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Barb:

This summer, HelloFresh is here to take the work out of eating well with meals like lemon salmon, which was fantastic. Try it today and get 16 free meals plus free shipping with code SISTERS 16 at hellofresh.com/sisters16. Everyone can also find the link in our show notes. Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Joyce Vance, and me Barb McQuade. Jill will be back next week and we already miss her.

Kim:

Oh, Jill.

Barb:

Jill picked the wrong week. What's the line from Airplane! I picked the wrong week to stop sniffing glue? We to go on vacation, sister. Well, as you all know, it's been a wild week and today we will be discussing the indictment of Donald Trump. I've been waiting to say that for a long time.

Kim:

The federal indictment.

Barb:

Federal indictment of Donald Trump. We'll also talk about the Supreme Court delivering a modest victory for voting rights and the Tennessee judges order striking down a ban on drag shows. And as always, we look forward to answering your questions at the end of the show. So I know we have a lot to talk about with this Trump indictment. And I also want to appreciate my sisters for working hard between news commentary today and moderating a talk with the former Attorney General of the United States, Eric Holder today to accommodate my schedule because I'm doing something incredibly important, which is taking my daughter to downtown Detroit tonight for the Taylor Swift concert. Woohoo.

Joyce:

There is simply nothing more important in life than that, right? I mean, no, I'm serious. That's it.

Barb:

Well, I would agree, except I don't even get to go to the show. I'm just taking her and her friend. It's expensive for me to go it.

Joyce:

Are you kidding? That's an outrage?

Barb:

So she and her friend are going, and I'm going to go find some place to set up shop and read.

Joyce:

But Barb, have you seen that Swifties have been gathering outside of her shows for people who can't get tickets and having this outside of the show experience? It's been apparently really good community and great music. You should do that and report to us. Tape what you can hear and send it to us.

Barb:

I'll come back with friendship bracelets, it'll be cool. But it got me thinking, sisters, tell me about a great concert experience that you've had. What was maybe your first concert or your favorite concert or a meaningful concert? Any good experiences that you can share there?

Kim:

I have a good one. It was one from a few years back. And so, one morning, I don't remember if I saw it on Twitter or I heard it on the radio, but it was a Tuesday. It was a workday. And I saw suddenly found out that Stevie Wonder was going to play a free concert in a park in Washington DC, and it was a surprise thing. And it turns out he was in one day doing surprise popup concerts in DC, Philly, and New York City, and DC was first. And it was going to be at 10:00 in the morning. And so I immediately start texting my friends.

I'm like, "That's it. I'm playing hooky. I'm calling in sick. I don't care what it is. I'm getting down there." And I texted my friends and none of them could go. They all had work obligations I did too, but it's Stevie Wonder. So I make my way down. I just book down to where this park is, and there's maybe a couple dozen people there because word hadn't gotten out yet and we're waiting. The concert thing was set up this, the stage was set up outside and I'm right at the front, and sure enough, Stevie Wonder comes out and plays for an hour plus. It is fantastic.

There's no more than a couple 100 people there, and it was just so special and wonderful, and he sounded great. Now, by the time he got to Philly and New York, word had got out, so thousands and thousands of people had descended on those venues. But in DC we had this block party where there were no more at the height than a couple 100 people on a weekday morning jamming to Stevie Wonder. It was really one of the most special things I've been a part of.

Joyce:

That is utterly amazing. I'm just literally sitting here dripping with envy because that sounds so good. I love concerts. And as a native of Los Angeles, I got the chance to see a lot. It's possible that in my misbegotten high school days, we may have spent a little bit of time chasing around to see if we could find Steely Dan when they used to occasionally pop up and play in these little clubs down in Malibu. And then as a young lawyer, I actually saw REM before they got huge. Kim, I wonder if you know this theater, I don't know if it's still there. The Schubert Theater in DC it's on 9th Street or it used to be on 9th Street.

It was small, and we were in the sixth row, and I have never forgotten how good they were that close up. But my favorite concert, you can tell I could talk about this for days and I won't because we have stuff to get to, but my husband and I went to see The B-52's when I was pregnant with our first kid. And during the song, Love Shack was the first time I ever felt him move. He went nuts and started rocking and rolling. And it's one of those things that you never forget. Oh honey, the first time I ever felt you move. But love, love concerts. Barb, I hope you have a fabulous time tonight, even if you're not in the arena.

Barb:

Yeah, thank you. My daughter and her friend are super into it, so it'll be fun to experience it through their eyes and ears, so it'll all be fun. All right, Kim, you always have those great looking nails. What's your secret?

Kim:

I really love Olive and June. Right now I am wearing this lovely light blue springy color from Olive and June. And best off, I was able to do it on my own time and in my own house. Nothing is better than giving yourself the perfect home manicure with Olive and June. They have everything you need for a salon quality manicure in one box. And you can customize it with your choice of six polishes from a wide variety.

We love how their polish doesn't chip and lasts seven days or more. I think I'm on at least day 10 on mine. And when it comes down to it, you're getting great savings because it breaks down to just \$2 a manicure or less. Not only do you get salon worthy nails at home with Olive and June, you'll immediately notice the difference you get when you craft your perfect nails with their mani system.

Joyce:

That means no appointments, no traveling to find a suitable salon, and you save money while putting your nails on your schedule. Your friends, family, spouses and coworkers will all be amazed. I wouldn't think of using anything else before going on the air. And I've got to say I was grateful when Trump's indictment dropped in the middle of nowhere and my Olive and June manicure looked fresh, even though like Kim, it was over a week old. Olive and June has amazing looking pressons that go on quickly. They look so real last so long and have any size you can imagine so you're getting the perfect fit.

Kim:

That means non-damaging manis in less than 10 minutes, that go on much better than with gel. They're even an allure, best of beauty winner. And with their quick dry, you only have to wait a minute and can feel confident knowing they'll last for five days or more with only one or two coats.

Barb:

So visit oliveandjune.com/sil for 20% off your first Manny system. That's O-L-I-V-E-A-N-D-J-U-N-E.com/sil for 20% off your first mani system. You can also find the link in our show notes.

Joyce:

So lots of movement in the last week with Trump, and particularly in connection with the Mar-a-Lago investigation. And you all know I had a whole list of questions I wanted to ask you to get your thoughts about it. And then yesterday with very little warning, there's an indictment in Florida. Today the indictment gets unsealed. Just I think about an hour or so before we tape today, we actually saw the indictment itself. And I think rather than going ahead with a preordained idea of questions, let's just talk about what we know so far. I mean, Kim, do you want to start and talk a little bit about what you see in this indictment and what your thoughts are?

Kim:

Yeah, I'm probably the worst person to start today because you guys you're hearing us on the fly, and this is in real time that we are digesting this. I actually just came from an event in Boston where former

Attorney General Eric Holder, Barb and Joyce's former boss was at, so I haven't even had a chance to go through the indictment, but-

Joyce:

He said really nice things about Barb in me, right?

Kim:

Well, he said nice things about Joyce. He said he does everything that Joyce fan says.

Joyce:

That's not true. He loves Barb.

Kim:

To be fair, I didn't ask about Barb, but I didn't have a lot of time. I just was trying to get in the question about Joyce's chocolate chip cookies in this time, but I digress. I think just off the top, the importance of this is a couple of takeaways. I think it's really important for us to understand this, and it in no disrespect to Alvin Bragg at all, but these charges are far more serious. When we're talking about the Espionage Act, okay? I know people hear that and think about, "Oh, it's like spying and giving secrets to foreign..." Even if that doesn't happen, there is a reason very strong, important national security reasons.

And I want to hear Barb talk about this because she's the expert on that, that we have laws that criminalize the mishandling of sensitive documents. They don't even have to be classified under the Espionage Act, but we have a reason that we keep these documents protected. And what is clear is that Donald Trump didn't just mishandle documents. This wasn't accidental. The more we are hearing about the evidence that exists is that he had a lawlessness about him with respect to them. He knew what he was doing was wrong, allegedly, I'll say allegedly to all of this.

He is assumed innocent until proven guilty. But the evidence suggests according to what is being alleged, that he knew, he had documents that were not declassified with his mind or by any other means, and he kept them anyway, and he defied the directives by federal authorities to give them back. And that is problematic. We cannot allow that to happen in our country because it puts potentially all of our security at risk. So moving forward, I'm going to be looking for why he had them, what he potentially had to gain? Because I think one thing I have learned from covering Donald Trump from his ascension into national politics is he does everything because there's something in it for him. And that's where my load star will be as I cover this, as I look at this and as I watch these things play out. So I want your you guys thoughts too.

Joyce:

So Barb, I've been dying to hear your take on this because you have a national security background, you understand the entire classification system, why these documents matter? What are relationships with foreign countries look like? How do you feel now that you've seen some of the actual conduct that Trump engaged in?

Barb:

Yeah, it's far more extensive than I expected it to be. So much has been written about this case that I kind of expected to know what it would look like, but it was reported that it was seven counts. It's actually 38 counts. Part of that is because they identify 31 particular documents that they refer to

specifically, and they describe them by nature. Of course, they can't disclose the secrets that are in them, but they relate to things like confidential briefings about foreign countries, about military capabilities, about nuclear capabilities. And so, one of the dangers of the way that Trump treated this classified information is that we share information with foreign allies.

We give them information and they give us information, and we do that so that we can all work together as allies on the world stage. If you know that this former president and possibly future president is so reckless with your secrets, I think if you're an ally, you become less likely to give secrets to the United States, which would be to the detriment of our national security. But one thing about the charge though, Joyce, is that as you note, it's charged under the Espionage Act and not under the law that makes it a crime to mishandle classified documents. And I think one of the significant reasons is that the Espionage Act makes it a crime to willfully retain documents or information about the national defense.

It does not require that documents be classified. Part of that is because the Espionage Act was passed around World War I before there was a classification system, which didn't come along until later, but I think it's important because to the extent that Trump either says he did declassify the documents or thinks he declassified the documents or can convince a jury that the government can't prove that he didn't know, he didn't declassify the documents, all of that nonsense is off the table as long as you can show they pertain to the national defense. And based on the description about military capabilities and nuclear capabilities and those kinds of things, it appears that they absolutely pertain to that.

So I think it is a very serious matter, and as Kim has said, this is not an inadvertent, "Oh, I brought home a bunch of boxes and I had no idea what was in them." This was a long term scheme to prevent the Justice Department from finding what he had, lying about it, concealing, covering up, moving boxes. And so I think is a very serious crime and very distinguishable from the kinds of things that we've heard about Joe Biden and Mike Pence retaining documents after they left office.

Joyce:

Whether or not something is national defense information is a question of fact, which means that if there's a trial, the jury gets to decide whether these charged documents are national defense information. So I want to underline the point you make because I think it's an important one. The government in this extremely well drafted complaint sets that up in the third paragraph. They start by talking about the sorts of documents that Trump was pilfering while he was the President and putting into his little treasure boxes.

And some of the information included information about defense and weapons capabilities both for the United States and foreign countries, US nuclear programs, potential vulnerabilities of the United States and its allies to military attack, plans for possible retaliation in response to a foreign attack. This is hardcore national defense information. And to the extent that there's been some suggestion that juries might want to be tribal, that there might be some jurors who would not want to vote to convict the president, I think DOJ has done a great job of posturing this case in a very apolitical fashion that talks about national security and not who you voted for in the last election, but they did bring it in Florida, Barb. Did that surprise you or do you think there's something strategic going on?

Barb:

It did surprise me only because early on we were hearing that Washington DC Grand jury was looking at this case and was making rulings about who would have to testify and the like, but when you read the indictment, it is apparent that the bulk of the illegal activity occurred after Trump left office and in Florida. And so for that reason, it makes sense. The law says that venue cases should be filed and tried in

the district where the conduct occurred. And sometimes you can have more than one choice, if conduct began in one district and passed through another district and ended up in yet a third district, you could charge it in any one of those.

If there's a conspiracy, you can charge a case any place, any part of the conspiracy occurred. But I do think that there was a critical nexus of facts that occurred in Florida, and if they had charged this in Washington, which some argue you might have a more favorable jury pool in Washington DC than you have in Florida, I think they would've invited motions to dismiss the case for improper venue, which could delay the ultimate trial. And I think you want to get this case tried before the 2024 election. So for that reason, I think it's probably more legally sound and probably strategically shrewd to file the case in Florida. I don't know, what did either of you think? Do you think it's a mistake to do that?

Kim:

No, I think, well, and I appreciate the prosecutor's eyes perspective of this. One thing that I thought, and I don't know if this is why, but one thing that I think is good that this is proceeding in Florida is because if this was proceeding in Washington DC the first thing that Donald Trump and his acolytes would say is, "Well, the liberals in dc they hate me and they're trying to come and get me." This is Miami-Dade County, which went not only solidly for Donald Trump, but more solidly for Donald Trump in 2020 than it did in 2016. He cannot claim that this is some sort of politicized judiciary.

And I even have mixed feelings about the fact that Judge Aileen Cannon is on this case. You all remember Judge Cannon? Judge Cannon is one of the reasons why we got the special counsel in the first place because she kept making rulings in the initial part of this investigation that ended up being overturned by even the very conservative 11th Circuit there. This is a Trump appointed judge who seemed to be engaging in a bit of activism.

But listen, at the end of the day, this is going to go before a jury, and I think I believe in the people who are going to be in the jury pool and selected to come to a just decision. And at the very least, if there's any shenanigans on the part of Judge Cannon, and we've already seen the 11th Circuit, be able and willing to step in here. And again, you can say that it is some judge. One of the worst things, threats to the rule of law is the way Donald Trump attacks judges. He's been doing that from the beginning, and I think if he's unable to do that in this case, that could be a benefit. What do you guys think?

Barb:

That's an interesting perspective, Kim, because, I know our listeners can't see me, but you can, and I'm replicating that emoji, scream. I saw her name on the indictment and thought, "Oh my gosh, how could it be her?" I'm still holding out some hope that there's some way it's not going to be her. But she was so awful in the search case. And I do worry that she could really wreak havoc in this case. I agree with you that it takes the political issue off the table. Trump loves to go after the judges. I mean, he appointed her and she's ruled in his favor in the search, but boy, her decision in that search issue.

Remember where she wanted to appoint a special master and all that was so contrary to law that I really worry about what she could do in this case. And I think she could do a lot of things to really delay it, or she gets to make decisions during voir dire. She could really help stack the deck. So I don't want to engage in that kind of thinking because like you I think one of the real harms that Donald Trump has done to our country is to undermine public confidence in the judiciary, but I don't know, on this one it might be well-placed. Joyce, what about you? What do you think?

Joyce:

The reporting has been all over the place, and I may have missed something because we've all been running around today, but I didn't have clarity that she actually was the judge. The case would be assigned to pre trial.

Barb:

Well, her name stamped on the indictment.

Joyce:

I was going to say, now that it's unsealed, it seems much more likely to me that she is. I'm going to go out on a limb here and suggest that Judge Cannon may, I'll say "voluntarily" in quotes, recuse on this one. Given her track record in this case and the law in this circuit, this is the 11th Circuit where I am as well. And although it's a squishy standard, the law here says that a judge should not stay on a case if their appearance of a conflict is so extreme that it would undermine public confidence in the objectivity of the judiciary. We're an old school conservative circuit, even though Miami's included, we are very southern. We worry about things like the appearance of judicial impropriety. I really would not be surprised to see her walk away from this case.

Barb:

Well, I don't know. I'm a little more skeptical because I think of recusal issues as things like I have a financial stake in the case or I know somebody in the case or one of my relatives is involved in the case. The mere fact that you've ruled against a party in some way in the past, even if it turns out to have been wrong or egregiously wrong, is often not enough to get a judge recused, I guess, unless as you say it's voluntary.

Joyce:

No, I mean, that's correct. That is explicit in this circuit that it can't be purely based on people disagreed with your ruling. I think here there's a little bit more than that. She made egregiously bad rulings. I know you remember the tenor of those 11th Circuit opinions. It wasn't you got it wrong and it was a close call. It was like, "Hey, you didn't have jurisdiction to hear this matter from the outset." And there is of course, the appearance of her bias for Trump in a tremendously important case that will undercut public confidence. I mean, if there is an acquittal in front of Judge Cannon, people will talk about that forever and it will be hard for folks to accept it.

Take any other judge in the circuit. And I think that there are three or four other Trump appointees, there are Obama appointees, there's a Clinton appointee, there are even a couple of Bush appointees. People will say it's a judge doing their job, at least for the most part, but like you, Barb, I am very skeptical that she can conduct a fair trial in this case. And I think there are numerous opportunities she would have to in a subtle fashion that couldn't be addressed on appeal to really stick her thumb on the scale of justice. So that's something that I think is disturbing. What else jumps out at you guys now that we've seen the indictment itself?

Barb:

One thing that jumps out at me is if you read this thing, it's a speaking indictment as they say which is they kind of show a little bit of the evidence. It isn't just the bare bones, parrot the language of the statute, they actually described some of the evidence. And it appears that some of their key witnesses are going to be Trump's lawyers and Trump employees. They've got text messages and notes from the

lawyers based on conversations, and they've got some quotes from Trump about saying like, "Oh, well, what if we just tell him, here are the documents and we don't show them all of them, and we keep some of them."

And directing Walt Nauta to move the boxes around and when Nauta gets questioned, he lies about it and says, "I don't know anything about it. I honestly wish I could help you, but I just don't know anything about it." And they've got text messages between him and a coworker talking about moving the boxes. So I think that's some really powerful evidence when there is this chronicle that occurred in real time and when the witnesses are Trump allies.

These are not people he can paint as his enemies or as an overzealous government in any way. Not as an interesting character because he is a co-defendant, he's been charged, there is a possibility that he would flip and testify against Trump, but I don't think they need him to because they've got his text messages back and forth. So I don't think they need any of that. They could try this case today with this evidence and have a very strong case.

Joyce:

What do you think, Kim?

Kim:

And the thing that's interesting about Nauta in particular is we have talked on more than one occasion about the fact that when you enter Trump's orbit, there are often not good things waiting for you. And in this case, I think it's probably the clearest example of that. You have someone who served as Donald Trump's valet, and it seems was following his orders and doing his directives and did it get him? It got him a federal indictment in which-

Barb:

When will people learn? What do you think? Oh my goodness, what is the allure? What is the allure?

Joyce:

Everything he touches dies. No one ever seems to get that.

Kim:

The Reverse Midas.

Barb:

That's a good title for the episode.

Joyce:

Hey, so you all this is a little bit of empty speculation on my part, but I think we're entitled to have just a wee bit of fun today. I found one really interesting reference in the indictment. This is on page 23 for those of you at home who want to follow along. Not only are there Trump messages between lawyers and staff and other people, there's even a text message, the date is super interesting, on May 30th, 2022.

This appears to be from Melania Trump to Walt Nauta. Maybe I'm overreaching. It sounds like Melania. And the text reads, "Good afternoon, Walt. Happy Memorial Day. I saw you put boxes to POTUS room,

just FYI, and I will tell him as well, not sure how many he wants to take on Friday on the plane, we will NOT, not is all in caps, have a room for them. Plane will be full with luggage. Thank you. Exclamation point." And he responds that he understands that. And he says-

Kim:

With a smiley face emoji?

Joyce:

Right. I mean smiley face. This is-

Barb:

To offset my scream emoji.

Joyce:

It's a little bit humanizing. But Nauta to says to her, "I think he wanted to pick from them. I don't imagine him wanting to take the boxes. He told me to put them in the room and that he was going to talk to you about them." This is why the timing is interesting. That's May 30th. On June 1, Trump then speaks with one of his attorneys, presumably Evan Corcoran based by the description of attorney one's conduct and says, "Hey, are you coming to Mar-a-Lago tomorrow to start looking through the boxes?" I mean, this is utterly the stuff of obstruction conspiracy dreams. Like Barb says, the case is ready to try. I mean, this is Trump. I get this is going out on a limb here. The evidence is killer. Does he plead? Do his lawyers talk with him about the need to try to negotiate a guilty plea here?

Kim:

No. No. Let me tell. Okay. This is purely my speculation, right? Well, this part is not speculation. There's no way that Donald Trump cops the plea. His entire worldview-

Joyce:

Yeah, agreed,

Kim:

... is wrapped around the fact that you never admit to anything. He said that he did not believe that he needed to repent for any sins. If the Lord came down today and said, "Donald Trump, what have you done wrong?" And he would say absolutely nothing. So I don't think that there is any way that he pleased. But one thing that I'm going to be looking out for as the presidential election campaign season moves forward, is who might be the first Republican candidate to say to Donald Trump, "Hey, drop out, back me and I'll pardon you." Would that be something he considers? Maybe, because I think one reason he is campaigning is to protect himself from these charges which he knew were coming, and he could at least try to deflect and delay using his presidential campaign as a tool for that. So I think if someone dangles a pardon in front of him, I don't know. I don't know.

Joyce:

He'll never get another Big Mac in prison. That has to be weighing on him pretty heavily at this point. But I mean, Kim, I think you raise a really interesting possibility there. And perhaps the final act in this

entire sad tawdry affair would be somebody who promises him a pardon, not delivering after they're elected because that is not an enforceable agreement, right?

Barb:

That would be poetic justice actually.

Joyce:

It would be lovely.

Kim:

Yes. I should preface, what I'm suggesting is completely counter to the rule of law. Absolutely. You cannot exchange a pardon for anything of value. This is supposing that it would be provable that it happens, but I wonder if there is somebody who has a bit more savvy in terms of trying to sell pardons than Donald Trump had. That could be really dangerous, but I'm wondering if that's something that could happen.

Barb:

No, I don't think he will plead guilty. I just don't think he has it in him. I think he is, as Kim said, never admit fault, never give in, never stop fighting. I don't think in a criminal case you can do what he did in the E. Jean Carroll which is just not to show up at the trial, to suggest somehow this is beneath me and I'm too busy and I don't show up for trial. I think he has to show up for his criminal case during trial.

Joyce:

He does. He's got to be there.

Barb:

So no, I think he just continues to maintain that this is all politically motivated witch hunt. You may notice he's been all over his Trump's truth social pushing out messages, and he's now calling it the box hoax, which is a very interesting set of terms. It's just about a box. Yeah, say a couple boxes. What's the big deal? The box hoax. And really suggesting that this is all a hoax. He's going after Jack Smith, he's going after Jack Smith's wife. So this will be scorched earth. And I think he's going to take his chances and he is already using it for fundraising. I think grievance and victimization are his calling card, so I think he'll use it to campaign on.

Joyce:

He is just so stinking predictable. But today, June 9th, 2023, a year ago precisely, we were preparing for the first of the January 6th committee hearings. It's remarkable to me the transformation that we've had in this country in a year. A year ago, no one believed that our system was sufficiently strong to hold Trump accountable. We've made progress. I think my last question for you all. And Barb, I'll start with you. I mean, we served at DOJ together. The rule of law matters to all three of us as lawyers. We get how important it is to the foundation of the American political system. What would you like to see DOJ do in the course of this case to further public confidence in the rule of law and our system of justice?

Barb:

Well, I think Jack Smith did a good job. Starting down that road today he did a very brief press conference to announce the charges, which I think is called for, because people don't know who he is. What's this all about? Trump is kind of controlling the airspace. And so I think it was good. He gave a very brief comment about the charges. He invited the public to read them themselves, which I thought was good.

But he did talk about what we owe to the people who serve our country in the military, which I think was an effort to appeal to all Americans, to people who serve in government and safeguard our nation's secrets, that there is one set of laws that applies to everyone, and he thanked the FBI for their diligent work in the case. So I think that no nonsense, straight shooter approach is the way to go in a case like this, maybe even welcoming the challenge of the trial and welcoming the challenge of doing it in Florida before someone who might even be a hostile judge, I think is the way that they will show that the Justice Department is independent and adheres to the rule of law.

Kim:

And I will add to that by saying I would love to hear from Merrick Garland again. Not to do anything beyond the public statements he made after the legally executed search at Mar-a-Lago, just to explain to the public, and I agree this is a speaking indictment, that is important, but to explain to the public exactly what is going on in clear terms. And I would hope that that address also blunts one thing that Donald Trump and his acolytes are doing, which is saying Donald Trump is being indicted by Joe Biden or Donald Trump is being indicted by Joe Biden's Justice Department, and that's his political opponent.

So first of all, that's projection because I mean this is the candidate who won by saying, "Lock her up." By saying that you prosecute your political enemies. He is projecting what he would do, what he tries to do on someone else who is actually not doing that. Joe Biden has had nothing to do with any of this. He has stayed so far away as a president should from a Justice Department involved investigation as he possibly can. I think Merrick Garland would do a great deal of good by blunting that and speaking clearly about what is and is not happening so that the American people understand it.

Joyce:

Yeah, I could not agree more. There are constraints. As a DOJ prosecutor you cannot go beyond the four corners of the indictment in terms of specifics of the allegations. You can't suggest the defendant is guilty. Donald Trump is entitled to all of those protections, innocent until proven guilty by a jury of his peers. But I think you can help people understand the process and how you expect it to work. And I would go a little bit further. I'd actually go outside of DOJ and Chief Justice John Roberts.

If you are listening to this podcast, I think the most important thing that could happen would be for the Chief Justice to enter a long overdue order authorizing the use of cameras in federal courts so the American people can watch every last minute of the proceedings in this case. There is nothing else, like a little bit of sunlight that will bring confidence to these proceedings, particularly if Judge Cannon stays on the case and ensure that people understand, hear the allegations, can think through it for themselves. It would be a real national moment if the Chief Justice would do that.

Barb:

Today's episode is sponsored by PayPal Honey, the easy way to save when shopping on your iPhone or computer. I know when I am buying something online, the Honey coupons just magically appear and I'm able to buy something and save a lot of money. I recently got a great discount on sunglasses.

Kim:

I love Honey too. I often forget to look for a coupon or that a coupon might be available on something that I might be shopping for online. And it's so great when the Honey logo just pops up and suddenly they find some savings. It could be anything, 5%, 10%. I save 20% on a pair of shoes lately. It's really good and it feels great to know you're getting a deal. And it also means you're playing the game at a higher level, that's why we love Honey. Thanks to Honey manually searching for coupon codes is a thing of the past because it's a free shopping tool that scours the internet for promo codes and applies the best one finds to your cart.

Joyce:

Just imagine you're shopping on one of your favorite sites. Okay, let's be truthful here. I don't have to imagine because I do this more days than not, and when you check out the Honey button appears and all you have to do is click apply coupons. It's so magical. You wait a few seconds, Honey searches for coupons, then it gives you coupons if there are any that work and you get to watch the price drop. It's utterly amazing.

I just had to buy new sheets for one of my kids. I got \$40 off on this set of sheets. I was so excited. The best part was Honey makes it so easy. I don't really have to do much more than pick out stuff I want to buy. And in case you weren't sure, Honey doesn't just work on desktops, it works on your iPhone too. You can shop literally anytime. Just activate it on Safari on your phone and save on the go.

Barb:

So if you don't already have Honey, you could be missing out and by getting it, you'll be doing yourself a favor and supporting this show. Get PayPal Honey for free at joinhoney.com/sisters. That's joinhoney.com/sisters. You can also get that Honey by using the link in our show notes.

Kim:

Now, you all could have knocked me over with a feather this week when the Supreme Court actually enforced the Voting Rights Act instead of taking another sledgehammer to this. So I will say one reason why I had not read Donald Trump's federal indictment as closely as Barb or Joyce's, because I just came, I'm in Boston right now at an event at the Kennedy Library that commemorates President John F. Kennedy's civil rights speech in 1963 that was meant to call for civil rights legislation to protect the rights of black people in America. This is before the Voting Rights Act and before the Civil Rights Act. This was in 1963. And it came after the federal law enforcement was dispatched to allow students to integrate colleges in Alabama, Joyce's home state. Now we have this ruling also out of Alabama, Joyce, and it involves-

Joyce:

The rule tide baby.

Kim:

Yeah. It involves the congressional maps in Alabama which were thrown out by a court in a challenge that alleged that they were gerrymandered to dilute the voting power of black Alabamians. And the Supreme Court after first staying that opinion before the midterms, allowing those maps to stay in place, came out this week and with a ruling that threw them out. So Joyce, were you surprised? And what does this mean for Alabama and other states like Georgia and Louisiana?

Joyce:

Yeah, so Kim, you and I discussed this earlier in the week, and I have tried to use you as my role model on this case because you're so smart and sensible. You always are about Supreme Court decisions. I have become so jaded that I just don't believe anything good comes out of this Supreme Court. And there's a Trojan horse buried in every opinion that looks like it might actually guarantee rights to everyday Americans like me and other Alabama voters, but I'm trying to soldier on and see the good in this opinion. And I'll tell you, it was very surprising. So a case like this, a voting case is decided in the first instance by a three judge panel.

We had one federal district judge and two appellate judges from the circuit who looked at this in the first instance. And then it gets appealed straight to the United States Supreme Court. And the district judge, a fairly recent Trump appointee did such a great job with her original opinion. It was detailed, it was thoughtful. She had obviously gotten up to speed on statistics and how districts needed to be drawn, and the panel was unanimous in saying that Alabama's maps violated the Voting Rights Act. I really thought it had a shot until the case made its way into the Supreme Court. And I mean, they're looking at this weird map that squeezes most of the black voters in Alabama into one district.

There's seven in Alabama. One district, that takes in both Birmingham and Montgomery and dilutes the rest of the black vote in the remaining six districts. It's just a terrible map. And I thought, "Surely the Supreme Court will see this for what it is." And they of course did not. They declined to enter a stay on the use of that map and let it be used. And there was new census data that said, "Look, the black population is growing in Alabama like it is across the South." And population wise, there should be two districts where black voters have at least the statistical opportunity to elect the candidates of their choice.

But that didn't happen then. I think what happens now, I hope, is that Alabama will redraw its maps. I saw that our Attorney General Steve Marshall was quoted in the paper today saying, "This case is not over." I do not know how much more over a case can be than this Supreme Court opinion. But nonetheless, it looks like there's some sort of nefarious plan there to charge it or to challenge it in any way possible. But Alabama will at least under this case, have to draw maps. Here's my Trojan horse cynicism. I don't think it'll last. Brett Kavanaugh writes a concurring opinion.

He joins the majority, Chief Justice Roberts joins the opinion. Kavanaugh writes concurrence, and he says that it was possible that the authority to conduct race-based redistricting cannot extend indefinitely into the future. And so here's my inner skeptic showing up. Kavanaugh is a pragmatist. He knows that the Supreme Court is at all time low in the annals of public opinion, they probably can't take another hit this year. So instead of killing off the Voting Rights Act, he's decided to let it go one more time in Alabama, but if he flips votes, then it's five four the other direction, and that's the end of the Voting Rights Act. And that's frankly how I expect to see this end.

Kim:

Ooh. All right. Barb.

Joyce:

I told you I am just simple about this.

Kim:

Well, Barb, I want to get your initial reaction to this ruling. Were you as surprised at the very least as I was? And what does your gut say about how this majority, that includes the Chief Justice and Kavanaugh came together?

Barb:

Yeah, I was very surprised because I thought there was really no reason for the Supreme Court to take this case if there were simply going to affirm what the three judge panel did before. As Joyce said, the three judge panel struck down the map, and so we should have been all set with that. The court only takes up cases where it wants to make a decision, and this year's only 50 something cases, absurdly low number, it leaves lots of other decisions undisturbed, and it could have done that in this case. So the fact that they took it up, it's sort of like when they took up Dobbs, uh-oh, you don't need to take up a case just to say, "Yeah, they got it right."

So I really thought we were going to see further gutting of the Voting Rights Act. And so I was surprised and pleased with the decision that there's still some hope for the Voting Rights Act, but like Joyce, I am a little bit cynical. I think one possibility is that Chief Justice Roberts has correctly assessed that the court has been moving too far to the right too fast, and that they are losing confidence of the American people, and that if they do that, they will lose their authority to lead. And they may want to keep their powder dry for bigger fights like the affirmative action opinion that I think is going to be coming out within the next couple of weeks where they're likely to dismantle affirmative action in this country.

And so if they had completely eviscerated the Voting Rights Act, they would be on very, very shaky territory when they take on affirmative action. And so my view is a little bit like Joyce's, I don't know that this is a forever good news or only momentary good news. I think one of the things you can look at to see Chief Justice Robert's track record is he likes to do a lot of things in two steps. He'll do this intermediate step and say not yet, and then down the road he'll overturn a legal precedent or something like that.

Kim:

He likes to chip away. He likes to chip away.

Joyce:

He really does.

Barb:

He is... What do you call it? A incrementalist.

Kim:

Yes.

Joyce:

But going the wrong direction. He likes to roll back, not move them forward.

Barb:

Right. And so I think that way when things are less dramatic, it's less noticeable to the public, and the public resists a little bit less, and it seems like just sort of a slow evolution of the law as opposed to a

dramatic change. So I remain, I guess momentarily relieved that they didn't further... It isn't like they did something great, it's just that they gave you something really bad that I expected them to do. It's like, "Hey, my kid didn't write on the walls this time." Yay, good for you.

Kim:

Yeah, it's like they did the very least. They did the very least. They did not eviscerate the Voting Rights Act, which we're like, "Yay." Because we were all braced for them to do-

Barb:

Yeah, good for you.

Kim:

... exactly that. I've come to agree with both of you on that front. In the beginning, I don't know if it was still my shock or my nerdy, statutory analytical self, but I'm just like, "Did they take to heart?" Justice < brown Jackson's really expert lesson in originalism during oral argument where she pointed out that actually the originalist view of the Voting Rights Act when you look at the 14th Amendment was that this is exactly the statute that the writers of the 14th Amendment had in mind. And this is exactly what they were supposed to do. Really taking apart the Alabama Attorney General's arguments that any consideration of race runs afoul of the Constitution.

Or maybe it is Chief Justice John Roberts thought that Clarence Thomas's view of voting rights was just way too out there and he couldn't join that, and he instead formed some sort of consensus with the liberals. The more I think about it, the more that I think you're right. I think that John Roberts knows he needs to do something. He hasn't done really anything else when it comes to the integrity of this court and the reputation of this court. And I think he knew that he could probably get Brett Kavanaugh who I'm still appalled by his performance at his confirmation hearing, thought he could just get on the Supreme Court and people would like him again and it would be okay. And he's desperate for people to like him and not think that he's a bad guy. And he thought, "Okay, I can bring Brett along, at least on this before we eviscerate affirmative action."

I think that might be what happened here. So one last quick question to you both. We can't talk about this case without talking about The Shadow Docket because as Joyce said, the court had a chance to keep this map from going into effect and before the 2022 election, and it chose not to. And our friend Steve Vladeck, who was an expert on The Shadow Docket, makes an interesting point. He says by allowing these maps, which now have been deemed a racial gerrymander to go into effect before the 2022 election, at the very least, it disenfranchised the black voters of Alabama. At worst, it changed the outcome of house control because not only did that affect how voters voted in Alabama, but also Georgia and Louisiana. What do you guys think about that?

Barb:

Yeah, I saw that tweet. I thought it was really interesting. I've read his book, the Shadow Docket. It's really excellent. And he talks about how this isn't just an accidental, we're doing things more because it's more efficient or other things like it's a way to really shape the doctrine of the court and by doing it kind of off stage. And so I don't know whether, I'm so cynical as to believe that they were trying to put a thumb on the scale of the election, but they definitely changed voting outcomes likely in a number of districts, and in light of how close the house was, that made a difference in the election. So it's an interesting observation at the least.

Joyce:

So look, Alabama was never in play. We were going to always have six Republicans go to the house and one Democrat, but I got to say-

Kim:

But if you had two majority black districts, Joyce.

Joyce:

Well, if those maps had gone into effect, I mean, we are assuming a lot of stuff. I mean, I won't talk disparaging stuff about Alabama politics. I think it would've been tough in an election run that close to get a candidate up and running. Maybe yes, and maybe it would've been one more vote, but I've got to say that even if you spot the fact that Alabama's politics are difficult and fraught, I do think it feels like the court put its finger on the scales.

And I understand that they needed to go through this whole process to reach this conclusion. But the way the law works and something that we talked about is that when you have a situation like this, you're supposed to grant an injunction. And here that would've in favor of forcing Alabama to put one of those newly drawn maps into effect. It was sort of a squirrely situation for an injunction. And I am left with a lingering distaste for the way the Supreme Court handled this case.

Kim:

Barb, your skin is looking fantastic. What are you doing?

Barb:

Well, thank you, Kim. Just before we started recording, I demanded that somebody tell me my skin looks good, so thank you Kim, for telling me how great my skin looks. But funny you should ask because now is the perfect time to refresh your skincare routine. And for us, OSEA's brand new Undaria collagen body lotion was a great place to start. It's a high performance body moisturizer that absorbs instantly and delivers lasting hydration without stickiness or residue. Born from OSEA's best selling Undaria Algae Body care line, and backed by some impressive clinical results like instant increase in skin hydration and visibly firmer skin in just four hours.

Kim:

We also love OSEA's Undaria Collagen Body lotion. It's your new favorite summer moisturizer, the newest product in their best selling Undaria algae body care line, which includes their coat favorite body oil and body butter. It's incredible for warm weather with a silky weightless finish without feeling greasy, and it's packed with vegan collagen, hyaluronic acid peptides, and Undaria seaweed. You don't wait for the product to absorb, apply it in seconds before putting on your clothes without worry, even before your morning jog or after swimming or pilates. So hydrate and brighten dry summer skin, whether you spent a day in a chlorinated pool or swimming in the salty ocean.

Barb:

Another thing that's really important to us is that OSEA is a one-stop shop for clean, nourishing clinically proven products for both face and body. And even better, they've been making seaweed infused products in California that are safe for your skin and the planet for more than 27 years. Never choose between your values and the best skincare. Get hydrated healthy skin for summer with clean vegan

skincare and body care from OSEA and get 10% off your first order site-wide with code SistersInLaw at oseamalibu.com. You'll get free samples with every order and free shipping on orders over \$60. Head to O-S-EAmalibu.com and use code sisters-in-law for 10% off.

Everyone can also get your skincare on when you go to the link in our show notes. Well, it's June, which means it's Pride month. And so we have a legal development that went in favor of the LGBTQ community this week that we wanted to discuss. A federal judge in Tennessee found a state law that restricted drag shows to be unconstitutional. The judge said it was vague, overbroad and violated the First Amendment. Joyce, you teach first year criminal law. Concepts like vagueness and over breadth ought to sound familiar. What was your thought about this ruling?

Joyce:

Yeah, I mean, this is a bad law. I mean, this is a law that's clearly designed to chill speech and do all sorts of bad things, and it was unconstitutional. And it's delightful to see a judge say that, especially in the great state of Tennessee. I can't help, and I mean, don't mean to not be serious about this, but every time I see on Twitter or in the newspaper, my own office, my former office has done a number of these, yet another child youth pastor or yet another coach or school bus driver who is being prosecuted for possession of child pornography or child sexual abuse, I always sort of quietly say to myself, "Yeah, it's not the drag queens." I'm glad a judge stood up for that too.

Barb:

How about you, Kim? First Amendment rights are not absolute. The government can restrict First Amendment expression through drag shows if it wants to, but it has to show that it has a compelling governmental interest, which it says here is protecting children from these drag shows. What's your reaction to that?

Kim:

So I have been to some drag shows. The most recent one was in Nashville that I went to with my friends, and I can report that no children were harmed during this drag performance. So I look at scans at this stated compelling government interest in protecting children in this case. Look, we know what's actually happening here. We know that we are at a time that Republican political candidates think that the culture wars are the way to win elections, and we are seeing them full well knowing that these laws that they're passing and this campaign against things like drag shows that they're launching runs completely afoul of the First Amendment.

Exhibit A, Ron DeSantis went to Harvard Law School. I know he likes to talk about how much he hates elites, but he went to Yale undergrad and Harvard Law School. He knows full well how the First Amendment works, and he knows that there are First Amendment protections for all types of expression, including performing, including telling jokes, doing comedy, lip syncing even. That is what a drag show is. All of this is protected expression. They know that. And they know that ultimately these laws, these bogus laws that they're passing will probably be struck down, ut what they're hoping for is that they're elected to whatever office that they're seeking before that happens, and they can just ignore that final judicial ruling, protecting the First Amendment.

But in the meantime, there is a real danger here, and that is the fact that the LGBT community is at risk. There are more assaults and murders against people within the LGBT community than in any other community proportionately. It seems that this is the most acceptable group of people to discriminate against in a way that leads to a dramatic, heightened amount of mental unwellness and depression, of

suicide rates in the LGBTQ community. This is deadly serious. And yes, in the end, the First Amendment will prevail, but I really worry about the damage that will be done in the meantime.

Barb:

I think politically they've decided here's a group that we can use as our boogeyman and be the demon, and we're going to use it as a distraction so that people don't ask us too much about why corporate tax rates are lower than individual tax rates and why they don't have jobs because they've been sent overseas. We're going to blame immigrants, we're going to blame the LGBTQ community, we're going to blame people of color, we're going to blame Jewish people. All these other people, for all of our-

Kim:

We're going to blame woke, even though we don't know, even define the woke means.

Barb:

Yeah. But as you say, there's a real harm to this. And this one in particular when it comes to drag shows, this is not only the people who are performing in the audience for whom it is intended, but if the goal is to protect children, I think that this likely has the 100% opposite effect on children. There are so many children who are gender fluid questioning their sexuality, and if you send this message that people who are gay or trans, there's something wrong with them, they're dangerous, they're bad, they're evil, it just leads to the self-loathing and the depression and the suicide that you talked about, Kim. And it seems that good government, the compelling governmental interest would be to protect those kids and not to demonize them. So I say good for this judge for this week at least once we have a little bit of good news to share with our listeners during Pride week.

Kim:

Joyce, I know you love Helix mattresses and you're looking pretty well rested these days. Is there a connection there?

Joyce:

There absolutely is. We've shifted every mattress in our house over to Helix. Everybody is sleeping better, even my husband, who I think is the worst sleeper in the house. There's just something about these mattresses and our ability to find the perfect mattress, which you can do by taking Helix's two-minute sleep quiz and matching with a customized mattress for your body type and preferences for the best sleep of your life. When I took the quiz, I matched with the Helix Midnight Mattress, and it turned out to be exactly what I needed. I've had great sleep ever since I got it last year, and Bob doesn't seem to snore quite as much.

Barb:

TMI.

Joyce:

It's true though. With Helix by a mattress tailor just for the way you sleep. It really has been the best sleep of our lives.

Barb:

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

Kim:

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

Barb:

Helix has been awarded the number one mattress by GQ and Wired Magazine. Leading chiropractors and doctors of sleep medicine use Helix as a go-to solution for improved sleep. And now Helix is offering 20% off all mattress orders and two free pillows for our listeners. Go to helixsleep.com/sisters. This is their best offer yet and it won't last long. With Helix, better sleep starts now. That's helixsleep.com/sisters. Find the link in our show notes. And now is the part of our show we like the most. It's where we answer your questions.

If you have a question for us, please email us at sisters-in-law@politicon.com or tweet using #sisters-in-law. If we don't get to your questions during the show, please keep an eye on our Twitter feeds throughout the week where we will answer as many of your questions as we can. So our first question comes to us from Tish. "In light of Trump's verdict in the defamation case, I wonder if politicians need to be more careful. Candidates throw insults about each other, and I would say plenty could seem as defamatory, especially from Trump. Can a defamed candidate sue for defamation?" Kim, you're our first amendment expert there. What do you think?

Kim:

Yeah, that's a great, great question and I'm really glad that Tish asked it. So yeah, you would think, yes, there are all kinds of all allegations that are hurling in the political arena all the time. So could they lead to defamation? The answer is no. And that is because courts, including the Supreme Court, have found that really the pinnacle of First Amendment protection is to encourage healthy and robust political debate, even when it's not healthy, even when people are hurling horrific allegations against their political opponents. And if you think what's happening now is bad, I encourage you to look back at the founding era what was going on back then.

They accused each other of all kinds of really horrible things. You want that robust political debate, and people who declare their candidacy for office are really signing up to receive that. So it's really difficult to bring a defamation case just on First Amendment principles. But on top of that, there are things called anti SLAPP Laws, S-L-A-P-P, that stands for Strategic Lawsuit against Public Participation that literally prohibits lawsuits that are aimed to silence that kind of healthy political debate. So when you declare your candidacy for office, what are you essentially doing is declaring that you cannot bring a liable case against your opponents because you know what you're signing up for. And I believe that that is correct under the principles of the First Amendment.

Barb:

All right, thank you. Our next question comes to us from Jane who says, "I keep hearing that Trump may very well be indicted at least two more times. He could be convicted and sentenced, but prognosticators have opined that he will never serve time. Why?" Well, first, Jane, I will answer this. I will say nobody knows. So when they say he will or won't serve time, I think nobody really knows this because it's just never happened before that a former president has been convicted of a crime. But I do think they have a point, and that is former presidents get Secret Service protection for life.

We deem it to be a very bad thing for a president to be harmed, hurt, kidnapped, killed, and so they get this protection. On the other hand, if Donald Trump were sentenced to a prison term, it would be sort of odd. Would you have Secret Service agents go with him? I don't think so. Perhaps he could serve a sentence in one of these kinds of cells where he gets his own cell, private cell and Secret Service could be there to make sure he is protected.

But frankly, what seems most likely to me is if he's sentenced to a prison term that he would get a term of home confinement where he would have to stay at his home, where he could be protected by the Secret Service. So I think that's probably what they're talking about. But truth be told, I don't think anybody really knows how that's going to shake out. So we'll have to wait and see. And our final question comes to us from Lori, who asks, "Would you please explain what obstruction of justice means and encompasses? We hear it being used for what seems to be a variety of possible crimes." Joyce, how about that? Can you answer that one?

Joyce:

So I think this is a great question. And Lori, thank you for doing this. It's really easy for a group of lawyers getting together to engage in shop talk and to use these terms without stopping to define them. I realized that I did that earlier this week on television when I talked about the rocket docket in Miami and had to go back and explain that meant that the judges liked to move their cases quickly and weren't crazy about entertaining unnecessary delays. So obstruction of Justice is a good one for this.

It shorthand for a range of statutes found in the 1500 series in Title 18 of the United States Code where the criminal statutes are. And essentially this is a series of laws designed to capture all of the different ways people who are up to no good might try to obstruct, to interfere, to delay, to hinder or otherwise tamper with a prosecution. It gets everything from fire bombing a witness's house in retaliation for their testimony, a case that I have prosecuted, to efforts to convince a witness not to testify or leave town, another case that I've prosecuted. And federal prosecutors are grateful that these statutes are so well-thought-out, that they are so broadly geared to be able to get to anyone who tries to keep justice from being done.

Barb:

Thank you for listening to #sisters-in-Law with Joyce Vance, Kimberly Atkins Stohr, and me, Barb McQuade. Jill will be back soon. Remember you can send in your questions by email to sisters-in-law@politicon.com or tweet them for next week's show using #sisters-in-law. Please support this week's sponsors HelloFresh, Olive and June, Honey, OSEA Malibu and Helix. You can find their links in the show notes. Please support them as they really help make this show happen. To keep up with us every week, follow #sisters-in-law on Apple Podcasts or wherever you listen, and please give us a five star review. It really helps others to find the show. See you next week with another episode, #sisters-in-law.

Kim:

Oh my God, Jill, of all the weeks to miss, she must be dying right now. I am dying that Jill is not here right now.

Barb:

Yeah. I really miss out on her perspective because she is the one who wanted to charge Richard Nixon and they wouldn't let her do it. So I would really love to hear her thoughts about the parallels. I'm sure we'll get a chance to do it, but somewhere out there, Jill Wine-Banks is screaming into the ether about her theories of this indictment.

Joyce:

I mean, history has really vindicated Jill Wine-Banks. If they had listened to her during Watergate, we might not be where we are today, but yeah, oh my God, I cannot imagine Jill being out. I expected that we were going to hear from her today and she was going to say, "Vacation be damned. I'll find a phone someplace and join you all." But I hope she's enjoying herself. I can't wait to hear what she has to say next week.

Barb:

Something tells me she's talking about Watergate with somebody somewhere right now.

Joyce:

Well, you all she texted me last night. I was doing 11th Hour, and she texted me, she's like, "I'm listening to you on TV." And she had all this great stuff to say. I really did think she would surface today.