

Barb:

Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Jill Wine-Banks, and me, Barb McQuade. Joyce is away this week, but we'll look forward to having her back next week. We wanted to start by giving a big thank you to everyone who came out to see us live on stage in Portland, New York, and Washington DC. We had so much fun and we really appreciate your support in all of those cities.

Today, we'll be discussing the latest in the Mar-a-Lago investigation, the Supreme Court's decision against EPA wetlands protections, and the trend to make shoplifting a felony. As always, we look forward to answering your questions at the end of the show, but before we get started, I really just want to talk a little bit about the live shows that we did in Portland, New York, DC. They were so much fun. Could you guys ever have imagined that they would be such a blast?

Kim:

I really couldn't. I mean would've never imagined going on tour and having audience members come and be so enthusiastic to see the show live. We always record every episode in our four little corners of the country on our own. So one, it was just so amazing for the four of us to be together. That was so amazing, but then the energy that our listeners brought when they came live and told us their stories, everything from how it's taught them how to think about the news differently to some of them even being inspired to go to law school. It was really overwhelming and amazing.

Jill:

I agree with everything that Kim said. It was a remarkable experience to meet people in-person, to hear their stories, to hear how we had inspired them, but mostly, the adrenaline rush that we got. Walking out on stage and hearing the audience roar was something you just can't ever imagine in your life, but also the dynamic between the four of us, I loved, and getting to know everybody even better, being together for prolonged periods of time, meeting in a hotel lobby at 7:30 in the morning and taking a train. It was fantastic.

Then I have to add. I loved our pastrami in New York. I also really loved ... People in Chicago are going to hate me, but I really did like the DC half-smoke with chili and I am looking forward to a Detroit Coney dog. Then I'm also looking forward to your sharing my love of Vienna hotdogs in Chicago, but I got to say, Kim, you did really good with the hotdogs.

Barb:

Yes, those hotdogs Kim provided from Ben's Chili Bowl, what were they called? Half-smokes, that was-

Kim:

Yes, with chili.

Barb:

The gauntlet has been thrown down for the best hotdog. We'll see if we can compete in Detroit and Chicago. I loved it too. One of my favorite parts of the trip was our train ride between New York and DC. That was really fun. We spent the whole time just talking on the train for three hours, whatever it was. We really had a great time during that ride, but I just loved meeting people in all three cities who are so deeply engaged in the issues of the day. It was really gratifying to see that there's so many people in America who care about democracy and the rule of law.

I think the reason they came out, the reason they're interested in listening is they just want to learn more so that they can have informed opinions about the issues of the day. These people recognize things are not normal right now and want to learn a little more about it to help them process what's going on. So I loved meeting all those people.

Jill:

They were really knowledgeable people. I was impressed by the content of their questions. These weren't just casual questions. These were people who read deeply and really understand what's going on in our country. That's very encouraging for our democracy.

Kim:

It's getting warm out and I love spending time outdoors, whether it's eating our meals outside or just reading a book and going out and you need a comfortable place to be. The great outdoors is the ultimate open concept area. There's so much potential there. So why not make your outdoor 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.

Jill:

For you as the winner of the best-looking room ever, that is really saying something. Article's curated assortment of mid-century modern, coastal industrial, Scandi and Boho designs make furniture shopping simple. It's easy when you love the prices and it all looks so good. 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. My favorite is some of the chairs and the hassocks and the outdoor lamps. I think I can't wait to use my outdoor lamp now that it is finally warming up in Chicago.

Barb:

Well, the best part is that Article offers fast, affordable shipping across the United States 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. I had some rugs delivered that I ordered through Article and it was great. Unlike when you call the cable guy and they say, "We'll be there between noon and Thursday," they actually came at the precise time they said they would. So I could have somebody home at that time to make sure I was able to greet them and bring things in. So it works well.

Jill:

That is an amazing feature, for sure. Article is offering our listeners \$50 off 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.

Kim:

In journalism, we sometimes talk about the five Ws, the who, what, where, when, and why. I know it's an old timey way of thinking about getting to the bottom of something. Even in journalism, we don't really talk about that anymore, but in the case of the classified documents, it actually works really well.

Of course, the who is the former president, Donald Trump, the where is Mar-a-Lago, but let's answer some of the other questions. Barb, let's start with the when because some of the new information we've learned involves the timeline of events when it comes to these classified documents and what happened to them at Mar-a-Lago. What do these things, this timeline, this new timeline signal to you about the investigation?

Barb:

Yeah. So one thing that we have learned is that on the day before the FBI and DOJ came to Mar-a-Lago to look at these boxes June 3rd of last year, the boxes were moved. That timing sounds extremely suspicious, that perhaps boxes were moved knowing that DOJ officials were coming in an effort to conceal something or to, in some way, interfere with their investigation. If so, that's a really significant fact because one of the factors that prosecutors look for in deciding whether to file charges in cases involving the mishandling of classified documents is the presence of some aggravating factor.

One of those aggravating factors can be obstruction of justice. It's also one of the things that would distinguish this case from the cases of Joe Biden and Mike Pence who say they inadvertently retained classified documents and immediately called their own foul and returned the documents. If Trump is playing games and trying to hide them from investigators, that really ups the ante here and, I think, takes it from perhaps explainable offense, though I don't think so, to one that is of a very different character that is obstruction of justice. So for that reason, I think it is more likely that we would see charges.

The other thing that this does is if you frame it as obstruction of justice, then some of the defenses that Trump himself have raised really go away, like this idea that he thought the documents belong to him. It doesn't matter if you're lying to the Justice Department about the documents, then that's a separate crime regardless of your belief about whether these things belong to you or this idea that he can, through his own mind without communicating it to anyone, declassify the documents. Again, becomes irrelevant if the case is about obstruction of justice instead of about retention of classified documents.

Kim:

Jill, we learn more about the what too when it comes to this case and what Trump is alleged to have done. It's like history repeating, right? You know that better than anyone. Talk about the alleged crime and the alleged coverup.

Jill:

So you're right, and Barb mentioned in part what it is because it's obstruction of justice. Oftentimes, the coverup is worse than the crime. Although in this case, I think we shouldn't forget how serious this crime is and the danger that having classified documents in unsafe places raises to our country, but in terms of what, you have Trump keeping documents in visible places, showing them to people according to what we're learning now. He also had a dress rehearsal. He told aids he wanted to make sure that he could keep papers that he said, "They're my property," which ... and I want to pause here for a second because we keep talking about the classified documents, but honestly, all of the documents are government property.

The classified documents present a risk to our country and to our security, but all of them, ever since Watergate, have belonged to us, the people. They're for history. They are not for personal gain. If a president wants to see them after leaving the presidency, he has to use them by request and only under limited circumstances. He doesn't just get to keep them. That isn't how it works.

The other thing is you have a lot of witnesses now who have been talked to about moving documents knowingly or not knowing what was in them and their lawyers are being paid by the Trump pack. That's another suspicious circumstance that makes it look like a coverup because there's a conflict of interest. No lawyer should be representing someone who is testifying in a way possibly against the person who's paying them. That's just blatant obstruction of justice. All of this goes back to the Watergate era when there was hush money paid to keep witnesses from talking. It was directly paid to them, but it also covered their lawyer's fees, and that was one of the big crimes of Watergate.

So this is a very serious development. This new evidence may explain why there's been another slight delay, hopefully only slight, in bringing some indictment in this case, which I think from all evidence might be coming soon.

Kim:

So let's talk about the when, Barb, another when, which involves when Special Counsel Jack Smith may do something. To me, it seems like some of the things that we're learning is a little contradictory. On the one hand, you have some news organization saying that he is wrapping up this investigation soon. It seems like charges could be imminent. On the other hand, you have another report from the Washington Post that said that that's the sought documents from the Trump organization that go back to 2017. We also know that the grand jury hasn't met since sometime at the beginning of May. So what does that tell us? Read these tea leaves for us.

Barb:

You know what? One thing I'll say is that you can never really predict exactly when an investigation is going to be over. Even prosecutors themselves often don't know because sometimes they think they have one more witness to talk to and that witness tells them about five more people they need to talk to. So I don't know that we know, but there are some interesting indicators. One is the Wall Street Journal reported that the investigation is wrapping up. So that could be accurate. Maybe someone on the inside has shared that with them.

I also think one of the things that struck me this week to suggest that the investigation is probably nearing completion is this letter that Trump's lawyers sent to Merrick Garland. This one was clearly intended for the public. It was posted on Truth Social, and it said, "We're being treated so unfairly," et cetera, et cetera, and asking for a meeting with Merrick Garland.

That strikes me as something that comes at the end of an investigation. I doubt that Merrick Garland is going to take that meeting just because Jack Smith is the special counsel who is overseeing this case, and if they want a meeting, it should be with Jack Smith. I imagine that this is a preemptive strike so that if and when Merrick Garland says, "No, I'm not going to meet with you," they can howl and say, "We were treated so unfairly. We asked for an audience, and he refused to give it." It's because they asked the wrong person. So that suggests to me that they may know something that charges are imminent.

As you mentioned, on the other hand, there is this reporting that as recently as April, a grand jury subpoena was served to get documents from the Trump organization relating to business dealings with foreign governments. That is very interesting only because that could provide an additional motive for Donald Trump to retain some of these classified documents. No one's made this link yet. There's no allegation of it, but one possibility is that he was selling secrets to foreign governments or that he wanted to keep documents to use as leverage over foreign governments or to obtain some advantage.

One of them is Saudi Arabia with whom he's got a big deal for promoting a golf tour. So it's a really interesting development. If they do find some there there, that could extend the investigation by weeks or months.

Kim:

That's a very good segue into the why part of the five Ws. Jill touched on it a little bit, and I want to go back and ask you more about why this is so important, Jill, but I think sometimes when we're talking about this classified documents case in general, it seems like the least serious of all the investigations that are going on, but it's really important that this investigation go on and it's really important why we have the rules governing them. We don't know all the documents that were in Donald Trump's possession at Mar-a-Lago. We don't know why he wanted them.

We do know that the Trump family has benefited from very lucrative deals with Saudi Arabia among others since leaving the White House, things that were probably cultivated through their, not probably, very certainly cultivated through their relationships during the Trump administration. That's just one of many things that seems fishy here to me. So Jill, get into the why, why these laws exist that govern the use of classified documents and why they're not supposed to be taken out of secure places, and why this investigation matters.

Jill:

It's really important to understand that. I think people have been diminishing the importance of this case and of the New York Alvin Bragg case. These laws exist for a very good reason, and that is that documents are classified by the people who create them and by the people who oversee them into various categories. Some of them are basically a guarantee that the leakage of them would harm America. It will either reveal the names of people who are involved in collecting foreign intelligence or the methods that we're using that would be shut down if the foreign country knew about those methods.

So it's really important that these kinds of pieces of information be kept secret, and that means they can't be just left in a desk drawer or even in a storage room in a public place. Basically, Mar-a-Lago is a public place. It's a private club with hundreds of members and guests who come in all the time. So anybody would have access to it.

Yes, theoretically, no one did, but theoretically, someone did. Now, there's reporting that Donald Trump left some of these documents in the open on his desk. That's dangerous. So we have to be aware of what could happen, the reasons for protecting our security. I also want to go back to ... because I've been thinking about this since Barb was talking about the letter. I'm personally completely outraged by the letter. It is not uncommon. When I was at Justice, we would meet with defense lawyers who would come in to say, "Here are facts that you may not be aware of. This is why you shouldn't indict my defendant. My client is innocent."

Of course, that's a valid thing to come in, and anybody would want to have that before making a final prosecution decision to make sure that there isn't something you should know about. You don't want to indict someone who is not guilty, but this letter is such a blatant public relations stunt aimed at only one thing, and that is the Trump cult because it says that the investigation is baseless, which no lawyer could say with passing what I call the red face test because the evidence is overwhelming that there is something going on here.

So it just makes them look silly to have written those words, and it demeans, I think, our whole justice system to make this kind of accusation. It's just going to lead to more of the, "It's a fake election. The

election was stolen." This case is unfair. It isn't unfair. It's based on very good evidence. I'm outraged by it. So just wanted to add that. Sorry.

Barb:

Jill, the other point about that letter, and I share your view, we used to meet with defense attorneys all the time. If there's information that would be valuable to our decision, by all means, we want to know as much information as we can, but this is what we would call an uninvitation. They don't want a meeting, they just want a propaganda with the community.

Jill:

Exactly. Exactly.

Barb:

So here's the other tell. It talks about Joe and Hunter Biden. It's like it was written by Trump himself, the most unfair investigation in the history of the world in contrast to Joe and Hunter Biden. So it is not a genuine-

Jill:

It's outrageous. It's just outrageous.

Barb:

It's not a genuine request, but getting back to Kim's point, just one thing to add about the classified information. So top secret information is defined as information, the disclosure of which would cause exceptionally grave damage to the national security of the United States. Some of Trump's supporters have compared this crime to being akin to an overdue library book. That is not true, unless the library book were radioactive. This is the information itself is a hot potato, and that's why you have to take great care in how you treat it.

Jill, you were talking about Mar-a-Lago. We know that that Mar-a-Lago has been a target of espionage. There have been people who have been arrested for bringing in thumb drives and trying to target computers at Mar-a-Lago. It is a soft target for people who want to collect information on the United States. If you know Trump's there thrown around classified documents, oh, my gosh, what a target that is. So it's a serious crime. Kim, you're right to ask about it because I think it gets lost in the shuffle as a bookkeeping error or a technical violation or something like that. It's a serious crime, and that's why it is consistently prosecuted.

Jill:

I hope your book is going to include this, Barb.

Barb:

Oh, absolutely, this information trick. One of the things that I think is the game here is the idea that everybody is corrupt. This is part of the attack on truth is, "Sure, I'm corrupt, but so is Joe Biden and so is Hunter Biden, and if we're all corrupt, then you should just pick the leader that best aligns with your values because truth doesn't matter." I think that's part of the campaign in this letter.

Jill:

Justice demands that we take action on this case. So Merrick Garland, make sure that Jack Smith does something soon.

Barb:

Wait a minute, Kim, why are you wearing a mask?

Kim:

It's not a mask. It's the wonderful weighted lavender scented sleep mask by Kitsch. Have you tried this thing? It's literally my favorite thing in the world, especially if you need help getting some sleep.

Barb:

You look like the lone ranger minus the eye holes.

Jill:

You are adorable.

Kim:

Well, I have to say I really love Kitsch. They say hair care is the new skin care, but Kitsch has taken it to the next level, not just with your hair care, but also with your help with sleeping. With a cult-like following, Kitsch has created game-changing essentials that beauty enthusiasts swear by. From satin pillow cases to time-saving towels to sleep masks, Kitsch knows hair care doesn't stop in the shower.

Barb:

Whatever your budget, your skin type, your hair type, Kitsch believes you deserve little indulgences at affordable prices, morning, noon, and night. They started in 2010 by selling hair ties door to door, literally, just hustle and a dream that took off. We love that Kitsch is self-funded, female-founded, and now carried in more than 20,000 retail locations. Some of Kitsch's bestsellers we can't get enough of are their vegan and cruelty-free satin pillow cases, caps, and eye masks. They're so great for your hair and skin while you sleep.

Jill:

With their heatless satin curling rollers, you can say goodbye to heat damage. These are the original, the OG, and still the best heatless curlers. Don't settle for knockoffs. Get the ones that started the craze. I use them regularly. Kitsch also has rice water shampoo bars that could help with overall hair growth and density with a rosemary scalp oil that helps support scalp health and hair strength from root to tip, and they have so much more.

Barb:

Right now, Kitsch is offering you 30% off your entire order at [mykitch.com/sisters](https://mykitch.com/sisters). That's right, 30% off anything and everything at [mykitch](https://mykitch.com/sisters), spelled M-Y-K-I-T-S-C-H, dot com slash sisters. One more time, [mykitch.com/sisters](https://mykitch.com/sisters) for 30% off your order. Everyone can also find the link in our show notes.

Well, this week, the Supreme Court issued its ruling in a case called Sackett versus EPA. A couple in Idaho had challenged the EPA's refusal to allow them to build a home on wetlands in violation of the Clean Water Act. They brought a lawsuit. It's been working its way through the courts. Until this week,

the court was unanimous in ruling that the couple's property was not covered by the law and should win their case, but the conservative majority went further than just that decision by narrowing the coverage of what can be protected as a wetland. I think we referred to this in a prior episode, wetlands of the United States or waters of the United States as the WOTUS. Is this the way courts normally decide cases this broad view?

Jill:

Well, there's nothing normal about our Supreme Court these days. So I would say this wasn't the way the courts decided things in normal times, but these aren't normal times. The court really went out of its way in narrowing the limits of what the EPA could do. They were exceptionally harsh in doing this and could create huge damage to the environment and the climate because of the role of wetlands in protecting against flooding, for example, and pollution.

So it's really a bad decision, and that's what led to having concurring opinions that say, "We agree with the outcome, the decision that this particular couple's home is not covered by the wetlands because it isn't the right definition of wetlands, but we don't agree that you should go further and redefine the test that has stood the test of time and has been in existence for over 40 years."

The EPA was created for a very specific reason by, I will say good things about, President Nixon. He was the one who invented the EPA because of a crisis in our climate and our environment. So it's very important to keep in mind that although it was a unanimous ruling, it was not agreed to by a significant number, including Justice Kavanaugh and the three liberal justices as to how the test should be going forward.

Barb:

So Kim, let me ask you about one of the concurring opinions. Justice Kagan tied this decision, which was a Clean Water Act case, to a ruling last year on air pollution under the Clean Air Act. What do you see as the larger trend here in environmental cases?

Kim:

Justice Kagan, essentially, cut and pasted her objection in this case from her objection in the last case, which essentially boils down to this. She accused the majority of, quote, "putting the thumb on the scale," basically, against the EPA and in favor of any private landowner or business who oppose what the EPA is doing, which, of course, think about it, businesses and private owners will often oppose what the EPA is doing because what the EPA is doing is looking at the greater good, looking at their role in protecting the earth, protecting the environment, and a lot of things that both individuals and particularly businesses do are not sustainable, are not in the best interest of the climate, and that's why it's there and they're going to oppose them.

The Supreme Court is increasingly both because it's a very pro business court and also because they really don't like an overly broad executive branch, which these agencies are a part of, have been consistently chipping away at that. What Justice Kagan finds very wrong is the fact that anytime Congress does not specifically say, "Hey, we are authorizing you to set specific rules with respect to wetlands and what constitutes a wetland and what property can be built on." Can Congress do that? Of course not. Congress cannot govern with that level of granularity.

That's why we have agencies that are filled with experts. We've talked about this before with respect to, say, the FDA and mifepristone. It is up to the agencies to make these kinds of really detailed decisions about the safety and what should be happening in safety with respect to waterways, just like safety with

respect to drugs. Congress cannot set rules with that level of granularity because they're not scientists, they're not experts, but anytime Congress doesn't set a rule with that level of granularity, the Supreme Court comes in and says, "Well, that's not specific enough, and you weren't authorized, Agency, to set these kinds of rules."

Kagan has essentially had enough, even in a case like this, where they ruled ultimately that in the specific case, the building that this couple wanted to do on their land in Idaho would've been okay. I'm going to also say just so that people aren't confused, this could be sometimes the Supreme Court tries to build a consensus. This was a five-four decision. It's possible that Kagan and the other liberals weren't sure initially that the wetlands provisions didn't apply to this couple, but they moved enough in order to try to get, and they got Kavanaugh to join them. Maybe they thought they could get a fifth person. Maybe thought they could get Barrett or someone and say, "Look, if we say that this couple ..." This is all speculation, but if we say that, "The regulations would've allowed this couple, would you keep us from going that step farther and really kneecapping the EPA?"

They may have tried to build a consensus opinion, and in doing so, gave the opinion then in this case that what the Sacketts were doing didn't run a foul of the regulation. That's always a possibility here. So I leave that open, but that just shows how far the Supreme Court, at least some of them like Kagan and the other liberals, are trying to save statutes like the Clean Air Act and Clean Water Act from extinction from the rulings of this court.

Barb:

This case reminds me of the Lorax, right? "Oh, we're going to cut down all the Truffula trees so that we can make more Truffula factories," and all that, and at the end of the day, what's left? It's all gone. It's all depleted. It's all used up.

Kim:

Oh, that is great. Thank you for taking me from my administrative law rabbit hole and using Dr. Seuss to bring me back to reality. Barb, thank you.

Barb:

So this couple gets their house, yay them. They get to cut down the Truffula tree, but what does that do to wetlands across the country? Well, Jill, Kim raises an interesting point about the battle against the so-called administrative state. It isn't just the EPA that the Supreme Court seemed to be going after. It's all of these federal agencies. What do you see as the danger when the court is striking down all these regulatory rules that are decided by federal agencies, the experts, as Kim says?

Jill:

So I think Kim made a very strong start at answering that question. It is a danger to how we run our government. There is no way that any Congress could ever do the kind of work that the agencies do. They don't have time, they don't have staff. You would have nothing left in Congress if that's all they could do was to implement regulations. I'm going to raise a slightly different issue, which is here, the regulation was crystal clear. I don't want to get into the definition of adjacent and adjoining and the technicalities of it, but it's very clear that the waters that are included in the EPA's jurisdiction include waters well beyond what the Supreme Court has now said is included. They have limited it to contiguous and continuous flowing waters to the waters of the United States. That's simply wrong. It hasn't been the rule for many, many, many years.

This is part of what I think is one of the most serious things that the GOP has taken on, which is to eliminate the entire regulatory administration of our government. As Kim said, that goes to the FDA and the ruling on mifepristone, but it would include every single other agency wouldn't be unable to pass regulations and enforce them if this ruling stands and if the court can substitute itself, which is what it did here. It said, "Okay. We're just going to ignore what the EPA says. We're going to make the decision about what the definitions are."

I think it's a little confusing to read these opinions and the concurring opinions, but they really, in the end, make it very clear ... The last paragraphs of both Kagan's opinion and Kavanaugh's opinion make it clear that what they're saying is they're reversing only because in the particular facts of this case, the Sacketts could build their house, but that the Ninth Circuit opinion should have further proceedings to determine things that it really is not up to the court to define what the EPA's jurisdiction is in this way.

So it's a very big danger for every agency. The FTC, everything could be at stake here. It's one of those things that we've pointed out. It's along with Moore v. Harper and the independent state legislation. Those could just eliminate democracy. So we have to be careful here. It's a very important issue.

Barb:

Federal agencies are the only things really that prevents capitalism from eating us all. That's what we're allowing to happen by throwing out all these regulations that are designed to protect the public good. Businesses and property owners get to do whatever they want, but we lose some of those protections that were important for the public good.

Kim, last question for you. Earlier this year, you wrote a really interesting piece in the Boston Globe about the impact this case could have on people of color. You wrote that the repercussions of the justice's ultimate ruling will be felt far beyond Chantell and Michael Sackett's property line. What did you mean there?

Kim:

This, like many cases when it comes to the environment and protections of the environment, the negative impacts of climate are felt in marginal communities most. It hits them the hardest, and therefore, any rolling back of the federal regulations meant to protect these wetlands or other environmental factors are going to hit people of color the most. I came across this story after reading some of the amicus briefs in this case, and one was submitted on behalf of a Native American community in Minnesota that depends on a particular type of grain, not only for their diet and their own sustainability, but also as a cultural element. It's in their rituals. It's been a part of their culture for generations, and it's the only place in the world where this stuff grows and it grows on these protected wetlands. They've actually used these wetland rules to oppose a plant from being built that would've polluted that water and made it impossible to grow this grain.

So without these protections, that entire community could be wiped out. Also, think about the farmlands on the wetlands down in places like Louisiana that have been polluted and have caused Black and Brown people to have to migrate away from land that they've lived forever. Think about the fact. There's this stereotype about Black people and how we can't swim. I can swim, by the way, but it's not that Black people have any inability to swim that is latent. What it is is, culturally speaking, in the United States, Black people have far less access to clean water. They don't grow up swimming in waters. They're not near beaches. They're not near clean streams. They're not near places where the water is clean to swim. So they have less of an opportunity to have that experience, and that's why they're less likely to swim.

So you have things like this that are eroding the protections of the waters that we have. Of course, it's going to hit Black and Brown people and marginalized people more. It's built into the system. We talk about systemic racism or institutional racism. That's what we're talking about. We're not talking about somebody saying, "Oh, I hate Black people." We're talking about a system that impacts Black and Brown people hardest no matter what happens. So I'll link my story in the show notes if you want to read a little more about it.

Barb:

My experience with discriminatory impact comes from gender issues being a woman, but I think it's why we need diverse groups at the table just to raise issues. Well-meaning people often simply overlook the impact that decisions have on people who aren't like them. They mean well, but they just see the world through their own eyes. So it's useful to have people at the table to raise these other issues.

Kim:

Well, some of them mean well. There was a point in Alito's opinion in this-

Barb:

Fair enough. Fair enough.

Kim:

... that says, "All this evidence that they put in about the impact of this ruling, we're going to disregard that. That doesn't matter." So I don't think he means well.

Barb:

Fair enough.

Kim, even from here, your skin is positively glistening. What is your secret?

Kim:

I noticed that all of you had great-looking skin when we were together live on tour, and I think I know why. I think it was because of OSEA. Spring is the perfect time to refresh your skincare routine. For us, OSEA's ocean eye serum was a great place to start because nothing says refreshed more than bright, wide awake-looking eyes. Jill has even convinced us that she actually sleeps, even though we know she doesn't. Do you, Jill?

Jill:

I don't. You would be easily deceived to think I went to bed before midnight, but I do have to say that that product does make a difference. All I can say about OSEA's ocean eye serum is that it checks all the boxes for all of us. It brightens, smooths, depuffs, and awakens the entire eye area. It's like a wake up call for your eyes, and the texture feels amazing. You're going to love applying it and watching the results on your skin in realtime.

Kim:

It's like a shot of espresso for your eyes. The cooling roller ball brings energy to your face right away. The ocean eye serum is clinically proven to brighten and reduce the look of crow's feet and under eye bags

while diminishing puffiness and dark circles and smoothing fine lines and wrinkles. It uses high performance ingredients such as hyaluronic acid peptides and Undaria seaweed, so you know it works.

Barb:

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Jill:

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Hey, we haven't talked about justice reform lately, and I want to talk about something that may be injustice reform, and that's more states are turning shoplifting misdemeanors into felonies, even though statistics show that harsher penalties have a disproportionate impact on people of color and do not reduce crime. We all remember the '90s and have seen that stricter laws did not help and had a disparate impact on people of color. Have we learned nothing since the '90s? Kim, what's going on? What is organized retail crime, which is what we're now calling what was used to be just shoplifting? Is it a real problem that warrants enhanced punishment?

Kim:

So this is really interesting. I stumbled across this. I had read a piece in the Marshall Project a while ago, and then lately, I've seen a little bit more about the push to strengthen laws meant to attack shoplifting to, in a lot of instances in almost a dozen states, to make what was a misdemeanor into a felony when it comes to shoplifting, and these laws are being pushed by companies, retailers, and their lobbyists, companies like Walmart and Target and Home Depot, who say they're getting killed by shoplifting, that shoplifting has increased, that it's really forcing them to increase their prices or even close their stores.

That is really terrifying to local communities. Even in New York City, Mayor Adams has said he didn't want to see his stores close in New York City and that he is amenable to these sorts of laws. Well, turns out from the reporting in the Marshall Project and elsewhere that there really hasn't been an increase in shoplifting per se. That's point number one, which makes these laws look a little suspect.

Also, we know from history that these punitive laws don't actually work to deter crime. Thirdly, if we believe these retailers and say that it is this organized retail crime that's hitting them, which means an organized scheme to shoplift in a way that you can take significant quantities of product and sell them on the secondary market, then is increasing the penalty for the people who actually take the thing from the shelf as opposed to the ringleaders of this, is that going to work anyway? Probably not.

So it just raised my concern that this could be like we saw with the drug wars of the 1990s, something that might be well-intentioned, but in the long run end up not working in terms of deterrence and also leading to overcriminalization, especially of people of color.

Jill:

It's such a good point and something that really needs to be taken into account. So Barb, let's talk about some of the reforms that have been put in place to deal with these claims, which, as Kim has noted, aren't supported by statistics in the sense we're going to have to acknowledge that the data shows that the loss from what is now called organized retail crime is very small and that employee theft is a bigger problem and that mismanagement of inventory is another big cause of the shrinkage, but some laws have been passed that are pretty stern. So let's talk about those.

Barb:

So Louisiana has converted shoplifting, retail theft from a misdemeanor to a seven-year felony if three or more people are involved in the theft. That's their definition of organized retail crime. There are 11 more states who are considering similar laws. I think, certainly, retail theft is a problem. It affects all of us who are consumers, and if stores shut down, it affects communities. So I think it's a problem that can't be ignored, but it's really important that you have accurate data when you're trying to solve a problem.

I think there are a couple of things that concern me. One is that although the sheer dollar value of the retail loss may have gone up, some of that reflects the increase in prices. So if last year it was 10 million dollars and this year it's 12 million dollars, is it simply because we raised the price of a handbag from a \$100 to \$120? So that could be driving some of these numbers.

The other thing is this definition of organized retail crime as three or more people. If Jill and Kim and I go into a store and one of us grabs something, the other puts it in her purse, and the other serves as a lookout, is that part of organized retail crime? I think that what they really want to go after is enterprises, criminal enterprises, racketeering groups, and there are some that send out pawns, often young people. They'll pay them \$100 to go into one of the big box stores and steal some things knowing that the kid is taking on all the risk, but for a low-income kid, for \$100 here or there, it might be well worth the risk, they're the ones who get caught and not the people pulling the strings up at the top, the bosses.

So I would favor steeper penalties against the bosses, maybe not so much against the pawns. I also think that increasing the penalty may not be the best way to solve this problem. Jill, I think you raised this that most of the studies show it isn't so much the length of the punishment as the certainty of getting caught that has a real deterrent effect. So maybe these stores are simply trying to outsource their own security problems, having police, law enforcement, prosecutors prosecute people with steep penalties when instead what they should be doing is hiring more security guards.

I know just the other day, I took my mother shopping to a large grocery chain that also sells a lot of retail merchandise. When I left the store, the greeter asked to see my receipt. That has worked. That does work. She was an elderly retiree sitting in a wheelchair, but she did the job. So maybe we just need more of that than increase penalties for people who are shoplifting.

Jill:

Very good points. To make this a really fulsome discussion, let's talk about some of the arguments that are being made on the other side. We've talked about that this impacts the wrong people. We're not getting to the people who are running this as a profit operation, which is the organized people, not the people who are actually doing the stealing. There's been some arguments that mobs are a problem and that stores and police can't or don't or won't deal with it, so they need to make these laws to get to mob crimes.

In Chicago, we have had mobs entering stores and creating mayhem and theft. There also have been arguments that when you up the value of what constitutes a felony, so saying that it's a felony if it's \$1,000 instead of \$500, that that actually increases the crime because people think, "Oh, I can steal \$950 worth of stuff instead of getting caught. It'll still be a misdemeanor."

The other argument being made is that bail reform is leading to more crime because people are not in jail while they're pending trial and they're out there committing crimes, even though statistics show that very few people commit new crimes while they're out on bail. So let's look more at what are the ways to do it besides upping the punishment for shoplifters. Georgia and Delaware tried doing that. In Texas, they tried it, but it led to racial disparities. So can you guys talk about what you think would be better ways to deal with or why those ways didn't work?

Kim:

Well, let me back up a little bit before we get into what might be better solutions to that. A lot of what you're talking about, Jill, and what I suspect a lot of this is about, frankly, is over the past several years, and certainly since 2020 and the racial so-called awakening in our country, which turned out not to really be one, there was a push to put ... Even before that, it was really part of the anti-over-incarceration push to try to change laws, to really get at the fact that we had over-incarceration in general.

A lot of which had to do with very petty crimes like shoplifting that could really destroy someone's life, and particularly the disparity, the racial disparity in over-incarceration, that there was a push, a bipartisan push, might I say, for a long period of time to rectify some of those laws and to change laws, to make them less punitive, to make them fit, to make the punishment better fit the crime, and to not create a basic pipeline to prison for so many people, particularly in marginalized communities, and that resulted in changing a lot of laws to lower the sentencing, to make parole and other lesser punishments more broad, to give some clemency to people who committed these crimes in the past so that they can get a second chance at a real life, and there was opposition to that.

I think part of this is a push to try to reverse some of those things that were done to say, "Ah, we shouldn't have been soft on crime and led up on these criminals and we need to really crack down again," and they drum up either actual fear about actual events happening or some cockamamie stuff to say, "Oh, we have mobs roaming the street. You can't go to Chicago anymore. Chicago's a terrible place," in order to try to increase some of these crimes and scare people, frankly, into thinking that they are necessary because they would prefer to have over-incarceration and disproportionate impacts on people of color in order to keep these policies in place.

I think a lot of this is disingenuous. I don't know a lot about the retail lobby. I think they generally probably are mostly concerned about their bottom lines and saving money, and maybe it's easier to push for laws like this than to deal with their own employees. I worked at drug stores and other retail places when I was in college, and let me tell you, all the theft was coming, well, 90% of the theft was coming from the people who worked there. It just was. That's something that happens. They have the access to it and they create their own little rings. It wasn't the people coming in. The people who were coming in who were caught shoplifting, honestly, it was for stuff that they needed because they didn't have money. It was medication or diapers for their kids. It was actually really sad.

If I caught them, I would try to make sure that the cops weren't called because it was a societal problem. These people weren't dangerous. So I think that this is a push to reverse some of the progress that has been made on criminal justice reform. Maybe I'm just cynical, but I want to hear Barb's thoughts.

Barb:

Well, I just think I'd like to see more data before we start changing laws. I'm sure that there is an issue with organized crime that is stealing from some of these big box stores. You can buy large electronics, you can sell them on the street. If this is a problem, let's deal with it, but as we said earlier, I don't know that the data reflects an increase in the number of items being stolen so much as the dollar value of the items being stolen. Are we looking at low level shoplifters or organized criminal activity? There are other ways to go about organized criminal activity using investigators and intelligence information to share information as opposed to just catching the low-hanging fruit when someone walks out the door with something stuffed in their pockets.

Then the other thing, I'd rather see more prevention than enforcement. So you can have prevention by having stores engage in best practices, having somebody at the door to check the receipt on your way out, more monitoring. You can put those devices on items that ring when somebody tries to walk out the door with them. So I guess I'd rather see more investment there, but that requires the retailers to invest as opposed to the government to invest. Perhaps that's why they're trying to pass this expense onto the government, into society.

Jill:

It does seem like getting caught is the best deterrent, and that harsher sentences are not going to have any outcome, especially if they don't get to the ring leaders of the mobs that go in as opposed to the individuals, and also being careful that we define the crime. If you're taking it, as Kim was saying, people frequently take what they need and can't afford, and that is a societal problem that needs to be dealt with as opposed to people who are doing this for economic gain, for selling in the private market. That requires much bigger volume than taking one package of diapers. So we need, as a society, to deal with this, and retailers need to deal with it, not the law enforcement.

Barb:

Well, now is the time for our favorite part of the show when we answer your questions. In fact, this was my favorite part of the live shows when we heard questions from the audience, and the questions were so good, so well-informed as they always are in the questions that we receive from you every week. 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 and we'll answer as many of your questions as we can.

So today, our first question comes to us from Kathy who asks, "How can Trump qualify to be president if he has been proven to be not responsible with security documents?" Jill, you want to take a stab at that one?

Jill:

Sure, and I'll even try not to be political in answering the question about whether he is or isn't qualified in a broader sense. Technically, to be elected president, you have to be 35, a natural born citizen, and to get enough electoral votes to win the election. There are some things that might disqualify you, which would include a conviction for insurrection, but other than that, it doesn't matter. You can be a felon and you still are qualified by the Constitution to be the president. So making sure that you vote and get out the vote is the only protection we have from someone who we think may have done things that are not the kind of person you want to be the president.

Barb:

God save us from ourselves. Our next question comes to us from @High26934106, who asks, "Does anyone know what will happen if or when Trump does not pay Eugene Carroll, and what's his deadline?" Kim, you want to answer that one?

Kim:

That is an interesting question. So deadline, there's not necessarily a deadline yet because Donald Trump has the right to appeal this opinion, and generally, that will delay the actual court judgment that requires an award be paid. Usually, that will be put off pending appeal, but once the appeals are exhausted, the judge, the trial judge in the case can impose a deadline with in which to pay this amount of money, the amount of the judgment, and if a defendant refuses to pay, then Eugene Carroll Carol can seek a court order to attach his property until he pays. They can attach property, they can attach earnings, wages, all kinds of things to go after to actually make good on this money.

It is not always easy. I think the most visible example of this is the Goldmans against OJ Simpson. OJ Simpson can't sign an autograph without that money going to the Goldmans because they attached everything until the full amount of the civil judgment that they got is paid, and that's exactly what she can do in this case.

Barb:

Garnishment and attachment. We had a whole department at the US Attorney's Office who did that to collect legal debts. So they have ways of making people pay.

Kim:

Indeed.

Barb:

Our third question comes to us from @GaleColleenH, who writes, "I'm having a back and forth with a friend on the concept of church and state. Since it's not specifically in the Constitution, she says it's in the writings of Jefferson and not really valid. Any response that can help me with this?" Yes, Gail Colleen H, you are right. This is part of our First Amendment. There are two clauses in the First Amendment that relate to this. One is the free exercise of religion, and that's the one that allows us to exercise our religion the way we choose, but there's a second clause in the First Amendment that's referred to as the establishment clause. It should actually be called the anti-establishment clause because it says that the government may establish no religion. There can't be a formal religion of the United States.

So that's the one that prevents the government from favoring one religion over the other saying, "We're a Christian country," or posting the 10 Commandments or those kinds of things. So there can be no officially sanctioned religion in the country. So you, Gail Colleen H, are right.

Thanks for listening to #SistersInLaw with Jill Wine-Banks, Kimberly Atkins Stohr, and me, Barb McQuade. You can send in your questions by email to SistersInLaw@politicon.com or tweet them for next week's show using #SistersInLaw. Please support this week's sponsors, Article, Kitsch, and OSEA Malibu. You can find their links in the show notes. Please support them as they really help make this show happen.

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Hey, you guys. So it was so much fun. I thought during the live shows we had a playlist that we played before the show. We all contributed various songs to it. I know I asked for Respect by Aretha Franklin, and I think one of the songs, Kim, that you put in was Sisters Are Doing It For Themselves by The Eurythmics along with Aretha Franklin. That was great, but one of the things that surprised me is they played our little theme song and it went on much longer than I'm accustomed to.

Kim:

It's so long.

Barb:

It's so long and it's actually quite beautiful. Did you know that that song has a name?

Jill:

No. What is it?

Barb:

Well, do you know, Kim?

Jill:

No.

Barb:

It's actually called Big World for a Minnow By Trevor Kowalski.

Kim:

Huh.

Barb:

I saw it on the playlist. So there's a little SistersInLaw trivia for you.

Jill:

Oh, my God. Here's another bit of trivia. I was in my hardware store, my local hardware store, Lemoi, and I'm all of a sudden hearing a song, which is what Stephanie Miller uses when I'm on her show, and you want to dance to it. I'm going, "Oh, my God," and it's a real song. They were playing my name. I forgot the words to it exactly, but imagine being in your hardware store and hearing your song played. It was really remarkable.

Barb:

Well, and speaking of music, I think we ought to just say what a contribution to music we had from Tina Turner. Rest her soul. What a great contributor to the world of music and sisterhood.

Kim:

... and survivorship. She's one of the greatest of the survivors for a lot of issues that we talk about.

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