

Jill:

Welcome back to hashtag SistersInLaw with Kimberly Atkins Stohr, Joyce Vance, Barb McQuade, and me, Jill Wine-Banks. As you know, it's been a wild week, so we had to really scrutinize to pick three topics to discuss today that we think you'll find fascinating. First, we're talking about a challenge I never thought any politician would ever raise to the independence of the Department of Justice. Without that independence, we cannot sustain democracy or the rule of law. Then we'll move to talking about Justice Alito's luxury fishing trip and the continuing absence of SCOTUS ethics code. And then we'll close with Durham's testimony on the same day that Schiff is CED for saying the exact same thing during the impeachment investigation. And as always, we look forward to answering your questions at the end of the show. But before we get to those great topics, I loved our conversation about words, so I want to continue that conversation.

And this week, I want to talk about words you would've used or could have used, or wish you had used in commenting on the news of this week. My word is risible, and I'll bet everyone listening knows that that was the word I wanted to use to describe Justice Alito's op-ed and his excuses for why he didn't file his reports and report his luxury travel. What about you, Joyce? What's your [inaudible 00:01:42]?

Barb:

What does risible mean? I don't know what risible means. What is risible?

Jill:

Oh, you're kidding. Risible is laughable.

Barb:

Laughable?

Jill:

Yes, it is laughable, causing...

Barb:

How do you spell it?

Jill:

R-I-S-I-B-L-E, risible. Good word for everybody to know. And what about you? Okay, so we'll start with you, Barb, since you asked. What's your favorite word for the week?

Barb:

Well, I don't know if it's a favorite word, but a word that describes this impeachment of Adam Schiff and the spectacle we saw on the house floor this week, but came to my mind as buffoonery. Just, it was just so embarrassing for our country, I thought, to try to censure a member of the house for leading the impeachment of Donald Trump for his high crimes and misdemeanors. So buffoonery is my word.

Jill:

Risible would work there too. What about you, Joyce?

Joyce:

So my experience this week was actually more than just one word. It was sort of a mood or a vibe, because I've been feeling, both overwhelmed by the press of the news, but also there's this up and down mood about will we finally hold Trump accountable, or is this all going to fall apart because of his incredible luck as a litigant and the delay game, everything like that. And then I was coming in from an early morning workout, and one of my neighbors who I love, who listens to the podcast, stopped me and she said, "I like the podcast so much more this year than last year." And I was momentarily taken aback, and she said, "No, no, it's not anything bad." She said, "It's that I finally feel like there really is going to be accountability. This year, I look at what's happening and the way y'all explain it, and it really makes me feel hopeful." So the word that I'm going to say, Jill, is hopeful. And I think that she's absolutely right.

Thank you, Mary, for the mood lifter. I do feel hopeful, and I plan on expressing that more on TV.

Jill:

Good word. I like that. What about you, Kim?

Kim:

Yeah, so the word that I thought of, and we were talking about words that we didn't use, and I think this is a word that I'm going to stop using, and that is unprecedented. I feel like so many unprecedented things are happening, and I think that's the point. We have precedences to talk about things that happen in a regular course so that we know, as a matter of law, how to handle them. But I think the point is these are things that have never happened before. That's why it's so important. That's why they're so impactful. I think a lot of the things we're talking about are things we haven't happened before. So I'm going to stop using unprecedented because I think that's the point. The point is that we need to figure out what these things mean in real time and not just be in awe at the fact that, oh, wow, that's never happened before. What do we do? I think we need to move beyond that.

Jill:

Good. Good, good. I agree. Unless we talk about the nature of the crimes are being unprecedented. But you're right, we shouldn't be using that.

Kim:

Jill, I have been needing some zen this week. Where are you finding yours in?

Jill:

Boy, don't we all need it this week, and almost every week recently because things are really wild on the news side. And it means that some mornings, you just wake up on the wrong side of the bed, or you had a long day at work and you didn't get enough sleep, and there's still more to do. Maybe you've been feeling like you just can't catch a break. We never know what type of day we'll have, but calm can help you handle whatever happens. Calm helps you stress less, sleep more, and live a happier, healthier life. There are guided meditations, sleep stories, relaxing music, and daily movement sessions are all designed to give you the tools you need to improve the way you feel.

Barb:

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

Joyce:

So I'm really focusing on getting healthier right now. I've gone back to the gym. This is week four, but I'm still working on the sleep component of things. And I can't tell you how many times I've felt the burden of everything that I need to accomplish just piling up in my mind when I'm trying to fall asleep. Thanks to the amazing content Calm has, and to its great narrators, I'm able to find deep relaxation and be ready to take on the challenges ahead of me and to get a good night's sleep.

Kim:

For listeners of the show, Calm is offering an exclusive offer, a 40% off a Calm premium subscription at [calm.com/sisters](https://calm.com/sisters). Go to [C-A-L-M.com/sisters](https://C-A-L-M.com/sisters) for 40% off unlimited access to calms entire library. That's [calm.com/sisters](https://calm.com/sisters). And you can also find the link in our show notes.

So you all know I've covered politics for a long time, and the brand that GOP candidates often boasted is that there's a party of Law and Order. Well, lately it doesn't seem to be the case, especially given the recent attacks on the Department of Justice and vows by candidates, even for president on the Republican ticket, to essentially sideline and sidestep federal law enforcement if they're elected. So Barb, I want to start with you. It used to be a maxim that Presidents steer completely clear of federal law enforcement investigations and prosecutions. What are GOP candidates now saying about this? And as a former federal prosecutor, what are your thoughts about it?

Barb:

Yeah, well, as you point out, traditionally, at least in my adult lifetime, the norm has been that the Justice Department is independent of partisan politics. In fact, there is a policy in the justice manual that says prosecutors may never consider politics whatsoever in making a charging decision. And yet what we saw this week is Donald Trump promising that if he becomes president again, he will appoint a special prosecutor to go after President Joe Biden and his family. Prosecutors make decisions about when and whether to open investigations based on factual predication when they believe a crime has been committed. To just go after your political opponent is completely at odds with that. But he wasn't alone. Ron DeSantis, the governor of Florida, who has also announced a campaign for the presidency, said something that is also really scary and dangerous. He said that he does not believe that the Justice Department is independent from the White House as a matter of law.

Now, he might be technically right about that, but we have made it a norm in this country that we allow the Justice Department to act independently of the President to avoid actual political interference, or even the appearance of political interference that would undermine public confidence. And he's not the only one. We also saw one other candidate, Vivek Ramaswamy, who is a businessman, perhaps a more long shot, but who pledged to pardon Donald Trump if he becomes president. He also said that he thinks a president has the power to direct prosecutors to open or close specific investigations. And then even Nikki Haley, who I think is got to be a strong contender there, said that she thinks Donald Trump should

be prosecuted. And if he's convicted, she will still nonetheless pardon him, even though the case is serious, sort of for the good of the country and moving us all forward.

So all of those things are so counter to the idea that we all are subject to the rule of law and that prosecutors decide cases based on fact and law apart from politics. So I think it's a really dangerous turn of events to see political leaders suggesting otherwise.

Kim:

And Jill, the principle, the DOJ should be completely independent from the White House and the President, that principle stems from Watergate. Talk about why that's so important.

Jill:

It is so important because if you have a corrupt president, or even a not corrupt president, but he is choosing the targets of investigation, not based on facts, not based on a predicate that would be sustainable in any court, you have a problem with having a system of justice, a rule of law, or even a democracy. And during Watergate, there are many examples of how the government was using the systems of justice, the FBI, the CIA, and the Department of Justice there. There was something that very little known. Watergate is thought of as the break-in and the obstruction of justice case. But really, it involved a number of cases including campaign contribution cases and dirty tricks and ITT, which was then International Telephone and Telegraph, which was one of the biggest corporations in the country at the time. And they had a lobbyist Dita Beard, and there was a huge investigation of whether she was paying bribes in the form of support for the Republican National Committee Convention or specific donations.

She wrote a memo that said the \$400,000 contribution went a long way toward helping them get dismissed antitrust cases that were otherwise pending against ITT. And our office did bring two criminal cases, one against the former Attorney General, Richard Kleindienst, who pled guilty, or pleaded depending on whether you're following the current media way of saying it, but I say pled, pled guilty to charges of failing to give accurate testimony in his confirmation hearing regarding White House influence on the antitrust suit. His fine, by the way, was \$100 and a suspended 30 day sentence. But anyway, it was a guilty plea.

And there was a second case against Lieutenant Governor of California who was convicted after trial on one count of perjury in connection with his testimony in the same hearings, and he received a suspended sentence for that. So it's very important that a particular target not be identified. It has always been deemed appropriate for the president to set priorities by saying, let's put more emphasis on antitrust cases. Let's put less emphasis on some other topic, but not to identify particular targets. That's what happens in third world countries. That's what it looks like happened to me in the case of Putin and Navalny. There's new charges now being brought against Navalny. And that's clear to me, a political move to keep him sidelined during Putin's administration. I don't want our country to look like that.

Kim:

So Joyce, Barb talks a little bit about the pardon power. I wrote about Donald Trump wanting other GOP political candidates to promise to pardon him and how that's become sort of a litmus test and how dangerous that is. I'll put my piece in the show notes. But there's a difference between the importance of the concept of clemency and making an end run around the rule of law. Do you think this, pardon talk crosses that line? And if so, how?

Joyce:

Yeah, I think it's really dangerous. And I loved what you wrote here, Kim. You said that it's no surprise that Trump is attempting to bully other potential Republican presidential candidates into this vow to pardon him. But you wrote that what is shocking and truly perilous for our democracy is the willingness of Republican presidential candidates to take that bait. And I think you're dead on the money. At this point. The promise to pardon Trump is all about wooing voters. It's all about wooing the base. It is ranked politics. It has nothing to do with the purpose behind giving the president the power of the pardon and the power to offer clemency. So I think it's always instructive to sort of do the shoe on the other foot sort of thing. And here, I find that to be helpful. If Barack Obama had done what Donald Trump did, would anyone be talking about pardoning him? And the answer is of course not.

Nikki saying that she would pardon Trump, she said that it's about what's good for the country. And I have to confess, that made me throw up a little bit in my mouth, right? It's just so strange to hear someone suggesting that giving a former president a pass for, if not fomenting insurrection, then certainly encouraging it and refusing to end it. It's tough to believe that that's something that merits the pardon power. This is an individual who lied about fraud in the election, who tried to stay in power after he lost. He lied, cheated, and stole his way into office, and Nikki Haley thinks that's somebody who should get a pardon. No thanks. That is not how the rule of law works.

Jill:

Anybody, can I add something to that? Yeah, I would really love to. Because for me, first of all, Nikki Haley saying it's for the good of the country is so phony and so false. We know, from past examples, that pardoning Richard Nixon did not serve the good of the country. In fact, in my view, pardoning him led to Donald Trump and to the situation we're in now. And secondly, clemency requires that there be an acceptance of responsibility, an admission of guilt. There needs to have been some either conviction or service of a sentence before you can grant clemency to someone. And here, they're saying, in advance and in complete absence of any exceptions or admission of guilt, they're going to pardon someone for things that they know that person did that they know are violations of law. That, to me, is not serving the public good, it's not serving the country, and it is the exact opposite. I really feel so strongly.

I'm not sure it passes the line or crosses the line because it tells us exactly who these people are. And so in that regard, it's a good thing that they're saying it out loud and that we can evaluate them as potential presidents based on this horrible thing they're saying.

Kim:

So some Republican candidates, as well as some members of Congress have pointed to Hunter Biden in suggesting that there is some double standard, some unfairness in the way that federal prosecutions are carried out. I would just say, based on my experience, especially with charges involving failure to pay IRS debt, those rarely result in jail time, unless somebody is willingly refusing to pay this debt, and certainly in cases where people have voluntarily repaid this debt, as Hunter Biden did. Jail time is almost unheard of. But I just want to hear from you guys. Do you think that there is a double standard here in the fact that Hunter Biden had a plea deal that results in no jail time as opposed to other things that are going on? Anybody?

Barb:

I'd love to jump in on this one. I think there are a couple things at work here that make these comments really problematic. Number one, we don't know all of the underlying facts. All we know is that Hunter

Biden failed to pay more than \$100,000 in two tax years. And so there may be more, there may be less. It may be problematic. And so to suggest that this is outrageous is really based on nothing, other than these rumors that unsubstantiated tips that he was taking bribes from China. This was all looked into. Another point is that Merrick Garland gave entire discretion in this case, complete authority to decide this case to David Weiss, who was the US attorney appointed by Donald Trump, left in office even after the Trump administration ended. And Joe Biden appointed his own US attorneys.

He left the US attorney in Delaware in place solely to handle this case, as well as all the others, but he has stayed there. And he's been given the authority to handle this case and decide whether charges should be filed, what charges should be filed, and where they should be filed. And so to suggest that that prosecutor is somehow in the bag for the Biden family really just doesn't make a lot of sense. And then just to put it in context, Kim, with what you said about how charges like this rarely result in criminal charges, in my former office, when we brought a tax case, it was usually in connection with some other crime. There was a fraud, there was some very significant crime we couldn't prove, like the Al Capone case where he was right convicted of tax evasion. Because they were unable to prove all of the cases of bootlegging and kidnapped and murder for hire and other kinds of things, they could get them on the tax charges. And so they did.

That is sometimes referred to as the Al Capone theory of prosecution. But if the only thing he did was fail to pay taxes for two years, that would almost always be resolved through civil litigation. And that's because prosecutors have limited resources to handle cases. So we prioritized the most important cases. In a given year, the US Attorney's office in Detroit could handle about a thousand cases. Delaware, my guess is it's probably even less. They're a smaller office. That means you have to prioritize. And so we went after trigger pulls and high volume fraudsters and massive drug traffickers involved with cartels and violence, corrupt public officials. The idea that you're going to expend your scarce resources on somebody who didn't pay their taxes when you've got perfectly good civil mechanisms to do that strikes me as not the way business is normally done.

And then on the gun thing, he was also allowed to sign into a deferred prosecution agreement for possessing a gun while addicted to drugs. The only reason the Justice Department knows about it is Hunter Biden himself disclosed this fact in his own book. And again, this is not a charge that would ordinarily be brought by prosecutors. In my 20 years at the US Attorney's Office, again because we prioritized trigger pullers, those who were involved in violent crime using guns to hurt people, we declined to prosecute these kinds of cases.

Agents didn't even bring them to us. I recall using it exactly one time against an offender who was plotting to shoot up a church. But because we didn't believe we had sufficient evidence to charge attempt because he didn't get close enough, or to charge conspiracy because he wasn't working with anyone else, FBI surveilled him for a number of days and found that he was using marijuana while possessing this gun. So we charged him with that. Because like Al Capone, that's the one thing we could use to disrupt him and take him down, get him help so that we could protect public safety. But for someone like Hunter Biden who is not otherwise engaged in violence, it strikes me that he has been dealt with more harshly than most other defendants.

Jill:

I was just going to say I agree completely with Barb, that he has been dealt with more harshly rather than more favorably, and that it was by the Trump appointed US attorney who started the investigation during the Trump administration and has continued it. And the best that he has been able to come up with are charges that relate to taxes that Hunter Biden has voluntarily already paid. He has paid what he owed. Normally, that would not result in a criminal case. And he only had possession of the gun

apparently for about two weeks because it was thrown away by his then girlfriend after he had it for two weeks. And he never used it. So again, it's just being dealt with unfairly in my view, unfairly harshly.

Joyce:

So I just zoom out here and make the larger point that part of what goes on here is standard DOJ process. In these very political cases, you often will leave an US attorney from the prior administration in place. It happened with John Edwards too. In that sense, I guess this is usual, but the point that I wanted to make is that trying to appease Trump and his followers never works. You can never do anything in a way that's fair enough. You can never protect people enough. No matter what you do, you will be criticized, you being Joe Biden or Merrick Garland or whoever. And ultimately, I think you just have to do the right thing. There's way too much bending over backwards to try to accommodate Trump or to encourage his followers to believe that things are fair. And I'm just here to say, ladies and gentlemen, it ain't going to happen. Just do the right thing and be done with it.

Barb:

Reminds me of the old phrase Janet Reno used to use, which is, I'm going to be damned if I do and damned if I don't, so I might as well just do the right thing.

Joyce:

It's very much that.

Kim:

Now Jill, I love having fresh flowers when I can in my zoom room. And one great thing is when those flowers start to fade, I can throw them in my Lomi. Have you been enjoying your Lomi?

Jill:

It's amazing, especially if you like gardening, because the results of the Lomi let you put back into the ground for fresh flowers and all your vegetables. We all know it's too easy to leave full trash bins at home when we're away, but Lomi is the perfect way to keep our places clean, that also makes a difference for the environment. Lomi transforms garbage into gold at the push of a button. If you didn't already know, Lomi is a countertop electric composter that turns food scraps to dirt in under four hours. It's amazing how fast it goes. You're going to love it as much as we do. And by the way, it makes a great gift for all your environmentally friendly friends.

Joyce:

Lomi even makes cooking at home more enjoyable, and it also makes it align with your values. That's because with Lomi, you can turn waste into nutrient rich dirt to feed your plants, lawn, or garden. That means it's not going into landfills and producing methane gas. So we get to help the environment and make our own lives easier. Now, all our food scraps, plant clippings, and even those leftovers you forget in the back of the fridge can go back to the ecosystem. Even better, anyone who uses Lomi can grow more nutritious food right in their backyard.

Kim:

Yeah, we've been putting our food waste, and as I said, even our plant clippings. If some leaves fall off our plants or I have the flowers I like to have in my Zoom room, once they fade, I put them in the Lomi

too and they turn into great soil. It feels so great knowing there's no food rotting in your garbage and smelling up the kitchen. And thanks to Lomi, I only have to take out the trash once a week. And it's hassle-free, mess free, a wonderful experience. Imagine having no more leaky bags, there's no smell when it runs and it's really quiet, making it the perfect compliment to a tidy and classy looking kitchen. And since I'm planning on entertaining a lot this summer, I don't know how I'd do it without Lomi.

Barb:

Well, I don't plan on having a lot of summer dinner parties, Kim, but you know who does? My friend Mojo is a total Lomi convert. In fact, she recently proudly presented me with a large plant that was planted completely in Lomi dirt that she planted.

Kim:

Oh wow.

Jill:

Wow. That's great.

Barb:

Yeah. So it's great for the environment. Whether you want to start making a positive environmental impact or just grow a beautiful garden, Lomi is perfect for you. Head to [lomi.com/sil](https://lomi.com/sil) and use the promo code SIL to get \$50 off your Lomi. That's \$50 off when you head to [L-O-M-I.com/sil](https://L-O-M-I.com/sil) and use promo code SIL at checkout. Thank you Lomi for sponsoring this episode. Everyone can also find the link in our show notes.

Joyce:

There was new reporting from ProPublica this week. On the heels of the avalanche of reporting they triggered about Supreme Court Justice, Clarence Thomas' ethical lapses, we learned that Justice Samuel Alito vacationed at the expense of two wealthy Republican businessmen shortly after he was confirmed to the Supreme Court. Leonard Leo, the head of the Federalist Society, was also involved in planning these vacations. It's just really unbelievable. This is the sort of thing that you cannot make up. But Barb, talk to us a little bit about the reporting and why the facts and the timeline are raising red flags that Alito may have not only failed to report these items on disclosure forms, but might have actually violated the law here.

Barb:

So yeah, in 2008, after he was already on the Supreme Court, Justice Alito took this fishing trip, luxury trip to a lodge in Alaska, place that rents for more than a thousand dollars a day, took a free ride on Paul Singer's private jet. Paul Singer is a hedge fund billionaire who has been before the court many times. Flew there, spent a few days. There are photos of Alito and others holding up their great trophy fish that they caught, the giant salmon, had a great time. Reports say that wine was served that cost a thousand dollars a bottle. 10 times since that trip, Paul Singer, the billionaire's hedge fund, has come before the court. And in 2014, there was a big case involving a dispute between Paul Singer's hedge fund and the Nation of Argentina. Justice Alito did not recuse himself from the case. He voted with the majority in favor of Paul Singer by a vote of seven to one.

And as a result, the hedge fund run by Paul Singer made \$2.4 billion. So that's sort of the timeline and the facts. But what's interesting about it in this reporting is that not only did Justice Alito take all this free stuff, but he also failed to report it on his financial disclosures. So we know that after Watergate, the Ethics in Government Act requires certain federal officials, including Supreme Court justices to report most gifts to the public, anything over \$415. I don't know why they landed on that, but it's anything of value. Now it has some exceptions, which is where things get interesting. There is something known as the personal hospitality exemption. So Joyce, if you should invite me over to spend a night in your chicken coop, and I'm a federal employee, I don't have to report that because that's personal hospitality, which is defined as food, lodging, or entertainment received as personal hospitality, which also is defined as gifts for an individual at that person's home or at properties that they or their family own.

And so when you look at what Alito did here in failing to disclose this fishing trip, this was not at a place owned by a friend or family. He rode on the plane. That's not the home of a friend or family, though he has an interesting explanation of that, a very tortured description I think we'll get to later of how he thought that was okay. And then he doesn't report this, nor does he recuse himself. And I think the real conflict in his judgment is you can't have it both ways. Either this is a very good friend who is offering personal hospitality because you're good friends and you're staying at their home, in which case, okay, this is a good friend and he's exempt from disclosure. But if he's such a good friend and he's exempt from disclosure, then what you do in deciding a case worth \$2.4 billion. He should have recused himself. So having it both ways is really problematic here. And I think his explanations just do not hold water.

Joyce:

Yeah. There's so much here that's wrong. If the trip is not a problem, if it's okay to take the trip, then why wouldn't you disclose it on your financial disclosure forms?

Barb:

You know what it is, Joyce?

Joyce:

What is it, Barb?

Barb:

It's fishy.

Joyce:

Oh man, you hooked me and reeled me on that. How many fishing jokes can we make? They are they endless. The problem is there's really nothing funny here, but in some ways, you feel like all that you can do is laugh about it.

Barb:

It's risible.

Joyce:

It's really...

Barb:

I learned that from Jill.

Joyce:

It is indeed risible. Kim, when ProPublica reached out to Justice Alito for comment, he declined to give them one. Had the Supreme Court's head spokesperson say that he would not comment. But amazingly, he turned around just a couple of hours later, filed his own piece over his byline in the Wall Street Journal before ProPublica publication deadline. So interested in your take on what he had to say. Was it smart? Did he give himself a good defense? And how do you feel about his efforts, since you're a journalist, his efforts to preempt their reporting?

Kim:

Yeah, I have so many thoughts about this, Joyce. So I will try to...

Barb:

Are they risible, Kim?

Kim:

... to keep them... They are. Well, they're strong. I'll put it that way. So here's the thing. Normally as a journalist, you will do what the reporter at ProPublica did, which is go and seek a response from Justice Alito through the normal format, which is to go to the public information office at the Supreme Court and say, "These are the questions that I have. Please submit them to the justice," and ask for some sort of response, which this reporter did. The official line, the people in the Public Information Office were probably told by Alito, "No, we don't have any response to this." And so they were preparing their stories. Alito didn't just reach out. And I want to be super clear here because there is a difference between the reporters at a news organization and the editorial and op-ed staff of a news organization. I personally belong now at the Boston Globe.

I'm a part of the editorial board. We are the editorial op-ed section of it, which is completely different from the news section. The Wall Street Journal has wonderful reporters who do a wonderful job of reporting news. The Wall Street Journal's editorial department, which includes its op-ed staff is completely separate from that, and they have shown a real bent to be protective of conservative causes. And that is where Justice Alito went. He sent them an op-ed, and they published it. Obviously, this had to have happened very quickly, with very little time. And it was a prepsponse. It wasn't even a response to the...

Barb:

Prebuttall.

Kim:

... story because it came out before the ProPublica article was even published. I cannot imagine... I don't want to speak on behalf of the op-ed editors at the Boston Globe, who are my bosses, but I cannot imagine that they would ever publish something in response to a story that hasn't even published yet. That is crazy. I cannot explain how crazy that is. And honestly, my first response to Alito's prebuttall prepsponse was, wow, a hit dog hollers because he was really whining and victimizing himself in it. But once the ProPublica story posted, I was angry because the headline and the subhead of the Wall Street

Journal piece, which I admit, Alito probably did not write. That is usually the staff of the news organization that writes the headlines and the subheads of stories.

They claimed that ProPublica falsely accused Alito of something. And in reading the report, and in reading Alito's response, clearly Alito isn't happy with the reporting, but he did not publish or point out a single factual inaccuracy. At the most, he called it a mischaracterization, and maybe he quibbled about how much the bottle of wine he drank was worth. He said it was less than a thousand dollars, whereas the reporting was that is worth a thousand.

Joyce:

Kim, I just have to caution you here, because you know if you're going to accept a hundred thousand dollars plane ride from someone, it's okay if the seat would've been empty otherwise.

Kim:

Oh my God.

Joyce:

It otherwise would've gone unoccupied, Kim. I don't know. What is he supposed to do, just let it go empty? Come on.

Kim:

He saved the taxpayer's money, according to... But he claimed... If I wrote something and a Supreme Court justice wrote an op-ed claiming that I falsely accused him of something, I have to believe that the good lawyers at the Boston Globe would be motivated and activated to respond to that. That was crazy. That was absolutely crazy. It's not okay. And he cannot be happy about something, but don't claim that someone falsely accused you of anything. And I just want to make one more point. I know I've been rambling because I'm hot about this. I am hot about this. This is a difference because I'm thinking about poor Ketanji Brown Jackson who reported the flowers that Oprah sent her after she was confirmed to the Supreme Court because they were in excess of a thousand dollars. Nobody is saying, and there is no rule that says Justice Alito...

Well, I won't say... I'll take that back. I'm not saying nobody is saying this, but there is no ethical rule that says Justice Alito could not have taken that trip. This is an important point. The rules say he had to disclose that he took this trip and the value of that trip, the same way that Ketanji Brown Jackson, when she was sent probably the most elaborate flower arrangement from Oprah Winfrey, disclosed on her forms that she got this elaborate flower arrangement from Oprah Winfrey. All he had to do was disclose it. That's what the rule called for, and that's what all of this is about. And that's what he's angry about. I personally think the rules should be changed, that he should not be able to take a trip like that, but that isn't even the rule. This is what is angering him. So this is why all of this is so ridiculous.

Joyce:

It's all about a topic that we've just discussed far more frequently than I thought we would have to, right? The public's confidence in the Supreme Court. The reason judges make these sorts of disclosures is so the public can know who their friends are. And it's also so lawyers know when there's a legitimate conflict of interest and they should ask the judge to step aside. And so I think when you put all that together the way you do, Kim, it makes it so clear that on so many fronts, this is a court that's more worried about its personal comfort and its summer vacations than it is about the public's confidence in

its integrity as a court. And there will never be a moment where I don't find that to be just such a shocking thing. And Jill, it reminds me of our discussion when the reporting about Justice Thomas came out.

We talked about it's tough for another branch of government to impose ethics rules on the Supreme Court. The courts and Congress there co-equal branches. Congress nonetheless is trying to do that. They're considering it. The Senate, in the absence of any plan, any plan at all to fix these problems by the Supreme Court and by the Chief Justice who even refused to acknowledge that problems existed the last time he deeded to appear over on the hill, there's an effort in the Senate to move ahead. But it does seem like there are constitutional issues. And I'm curious, based on all of your experience in this area, do you think that the Senators are trying to play a long game here? Is there anything that can be done about Thomas and Alito?

Jill:

So before I answer that really good question, I just want to say I have, since the day I read about the disclosure about the Oprah flowers, I've been trying to imagine what something looks like that costs more than a thousand dollars. I just can't even. A hundred dollars, I could imagine, maybe three or 400. But a thousand dollars or more, I just... Anyway, I would love to have seen a picture of that. That should have been attached to the disclosure form in terms of what Congress can and should do, first of all, I agree with what you said, should, they should be doing something. But actually, the Supreme Court should have done something a long time ago. And Chief Justice Roberts is doing a huge disservice to the court and to its legacy and its reputation by not doing something because there is a legitimate reason for concern.

And while you're right that he could take this trip, I'm not sure he should have, but if he did, he should have recused himself after that for any case involving the donors of that very lavish trip, and he didn't. Now Congress, you have two issues. One is separation of powers under the Constitution, but you also have checks and balance which are built into the Constitution. And I'm going to say I personally would be stressing checks and balances, saying that Congress does have some power and we know that Congress has some power. It can, for example, limit the Supreme Court's jurisdiction, except in cases that the Constitution says must be decided by the Supreme Court, like when it's a dispute between two states. So Congress does have some power. And if the court continues to refuse to take any action, then I think checks and balances demand that there be something done.

And there is a recusal statute that's been around for more than 75 years. Ethics and government accountability requires that disclosure be made. There was no disclosure. Maybe it should be strengthened to say no gifts can be accepted at all, and we have to do something. Justice Kennedy, a long time ago, said that Congress had the power to regulate the court. And maybe we should be taking him more seriously, giving total independence to the court on decisions it makes in cases or controversies that adheres. But other than that decisional, I think the Congress can and should be taking action to save the reputation of the court. And if they don't do something immediately this summer, then I think in the next session of Congress, they should be going full force ahead to create some ethics standards about recusal and what can and can't be accepted.

Kim:

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revolutionized compression technology so you no longer have to feel like you're suffocating while looking great. You'll immediately feel and see the difference.

Joyce:

So right now, Honeylove's bestselling superpower short has become a go-to for so many people. It has targeted compression technology that distinguishes between areas where you want more support and areas where you need less compression. And their signature X targets and sculpts your midsection without squeezing your natural curves. It's designed to work with your body, not against it. Honeylove offers the perfect amount of compression, and you won't ever have to worry about it rolling down, thanks to their special side seams. Even better, this piece is also a back lifter. Honeylove has amazing body suits with 360 degree bonded compression that smooths your tummy and hips with built-in support, and it lifts without underwire.

Jill:

Finally, comfortable shapewear that goes on easily. Honeylove also has incredibly comfortable bras, tanks, and leggings for everyday support. Shapewear shouldn't be hard. You'll look good and feel good. So whether it's for a wedding event, a live Sisters-in-law show, or an everyday boost of confidence, Honeylove is the perfect plus one.

Barb:

Well, I don't like to talk about undergarments on air, but I can tell you that our listeners should treat themselves to the best shapewear on the market and save 20% off at [honeylove.com/sisters](https://honeylove.com/sisters) with the code sisters. Use code [sisters@honeylove.com/sisters](mailto:sisters@honeylove.com). Everyone can find the link in our show notes. Well, this week, John Durham testified before Congress about his investigation into the investigation of the Trump campaign's connections with Russia. He was, of course, the special counsel appointed by William Barr and left in place by Merrick Garland. Joyce, we saw this testimony a couple weeks after John Durham's final report was issued. Did we learn anything new from Durham's testimony?

Joyce:

No, Barb, we didn't.

Barb:

Not even anything risible?

Joyce:

I think that Durham seemed remarkably out of touch with commonly understood facts that anybody who's been paying even a bare modicum of attention to everything involving Trump and Trump's initial 2016 campaign and Russia's effort to influence the outcome of that election is already familiar with this. You know this from our time there, Durham used to have a really good reputation at DOJ, but he so many other people, seems to have just squandered it in service to Trump. And I really don't know what the explanation is for that. He did not have anything new to offer in his testimony. He didn't explain why he spent five years worth of resources on two failed trial prosecutions. He didn't explain why he didn't stop and reconsider what he was doing when one of his closest friends resigned because she had serious concerns about the process he was undertaking. And I think one of the ongoing mysteries of the Trump

era is why so many people, good people gave up everything that they had in service to Trump. We just don't know why that happened.

Barb:

Yeah. Frankly, the most scathing thing he found in his whole report, and as he repeated in his testimony, is that he believed that when the investigation was started, not that it should not have been opened, that it should have been opened, but it should have been opened as a preliminary exam, as opposed to a full exam. And that is such a quibble. It really relates only to the duration. And that's not the complaint that Trump people have about the duration. And the other thing it does is it allows the use of different investigative techniques. But in terms of that decision, even the Inspector General said that he believed it was appropriate to open it as a full investigation. I'm sorry, Joyce, did you want to chime in on that?

Joyce:

No, I was just going to say I agree with you so strongly. It's a hyper-technical distinction that has only a little bit of weight, even inside of FBI, inside of DOJ's practices because you can always convert an investigation as more evidence develops. And I think it's astonishing that this is the outcome here.

Jill:

It's a difference without distinction.

Barb:

So Jill, did you see the exchange between Adam Schiff, congressman, and John Durham? Schiff is a former prosecutor, as you all know. He did that classic prosecutor that can be so devastating. Schiff just simply read statements from the Mueller report verbatim, and then he would ask Durham if he disagreed with them. Now, Robert Mueller found that Russia interfered in the 2016 presidential election, sweeping in systemic fashion. Do you disagree with it? Did you see that? And what was your reaction to both Schiff's technique and Durham's responses?

Jill:

One, I did see it. Two, I think that we should post it on our show notes so that everyone listening to this can see it or read the transcript of it. It was brilliant examination by a really skilled prosecutor. He did a great job, and it was so funny to watch. Actually, one of my friends who is really obsessed with all that's going on actually felt sorry for Durham. I thought he deserved every bit he got, but she really felt sorry for him because he apparently didn't quite catch on at first. And so he was, "Yeah, no, I agree with that. Yes, that's what it says." And then he realized how badly things were going and where this was leading, and he's like, "Well, I can't really say. I don't really know." And he sounded like an ill-informed, illiterate person, and it was really pathetic.

Adam Schiff made the points very clear about what the Mueller report showed and about the failure of Durham to uncover anything that would've undermined that. And it really showed the complete failure of the millions of dollars that were spent on the Durham investigation. It's something really worth watching. And as I think we've already mentioned, it's ironic that all of these things that Durham is admitting under oath, in front of the American public, were the things that then the Congress voted to censure Schiff for having said years ago, and that are proven to be true over and over and over again.

Barb:

Yeah. And I want to get to that in just a second, but just the final point on the Schiff cross-examination of Durham. I think as you said, his first instinct was to say, "Yes, I agree. Yes, I agree," which was right and truthful. And then at some point, he realized, "Oh, this is not going well for me."

Jill:

Right.

Barb:

But then I thought he looked so much worse because then he starts to downplay and minimize conduct, and I think revealed himself to be totally in the bag for Trump and a total Trump apologist. At one point, Schiff asked him, "Isn't it true that Robert Mueller found Donald Trump Jr. And Jared Kushner and Paul Manafort met with Russian operatives at Trump Tower in the summer of 2016 for the purpose of receiving dirt on Hillary Clinton. It says that, doesn't it?" And rather than say, "Yeah, it says that," he starts saying, "Well, it's not a big deal. Lots of people make phone calls. You get a lot of..." Why are you defending their conduct? I really thought that was very, very telling and really just kind of evaporated any credibility he might have had. And Kim, let me ask you about the point that Jill raised there about on the very same day that we see this exchange between Congressman Schiff and John Durham, the house votes to censure at Schiff for his role in the Trump impeachment back during the Trump administration. What was that all about and how do you read that situation?

Kim:

Well, I think, and I'm not a part of the House Republican Caucus brain trust...

Barb:

No?

Kim:

... but it certainly seems to be part and parcel with attempts to try to bring impeachment charges against Joe Biden because tit for tat, right? But what it actually served to do, I think. And if I were Adam Schiff, I'd be thrilled because he is now, well, in the middle of a Senate campaign. It's like an in-kind contribution if the house is coming after you in this way for your role in the impeachment, in your role in very deftly, as you pointed out, questioning Durham in that hearing. I think all the attention that Adam Schiff gets to it is probably going to help him politically in his next endeavor.

Barb:

Yeah. Did he even say that? He said something like, "I take it as a badge of honor," or something like that.

Kim:

Exactly.

Barb:

Yeah. But Joyce, let me ask you, I really feel like this is an effort to rewrite history. I've been studying disinformation for my book, and this idea that we're going to censure the person who led the impeachment proceedings. And then did you see Elise Stefanik, the congresswoman from New York,

wants to expunge the Trump impeachments, erase those from his record? Do you see it as an effort to rewrite history?

Joyce:

How else could you see it? Right? This is nothing other than a cult at this point in time. We're no longer talking about the American system of government or politics or justice when we see this stuff going on. They're Congress. They can do whatever they want, right? Our former boss, Eric Holder, faced censure for something that, as I recall it, was not something that rose to that level. And it looked very much like he was being targeted because the house didn't have the ability to go after his buddy up the street who he played basketball with a couple times a week. And so they went after Eric Holder, sort of as a marker for their discontent with what was going on in the White House.

Here, I think we've now got a crude that has no shame, no sense of politics, no sense of service, and they will do whatever they can to try to whitewash the world for President Trump, while at the same time, taking this crazy step against Adam Schiff, whose service has been nothing but honorable, and who history has proven to be correct, right? You will remember that Schiff said, during his closing argument in impeachment, "If you do not hold him accountable, he will do it again."

Barb:

Boy, truer words were never spoken. Yeah, I think it's so disturbing. I am a proponent of a two party system. I think a healthy, Democratic and Republican party are essential to good government. But what we have now is a Republican party that has been hijacked. I know lots of good Republicans who care about good government and honor and integrity in government. They have different policy priorities than Democrats, and that's all okay. But this idea that we're going to rewrite history and manipulate public opinion and say true is false, and false is true, I think is really damaging to democracy.

Joyce:

Hey, Kim, I know you have so much free time on your hands that you spend all of it cleaning your house, but when you do clean or when you think about cleanliness, what's your go-to these days?

Kim:

It's really important to me to be good to the planet, and I'm not super comfortable with just throwing a lot of chemicals around, not just because I know they're not good for me and my family, but because I know they're not good for the environment. So I really love Blueland because they have the environment first in mind with their products. Did you know that an estimated five billion, billion with a B, plastic hand soap and cleaning bottles are thrown away each year? And if that's not bad enough, most cleaning formulas are 90% water, which is heavy to ship, leading to excessive carbon emissions. Plus, those products are often filled with nasty ingredients like chlorine and ammonia. That's a lose-lose situation for you and the planet. Like us, we're sure that means you know it's time to make a difference, and that means Blueland.

Joyce:

Blueland is on a mission to eliminate single use plastic by reinventing cleaning essentials to be better for you and the planet. Their idea is simple. They offer endlessly refillable cleaning products with a beautiful, cohesive design that looks great on your counter. So this is how easy it is. You just fill your bottles with water, drop in the tablets and wait for them to dissolve. You'll never have to grab bulky

cleaning supplies on your grocery run. Refills start at just \$2 and 25 cents, and you can even set up a subscription or buy in bulk for additional savings. From cleaning sprays to hand soap, toilet bowl cleaner, and laundry tablets, all Blueland products are made with clean ingredients you can feel good about. Now, you can try their Clean Essentials kit, which has everything you need to get started. That's what I did, three bottles of cleaner plus a bottle of hand soap. And everything comes in beautiful light scents like iris agave, fresh lemon, and eucalyptus, mint. I'm a lemon everything girl, but all of their scents smell wonderful.

Jill:

I'm with you on the scent, Joyce. I love the Lemon. It is such a fresh fragrance in the kitchen and in the bathroom and as hand soap. I love it. Blueland has a special offer just for our listeners. You can get 15% off your first purchase of any product. To get 15% off your first order, go to [blueland.com/sisters](https://blueland.com/sisters). You won't want to miss this, [blueland.com/sisters](https://blueland.com/sisters). That's [blueland.com/sisters](https://blueland.com/sisters), or go to our show notes for the link.

Now, we're going to get to one of our favorite parts of the show, your questions. We love hearing from you. So if you have a question for us, please email us at [sistersinlawpoliticon.com](mailto:sistersinlawpoliticon.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 because we try to answer your questions there whenever we can. And today, we have some really good questions. The first one comes from Julie. And I'm going to ask Kim to answer this. Can a defendant in a criminal trial choose a bench trial? If so, would Trump be able to request one?

Kim:

So this is a great question from Julie, and I'm glad she asked it because I've actually gotten this question a lot in emails. I know we've gotten it a lot on Twitter, so a lot of listeners want to know it. So yes, a defendant can request a bench trial, but in federal court, in order to allow that, both the judge and the prosecutor would have to agree. And in this case, I don't think there is any world in which Jack Smith would agree to that, so I highly doubt that that would happen.

Jill:

Our next question comes from [inaudible 01:00:41] Ellie, or Skokie Ellie, from my point of view, since I went to high school in Skokie. How are Chief Justices selected? And Barb, do you want to answer that one?

Barb:

Chief justices are selected by the president, just like other justices. The others are called Associate justices. And so the president can either elevate somebody who's already on the court, one of the associate justices to the chief justice position, or can select that person from outside the ranks of the court, just as President George W. Bush most recently selected as Chief Justice, John Roberts. And he picked him from outside. He was not already on the court. He selected him from outside the court to be the Chief Justice. So it's up to the president.

Jill:

Thank you, Barb. And our final question comes from Ninjacat\_Cheryl. And of course, since it has the word cat in it, I have to go to Joyce on this question. Will Trump and Nauta's trials run pretty much in

tandem, or will they intentionally be kept very separate? Is there an advantage to trying one person before the other?

Joyce:

Yeah, so this is a really great question. This is basic criminal procedure, which Barb teaches, not me, but I'll take a stab at it. Sometimes defendants will move to have separate trials, especially if evidence is admissible against one of them, but not the other. But the usual rule is that co-defendants get tried together, and I think that's exactly what will happen here. I guess there's a big sort of a bubble hanging over my head that says, "If Walt Nauta remains a defendant and doesn't become a cooperator. But assuming he's a co-defendant, I think they will get tried together. There are conspiracy charges in this indictment, and that means that the evidence will be admissible against both defendants. I think it's unlikely that there's evidence that is only admissible against one of them. And so for judicial economy reasons, and just because that's the normal course of business for the government to try co-defendants together, I think that's how this trial ends up working. What do you think Professor McQuade? Did I get it right?"

Barb:

Superbly said, yes.

Joyce:

Thank you.

Barb:

I think they will be tried together, unless they becomes some sort of conflict between the defenses, or as you said, sometimes there's evidence that's admissible as to one, but not as to the other, like an admission, a confession by one that then you have fifth and sixth amendment concerns come into conflict, what's sometimes referred to as a Bruton problem. But to date it does not appear that we have that, but we'll see as it goes forward.

Jill:

Well, I'd say we certainly have confessions from Donald Trump made to Fox News and other sources.

Joyce:

Every damn night on public TV. Yeah.

Jill:

Of course. Sure.

Barb:

That's true. That could create a Bruton problem.

Joyce:

I think maybe not at this point, but it is really interesting. Aren't you guys happy? You're not Donald Trump's defense lawyer. That's a happy thought going into this weekend.

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Jill:

And we need one. That's for sure. But thank you all for listening to #SistersInLaw with Joyce Vance, Barb McQuade, Kimberly Atkins Stohr, and me, Jill Wine-Banks. Remember, you can send in your questions by email to [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com), or tweet them for next week's show using #SistersInLaw. And please support this week's sponsors, Calm, Lomi, Honeylove, and Blueland. You can find their links in our show notes. Please support them as they help make this show happen. To keep up with us every week, follow #SistersInLaw on Apple Podcasts or wherever you listen, and please give us a five star review because it really helps others to find the show. See you next week with another episode, #SistersInLaw.

Kim:

All right, now My Sharona going to be in my head all day, but...

Barb:

Do you think any of our listeners will catch that reference?

Kim:

Do you guys remember that the SNL when they [inaudible 01:04:44] Janet Reno was always dance...

Barb:

Dance party. Janet Reno's dance party.

Kim:

It was Janet Reno's dance party.

Jill:

Which is based on a real thing that she actually did...

Kim:

I know. I know.

Jill:

... host a dance party. Yeah.

Kim:

It was always My Sharona.

Joyce:

Somehow that one has totally eluded me, and I'm actually pretty gappy about it.

Kim:

It's so great. It's so great. All right. Anyway, we'll see if anybody picks that up.