Barb:

I love it. You did like that spit take they do in comedy shows?

Joyce:

I sort of did. Right?

Barb:

You're drinking your little cup of water? And...

Joyce:

I was knitting, actually, and I made a mistake in my knitting, which is even worse than that.

Speaker X:

It is.

Joyce:

But that said, in some ways it felt to me, and maybe this is an overread, the notion that Joe Biden, the ultimate institutionalist would ever permit even with the decision he thought was wrong, right, outright flagrant ignorance, failure to comply with the Supreme Court's order, that is not in this President's genetic makeup. It is not in the genetic makeup of, I'm going to say 99.9% of the people who work at the Justice Department. We believe in the rule of law. And it almost felt to me like Alito was maybe

projecting a little bit how he thought he might react in this sort of a situation. It was so incredibly distasteful. Kim, I'm afraid I sort of cut you off there. Did you have a point on that too?

Kim:

Yeah. Just to Barb's earlier point saying that on chaos and anarchy, that's not an understatement. I mean, don't trust us as now retired Justice Stephen Breyer who wrote a whole book about the importance of the Supreme Court. I think I criticize that book a little bit because his thought is, at the time anyway, I think he wrote the book before January 6th, to be fair, is to say after Bush v. Gore. That was a very politically contentious case, but Americans accepted the results. They accepted what the Supreme Court did, even if they didn't agree with it because that's how the rule of law works. I'm not sure we're still in that place given what happened on January 6th. So if the Supreme Court does not have the public trust in what they do, it really honestly could undermine democracy. I really can't say enough how detrimental that would be.

Joyce:

Right? I mean in this moment where we need the court's integrity and we need the public's confidence to be high, because they will likely end up deciding the 2024 election one way or the other, they seem to be squandering the public's confidence in them when they should be rebuilding it. And I mean, I'm really interested in both of your views on this one because what really does happen if the public loses confidence? I don't want to overstate it, but you've both said that it's a serious risk. I mean, we're not in a full-blown condition of anarchy. I don't really expect for us to get there. But what happens if the court doesn't reverse this trend, Barb?

Barb:

I hate to imagine, but I think it would be invite lawlessness. If people feel like the court is just one more political branch and is not really deciding cases based on fact and law, then what do we need with them?

And I worry that people will resort to vigilante violence to get their way. If the court says, "You can do this, you can't do that," that people will take the law into their own hands the way we've seen with some of these militia groups trying to physically cause the election outcome that they want, trying to physically kidnap the Governor of Michigan because they didn't like her shut down orders. I mean, I think that's the kind of thing that happens when we don't have courts that enjoy the respect and legitimacy of the people they're supposed to serve.

Kim:

And I think the more we see these justices as political actors, as opposed to independent, unbiased, jurists carrying out their interpretation of the law in the constitution, the more problematic that is too, especially given that they have lifetime tenure, then they become demagogues in some sort of way, ruling in a way that was never intended under the American governmental system.

I mean, I just think it's so, so dangerous in that the Chief Justice of the United States who had this reputation of caring so much about the institution of the court and being so careful in his stewardship of it could respond to the Senate and that... Listen, nobody expected him to actually testify. Let's be clear here. Nobody expected him to testify before the Judiciary Committee. But by putting out the statement and having all the signatures of everyone on that as if to say, "Well, it's not just me. Everybody agrees with me, we're fine." It's just so shortsighted that that was really gobsmacking.

Joyce:

So look, I think the analysis here is really helpful. It's a depressing landscape, but it does help us see a couple of different issues in focus, right? We see the problem with any institution losing public confidence, especially the court. We see really what the impact can be if we don't get a grip on our domestic terror/ white supremacist militia problem. And it also helps us appreciate the import of some of the voting rights issues that are percolating.

Today, the North Carolina Supreme Court reversed course and has now said that North Carolina's just egregiously politically gerrymandered voting maps can go into effect. And the only thing that has changed since the North Carolina Supreme Court said, "No, this is a vicious political gerrymander that's illegal under the North Carolina Constitution," the only thing that's changed is the composition of that court. So it's a real attack on the rule of law.

Those issues all sort of come together and it's depressing to think about. But Kim, you shared with Barb and with me earlier today, a Supreme Court ethics bill that you told us now has no chance of passing, but that it could be a roadmap for the future. Can you talk a little bit about what that looks like and whether there's some hope here?

Kim:

I think there could be some long-term hope. So there is a bill, it is bipartisan in the Senate that would require the Supreme Court to adopt an official code of conduct and it would have to be done within a year. Those rules would have to be published on their website. It would designate an independent official to handle violations of those rules so it wouldn't be left to the court itself or the individual justices themselves to police themselves and publish an annual report about any complaints made with respect to that.

It would just bring a real accountability to the court in a way that just doesn't exist. Now without question, a law like this would face some constitutional challenges because it's never existed before. But I think at the very least, it's worth pursuing if, for no other reason to hold the Supreme Court to the same standards as other federal judges here. They don't have term limits, they have life tenure and there needs to be some sort of check. Chief Justice John Roberts raised concern about separation of powers in his letter saying that that is an important principle and it is. But you know what else is? Checks and balances. And the Supreme Court increasingly is having fewer and fewer in checks. They really honestly don't seem to have any checks at all. And I think it's time for that to change.

Barb:

I'm very inspired by Fast Growing Trees. I want to get something new from my yard, but I'm not sure what. I'd love to hear your thoughts, Joyce and Kim. But I know that you can breathe some life into your own backyard with fastgrowingtrees.com this spring. From shade to fresh fruit to privacy and natural beauty, let fastgrowingtrees.com help you plant your dream garden with their expert advice and fast, reliable shipping. What do you guys think I should get?

Joyce:

Everything is so good, Barb. I'm a longtime customer of Fast Growing Trees long before we had the podcast. I really love their Meyer lemon trees and some of their other citrus trees. I think that's a good place to start because you can bring it inside in winter, take it outside in summer. And they're very low maintenance. I've got confidence in you.

Fastgrowingtrees.com's plant experts curate thousands of easy to grow plant, shrub and tree varieties for your unique climate. Anything from Meyer lemons to evergreens and all that's in between. With happy plants, you have a happy home, right? We know sometimes it's hard to know which plants will do best, but that's not a problem because with fastgrowingtrees.com, you'll get customized recommendations based on your specific needs. Plus, their plant experts are always available to help keep your plants growing healthy through the season and beyond.

Kim:

We got some really beautiful Japanese boxwood shrubs that just look beautiful still more than a year after planting them. So I'm a big fan of Fast Growing Trees. So forget waiting in long lines and hauling heavy plants around, with fastgrowingtrees.com, you order online and your plants arrive at your door in just a few days. I love how great my evergreens look in the yard when we still get the occasional snow, even though I do not love the occasional snow. The prices were so cheap and the vibe it adds to my home is amazing and we know they will make your home look great too.

Barb:

All right. So on my list are lemon tree and Japanese boxwood shrubs. I will look at those. With Fast Drawing Trees 30 day alive and thrive guarantee, you know everything will look great fresh out of the box. So join more than 1.5 million happy Fast Growing Trees customers. Go to [fastgrowingtrees.com/sisters](https://fastgrowingtrees.com/sisters) now to get 15% off your entire order. Get 15% off at [fastgrowingtrees.com/sisters](https://fastgrowingtrees.com/sisters). Head there as soon as you finish enjoying the show. And get the link in our show notes.

Well, trial began this week in E Jean Carroll's civil lawsuit against Donald Trump for rape and defamation. Joyce, let me start with you. They had some opening statements earlier this week, and Trump has a lawyer named Joe Tacopina. He looked something like right out of Central casting in some mob movie, and he gave an opening statement that CNN described as fiery. Do you think that that sort of scorched earth strategy is an effective strategy in a case like this?

Joyce:

If by fiery, you mean misogynistic and offensive, well then maybe. And look, it wouldn't be a SistersInLaw episode if I didn't just flag this. As I've texted back and forth with friends, Joe Tacopina really takes on some interesting tones when Siri gets into autocorrect mode. You guys remember during the Brnovich case, the voting rights case when Brnovich kept coming out as Bernabitch on my phone. Tacopina isn't quite that PG rated, but I have really enjoyed that.

Kim:

Oh my God.

Joyce:

I did not enjoy.

Kim:

Oh my God.

Joyce:

I did not enjoy. I'm sorry. I've like now put Kim into heart failure.

Kim:

I was taking a sip of tea and I like choked on it.

Speaker X:

Did you spit take? Did you spit take?

Kim:

I did.

Speaker X:

I knew it.

Kim:

Oh my God.

Speaker X:

Spit take ups.

Joyce:

All right, pull it together, y'all. So it is worth reiterating that we are not watching this trial because the federal courts refuse to permit cameras in the courtroom, something that I think is shortsighted and silly and doesn't serve the ends of American justice.

But we are lucky that there are journalists in the courtroom and that they are live tweeting much of what goes on from an overflow courtroom. And of course, there are other journalists who are writing after the fact. And so it's hard to gauge the jury's reaction to these arguments for one thing. But Tacopina really did just rely on a bunch of old tropes in his opening statement. It is called an opening statement because lawyers are not permitted to argue the evidence in opening statement. They just tell the jury what they expect the evidence will look like.

And Tacopina told this jury, "You know, you will be asked to believe in facts that are just unbelievable in this case." And I know he meant when he said that that the jury would be asked to believe E Jean Carroll's testimony. But when he said, "You'll be asked to believe something unbelievable," I thought damn straight, and that'll be your client's version of events here. It seemed to me that this is going to really just be a matchup where Trump's overbearing, heavy-handed manner is repeated by his lawyers in the courtroom. And I don't think that that will be effective, particularly in a case of this nature.

Barb:

And he carried on what he promised in his opening, once the trial began. So the first witness was E Jean Carroll herself and during the direct exam of E Jean Carroll, so this is with her own lawyer asking her questions, it's actually Trump starts going after her again in the same kinds of things he said that was the basis of the defamation suit. He is not even in the courtroom for this trial, can't bother to show up, but he posted disparaging things about E Jean Carroll on social media as she's on the stand testifying. Kim, can he get away with that? And do you think it will affect the trial?

Kim:

Oh my goodness, he just cannot help himself. Could you imagine having him as a client? I really, I just-

Barb:

Oh, what a nightmare.

Kim:

I just can't. Yeah, probably not get away with that. If I were E Jean Carroll's attorney, I would be keeping a running tab of everything that he posted publicly and that would become a new exhibit that I would ask to be introduced in this trial, much the same way that they introduce the Access Hollywood tape which is basically him admitting to generally doing what he is accused of in this case. This is evidence that I think could be used just to show a pattern of practice of just how he thinks about, how he talks about, what he says about this person. And if he is restating the same alleged defamatory things that he's being sued for, it shows that he's being intentional about it. It shows that he's unrepentant about it, and it can do nothing but harm his case. I mean, he can't help himself.

Barb:

It reminded me of, do you remember when... Was it Marie Yovanovitch, was that her name? The ambassador to Ukraine?

Speaker X:

To Ukraine?

Barb:

Remember where she came in and testified and he did the same thing to her that wherever she went, it was a disaster. I think Adam Schiff called it witness intimidation in real time, which is very interesting. And he was kind of-

Joyce:

You could almost think that Trump doesn't like women.

Barb:

I think he said it's a scam. And I know the defense was from Trump's lawyer, well, the jury is admonished not to read any press, so therefore it's all harmless. And I think the judge said, "You better control your client." But as you said, good luck with that.

Well, I want to ask you both about the cross-examination of E Jean Carroll, because I thought this was quite interesting. We heard a lot of, as Joyce said, as we heard in the opening statement of the old tropes, that re-victimize survivors of sexual assault, failure to report immediately, failure to scream. This is all about making money. On the other hand, if you can get just one or two jurors to buy into that theory, maybe you can hang the jury. So what do you think of that strategy in 2023? I mean, I know we think it's disdainful to say those things out loud, but do you think it can be effective?

Kim:

So I want to hear what Joyce has to say, but two points come to mind in that yes, it is really discouraging that we're still seeing this happen in real time. But on the one hand, this is a civil trial and not a criminal one. So it could, in a criminal case, pick off that one juror or those two jurors, or get a bit of reasonable doubt put into a criminal case. This is a civil case, so the standard is by a preponderance of the evidence. So I just think generally speaking, the chances that this will have the same sort of payoff are much lower. Somebody can think, "Oh, maybe she could have done more," but also think that by the preponderance of the evidence, she has made her case. So I just think the standard here being different makes this a lot different.

Secondly, as somebody who has participated in civil trials, when the lawyer is being what seems like a jerk to a witness in a case, no, that never helps you, that never ever helps you. So I don't really know what he is thinking. There is a way to question a witness, to try to... Questioning a witness, to try to raise questions about her testimony is totally fair game, and that's the job of an attorney. There's a way to do that without looking like a jerk or looking like you're re-victimizing her. And he doesn't seem to have the ability to do that. So I just think it's bad lawyering.

Barb:

Yeah. What do you think, Joyce? I think I share that view.

Joyce:

Yeah, I do share that view. And I should say that my view is probably colored by the fact that E Jean Carroll and I are real life friends. She's a knitter. And when my knitting group moved online during the pandemic, she was part of that. So I should acknowledge that maybe I'm biased in her favor.

I would like to be able to say that as a society, we have moved past the days where people didn't trust women and that the Me Too Movement had engendered permanent change, where now everybody believed women when they came forward with these sorts of allegations because it's painful. And E Jean Carroll's case demonstrates that, right? She comes forward, she loses her job at Elle Magazine. They say that it's not because of what she said about Trump, but the timeline sort of suggests that it probably is, and she pays a big price.

She's subjected, if you saw any of the reports of her testimony, to a lot of online abuse. People threatened her. She's called ugly. She's called old. The President of the United States used the bully pulpit of the presidency to condemn her. I mean, this is something that no woman would voluntarily inflict upon themselves unless they viewed it as important and as principled.

And I suspect that her cross-examination will impact this jury. I mean, this is a jury in New York City. This is a jury I think that during voir dire, we saw that many of them seemed to reflect consistent views of their ability to have heard much of this evidence, but to be willing to set it aside to decide a case. So I think this jury will render a careful deliberate verdict based on the evidence. I worry that in many parts of the country, that might not be the case, and that these sort of tropes would still play very well, and that women wouldn't get a fair hearing. It's an area where we have a lot of work left to do.

Barb:

And I think that Trump's lawyer, Joe Tacopina, became his own exhibit A, right when he asked, "Why didn't you report this when it happened?" Because I didn't want to get re-victimized the way you're re-victimizing me right now. She gave a more diplomatic answer than that. But I thought that just watching that play out, there was a report that said that two of the male jurors who had previously been very engaged were just staring down at their laps during that. And I hope it's because they were so ashamed



of him and not because they were believing what they were hearing. Well, let's hope this case comes out. Maybe next week we'll be able to talk about it and let's hope it can be a teachable moment for America.

Joyce:

So Kim, this is that time of the year. I'm done teaching for the year. I'm still grading papers, but it's time for me to reclaim a little bit of space for myself and take better care of myself. And for me, that means really putting the time into Noom to read all of the articles and to think not so much about losing weight, but about being healthy. Noom is really great for that, aren't they?

Kim:

Yeah. Trends and fads come and go, especially when it comes to health and wellness. Noom is 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 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:

Well, you guys know, I'm a big fan of Noom. I'm a Noom evangelist. When people ask me if I've lost weight, I started saying, "Have you heard about Noom?" And I tell them all about it, so I could go on.

But it isn't just about controlling what you eat, though. That's a big part of it. They talk about recognizing your habits then they give them labels, which I think is always so helpful, identifying behaviors by naming it, discussing it, and understanding it. So they talk about storm eating or you're just sort of eating without really thinking about it, or fog eating or joy eating, you don't always have to eat your fruits and vegetables. I was at a birthday party a week or so ago and they had a hot fudge sundae bar, and so I enjoyed it. As long as you don't have a hot fudge Sunday bar every night, you can have joy eating. But most of it should be healthy, nutritional eating with vegetables and lean meats.

But the program helps you understand the science behind your eating choices and why you have cravings. And your daily lessons are personalized to you. So whatever your health goals are, the flexible program focuses on progress instead of perfection. And you can choose your perfect level of support from five minute daily check-ins to personal coaching. It's helped us change our habits because Noom Weight shows you how to pursue the goals you set for yourself and gets you to them.

Joyce:

And the joy eating part is such a big deal. If you're a baker, and I love to bake, it really teaches you that it's okay to eat that first piece and enjoy that first piece fully, right? Live in the moment. Just don't eat the whole cake. My daughter sent me a great recipe for chocolate éclair cake earlier this week, and I ate the one piece and felt pretty proud of myself.

First time Noomers lose an average of 15 pounds after being active in the program for 16 weeks. And 95% of customers say Noom is a good long-term solution. They've even published 50 peer-reviewed scientific articles 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 trial today. Also, check out Noom's first ever book,

The Noom Mindset: A Deep Dive Into the Psychology of Behavior Change. It's available to buy now wherever books are sold, and you can also find the link in our show notes.

Kim:

Well now, we are at our favorite part of the show, which is listener questions. If you have a question for us, please email us at [sisterinlaw@politicon.com](mailto:sisterinlaw@politicon.com) or tweet using the hashtag SistersInLaw. If we don't get to your question during the show, keep an eye out on your Twitter feed. We'll answer as many of your questions as we can get to.

But first, our first question of this week comes from Brian in Seattle, Washington, who asks, "What is the process of jury selection for grand juries? Who is authorized to say yes or no for prospective jurors? Are there any guardrails to prevent an unscrupulous or partisan prosecutor from stacking the grand jury?" Those are a lot of questions, but Barb, can you give an answer here?

Barb:

Yes. I have actually had the experience of selecting a grand jury. Joyce, did you ever do that in your time at the US Attorney's Office?

Joyce:

I did. It was always a fun thing to do.

Barb:

Yeah, I actually did. Typically, our criminal chief does it, but there was a time when our criminal chief was not available, so I did it, and it takes a full day. But the guardrails is the judge. So Brian is right that there is not an adversarial party there. Ordinarily, you've got prosecutors and defense attorneys to strike people that they think might not be fair to their client, and so it doesn't have that component.

But of course, you're not picking a grand jury for any particular case, typically. I guess maybe the Fani Willis special grand jury had that feature, but you're picking a grand jury for cases that will come before it, at this moment, unknown. Frankly, the hardest thing is finding people who can show up and be there for six months for a regular grand jury or 18 months for a special grand jury, which is a huge time commitment.

In our district, it was either two weeks every other week or once a week, every week, depending on which kind of grand jury you were on. And that's a big commitment. And so often, it was really just listening to the challenges that people might have. I'm an hourly employee, I care for my elderly mother. I have young children at home. There are a lot of things that would cause people to say, "I just don't think I can commit to that." And so people would often be excused for those reasons.

But otherwise, the questions were really looking more for challenge for cause, not so much knocking off people for peremptory reasons. But if a person had a relative who was a police officer and didn't think they could be fair in deciding cases, people who worked for the court, those kinds of issues would be the biggest issues. And then otherwise, the idea was we should keep on whatever is a cross section of the public. So I think that regardless of the absence of someone to speak for the defense, the judge is there to play a proactive role to ensure that those interests are represented.

Kim:

Our next question comes from, and I hope I'm saying this right, Atsmother Einstein, who asks, "Would it be possible to strike down gerrymandering elsewhere as was done in the Alaska Supreme Court last week?" Joyce, do you have an answer?

Joyce:

Yeah. So this Alaska situation is interesting, and it didn't get a lot of attention, so I'm glad we've got this question. A little bit of a rehash of the Supreme Court law on gerrymandering. The Supreme Court says that it will not review what's called political gerrymanders, efforts by state legislative majorities to draw district lines for elections along political lines. Sort of like the situation in Alabama where you happen to have all of the democratic voters squished into one district in the state, the court won't look at it if it's purely political. They will only look at it if it's a racial gerrymander.

But there's an exception. Some state constitutions say that you can't have either political or racial gerrymanders. And states that explicitly prohibit political gerrymanders, in those states, you can still have challenges, and that's what happened in Alaska. Alaskans challenged some districts that had been drawn and said, "This is a political gerrymander. It violates the Alaska Constitution."

And so long as the Alaska Court approves that and says it is a political gerrymander, then you can throw those district lines out. That's similar to the North Carolina situation that we referenced earlier. North Carolina also has a constitutional provision that prohibits political gerrymanders. But now, the North Carolina court has said, "Well, in this situation, this isn't a political gerrymander," which means the answer to the question is it is largely up to two things. One, what does your state constitution look like? And two, what does your state Supreme Court say? Do they look at certain maps and say that there are political gerrymander or not?

And of course, that can ultimately get appealed to the United States Supreme Court. That's what had happened with the North Carolina Maps. We've discussed this independent state legislature theory case that is pending in the United States Supreme Court and whose outcome is now uncertain because North Carolina reopened that case. But in essence, if you've got the right law in your state, you can still attack a political gerrymandered.

Kim:

And finally, we have a question from Wendy who asks, "If abortion has been outlawed in state X, how can mifepristone still be legal? What differentiates the two methods of terminating a pregnancy making one illegal, and the other legal?"

This is a good question, because I think in everything that we're talking about this case involving the challenge to mifepristone, it can be confusing. So what the case involves is a challenge to the FDA approval of mifepristone. The FDA is the federal body that approves drugs to be used nationwide. That approval process is very different from what states are doing on a state by state level in terms of legalization of abortion.

So two things can be true at the same time, mifepristone can be an FDA approved drug that is available where available, and a state can outlaw abortion entirely, which would include medical abortion making the use of mifepristone illegal in that state. A state cannot revoke the FDA approval of that drug. That's up to the federal government. That's a federalism issue, but they can ban abortion in any form that it wants. So there are states that use of mifepristone is dramatically reduced beyond what the FDA approved or outlawed altogether, but those are two different legal processes that are happening simultaneously. So I hope that makes a little bit more sense.

Thank you for listening to #SistersInLaw with Joyce Vance, Barb McQuade and me, Kimberly Atkins Stohr. We can't wait for Jill to get back. She'll be back soon.

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. And don't forget that #SistersInLaw are going on the road. Come and join us as we record the podcast live on stage where we would discuss the legal topics of the day and answer your questions live. We're starting off in Portland, Oregon on May 12th, then going to New York City on May 19th and Washington DC on May 21st. There are still some tickets available, but not many, so you really need to hurry and go to [politicon.com/tour](http://politicon.com/tour) to get your tickets today, because we can't wait to meet you.

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Joyce:

You need to post more on your fashion one. I found that a couple years ago and I like it.

Kim:

I'm going to. Yeah, I'm going to... I should post what I'm doing right now is mending a hole in the dress I'm wearing tomorrow night because it's... I'm literally-

Joyce:

Look at you. Oh, we got to talk about that. She's sewing as we record.

Speaker X:

[inaudible 01:06:23] do the hole-

Joyce:

And this is like a fancy gown. Oh my gosh.

Barb:

You got to talk about that.

Joyce:

Seriously, we should. But Kim, do you do the creative mending thing or do you do standard mending? I have friends who are really into creative mending with embroidery.

Kim:

No. No, I don't do creative... I try. I've made one wedding dress for a friend that had lace overlay on it, and the amount of work, my God, I don't know. I don't know why. I would never do that again. I just do regular mending. The only reason I'm doing this by hand is because it's sequins and putting that in a machine is...

This transcript was exported on Apr 29, 2023 - view latest version [here](#).

Joyce:

Yeah, you got to do it by hand.

Barb:

Wow.

Kim:

Definitely. Yeah. Although, I did sew this on a machine very carefully, but that also took a ton of time.

Joyce:

Wait, you made your dress for WHCD?

Kim:

The dress I'm wearing is a dress that I made like five years ago that I've worn before that.

Barb:

Wow.

Joyce:

That's amazing.

Kim:

I'm going very last minute. But yes, I made the sequin... I designed and made this sequin dress for-

Joyce:

If I made a dress-

Kim:

... charity fashion show.

Joyce:

... I would wear it like 10 times a year. Forget it.

Speaker X:

Yeah, I'd wear it everywhere. I'd go.