

Barb:

Welcome back to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, Jill Wine-Banks, and me, Barb McQuade. Today, we'll be discussing the election interference indictment, a new attack on abortion rights in Alabama, and sexual assault on campus. As always, we look forward to answering your questions at the end of the show. And remember, go to politicon.com/merch to buy our shirts, totes, and other goodies just in time for the late summer.

We'd love to see you wearing our merch out and about. But before we dive in, I wanted to ask you guys about your favorite college town. I happen to be in Madison, Wisconsin right now as we're recording this in what appears to be a soundproof booth from my echo. And what a great town this is. I've been here before, but I've had a chance to look around. And I always hold out Ann Arbor, Michigan, my hometown, my home of residence, as the greatest college town in America.

And I still think it is, but, wow, Madison sure is great. It's got a lot of the great things I like about Ann Arbor. But then it's got these beautiful lakes right in the middle of it, so I think it's amazing. How about you, Jill? What's your favorite college town? I know you live in Evanston, which is also one of my favorites, but do you have other favorite college towns?

Jill:

Well, I do love the Evanston Northwestern campus because we're right on the lake there, and it is beautiful. But I love every college campus because, well, I would say especially my law school, which is in New York City, a city that how could you not fall in love with. And being right in the center of it is fantastic, but so is anything that is a campus. There's something about the community of a college campus that just can't be the culture that they offer, the arts offerings they have, and just the dynamics of a student body. So I love all college campuses.

Barb:

How about you, Kim?

Kim:

So it depends on the definition of a college campus. I know my husband and I disagree about this, right? So I went to college in Detroit, in Boston, and in New York City. I'm also a Columbia grad, go Lions. And to me, I had great college experiences in all of those cities.

So those are college cities to me, but my husband says, "No, no." A college town means a college, a town in really which revolves around a college. He even quibbles a little bit with Madison. He sort of grants that one because it's also the capital. And so there's other things going on there. But he's talking about Durham or someplace that is just really focused on the college.

I disagree with that. I think that Boston, Detroit and New York City, especially Boston and New York, there's so many schools there. Columbia, NYU, Barnard. Boston has two billion colleges, and there are students everywhere. It's a vital part of the city. And so I think that it's great. So if I had to pick a college town, I'm going to go with Boston. I think that's the best one. What about you, Joyce?

Joyce:

I've never met a college town I didn't like, and Kim, I hate to side against Greg, but I'm totally with you on this one. I grew up in Los Angeles. It is a college town, UCLA in the middle of the city, USC where I spent some awfully happy summers at debate camp in the city, but still very much part of a college town feeling. But I think if I had to pick, my favorite one is actually Cambridge, Massachusetts, where I used to

go to debate summer camp also in high school. And there's just nothing as good as getting Elsie's at midnight and climbing back into your dorm. I actually really, really liked that whole feel.

Barb:

Well, there's not a bad college town in America. You heard it there first. Maybe we can take our next roadshow to some of our favorite college towns. That sounds pretty great.

Joyce:

Ooh, I love that. The Sisters In Law, the college town tour. We need to do that.

Jill:

Well, we did that in Portland where I was able to visit my grand goddaughter at her college in Portland because she's at Lewis and Clark there. And it is a gorgeous campus with amazing views of Mount Hood. So maybe I should have said that as my favorite campus.

Kim:

I've told you guys before that I've had my identity stolen. It was such a pain. It was really an awful, awful experience. And I also know that people have tried again to do it. But this time, the outcome was so much different because I was well protected with Aura. Did you know your personal info is out there for anyone to find? Data brokers scrape public tax records and sell that information legally making it accessible to anyone? We all need to fight back. You guys know how important it is to protect yourselves, right?

Jill:

Absolutely. It's happened to my husband, and it's happened to me. And getting new credit cards is really a nuisance. And changing your auto-pays, it's just not worth not being protected. You should be protected.

Kim:

Right. And when privacy is paramount, we're thrilled to partner with Aura. Aura is an all-in-one online safety solution that helps protect you and your family from identity theft, financial fraud, and online threats before they happen.

Joyce:

And that's the key. We've got four kids. We are all protected with Aura, and I sleep a lot better knowing that. With Aura, you too can rest easy knowing that someone is looking out for you. The app scans the dark web to look for your email addresses, passwords, social security numbers, and other sensitive information that malicious actors might have. And if anything is found, you'll receive an alert in real time. If you're a victim of ID theft, their experienced white glove fraud resolution team will help you navigate credit bureaus, help you initiate credit freezes or lock and work with you around the clock to resolve it.

Jill:

The security is such a great feeling, and Aura offers a suite of tools to protect you and your loved ones, including real-time alerts on suspicious credit activity, computer virus protection, parental controls, a

VPN, and a password manager. It's a comprehensive safety solution that provides almost every tool you'll ever need all in one place. Aura also helps reduce annoying robocalls. Can you imagine that? No more telemarketers calling you at all hours. It'll stop junk mail by sending take-down requests for you regularly.

Barb:

For a limited time, Aura is offering our listeners a 14-day trial, plus a check of your data to see if your personal information has been leaked online, all for free when you visit aura.com/sisters. That's aura.com/sisters, to sign up for a 14-day free trial and start protecting you and your loved ones. Again, that's A-U-R-A.com/sisters. Certain terms apply. So be sure to check the site for details. And, of course, everyone can find the link in the show notes.

Jill:

The third time's the charm, and I'm talking about Trump's third indictment. And since you've all heard so much detail about it this week, I want to take a different approach to talking about Trump's third indictment here. It's one that gets to Trump's conduct that poses the most serious threat to our democracy. It was made public, and he was arraigned this week on four conspiracy counts, all of which have been so well reported and analyzed in MSNBC, that today what I want to talk about is all of your unique perspectives on points that haven't been overly covered already.

And I'm going to ask each of you three questions in three rounds. The first round is going to be things that surprised, shocked, or amazed you in the indictment or the arraignment. And I'm going to go last on this one. So who wants to start?

Kim:

Yeah. So there has been a lot of talk about the Count Four, the deprivation of rights charge that stems from the first Ku Klux Klan Act, from the reconstruction era, which we've already talked about, and how the facts are so fitting for exactly what happened on January 6th into the lead up of January 6th.

And I wrote a column about it, which I'll put in the show notes, but one thing that I found while researching that statute is that it was originally drafted with disqualification clause, which would've meant somebody convicted of it would not be able to run for office.

But at the amendment stage, it was actually taken out for two reasons. One, some lawmakers expressed of you that it was too punitive because it would mean a greater punishment than for other crimes that they thought were more serious. But also because federal prosecutors expressed a concern that they wouldn't get convictions if there was a disqualification clause in there.

And think about the time that this was happening, reconstruction. Essentially, what they were afraid of is if Johnny, the clan member, even if they don't like what the violence he was doing, if he ran for sheriff, maybe they want to vote for him and that they wouldn't convict him if there was a disqualification clause, which is just such a sad commentary and just considering now what that could mean was really something.

Jill:

That's such an interesting point, Kim. It really is. It goes to jury nullification that happens in a lot of cases where juries just refuse to accept either the penalty or the crime.

Kim:

Yeah.

Jill:

So Joyce, you want to go next?

Joyce:

Yeah. I have something that surprised me, and I wonder how y'all react. I was surprised that there wasn't a more robust inclusion of information that the government had obtained from Mark Meadows. I really thought for certain that he was going to emerge as a cooperator, and there is very little that we didn't already know attributed to him in this indictment. It suggests that either the prosecution is completely holding back what they've got and he is cooperating or I think more likely that he's just not engaging in fulsome cooperation. And I was very surprised by that.

Jill:

That one surprised me too. And Barb, what about you?

Barb:

Well, I think the thing that surprised me, but I now think as a stroke of genius, is the inclusion of only one defendant. It's United States versus Donald John Trump. There is not a charged indictment against the other six people who are identified as co-conspirators.

I fully expected to see some of those people to be charged in this initial indictment. Part of it I was really looking for was to see who they were. And although Jack Smith has described six unindicted co-conspirators and described their conduct and it is illegal, they're all participating in these various conspiracies, he chose not to charge them. And my first reaction was to be a little bit puzzled, but as I've thought about it, and I've read other people's theories on it, it strikes me as a stroke of genius. I mean, one, is it's a shot across the bow, right? I'm sure they've already had conversations with these people. But now that you're seeing Black and white what the allegations are, it's kind of one last chance to sign on as a cooperator.

And even if they don't want to, I think it is an effort by Jack Smith to streamline this trial against Donald Trump and get it done before November of 2024. A seven defendant indictment is at least seven times harder to get to trial than a one defendant indictment because people get sick. They have problems with lawyers. They want to file various motions. And so if you can focus on the one, the statute of limitations gives Jack Smith time to go back and indict the others later if he wants to, to indict them in a superseding indictment. But this way, he can just keep the heat on for a speedy trial that can be resolved before November, 2024. So I was surprised, but I think it's a stroke of genius.

Joyce:

Can I just say, Barb, that I totally agree with your assessment that this is a speedy trial move, and I'm also curious about whether any of the six are cooperating, and my focus is that last one, right?

Barb:

Yeah.

Joyce:

The first five, we know who they are. Number six, not clear. I wonder if it could be Michael Roman, this guy we've talked about on the podcast before. He's a political operative. He was running day of operations stuff for the election. There had been speculation that after a very dry performance in front of the January 6th committee that he might be cooperating. And because he was accompanying Trump throughout the day and was there afterwards, there's some stuff he could really shed light on if he's now a cooperator.

Kim:

I think that's a good gas choice. I was leaning toward Steve Bannon, but I think that that might be right. One thing that I will say that the internet sleuthing that's pointing to Ginni Thomas, please, she wishes she were that connected. It's not that important.

Barb:

Yeah. I know [inaudible 00:13:52]

Joyce:

Bless her heart. Bless her heart.

Barb:

Boris Epshteyn, you don't think it's him?

Jill:

No way-

Joyce:

I think it could be him. He's another good [inaudible 00:14:00]

Jill:

I don't think so because he is a lawyer, and they went out of their way-

Joyce:

Yeah. I agree.

Kim:

Oh, that's the point.

Joyce:

Yes, agree.

Jill:

... [inaudible 00:14:05] lawyer. And so, I just-

Kim:

[inaudible 00:14:05] political operative.

Jill:

He's not a political operative.

Kim:

That's a good point.

Jill:

And he's the one who caused some of Trump's lawyers to quit in his defense because they didn't like working with him as a lawyer. So I don't think it's him, but I do think it's curious that they went out of their way to give clues that made one through five clearly identifiable and went out of their way to make sure you didn't know who six was which leads to me thinking that Joyce's theory, that he or she is a cooperator is a real possibility.

Barb:

Oh, that's a good theory, Joyce. I [inaudible 00:14:41] about that.

Jill:

Yeah.

Joyce:

My favorite one was number four, Jeffrey Bossert Clark, the anti-environmental lawyer who ran the Environment and Natural Resources Division at DOJ. And seriously, it was so clear it was him that I thought the last sentence was going to be and his initials, RJBC.

Kim:

Yeah, I said, "It rhymes with Schmeffry Schmarf."

Jill:

Oh god. All right. Well, I was going to add to this the thing that stood out to me was some of the quotes, I mean the, "You're too honest," just a ton of quotes. But there was one where I hadn't heard it before, and I wrote in the margin of my indictment, "Yikes."

And that is paragraph 58 that says, "I just talked to the gentleman who did that memo, co-conspirator five, your favorite co-conspirator. His idea is basically that all of us, Georgia, Wisconsin, Arizona, Pennsylvania, et cetera, have our electors send in their votes even though the votes aren't legal under federal law because they're not signed by the governor so that members of Congress can fight about whether they should be counted on January 6th. They could potentially argue that they're not bound by federal law because they're Congress, and they can make the law, kind of wild and creative."

So I mean, it goes on from there. And I read that, and I went, "Oh my God, this stuff is in writing. And there they are." It's outrageous. But, okay, let's move to round two.

And round two is tell me something that you thought was very well done. And Barb, you've already said one thing you think is well done, but you'll have to think of another one, or something that was omitted that you expect it to be included. And Joyce, you may have given a clue on what you think on that one,

in this interference with the election indictment, or maybe you can talk about something in the arraignment.

And I'll just give a quick answer this time as the first one to speak, which is I thought it was really brilliant to call him defendant throughout this indictment and to call his co-conspirators co-conspirators one, two, three, four, six because by the time you read a few pages of it, you no longer thought of him as Donald Trump. You thought of him as defendant.

And then they did the same thing like they called one of the memos, the Wisconsin memo that morphed into the fraudulent elector's memo. So I really thought that was really clever drafting because it really puts you in the mindset of these are crooks and criminals. So let's see. Kim, you went first last time. So how about Joyce? You want to go first or second this time?

Joyce:

Well, I'll tell you something that I think is particularly well done, and this sort of piggybacks on what Kim was saying about the fourth count in the indictment, the civil rights conspiracy. I'm really a huge fan of that count. The first time we focused on that for real was when Donald Trump himself announced that he was going to be charged with a civil rights conspiracy.

And we were all trying to figure out, "Okay, we read the statute." It could go a lot of different ways. There could be a lot of different theories. And the theory that this special council team landed on, I think, is brilliant in this sense. It tells a story about what Donald Trump did that should be very personal to every American because this is a conspiracy to deny you of your right to vote, not just if you voted for Joe Biden, but all of us collectively because the agreement that we have with each other is this collective notion that, as Americans, we vote for the candidate of our choice, and then we accept the result and move on.

That's what Donald Trump kept this country from doing. It is very personal. And I think as the case progresses, this will help some of the people who are fence sitters, some of the people who've disengaged because they're overwhelmed by just his massive criminality. I'm the eternal optimist here who believes that people can reengage, that the Trump fever dream can break. And I think the way this charge is positioned is one of the paths forward for us as a country.

Kim:

So I agree with you that it was a violation of everyone's rights, but it was particularly pointed at Black and brown voters because they knew that they would have a strong turnout on election night, and that would be one of the biggest obstacles to Donald Trump pulling out another victory. So I think it's important to remember both things.

Joyce:

So look, let's just be honest about what this is all about. The reason that a big part of the country is still behind this guy who's a rapist, who has committed horrible crimes against the Constitution, who's a grifter, it is about race. It is about concerns about the shifting demographic in this country. It's about the possibility that Black and brown people will have more political power, and it's all exemplified in the way Trump handles the election trying to deprive the new majority in this country of voting rights. I mean, I think that this is so perfectly on brand for Trump and his base.

Jill:

Kim, I think everyone's going to agree that your interpretation of what Joyce said is so moving and so terrifying that we need to all be cognizant of it. But I want to add another thing to something that I thought of when Joyce was talking. The way it's drafted, that count makes all of us, every single American, a victim of the crime.

Joyce:

Yeah.

Jill:

And that is a great reason for our camera in that courtroom. It must be televised because victims have a right to see the trial, and we are all victims. So I am hoping that there are going to be some changes to the rules of cameras so that we can have a live broadcast of this trial.

Kim:

And can I talk about what I think was omitted because I think it's related?

Jill:

Sure.

Kim:

I don't think I was expecting it, but one thing that I was disappointed, that was omitted, was a seditious conspiracy charge that would've expressly tied Trump to what the oath keepers and the proud boys did in their convictions that would've made Trump a part of that conspiracy because they were. Again, this is the Ku Klux Klan Act, and they were acting as the modern Ku Klux Klan. And so for Trump to not also be charged with seditious conspiracy to draw that through line, I was very disappointed in.

Joyce:

But what do you think was the evidence that showed Trump intended the use of force? I mean, do you think the evidence is there?

Kim:

Will be wild like-

Jill:

So don't take away the magnetometers. They aren't after me. They're after the people at the Capitol.

Kim:

He knew that they were armed. I understand why. Listen, like I said, I wasn't expecting it because I understand that trying to base any evidence on the rally would have caused First Amendment challenges that would've delayed everything. I get it. I understand. But it was a conspiracy. The proud boys were a part of this story, and in his trial, they won't be. And that for history, for posterity is this is a speaking indictment, but it doesn't speak about everything. And so it would've been great if that could have been a part of it.

Jill:

Right. But I do agree with Joyce's question, which is to the extent that this was drafted, as we said with one defendant to get to trial speedily-

Kim:

I know.

Jill:

... that would've definitely, definitely delayed it. So what about you, Barb, in round two? What was either well done or omitted?

Barb:

Yeah. I would say omitted, things I was looking for was like Kim's seditious conspiracy or inciting insurrection or even what Congresswoman Zoe Lofgren referred to as the big ripoff using these false claims to raise money.

Jill:

Yes.

Joyce:

Yeah.

Barb:

But I think this is probably the kind of modest yet sweeping indictment that is going to do the job. I mean, like you, I would love to see Jack Smith make that connection between the people who attack the Capitol, the seditious conspirators, the oath keepers, the proud boys, and that Willard Hotel war room.

Jill:

Yes.

Barb:

I feel like there's more to learn there, but in the absence of overwhelming evidence, I think that it is wise not to charge those things. Believe me, as someone who has lost a seditious conspiracy case, I know how hard it can be to prove those.

And so I think not swinging for the fences, not including a seditious conspiracy count where maybe there is a First Amendment defense that will slow things down, not including the kitchen sink. I think it was well done because I think that a conviction on the indictment as charged, conspiracy to defraud the United States, obstruction of an official proceeding and deprivation of rights, those are very serious charges.

And if he's convicted of those things, then we're done. That is victory. And so to go for the home run, especially if you miss or if you delay the trial, I think that would've hampered things. So I think this was an example of a just right modest indictment, but it does include facts from A to Z that happened from November of 2020 all the way through January 7th, 2021.

Jill:

Right. And I think that they did a really good job of learning what most prosecutors or many prosecutors forget, which is that sometimes enough is sufficient. They had exactly what they needed. So let's go to the final round, something that Trump and/or his lawyers said that shocked or angered you. And let's see, Barb, you haven't gone first. So why don't you go first this time?

Barb:

Well, I think the one that is getting my goat the most is this idea that Donald Trump, his First Amendment rights are being violated. And he had an absolute First Amendment to say the things he said. If you look at the indictment itself on page one, it said, "Of course, he had a right to proclaim even falsely that he had won the election."

But this goes well beyond this. His charges use that lie, and then operationalize it by doing things like trying to organize false slates of electors and trying to get the Justice Department to lie that they have found irregularities to get Georgia to reconvene its legislature by asking Rusty Bowers to reconvene the legislature in Arizona to submit alternate slates pressuring Brad Raffensperger in Georgia, all of those things.

Yes, they do involve speech, but it goes back to this idea that you are right to free speech, like all rights is not absolute. Conspiracy, every conspiracy involves speech, right? It's an agreement. Every threat involves speech, when you extort somebody that involves speech.

I had a friend say, "If this is all about speech, then what Osama bin Laden did on January 11th was only about speech." Like, "No." You can't use speech as a weapon. And so that one is when you're hearing a lot of talking points and supporters say, and it's just not valid. Maybe, it flies in the media, but it's not going to fly in court.

Jill:

And Joyce, what do you want to add to that?

Joyce:

So my outrage was Trump's lawyer, John Lauro, on national TV last night trying to explain that all the man wanted was a 10-day pause so that they could check the... And I'm screaming at the television. It's a coup. It's an effing coup.

I'm so frustrated by the way Trump's behavior gets normalized through repetition, and what's outrageous at first becomes acceptable. And I think that we're at a moment in this country where we need to, I'm just going to try to say this politely, stop the normalization. I get that these guys are defense lawyers, and they have a job to do. And I don't grudge them that, but I think our job is to restore what my good friend, Barb McQuade, would talk about as being accurate information, not misinformation or disinformation.

Kim:

Thank you, Joyce. I hope the bar authorities are just paying close attention because making false public statements violates most ethics rules of the oath that we take.

Jill:

And Kim, why don't you go ahead and add yours? And I'll go last.

Kim:

Okay. So it's everything that Trump has said because here's the thing, at the end of the day. You have to believe one or two things that he knew that he lost the election, and he lied and spurred a coup because he lost the election or that he genuinely did not know that he lost this election. If it's the former, he's a criminal, if the latter, he's an idiot. Either way, he is unfit for the presidency. So this is so clear to me that I cannot believe he is even polling above 3%, because either way, he can't be president no matter which one you believe, right?

Jill:

Absolutely. Absolutely.

Kim:

I just want to pull my hair out at this point. That's it.

Jill:

Please don't. It looks too good. Don't do that. So I had so much trouble picking something to say in this round because I had two pages of notes of things that outrage me both by Trump, his continuing attacks on the prosecutors, and repeating lies that are alleged in the indictment as knowingly false and which I think could actually lead to the violation of his release plan because if you remember, the magistrate said to him, "You cannot commit any more crimes or you will be taken into custody."

And so I think he's committing additional crimes. He's threatening the prosecutor. He's threatening the prosecutor's wife. He attacked her. He said that the Department of Justice was weaponized against him, and went on and on. But I'm going to turn to really the attorneys who have brazenly made false statements and that I think do cross the line of what is their role as a defense lawyer. So aside from the free speech one that Joyce has already mentioned, his lawyers are claiming that the Speedy Trial Act is only for the benefit of the defendant.

Excuse me, but who doesn't know that the government is protected by that as well? Witnesses die. Memories fade. The people are entitled to a speedy trial. So that one really, really got to me. And his speedy trial arguments are so ridiculous that the government took three years to investigate this. So we should have three years. Well, you have the person who I did it.

Kim:

Come on.

Jill:

You know everything there is to know. Excuse me.

Barb:

Well, he's presumed innocent, so I don't know that that works. The two things are apples and oranges, right? [inaudible 00:30:19]

Jill:

Remember, all of this is public information. The January 6th committee published a report where there's nothing that's not going to be pretty much there. Yes, they need time. They don't need a year or two. They need to address this and treat it like it is required under the Speedy Trial Act.

I mean, I could go on and on this one, but I'm not going to. It's just, as I say, there's two pages of things that I could say, and maybe I'll write something about it because I was so completely outraged by him. It was ridiculous.

Kim:

That was so dumb. And even if it worked that way, and it doesn't, Jack Smith was appointed in November. It was not three years.

Joyce:

They can't even count. I mean, they can't count. How are they going to defend this guy?

Jill:

Oh God. I think that's a good place to end this conversation because enough is sometimes sufficient, even though we could go on forever.

Joyce:

Don't play with your food. Eat it.

Jill:

Who's calm this week? Not me. It's been an incredible week of news, and I haven't slept at all. So Kim, what can I do to help myself?

Kim:

I have slept like a baby because I use Calm, Jill. It's all about meditating, bringing yourself back to center and not letting what is externally affect you internally. In today's fast-paced world where indictments are coming from everywhere, taking care of your mental health is more important than ever. And if you're looking to reduce your stress, increase your mindfulness, and improve your overall wellbeing, you need Calm. That's because Calm helps you stress less, sleep more, and live a happier, healthier life.

Joyce:

Calm recognizes that everyone faces unique challenges in their daily lives, that mental health needs differ from person to person, and that time for meditation varies. And since self practices are so deeply personal, Calm strives to provide content that caters to everyone's preferences and needs.

Calm's meditations range from focuses on anxiety to stress, self-care, to inner peace with sleep stories, relaxing music tracks, and daily movement sessions, all designed to give you the tools to improve the way you feel. They even have expert-led talks on topics such as tips for overcoming stress and anxiety, handling grief, improving self-esteem, caring for relationships and more. I.

Really like Calm a lot. I'm most likely to use it at night for one of the sleep stories, but I also really like to meditate. And I didn't think I needed Calm, but I've been using it the last couple of weeks, and it's great for my meditation practice.

Jill:

That's so good to hear because everything you need to prioritize your mental health and wellness is on Calm. And if you go to calm.com/sisters, you'll get a special offer of 40% off a Calm premium subscription, and there's new content added every single week. So relax, Calm's got everything you need for a happier and healthier you,

Barb:

Jill, I was just impressed with how well you were able to say calm.com. For listeners of the show, Calm is offering an exclusive offer of 40% off a calm premium subscription at calm.com/sisters. Go to C-A-L-M.com/sisters for 40% off unlimited access to Calm's entire library. That's calm.com/sisters. You can also find the link in our show notes.

Kim:

August marks the beginning of what is known as the red zone, and it's nothing good. It's the period between August and November when rates of sexual violence at colleges and universities are the highest, and survivor advocates have decried the fact that yet another school year is about to begin under Trump era Title IX rules, which dramatically changed the way school officials handle sexual abuse and harassment claims. So Barb, I want to go to you first. Remind our listeners of how Title IX applies in cases of alleged campus sexual assault, and how that rule changed during the Trump administration.

Barb:

Well, Title IX is the law that was passed in 1972 to provide for equal rights in education. And it's been applied to say you can't discriminate on the basis of sex. And that includes things like sex discrimination, sexual harassment, sexual assault. All of those things get rolled into the Title IX protections.

And during the Obama administration, a lot of changes were made to make it easier for people to report and make the process more comfortable for the survivors of a sexual assault. In the Trump administration, we saw that switch back treating it much more like a criminal charge and increasing the due process rights for the accused.

And although certainly if you care about due process, it makes sense, but it raised the stakes. And because this isn't a criminal case, I think many people thought that changing these rules were misguided. For example, you have to show clear and convincing evidence instead of a preponderance of the evidence that the assailant committed this sexual assault.

It requires the accuser to be subjected to cross-examination, which I think is something that deters a lot of people from going forward. So this switch in the landscape to make it more difficult for a survivor and to increase protections for the accused and make it much more akin to a criminal case, I think is what changed the landscape and has made it just much less comfortable for accusers to come forward.

Kim:

And Joyce, we talk a lot here about the importance of due process, right? So why do you think activists, sexual abuse survivor advocates are so unhappy with this Trump era policy and that it hasn't been changed?

Joyce:

Yeah. Barb really touched on this. It's the bounce back between the Obama administration and the Trump administration, where Betsy DeVos, the Secretary of Education, was just not a friend to women's students. Under the policies that went into place during the Trump administration, student survivors experience punishment, retaliation. They have forced leaves of absence.

Many of them end up transferring schools or dropping out because schools are able to shirk their responsibilities, and the victims are the ones who aren't getting due process in this regime.

It has always been a complicated process to be fair. But the Trump administration expanded protections for students accused of sexual assault, and it allows colleges to largely ignore the complaints. One of the results of that is this just bizarre situation where it can actually be quicker for victims to go into the criminal justice system than to ask for a remedy under Title IX.

So it is a due process issue, and the Trump rules raised the burden of proof for someone who's seeking to establish campus sexual assault. Virtually, Title IX investigators have to have a video or an audio taped recording of a confession before they'll move forward under these laws. Change is long overdue, and it's time to get off the stick, Biden administration.

Kim:

Yeah. It's really amazing because just in researching this topic, I think I Googled something like Title IX sexual assault, and all of these news stories came up, from colleges, from coast to coast about people who alleged that they were sexually harassed or sexually attacked on campus and off. Title IX, in some circumstances, it can also apply off campus if it's a campus event, and that they just had no way of getting any satisfaction that they could not even get adjudication off the ground, that they're still forced to go to school with their alleged attackers.

And just like Joyce said, it can have terrible consequences. And just this past week, there was a story in the Boston Globe about students at Harvard and BU who they actually got criminal convictions against these people, and the Title IX process still had not provided any... I mean, it's really incredible to think about. So Jill, at the bottom, Title IX, as Barb pointed out, is a gender equality statute.

And although sexual assault happens to people of every gender, women are overwhelmingly at a higher risk. In fact, college women are three times more likely than average to be sexually assaulted.

So why do you think the Biden administration... The Biden administration, said, "We're going to change this." They said they announced the rule last year. They said they were going to implement it in May, and then they're like, "Wait a minute. No, we need more time." And they still haven't done it yet. What do you think the holdup is here?

Jill:

Well, they are saying that the holdup is that they got so much public input when they released these new rules that they needed the time to absorb them and analyze them and respond to them. The problem is, as you started this with the red zone, that happens August, September, October, and November, and the new release date is October, which means that they will not be in effect for this school year's heavy sexual assault.

And to repeat something that Joyce said, it's a very complex issue. I today spoke with the former president of Governor State University, Elaine Maimon, to talk about how in her experience it had handled, and I also looked at this as part of an Obama appointed committee looking at sexual assault in the military, a Pentagon Committee. And it's a hard line to draw between protecting victim's rights and ensuring that there's due process for the defendant.

But when you can go to court and get a conviction faster, and when under the Trump rules, that conviction does not assure that you will have any response from the school, you know that the rules need to be changed.

Right now, after conviction in a court, a student goes to the university and says, "Please punish the student." And they say, "No." The rules say we have to do an independent separate investigation which re-victimize the victim. It's a waste of time. And if you had under the standard of proof that a trial means, which is beyond a reasonable doubt, there's no reason why a university can't use that.

And so I think that that needs to be built in. It would be different if you get an acquittal. That doesn't mean you can't have a separate investigation at the college because the acquittal could be based on, as in the E. Jean Carroll case, the definition of rape.

And even though we all would understand it as rape, it's not technically within the rape statute. But it could be the kind of violation of community standards. We talked earlier about college campuses and they are communities, and they have community standards, and students are held to account for violating those standards. So I'm going to take the Trump administration... I'm sorry, the Biden administration at its word and agree that they needed to really analyze all of the comments they got, but it can't happen soon enough to protect the victims of this growing problem of sexual assault.

Kim:

Joyce, you are looking fantastic, your skin particularly. What are you doing?

Joyce:

You are so sweet, Kim. I have been using OSEA. I had trial sizes of all the OEA products, and I like them so much that I ended up getting full-size products and using a very valuable bathroom displays base because this is really, really a product that I am sold on. We all want that summer glow. And OSEA is offering a rare opportunity to try their bestselling body care set at an amazing reduced price.

It really is my personal favorite in the horrible southern heat and the humidity, and I know my sisters love it too. The kit includes OSEA's TikTok famous Undaria algae body oil, great to use in the shower, and the Undaria algae body butter which I've just been slathering everywhere in the heat. You also get their ultra-rich Anti-Aging Body Balm and Salts of the Earth Body Scrub. They all feel silky and cleansing, and they're perfect for summer travel.

Kim:

Joyce, they totally are. I just got back from Martha's Vineyard for a wonderful event. I was able to carry my bag on and not have to check anything with OSEA's convenient TSA-friendly sizes. They're packed in a beautiful, reusable, vegan leather bag, and you can enjoy silky soft, radiant skin wherever your adventures take you with OSEA.

Make OSEA's bestselling body care set your glow-to for summer and make sure everyone can see you shine. And in the world of high prices, you'll love knowing the set has a value of \$78. But right now, you can get it for only \$52 at oseamalibu.com. That's 33% off, and we can all use that when it comes to treating ourselves. Plus as a special treat for our listeners, you'll get an additional 10% off when you use our code Sisters in Law.

Barb:

Did she just say glow-to?

Jill:

She did say glow-to because you too will glow if you use OSEA Malibu. And another thing that's really important about OSEA Malibu to all of us is that OSEA is a one-stop shop for clean, vegan, cruelty-free clinically proven and climate neutral certified products for both face and body. Even better, they've been making seaweed-infused products in California that are safe for your skin and the planet for over 27 years. Never choose between your values and the best skincare you can trust will work for you.

Barb:

This summer, get glowing healthy skin with clean vegan skincare and body care from OSEA. I have been slathering their body butter on my toast. It's so good. Don't miss this rare opportunity to try OSEA's best-sellers body care set for 33% off and 10% off your first order site-wide with code Sisters in Law at oseamalibu.com. You'll get free samples with every order and free shipping on orders over \$60. So head to oseamalibu.com and use code Sisters in Law for 10% off. You can also find the link in our show notes.

Joyce:

Well, shocker, Alabama is not satisfied with its near total abortion ban. Now, it wants to tell people when they can get abortions out of state. And I thought that our deviation here from talking about Trump would be uplifting. But we've gone from problems with Title IX to something that I think is really problematic.

And so I would underscore the point that Trump is a problem. But problems brought on by some of the shift the country has experienced under Trump, they aren't going anywhere. So with apologies, we'll focus on this issue. Jill, earlier this week, the ACLU actually sued Alabama's Attorney General Steve Marshall over his approach to enforcing the ban in Alabama. And then a second lawsuit was filed. What's the controversy about?

Jill:

Your attorney general, lucky you, said that he was going to start using an 1896 law to punish people for conspiring in the state to get services that are legally available in another state in the context of abortion.

He said, "If you're agreeing in my state to let someone go out of state to get an abortion where it is legal," then I'm going to hold you responsible here. And so there are actually two lawsuits, as you said, one from the ACLU and one from a funding organization called Yellowhammer Fund. And they are both suing for pre-enforcement because it hasn't been enforced yet. It's just that he said out loud that he was going to start doing it and that people are now afraid to give advice to a patient who comes to them that they feel is medically necessary, that it's a violation of their First Amendment right, but it's also a violation of doctor's obligation to give the kind of care that patients deserve. And it's on the threat that your Attorney General has made to use this law to start punishing people for giving help to getting out of state and to violating everyone's right to travel interstate.

Joyce:

I mean, it's sort of the classic situation for pre-enforcement challenges because the threats chill exercise of rights, it'll be interesting to see how the court addresses the standing issues. But like you say, Jill, two different lawsuits, one from two women's healthcare providers who no longer provide abortion services. All that they're doing is talking with their pregnant patients about their options. And then the

Yellowhammer Fund, which helped to fund out-of-state travel because very often, it's poor people or people with less access to the resources to travel out of state.

And even folks who are just giving advice over the phone or in person are worried that they'll now be subject to criminal charges as co-conspirators or accessories for even saying, if you still want to obtain abortion services, they're perfectly legal in California. So it's really doesn't look good on its face. But, Barb, my question for you is maybe this is okay. I mean, can Alabama or any other state, for that matter, tell people what they can and can't do outside of that state's borders? Can it impact their right to travel freely? What are the constitutional issues that we're looking at here?

Barb:

Yeah. I don't think so. Of course, this has never been tested in court. And so until it is, it's not quite clear. But there is this constitutional right to travel. It goes all the way back to 1867, and it's been upheld. And so courts, I think, typically are of the view that imposing a ban on travel, whether it's to get an abortion or for other reasons would be unconstitutional.

And in fact, anticipating this argument in Dobbs, Justice Brett Kavanaugh actually wrote in his concurrence that a state may not ban a resident from traveling to another state to obtain an abortion. And so he's on record at least saying that, of course, it's dicta because it was not part of the decision in that case. And so I think there's at least a strong argument that even he would support that would say, "No, you can't." There's also this clause in the constitution, this is going to make you shudder from law school, known as the Dormant Commerce Clause. Remember that? I know there's [inaudible 00:51:17]

Joyce:

The commerce clause, I've tried to forget it.

Barb:

It's [inaudible 00:51:21]. I'm talking about imaginary numbers [inaudible 00:51:23] Dormant Commerce Clause. But basically, it's the federal government that gets to regulate commerce between and among the states. And so states are really not supposed to intrude in that area of interfering with what other states are doing. And each state is its own separate sovereign. So this idea of preventing somebody from doing something that affects commerce in another state is also I think possibly a violation of the Dormant Commerce Clause. So I think it's unconstitutional. But it's-

Kim:

But, Barb, in that sense, won't people just say, "Well then, we just need a federal abortion ban," and then that takes care of the Dormant Commerce Clause probable?

Barb:

Yeah. Maybe so. Yes, perhaps so.

Joyce:

It's fascinating because I think that's what led to this approach by Alabama and other states. They realized that a national abortion ban wasn't palatable, but they may just shoehorn themselves back into it with this. Well, Kim, what are the larger implications of this move by Alabama? Alabama's not alone among states in trying to ban out of state activity.

My big fear has always been that these sort of issues about interstate travel would arrive at the court cloaked in abortion, where the court always seems to have special jurisprudence. I mean, I would just be certain that we would all have a right to travel out of state and do whatever. I mean, you can go to Colorado and smoke weed if you're from Alabama, but I do have real concerns because the court has a special jurisprudence when it comes to abortion. What do you think we're facing here?

Kim:

Yeah, I mean, I don't trust the court. I think I've said this before on this, and despite whatever dicta Kavanaugh included in this and other cases, I still think that there could be five justices that could rule something awful. And because we are talking about the need for reproductive health healthcare, which is very time specific, it's not like if somebody needs this care, they can wait for an appeal process to happen.

And already just today, I saw a study by Washington State University that without any of these travel bans, just with the abortion bans that are already in place at this moment, 41% of women of reproductive age would have to drive at least 30 minutes to reach an abortion care facility, and 29% would have to drive 60 minutes, and a quarter have to drive 90 minutes or more just to access it.

That's not even counting all the pending abortion bans or increased restrictions that are set to go into place, which could raise that number up into the 40s in terms of people who would have to travel 90 minutes or more. Imagine how the lack of access that would be included if there's also a threat of either civil or criminal penalty for leaving the state to access this care.

We are talking about real people. We are talking about people who can be having a host of complications who are not just... Again, I think there's still this narrative that this is irresponsible people using abortions as birth control. It's not. These are real lives at stake, and I just can't imagine if this were allowed to happen. And even if it's challenged and the Supreme Court says, "Nope, you can't do that," I worry about all of the lives that will be threatened in the meantime.

Barb:

And now comes the part of the show that we like the best where we answer your questions. If you have a question for us, please email us at sistersinlaw@politicon.com or tweet us using #SistersInLaw. If we don't get to your question during the show, keep an eye on our threads feeds throughout the week where we'll answer as many of your questions as we can. So our first question comes to us from Kathy who asks, "Does Donald Trump have to register as a sex offender following the E. Jean Carroll result? And if not, why not?"

Joyce:

So I'll take that one, Barb. The answer unfortunately is no. That was a civil case. Although he was found responsible for sexual assault, he was not convicted of a crime. So he will not have to register as a sexual offender, at least not on those charges.

Barb:

All right. Our next question comes to us from MG. Jill, let me direct this one to you. If Fani Willis uses the same details and charges in her indictment as Jack Smith uses in his election interference case, can it be considered double jeopardy?

Jill:

Short answer, MG, is no, because it's a different sovereign, and it's a different law. So she will be prosecuting under Georgia law whereas Jack Smith is prosecuting under federal law. And yes, I do expect that her indictment will overlap in the facts and witnesses with what Jack Smith has alleged in his indictment, but it will not be double jeopardy. And it's important because if her case goes to trial and he's convicted, he cannot pardon himself if in the horrible event that he should be reelected, he becomes president. He cannot use his pardon power for himself, nor can any other Trump-like successor do that. And neither can Governor Kemp because the Governor of Georgia does not have pardon power. It's vested in a separate independent committee.

Barb:

All right. And our third question comes from Anne Monroe 4336. Kim, what do you think about this one? Do you think the lawsuit against Harvard about legacy admissions will actually be successful? Many schools are eliminating them voluntarily, but I think the lawsuit is important not only for Harvard but for other similar schools. Will it work?

Kim:

Yeah. The answer, Anne, is I don't know. And I fear that it won't. What the affirmative action case really did in striking down the consideration of race is I think it really eroded something that is called disparate impact claims, which is you're not looking at race purposefully, but it is having an effect of denying people of admission due to their race. The way that that was worded, I think that, that is in peril and that is the theory that this case would have to rely upon. And again, I don't trust the Supreme Court. So I have a feeling that it may not be successful.

Barb:

Thank you for listening to hashtag #SistersInLaw with Kimberly Atkins Stohr, Joyce Vance, Jill Wine-Banks, and me, Barb McQuade. And remember, you can send your questions to us by email to sistersinla@politicon.com or tweet them for next week's show using #SistersInLaw. Please support this week's sponsors, Aura, Calm, and OSEA Malibu. You can find their links in the show notes.

Please support them as they really help make this show happen. And go to politicon.com/merch to buy our shirts, totes, and other goodies. To keep up with us every week, follow #SistersInLaw on Apple Podcasts or wherever you listen. And please give us a five-star review. It really helps others to find the show. See you next week with another episode of #SistersInLaw. I don't know about you, but after Trump's arraignment, I'm going to start reporting my age as five eight. I just going to say I'm five eight because people might misunderstand and think I'm talking about my height.

Joyce:

Barb, no one.

Jill:

You'll never convince anyone of that.

Joyce:

Yeah. No one is going to think you're five eight. I'm sorry.

Barb:

This transcript was exported on Aug 05, 2023 - view latest version [here](#).

Just [inaudible 00:59:25] I'm the tall one.

Kim:

Not unless you wear my shoes.

Joyce:

No, you're not. No.

Barb:

Kim's not in shoes.