

Barb:

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Jill:

Welcome back to #SistersInLaw with Joyce Vance, Barb McQuade, Kimberly Atkins Stohr, and me, Jill Wine-Banks. Today we have three great topics. Georgia, of course, is on our minds after the fourth indictment of the former President, Mifepristone's been decided again this time by the Fifth Circuit in a not surprising outcome that we're hoping may change at some point. And then there's a shocking case that didn't get much attention in Kansas where a newspaper office was raided and all their devices were taken. You'll love hearing about that.

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. They're the perfect summer gift. Today, before we get to the really good topics, I wanted to ask you a question. I'm going to dinner at a friend's house, and all we ever talk about is politics and the news, of course, is usually pretty depressing and scary in terms of what's going to happen to our democracy. So I want to ask all of you for suggestions on what can you talk about when you don't want to talk about politics.

Kim, let's start with you.

Kim:

Well, it's really hard in my household considering that my husband and I are both journalists and I cover the law and politics, and he covers the Supreme Court. So there's usually a very strong tendency for us to bring our work to the table. But you know what has solved that? Adopting a puppy. We talk a lot about Snickers, what she's up to, what we need to train out of her, whether it's how much she loves everyone, and how wonderful that is, or how the only person on earth she hates is the mailman, and she has scratched up our door as a result because every time the mailman comes, she loses her mind. So that takes up a lot of our dinnertime conversation, Jill.

Jill:

That's a great substitute for sure. And Joyce, what animals do you talk about or what is it that's not legal? No, not legal not political.

Joyce:

So interestingly, my husband, who until recently was a state court judge in Alabama and is still a lawyer in private practice, or at least I hope so. He's spending a little bit too much time on the couch for my taste these days. But I'm sorry, honey, but Bob does not like to talk politics at our dinner table or when we're out with friends. And I have found that to be a good rule, although people really want to ask questions about politics and particularly about Trump when we go out. I try to keep it to a minimum. I had this great dinner last night with two of my closest friends, people who I started out with in the US attorney's offices, prosecutors with, and the three of us hadn't been together alone for a long time. And I found myself partway into the conversation thinking, this is so wonderful.

One of them is in the middle of writing a book, and we were talking about that and the motivation and the setting, and one of the others lives out of state now so we were talking about what she's doing and what her kids are up to. And I had this moment of clarity that I don't know if I can reflect where I

thought, this is why we do the work we do. This is why the pro-democracy work matters so much so that we can have wonderful lives with people that we love about and hear about what's going on in their lives. It filled me with a lot of happiness last night.

Jill:

What about you, Barb?

Barb:

Oh, I love this question. One of the things I tell my students is I personally went through this whole evolution where my ability to talk about the weather and the traffic I went through this period in my young adult life where I thought that was the most superficial thing anyone could ever talk about. Stop talking about it. If you talk about it. I'm not going to indulge in this conversation, but I have since learned that talking about the weather and the traffic is the greatest common denominator with everybody because everybody has an experience, a story. It affects everything we do every day. And so I found it is a great way to make common ground with people because once you start talking about this, you say, "Oh, let me tell you about my story. Let me tell you about my story." You have started a conversation and so it's the easiest thing to talk about. It affects everybody, and I encourage people to talk about that. If there's somebody you don't know, a perfect stranger, you can all talk about the weather and the traffic.

Jill:

Well, that certainly is good advice. Although I know with my friends, if I start talking about the weather, they're going to talk about climate change and we're going to get right back into the thick of things.

Barb:

Absolutely, yes.

Jill:

I know it for sure. For sure, for sure. But yeah, we are looking forward to our dinner and having fun and talking about maybe not the weather, maybe not traffic, although traffic is also part of what we need to do to save this planet, but at least it won't be talking about saving democracy. So all you guys send us your topics that you talk about. I'm sure Joyce talks about knitting and chickens and dogs and cats. For sure you do that. I know you do.

Joyce:

Absolutely.

Jill:

And Barb, you talk about sports for sure, right?

Barb:

I do.

Jill:

Absolutely.

Barb:

That's another good community builder.

Jill:

Yeah, that is. Unless you're me who has no knowledge of sports and can't do it.

Barb:

Hey Jill, what have you done to save the planet lately?

Jill:

I have actually been taking care to make sure that I do reduce my waste. And did you know that an estimated 5 billion 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. That's why we feel great about using Blueland, and we know you'll love their products too.

Joyce:

If you haven't heard, 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, and they look great on your counter. We have been enjoying having them so much, especially the ease of refilling the hand soap whenever you're about to run out is great.

Barb:

Not only are you doing your part for the planet with Blueland, but all of their products are so easy to use. Just fill your bottles with water, drop in the tablets and wait for them to dissolve. You'll never ever have to grab bulky cleaning supplies on your grocery run. Refill start at just \$2.25, and you can even set up a subscription or buy in bulk for additional savings.

Kim:

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, and their cents are amazing too. Even better, Blueland has a special offer for listeners. Right now get 15% off your first order by going to blueland.com/sisters. You won't want to miss this. blueland.com/sisters for 15% off. That's blueland.com/sisters to get 15% off, and you can also find the link in our show notes.

Joyce:

So Monday night, Trump picked up a fourth case. If I could do a good imitation of an Italian mobster right now, I say, "Hey, Trump picked up a fourth case." That's a lot for any defendant. It's even a lot.

Barb:

Oh my gosh, I'm sorry, I just have to call time out right here. Was that Joyce Vance trying to do a mobster voice?

Joyce:

I don't have a mobster voice. I admitted that up front. I mean, Barb, come on. I'm an old Dixie Mafia prosecutor. I could do like, "Hey, y'all Trump picked up a fourth case Friday night." That's about as good as you're going to get from me. But joking aside, that's a lot. Most people don't get indicted four times in their entire life, let alone former presidents. I'm not sure that we give ourselves enough time to reflect on how truly bad, how truly incredible it is because we all have so much numbness over Trump. But fourth indictment, we've now had the week to digest the indictment. Fani Willis brought a sweeping indictment. I think that's a fair characterization. In some ways it has echoes of the election fraud indictment brought by Jack Smith, but we get a lot of fascinating factual detail and it's brought under Georgia law. So Barb, let me put you on the hot seat for starters. Help us understand the RICO charge and what Fani Willis has to prove. That's the common denominator, all 19 defendants charged in RICO.

Barb:

Yeah, so I've had experience with federal RICO. This is Georgia RICO, but they're almost identical, and if anything, the Georgia RICO is a little bit easier to prove. But the gist of RICO is, it's short for the Racketeer Influenced and Corrupt Organizations Act. And as you said, Joyce, it was passed initially and the federal statute in 1970, and many states followed thereafter to go after the mafia, and organized crime. But it is not written directed solely to those groups. It can really be used against any organized criminal activity. Racketeer actually comes from a really interesting background. It's from the old Tammany Hall days when the politicians would hold raucous dinners and all the business people were expected to show up and buy a ticket if they wanted to do business with the city. They were kind of getting shaken down, so they called it the racket.

And so racketeering comes from that word that time. So I just thought that was an interesting background that I learned very recently. But RICO requires that a prosecutor prove that people join together in an enterprise, some sort of loose association for the purpose of engaging in an ongoing pattern of racketeering activity. So that part has to happen. It has to be ongoing. And so here we've got a scheme over a matter of months. We've got an overall scheme, which Fani Willis alleges was to overturn the election in Georgia to give Trump victory over Joe Biden. And then that it encompassed a number of different illegal schemes to do that. And so the beauty of RICO is it allows you to bring in what might appear to be disparate schemes under one umbrella because they were all joined in this same goal. And the reason it worked for the mafia is sometimes the underlings would do the street crimes and the Don at the top of the organization would be able to get away with it because he was able to keep his hands clean and distance himself.

This brings accountability for everybody involved in all those schemes. And so here the racketeering activity that Fani Willis has alleged are a number of schemes. One involved the fake slate of electors, so there's forgery and some other charges related to that. Another is the efforts to pressure and harass Shaye Moss and Ruby Freeman to falsely confess that they had engaged in voter fraud. And so there are a number of crimes around that. Another is computer intrusion, and that relates to Sidney Powell and some others who are charged with, in Coffee County, intruding into voting machines. And then one scheme involves Trump and Giuliani and Mark Meadows and some others pressuring public officials to change the vote for the outcome like this called the Brad Raffensperger, find me 11,000 votes and pressuring other public officials, that's another one of the schemes. And then finally obstruction and perjury relating to all of this investigation. So each of those schemes now, instead of going to five

different juries, one jury gets to see the entire scope of all of that in the same case. And it also allows Fani Willis to reach outside Fulton County where she's the DA into Coffee County and even to allege that some of this other activity was going on in other states.

Joyce:

Hey Barb, can we draw one other distinction here? We've talked in the past about conspiracies where in essence, when a defendant is charged with conspiracy, prosecutors have to prove the agreement and then an overt act, something that someone did in furtherance of the conspiracy. And it can be anyone. If the four of us are in a conspiracy and I commit an overt act, it's game on. Barb and Jill and Kim don't have to commit overt acts of their own. How does that work out in the RICO context where under Georgia law, there have to be two predicate acts committed. Is there some sort of individual tie in or does it also have this broad language?

Barb:

Yeah, in fact, even broader, I think Joyce, because they're charged with RICO conspiracy, so conspiring to violate the RICO statute. So what they have to prove is among that group of 19, at least one of them, they agreed that at least one of them would commit two of those predicate schemes. So those five schemes I just described, the jury just has to pick two. And it doesn't have to prove that they succeeded, just that they agreed to commit those and that at least one of them would engage in it. So when I was in the US Attorney's office overseeing a big RICO case, our prosecutors came up with what I thought was a very clever way to help a jury understand this. It can get a little complicated, which is the downside of RICO is it brings in a level of complexity in the jury instructions in the law.

But the way they simplified it for the jury was you pick two in the way the popular restaurant chain says you can pick a soup and a salad. You can pick a salad and a sandwich. You just have to pick two. You don't have to pick... So think of this as a menu of predicate crimes, and as long as you agree on the same two, you only have to find that this group agreed to violate two of these laws. So I think that way helps to make it a little more understandable to a jury.

Joyce:

Yeah, Fani Willis has given them quite a number of choices. I think that there's something like 33 racketeering acts and 119 overt acts charged in the RICO count. So it's a smorgasbord.

Kim:

It's like a Michelin star menu.

Joyce:

Right. I mean, it's like one of those things where the courses keep coming. We had a meal like that when we were in Sweden earlier this year where we lost track of courses and we frankly ran out of appetite. I wonder if the jury's going to feel that way by the end of trial. But Jill, so Willis has been on a really serious note. She's been very open, very public about the threats that she has experienced as a prosecutor in this case accelerated I think very clearly by the fact that she's a black woman. Grand jurors whose names are made public under Georgia law, they've also experienced threats. We've learned that a Texas woman has been arrested after leaving a telephonic threat for Judge Chutkan in DC. She's handling the federal election fraud case brought by Jack Smith. Do you expect that judges in any of the jurisdictions will take real steps that will reign in Trump? He's not always directly responsible with the

Texas woman. We don't know what, if anything, his role was, but certainly having him out continuing to target people is not helping anything. Do you think that there's any realistic hope that a judge will reign him in?

Jill:

I hope, but I have to say the judges are in a really tough situation. Judge Chutkan said that she was going to move the trial up faster if he kept on making threatening comments because he wanted to protect the trial and he needed to make sure that jurors weren't put off by this. And right now we have the federal investigators and state investigators and county investigators looking at the threats to the grand jury in Georgia. They are certainly, I'm sure, looking at the threats to Judge Chutkan and to Fani Willis, and it's really scary to have that happening. But if any of the judges says, "Okay, you cannot say a thing," or says, "I'm incarcerating you to protect the jury system to protect the system of justice," that's going to only rile up his base, the MAGA crowd, even more. So the choices for Joe Smith, which would be incarceration no doubt, may not apply here where a judge has to balance the first Amendment, the sixth Amendment has to due process.

If she pushes the trial up too fast, he will be deprived of the time to prepare, which is part of his due process rights. So I'm not really sure what or how he's going to be controlled.

Now, he did cancel his promise to say, "I have this great evidence that's going to show there really was fraud." And of course he's canceled that because there is really no evidence that there's fraud and there's evidence quite the contrary, that there was no fraud. He's saying, "Well, it's going to be in the court papers and my lawyers said it's not necessary." I don't know why he stopped. I don't know if his lawyer said, it's going to kill you if you do this, if you keep putting forth the lie, the big lie about fraud or what's happening. And I'd be interested in hearing what all of you think. Is there something beyond threats because I believe if there is not some consequence, if there isn't a stop put to this behavior, it's only going to escalate and get worse. And that his followers, we saw what happened on January 6th. We saw what happened in Ohio where someone came to kill people in the FBI office and it didn't go very well for him, but it was clearly motivated by the words of Donald Trump. So if anybody has any suggestions, I'd love to hear them.

Kim:

I honestly think, and Judge Chutkan can, she has been doing this for a while and she, based on all accounts, is a very astute jurist. And I think the trial date threat was brilliant because she's not going to go to a point where I think it threatens his constitutional rights, but she also realizes that putting Donald Trump in jail for contempt is exactly what he wants and that can have terrible consequences. This really hits him where it hurts. This will ensure if he keeps doing it, guess what, you're definitely going to get a trial on this and it's going to be well ahead of the election. It's exactly what you don't want. So I think that it was actually really brilliant and I think that it could be effective. In terms of his attorneys and this cancellation of this ridiculous press conferences, I hope that his attorneys threatened to quit on Moss if he did that because that's... Can you imagine your client is indicted for a total of 90 some odd charges, and he's like, "I'm going to go speak in a public..." I mean, that's crazy. I can't emphasize enough how nuts that is.

Joyce:

I think you're right though. I think that's probably what happened. I suspect that the defense lawyers may have said, "If you do this, we cannot represent you."

Kim:

Correct, and you will have no one because he's just about... We talked about how hard it was for him to find attorneys in Florida for one of the, I'm not saying that the classified case is less important, but he couldn't find lawyers in his own backyard. It took him a long time so could you imagine if everybody quit?

Joyce:

Well, Kim, why don't we keep going beyond the question of whether a judge will take steps against Trump, we have that larger question of whether information like the identities of grand jurors in Georgia should remain public. There are countervailing interests at work here. The public does have a right to know as members of the public, we feel that strongly, but people who are doing their civic duty should also be protected. So how do you balance the equities here?

Kim:

Yeah, this is a really important point, and I think there has been a lot of confusion about it. I've seen erroneous reports that it was a mistake that they forgot to redact the names of the jurors or that somebody leaked it or something. That's not true. In Georgia, generally speaking, it is practice to name the grand jurors in an indictment. There's not a law requiring that but case law, based on Georgia case law, the practice is that you do that because the Georgia Supreme Court has held in the past that failure to name the grand jurors makes an indictment deficient and it deprives defendants of the ability to make all the defenses they could possibly make to challenge the indictment and things like that. So I am sure that Fani Willis is aware of this, and the last thing she wanted would be to give Trump's team an additional means of challenging this indictment, and so there really was not any choice.

Now you can go to a judge and ask for an order to deviate from that standard, but you have to present the reasons why that could take additional time. I don't know why she didn't do that, but it's probably because time was already of the essence and they didn't want to do that. But these are the different interests. Now, generally speaking, in most of these indictments, you don't have somebody who has a national megaphone and can rally people to harass and threaten these folks. But it is true that it is a criminal offense to harass and intimidate anyone, but specifically to harass and intimidate grand jurors. That is obstruction of justice that can come with very high penalties. So I think that's the balance that was struck here.

Joyce:

Yeah, I guess there's not a perfect world in which to handle all the problems that Trump creates, and it certainly underlines the fact that when you've got someone who doesn't respect the rule of law, it's tough for the rule of law to work. To that point, Barb, in the next week or so, Trump and his 18 co-defendants will all show up at the Rice Street Jail in Fulton County for processing. There's been a lot of speculation that Trump might time his appearance to counter program the first Republican debate. And of course there's his on again, off again press conference that Jill referenced where he's talked about proving fraud off for the moment. [inaudible] You are speculation on disinformation. How does the media handle this if Trump tries to set up his court appearance yet again as something where he shows himself off as the victim and portrays it in a political light rather than as a legal proceeding?

Barb:

Well, he's going to do that. The latest news I saw [inaudible]

Joyce:

Yeah, I pretty much know that. Yeah.

Barb:

He has scheduled an interview with Tucker Carlson for the same night as the debate, as counter programming. Of course, it's streaming online, and I don't know if a lot of people know how to access that, but that is his effort at counter programming to get people to watch him and not watch the debate. So kind of interesting there, and we'll see what else. You're right. Maybe he'll say, "I've chosen to turn myself in right at the time that the debate is going on." I doubt it though, because the debate will be in the evening, and I think the court will want him to turn himself in during the day. So Tucker Carlson...

Joyce:

Can I just push back a tiny bit and say the sheriff made a point of saying that the jail was open 24 7.

Barb:

Well, all right then. There you go.

Joyce:

That made me ask the question.

Barb:

Oh, that's interesting.

Well, why not right here I am. What do you mean? Yeah, that's really interesting.

So you never know, he's certainly thinking about how can he upstage that debate and get people not watching it and watching him. He's all about the ratings. As for this thing on Monday, I would love to think that it was his lawyers who really talked him out of doing this, but it reminds me an awful lot of the time. He announced he would have a big announcement about Hillary Clinton on Monday. This was in 2016, and then it didn't happen. And about how I'm going to talk to Robert Mueller, I'd love to talk to Robert Mueller, and then it didn't happen, and he blames his lawyers when these things don't happen or my tax returns are under audit, here are all the folders, see everybody. Remember he did that big show, probably blank pieces of paper.

I think this is... I don't have any facts. This is pure speculation on my part, but come on. "I've got a big report that proves that the election was stolen and completely exonerates me, and I'm going to show it to you on Monday in my press conference." And then, "Oh, guess what? My lawyer said, I can't show it to you, but I'll have it at my trial. So you can be confident folks. I'm going to put off this trial till after the election because we need to do that to make sure it's fair. But you know my loyal followers that I've got this great report so you can rest assured that I've got a defense and you can go ahead and vote for me." I think it's all part of the PR disinformation strategy. I don't know that, but that is my speculation.

Jill:

You might call it witness intimidation or influence because that's what he's trying to do is to say, "I have it so just expect it." And by delaying it, making it sink in first impressions are hard to change.

Joyce:

That's definitely true. And Jill, now we're starting to see the other co-defendants try to step into the arena and begin to make their cases. The first motion that we've seen came from Mark Meadows. It's his motion to remove the case from state court to federal court for trial. What's that about, and do you expect it to succeed?

Jill:

It's very hard predicting what courts are going to do in this era, but no, I don't expect it to succeed because what this is about is saying that I was federal official. I was acting within the scope of my job and I have a federal defense to this, and therefore I can't be tried in a state court, it has to be tried in federal court. And that would eliminate the possibility of cameras in the courtroom because in Georgia you're going to have cameras, and I personally think that's really important. But other than that, it would still be under the Georgia law and prosecuted by the Georgia prosecutors. I don't think there's a federal defense. I don't think he can claim that it was part of his job because under the constitution, the president has no role in counting the votes or in any way connected to what was going on at the time.

So he doesn't have a colorable federal defense, and therefore I don't think that it's going to be granted. Not every act that you do when you're a federal officer is under color of your office, and I don't see how this could possibly be under the color of his office. I don't think he meets the minimum standards that have been set up for what has to be established to remove a case. And we've seen some examples where courts have refused to remove, for example, Donald Trump's case out of the New York court. And I think the same will happen here in Georgia.

Joyce:

I think there's a lot more to be said on removal. That's a great overview, and I suspect that this is something that we'll all be watching carefully because now that Mark Meadows has filed that motion, maybe this is the test balloon and it goes up, but Donald Trump certainly can try this same move. Jeffrey Bossert Clark, who worked at the Justice Department may be able to assert this argument too so we'll just put a pin in that one and say more coming.

Kim:

Well, can I just say one thing because I've gotten some questions from listeners about removal, and some people are worried that if by removing a case from state to federal court that somehow then the president will be able to pardon it. And I want to be very clear, even if it's removed, state rules still apply. It's still prosecuted by the state, and the Georgia rules on removal, which we've discussed before, are very difficult. It's all but impossible to get or for pardon rather are very strict. It takes five years after the completion of the sentence. You have to pay all the fines. You have to be a law-abiding citizen during those five years. Yeah, he's not going to be able to get pardoned, but that's important to know.

Joyce:

So I think that you're right about that. It's sort of this subtle point that even if the case goes to federal court, it still remains its nature is that of a state case? I think it's worth flagging though that that would be an issue of first impression because no president has ever been indicted in state court, removed it to federal court, and then tried to pardon himself after being reelected. And it is an issue of first impression with a Supreme Court that hopefully would not go that far. But you know what, it makes me wonder, Kim, and this is just wild speculation. If I was the government, I would say, "Look, federal judge,

you're just handling this for the state of Georgia. We have cameras in the courts in Georgia, so we want our cameras back." And I wonder if a motion like that couldn't be made. This just raises a whole host of questions.

So what comes next though? Willis has asked for, let's just say rather speedy trial dates in March. Do you think she'll get it and what other motions are we about to see from the defendants?

Kim:

I mean, I think that has to be the opening bid. The trial dates are usually a negotiation between the prosecution and defense. She's opening with [inaudible] March. I think given the complexity of this and the number of defendants, I think that is very unlikely but we'll see if the defense comes back with really unreasonable requests. I think was their first request like 2026 or something. That's what they're asking for. It makes it more...

Jill:

April 26.

Kim:

... It makes it more likely that it's something closer to what the prosecution is asking for than defense. You're going to see that, you're going to see motions to dismiss which will fail. You're going to see motions for removal, postponement. I think most of those will fail because based on the indictment, this is a prosecution that's being brought very carefully and deliberately, and I don't think we're going to get it tossed out or postponed in any unreasonable way.

Jill:

Although I also don't think they can have 19 defendants in one courtroom. During Watergate, we use the ceremonial courtroom, which is the largest one available in DC and maybe anywhere. And we fit in the prosecution table and five defendants, and there was not one inch of space left.

Kim:

So my prediction is by the time this goes to trial, there will be no more than six defendants left.

Joyce:

When Willis tried the Georgia Educators RICO case, she indicted, I forget now the numbers I used to know, it's either 25 or 35 people. By the time it went to trial, she was down to 12, so she has tried that many people in a courtroom in Fulton County. I don't know what the over under is on fitting more than 12 in with a shoehorn, but she doesn't have to go down that far. Kim, are you thinking she loses all of the Georgia people that they all plead out?

Kim:

Yes.

Joyce:

That makes a lot of sense to me too. Barb, you had something to point out.

Barb:

Yeah, just one thing about Donald Trump asking for a trial date of April of 2026. It just reminds me of my favorite New Yorker cartoon, the one where the man's holding the phone and he says, "How about never, is never good for you?"

Joyce:

It's so true. I saw somebody on Twitter who was like, "How about 2047 on Mars?" And that's really what? Let's do it on Mars.

Kim:

Joyce, I really like taking good care of myself while also looking cute. And I have found Kitsch products are perfect for that. Do you like Kitsch?

Joyce:

I do. Kitsch has been called game changing. That's what Kitsch's biggest fans like all of us here at #SistersInLaw, say about its time-saving beauty essentials for hair, skin, and body. So ask yourself, are you ready to take your beauty game to the next level? We think it's amazing how they started in 2010 by selling hair ties door to door with literally just hustle and a dream. Plus Kitsch is a self-funded female founded company, and it's now carried in over 20,000 retail locations.

Jill:

Yeah, I love seeing them everywhere that I go now. And whatever your budget, your skin type or your hair type Kitsch believes you deserve little indulgences at affordable prices. Morning, noon, and night, you might have seen Kitsch's satin pillowcases, caps and eye masks. They're all terrific. They're great for your hair and skin while you sleep. We also can't get enough of their heatless satin curling rollers. So say bye-bye to heat damage with Kitsch.

Kim:

You know, I travel a lot and I always make sure the first thing that I pack is my Kitsch satin pillowcase, because it is great not just for your hair but also your skin, because cotton can be really dry. It actually saps moisture from your skin and hair and having the satin pillowcase is great. And I have to tell you about the latest Kitsch viral craze, rice water shampoo bars that can improve your overall hair growth and density.

Barb:

Wait, wait, wait. What's a shampoo bar?

Kim:

It's just like a bar, but for your hair, Barb. Reviewers say they'll never use bottle shampoo again, and that their hair feels and looks 1000% better between washes. I know mine does. Plus right now, for a limited time, you can live the Barbie Dream Life. I don't mean just Barbie McQuade, I mean, the Barbie by Kitsch collection featuring Kitsch's, bestselling satin pillowcases in iconic Barbie pink.

Barb:

I got to get me some of that Barbie water shampoo bars. But right now, Kitsch is offering you 30% off your entire order at my [kitch.com/sisters](https://www.kitch.com/sisters). That's right. 30% off anything and everything, mykitch, K-I-T-S-C-H dot com slash sisters. One more time, mykitch.com/sisters for 30% off your order. You can also take your beauty to the next level by finding the link in our show notes.

Kim:

So today, Mifepristone known as the abortion pill remains available, but that can change as a challenge to the FDA approval of the drug and the regulations around that drug is far from over. So Jill, this has been a complicated legal saga already, and it's not even through. Remind us how we got here and what a federal appellate court did this week.

Jill:

Well, this is complicated. You're right. Mifepristone was approved in 2000 and it had some conditions for its use set with it. And then it was changed in 2016. And then in 2019, a generic version was approved. And in 2021, the FDA said it wasn't going to enforce the in-person prescription requirements. And the plaintiff group right after Dobbs formed this group, the Alliance for Hippocratic Medicine and the Association for Pro-Life OBGYNs, and brought this lawsuit in district court, which they carefully selected a district in which there is one judge and one judge only, Judge Kacsmaryk, who is known as a very conservative judge. And he basically held that everything about Mifepristone was illegal, that the original approval hadn't taken into account all of its possible bad reactions and that they couldn't change the rules. And so he ruled completely as a national thing that it would be barred from being used. That was in direct conflict with a Washington judge who issued a ruling exactly the opposite way. It was then appealed, the Texas, sorry, Judge Kacsmaryk as in Texas. That opinion was appealed and the Supreme Court put a stay on it while it went back to the Fifth Circuit, and that's what happened this week. The Fifth Circuit, also a very conservative leaning court vacated part of the district court ruling. It said that the original approval, they were way pastime to file any complaints about it. Normally we're talking about a statute of limitations of five years. This is 23 years that they couldn't even challenge that. But the Fifth Circuit did say that he was right in terms of the 2016. So he's put the law in a way that it's very restrictive for the use. You would have to go see a doctor, you couldn't have it through 10 weeks, which is what the current rule is. You could only use it up to seven weeks of pregnancy and you'd have to get it from a doctor.

You'd have to go to the doctor's office to take the first pill, come back for the second, come back for a third. You'd have to have some MRIs before. So it would really restrict the use and the opinion is very, very limiting. It ignores standing, which I think all of us would say is probably one of the things that didn't exist here, that there was no reason this court had standing to do this or that the plaintiffs had standing to bring the case. So that's where we are right now. It will be appealed. The FDA has said they want to take it back to the Supreme Court. So that's where we are going back to the Supreme Court.

Kim:

So Joyce, a lot of listeners have asked how a court can second guess the FDA when judges are not experts in medications or the rules that apply to them. So give us a little admin law if you can, and explain how that can happen and what is the standard.

Joyce:

I wish I could give you a little bit of admin law to explain how this opinion happened. I mean, the standard is that the courts are supposed to affirm administrative action unless it's arbitrary and capricious. But that's not what's happening here. And you can see it happening and I apologize. It may be that I'm going to need therapy after reading this almost a hundred-page opinion. But it starts at the beginning with this three judge panel, which is a one-sided panel results oriented going into it. We get it in the first sentence of the opinion where they say, "This complicated administrative law appeal concerns the regulation of Mifepristone, a drug used to cause abortion." Nothing about medical treatment, nothing about complicated pregnancies or saving women's lives. We know from the outset that this opinion in their minds is about causing abortion. That's what this panel is concerned with.

And they keep it up a couple of paragraphs down. We hear the panel saying, "Many women face severe complications as a result of taking Mifepristone," again, substituting their judgment for the FDA, because this is of course, inconsistent with the facts, Mifepristone is safer than Tylenol. It is far safer than Viagra, by the way, which no one is talking about taking off the market. So look, Kim, I'll answer your question this way. Judges are supposed to call the balls and the strikes. They're not supposed to take an at bat for one side or the other. It's very hard to avoid the feeling that that's what's going on here. There is no way that the court can use the language that it did to get around the administrative action and the deference to administrative action. That's one of the centerpieces of the way our civil society system works.

The fifth opinions decision is about whether the FDA actions that loosen the restrictions on the use of Mifepristone are valid. That's not how they treat it. I mean, they note in passing, well, you might have a statute of limitations defense, it's a pretty good one. But they go on to question the actions that were taken by the experts at the FDA, which is not their job under the way that the law works here. And so while the FDA applies this sort of special regulatory framework to Mifepristone, which means that it has been regulated and studied much more strenuously than most other drugs are, I think we need to remember this is drug. It's proven safe, it's used in other countries, but now we've got three judges, including by the way, one who was sworn in Harlan Crowe's private library with Justice Clarence Thomas in attendance.

These folks have substituted their judgment for the judgment of the experts at the FDA. And I'll just note that if you get as far as I did into this opinion, you'll see that Judge James Ho, the one who was sworn in that manner, said that he would invalidate the approval of Mifepristone in 2000 entirely. He wrote, "Scientists have contributed an enormous amount to improving our lives, but scientists are human beings just like the rest of us. They're not perfect. None of us are. We all make mistakes, and the FDA has made plenty."

So Judge Ho, how did they get away with it? They do it because we have a Supreme Court that's okay with bending the rules and using special jurisprudence when it comes to abortion.

Kim:

Oh my goodness. Well, that anticipates my question to Barb because as Joyce said, the DOJ is likely to appeal this to the Supreme Court. What do you think is going to happen there, Barb?

Barb:

Yeah, I think that's right. And one little bit of silver lining here is that the Supreme Court has said until the entire appeals process is completed, the status quo will be maintained. And so that includes appeals to the US Supreme Court. The court could do a number of things. They could just simply decline to get involved and just let this decision stand. They may want to do that just to stay out of it, or they have

been very active in the abortion space. And so they could say, we take this up. They could either affirm this opinion and leave the FDA's approval of Mifepristone on the market, but include those great restrictions that Jill just talked about. Or they could reverse it on a number of different bases. They could go back to what Judge Kacsmaryk said in the district court, which is it's just not available, which could be the worst of all scenarios.

I think they could also reverse on the grounds of standing, though. Going back to that idea, remember at the very beginning, the plaintiffs in this case are a group of doctors who have the most speculative harm you can ever imagine. And remember, folks standing means there has to be a real case or controversy, someone who has suffered real harm before you can file a lawsuit. And what they say is, it could be that someday because we are doctors, we might be on call and we might be on call to show up to work one day when some patient who comes in who is pregnant shows up and that she has used Mifepristone and that Mifepristone has failed her, and there must be an emergency abortion performed. And because I'm the only doctor there, I will be the one to have to do it, therefore, in violation of my religious beliefs.

Are you kidding me? So this person whose religious beliefs on this pure speculation are trumping the pregnant patient who comes in whose reproductive rights are completely secondary to this speculative right. So I think there's a good grounds for standing there for them to overturn the case.

The other thing, because remember, this court as a conservative court is not interested in opening the floodgates to plaintiffs to sue big business. And so that's one thing, tort law and other kinds of things, they have always been very tough on standing. The other thing is if it's open season on FDA approval of drugs, that is going to have a bad effect on big pharma and people who do invest resources and money and time in developing drugs. And if you know that some judge on some whim can take away FDA approval, then that becomes far less valuable in certain kinds of drugs. So I'm not certain that the Supreme Court here will go the course you might expect following does.

Joyce:

If only they had just followed the law from the outside, the courts wouldn't have to contort themselves to save big pharma. Imagine that.

Jill:

Well, and you're also in a situation where they had the facts all wrong. You pointed out they said that there were more deaths from this and bad harm that they really can't establish. And Judge Ho also used language about an aesthetic injury to them by having to be confronted with this. And that is just so far afield from what I think is valid grounds for making a ruling on this, that it just made me crazy to read it and it's a horrible decision to read.

Kim:

A GOP strategist told me the other day that he doesn't think that voters will be energized by the indictment of Donald Trump, but he absolutely thinks that voters will be energized on the issue of abortion. It's probably the most problematic one for Republicans. It's just a reminder that you all, every one of our listeners has some power on this when it comes to going to vote and making clear to your elected officials that this is an important issue. And that is one way to protect abortion access in America. So it's in your hands.

Joyce, you look so bright and alive, and I love the way you're batting your eyelashes at me. What's your secret?

Joyce:

My secret, Kim, and I think you know it already is Thrive Causemetics. Thrive Causemetics makes high quality, high performance beauty and skincare products, and they're made with clean skin loving ingredients. No parabens, no sulfates, no phthalates, and they're products are certified 100% vegan and cruelty-free. Cause is in the name for a reason. We love how every purchase supports organizations that help communities thrive, and their products are perfect for any look even for me when I'm a little bit, what do we say this week? I haven't slept quite enough, am I under slept, and I'm finding that white eye stick is a lifesaver right now to open up your eyes. What about you, Jill?

Jill:

Oh, I love that stick and I love their mascara. And right now, I think the best is that brilliant eye brightener. The news has kept us all awake day and night so especially when you want your eyes to pop on camera or at a party, it's the highlighter stick made to brighten and open your eyes, giving you an instant eye lift.

All you have to do is apply it to the inner corner of your eyes to look like you've had plenty of restful sleep. I also use it on, I think it's called the waterline of my eye. Even if you haven't had a lot of sleep, you're going to look a lot better. You'll look much better than when I stay up till two in the morning like I always do.

Kim:

Well, Jill, you still look great. That's the whole thing about it. And this isn't...

Jill:

Well, it's that white eye stick. That's it.

Kim:

But it's, true talk, even without me prompting, I have a running email, text chat with my law school girlfriends, and they were talking about the Thrive Eye Brightener and how great it is without even knowing that I've been using it all these years and I've been talking about it with you guys. So we've all been up late after the news out in Georgia and other developments. And Jill, you're absolutely right. You can use it as an eyeshadow for a perfect daytime glow or use the metallic shades for an easy smoky eye. It's really foolproof. It's very easy. You don't have to be a makeup artist to be able to blend any of the 13 shades, and you'll see why it has more than 10,000 five star reviews as soon as you put it on. So you need to get over to Thrive Causemetics and check them out. We truly can't get enough of thrive, especially how they contribute to helping communities thrive with every purchase through their bigger than beauty program. They give to over 300 causes, spanning colleges, cancer research, and homelessness along with many more.

Barb:

You have to try Thrive Causemetics to see for yourself right now. You can get an exclusive 20% off your first order when you visit thrivecausemetics.com/sisters. That's Thrive Causemetics, C-A-U-S-E-M-E-T-I-C-S do com slash sisters for 20% off your first order. The link to this deal also looks beautiful in our show notes.

A story that might've been a little below the radar during this busy week was this one out of Kansas where police conducted a search at a small newspaper. Police came in, they had a warrant, and they

were looking for information about a local business owner who was seeking to get her driver's license restored with the help of a member of the city council. Now, nothing actually got published, but there was a reason to believe that they had some documents. So police officers seized documents and even equipment from the newspaper during the search. And I think what made this story particularly sympathetic was the fact that the newspaper is co-owned by a man and his 98-year-old mother who died shortly after the search. And her doctor said that the stress of the search was a contributing factor to her death. And so just this week, the prosecutor returned all of the documents and all of the equipment to the newspaper, it's called the Marion County Record, saying there was insufficient evidence for the search. But the state police say that their investigation is continuing. So it raises so many questions. Kim, first, what's the law in searching newspapers? Are they immune from searches if the police obtained a search warrant, which they did here, then why all the outrage?

Kim:

So news organizations do not have broad immunity to searches that are conducted in accordance to the Fourth Amendment and relevant state law. The standard is that there is probable cause that a crime has been committed, and that can apply to individuals as well as businesses. But there is another law governing it. It's a federal law that was passed in 1980 called the Privacy Protection Act. And it requires something a little more than the standard procedure for a search warrant alone. It actually makes it illegal for law enforcement to seize materials used by journalists if the effort is just to prevent them from publishing information. And there is not the prerequisite that there is probable cause to believe that a law was broken and that a crime was committed. So I believe that's why there's still so little information about exactly what happened, why this warrant took place, and why it was dismissed by a judge.

But my suspicion is that a judge looked at this, looked at the Privacy Protection Act, and said, "Look, y'all, you can't just be going and raiding a newsroom just because somebody claimed, as in this case, that their identity had been stolen." There is a greater protection there, and it's important, it's consistent with the principle of prior restraint. The First Amendment prohibits prior restraint of news organizations, which means you cannot stop something from being published just because you don't like it. That goes back to the Pentagon Papers. You can't do that. So it's an important law. You have to strike a balance between the first and the Fourth Amendment. But when it comes to news organizations, it seems to weigh more heavily toward the First Amendment.

Barb:

And so Joyce, I'm struck by this story of the DOJ policy in this space, which has evolved a bit in recent years. In fact, Merrick Garland has spoken on this most recently. What's the DOJ policy when it comes to searching materials obtained during the news-gathering process in a federal case?

Joyce:

So the department's policies intended to provide protection to members of the news media from law enforcement tools like search warrants or subpoenas that are used to gather electronic information, and it applies in both criminal and civil cases. The goal and it's sort of the theme that's animated this conversation, is to avoid unreasonably impairing news-gathering. So to do that, DOJ policy requires prosecutors to balance vital interests that don't always point the same direction. You have to think about national security, but also about public safety. And most importantly, you have to think about safeguarding the role of the free press in fostering government accountability and an open society. So there's a lot of balancing that goes on there. The hands-off policy is meant to apply to legitimate

journalists who are bringing us the news. It doesn't extend special protection. So people who think that DOJ's approach is overboard, it doesn't apply say if a journalist is being investigated for a murder that they've committed outside of their news-gathering function. This is meant to protect newsrooms and news gatherings, and it calls for a high level of coordination between field offices and main justice. The Attorney General is even looped in to make some of the most serious authorizations and decisions in this area.

Kim:

And it's important to say that that guidance requires a subpoena, which is a higher standard than a search warrant, which means that there has to already be an ongoing case in process. They can't just decide to do it because somebody gave them a tip.

Barb:

So DOJ policy is not law, it's just policy. It can change from one administration to the next. So right now, we've got this pretty pro First Amendment, free Press standard. Jill, do you think that we need specific laws on the books that protect newspapers from searches? I am kind of mixed on this. It strikes me as kind of a First Amendment versus Fourth Amendment face off. And although I'm a vigorous advocate for the First Amendment and a free press, not all newspapers are the New York Times or even the Marion County record. I mean, now anybody with a blog can call themselves a newspaper and publish half-truths. We don't know the facts of this case, but is any newspaper permitted to steal government records in the name of the free press?

Jill:

It is an interesting question, and I would say that we've already identified that there are special rules at the federal level that protect the press. This, of course, was a local county sheriff and a local newspaper that aren't under those rules. And here the violation seems much more egregious. But that's probably because we don't know all the underlying data. On the other hand, we can sort of assume that because they've already returned everything voluntarily. So they are sort of saying, yeah, we didn't have anything here. They probably acted without the proper thought that should have gone into it.

I think we do need... The First Amendment is very precious. It is the First Amendment, I think for a reason. It's because it's a foundation of our democracy, and if we don't have the freedom to speak, then we lose a lot of ability to have a democracy. So I think it is really important. On the other hand, you don't want the police being able to go in and search anywhere willy-nilly, so you do have to have some protection. And it would be more so I think with a newspaper, a legitimate source of news as opposed to someone who's just posting on social media with no credentials. But it is a difficult weighing of the values. It's definitely very tricky.

We are now all so concerned about saving the planet and enjoying summer gardening, and there's a great device called Lomi that will help you do both.

Kim, are you using Lomi?

Kim:

I am. Can't you hear it? No, you can't. It's so quiet. Even when it's running, you can't hear it at all. We love Lomi in our household, and you're absolutely right. It deals with our food waste while also helping our gardens outside. We know it's all too easy to leave full trash bins home when we're away for summer vacations, really gross. But Lomi is the perfect way to keep our places clean and fresh smelling,

but it also makes a big 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.

Barb:

And it even makes cooking at home even more enjoyable, believe it or not, and in alignment with our values. That's because with Lomi, you can turn waste into nutrient rich dirt to feed your plants lawn or garden, which means that it's not going to landfills and producing methane gas. So we get to help the environment and make life easier. Now, all food scraps, plant clippings, and even those leftovers you forget in the back of the fridge can go back into the ecosystem. Even better, anyone who uses Lomi can grow more nutritious food in their backyard. I know Joyce can't wait for the fall harvest.

Joyce:

And it's not just fall bar because our fig trees are loaded with figs this year, even though we had a really horrible, tough winter here where everything looked like it was dead. Lomi is going to give us a backyard full of figs and then on into fall, and it feels great knowing there's no food rotting in your garbage and smelling up the kitchen. Thanks to Lomi, I only have to take out the trash once or twice a week, and it's a hassle-free, mess free experience. Imagine having no more leaky bags and 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 a lot more dinner parties before the season is over, I don't really know how I'd do it without Lomi.

Jill:

After a summer of really tragic and unique weather events because of global warming, it is really good to take some action to help the environment. So 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 and use the promo code SIL to get \$50 off your Lomi. That's \$50 off when you head to [L-O-M-I dot com slash sil](https://l-o-m-i.com/sil) and use the promo code SIL at checkout. Thank you Lomi for sponsoring this episode. Everyone, of course, can also find the link in our show notes.

Now is time for the best part of this show where we answer your questions. We love getting them and we hope you'll send more of them to us. If you have a question, you can email us at sistersinlaw@politicon.com or thread or tweet using #SistersInLaw.

If we don't get to your question during the show, keep an eye on all of our thread feeds and more because during the week we answer as many as we can. And today we picked three really good questions, and the first question is from Judith, and this is for you, Joyce.

Do you think that judges in high profile cases listen to new shows or read articles and opinion pieces about their cases in order to get clarity or new insights, or do judges pretty much ignore all of the outside stuff, all the external chatter?

Joyce:

I think this is a pretty interesting question, and because the judicial process can be so opaque and people don't really know how judges work inside of their chambers, I'll take a stab at answering it. I'm the wife of a judge. I was the daughter-in-law of a judge, and I've spent a lot of time around judges in my career, and I think that judges are human beings and they do get exposure to TV news and the media, but I don't think that they use it to get insight about their cases or to form their views. I think something

that people may not always appreciate about the way judges operate is that good judges and 99% of the judges out there are good judges in this sense. They're very vigilant about doing their jobs and they understand that they have to set aside anything that's extraneous when they go in to look at a case.

Judges are thorough. I bet we've all seen Judge Chuck and they've been playing tapes of her confirmation hearings for her judgeship in front of the Senate where she says, in no uncertain terms in response to questions from senators. She says, "Look, I do my job. I'm thorough. I read the facts. I know what the law is. That's what I use to make a decision." And I think that that's what the overwhelming majority of judges do, even though they're human, they do love seeing themselves discussed on television. I mean, I just think that that's sort of baked into the cake, but I think they're very good at setting it aside.

Jill:

Our next question comes from [inaudible] @MPena Gu Arrow, and I'm going to ask you to answer this, Barb.

Does the Mark Meadows indictment in Georgia affect his potential cooperation with Jack Smith?

Barb:

Such a great question. I think it does. I was really surprised to see his name listed as a defendant in the Georgia case, just because I had assumed he was cooperating with Jack Smith. There was that description of six unindicted co-conspirators, and none of those matched the description of Mark Meadows. In fact, at one point it describes conduct by the chief of staff. I assume that's Mark Meadows so I really thought he must be cooperating with Jack Smith, but you would never cooperate with one and not the other. Now, would maybe that he will cooperate yet with Fani Willis, he just hasn't yet, and that he'll work out some deal with a global resolution. But it would be foolish for someone to testify in federal court, say for example, in exchange for a benefit leniency in a plea deal or something like that, because anything he testifies to in federal court could be used against him in state court.

So his value is admitting like, "Yeah, I was in the room and I planned with Trump and we planned to do these things and we shook down Georgia." That would be the value of his testimony in the federal case. So it may be that Fani Willis will put together a deal for him that will have a global resolution of both cases, but to the extent they don't, I think this could harm the potential cooperation in the federal case, and this will be true of everybody, of every cooperator. If you're a defense attorney, you want to resolve everything, not just one thing, only to have your client turn around and face serious consequences in a different forum.

Kim:

But doesn't that require the approval of the other prosecutor, right?

Barb:

Yeah, absolutely.

Kim:

Yeah.

Barb:

Absolutely. They're going to have to work together on this.

Joyce:

And that's what makes it so mystifying. When Fani Willis was asked, "Are you and Jack Smith coordinating?" And she said, "He couldn't put me out on the street," and you sort of had to think in that moment, "Well, how are they aligning on cooperators?"

Jill:

That was a big surprise.

Kim:

She later, when asked again, she just said she wasn't going to talk about deliberations.

Jill:

Our final question is for you, Kim, and it's a really good one from Tyra Lindquist one.

If all the lawyers who defend Donald Trump end up disbarred under indictment or in prison, is it possible Trump could end up with a public defender?

Kim:

This is a great question.

Jill:

I'd add to that question, or even if they don't get to prison or indicted, but they just simply quit because he won't follow their advice.

Kim:

I was going to say, the most likely scenario is all the lawyers quit before they reach the trial date because he keeps trying to do things like holding news conferences.

If there is no attorney on record by the time the trial arrives, Donald Trump will not be appointed a public defender because he does not meet the financial requirement for a public defender. But there are other options. What a judge can do is that there are a panel of attorneys who can be appointed by a court to serve as defense counsel. Now, Donald Trump will be required to pay them to do that, but they will be appointed because it is important, is a crucial tenant of our criminal justice system that every defendant have competent legal representation. Now, there's also a possibility that Donald Trump may choose to represent himself. Defendants have that right to request. Now, that request would have to be approved by a judge. Could you imagine Donald Trump, pro se in his own trial? Crazy things have happened. Accused murderers have been tried pro se, but just imagine. Can you guys imagine that?

Barb:

Oh my gosh, no. Oh my gosh.

Jill:

There's also another element of this, which is that he has a right to the lawyer of his choice. And in the Watergate case, one of the lawyers got very ill, had a great second, who was really a competent, terrific

lawyer, but the defendant said no. He was forced to go to trial with the other attorney, and his conviction got overturned. So that's an interesting dilemma, I think, for this particular case. But it's a fascinating question. So thank you for that question.

Thank you for listening to #SistersInLaw with Barb McQuade, Joyce Vance, Kimberly Atkins Stohr, and me, Jill Wine-Banks. And remember, you can send in your questions by email to sistersinlaw@politicon.com or tweet them or thread them to us for next week using #SistersInLaw.

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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 define the show. See you next week with another episode, #SistersInLaw.

Joyce:

Okay. Wait, can I just ask, I sadly missed out on the whole Barbie conversation, although I got to hear it, but look, y'all, I mean, do we get #SistersInLaw Barbies? I want to Barbie.

Kim:

I would love that.

Joyce:

That would be pretty cool, wouldn't it?

Kim:

That would be amazing.

Joyce:

Isn't there already a Jill Wine-Banks action figure.

Kim:

Yeah.

Barb:

There is, right?

Joyce:

Seriously.

Kim:

The best.

Jill:

This transcript was exported on Aug 19, 2023 - view latest version [here](#).

My friends who have seen the movie loved it. I mean, I'm talking about sophisticated people who really love the movie. I haven't seen it.

Kim:

I've heard that it takes itself with the proper level of seriousness and that it is very clever. I've heard that, yes.

Joyce:

I just think we're going to need Barbies.