

Jill:

I totally love HelloFresh. It is a joy to cook and I've had some really good seasonal meals lately. I made a chicken soup with chicken sausage and noodles that was fantastic, and a Thai vegan curry soup that was outstanding.

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Barb:

Welcome back to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, Jill Wine-Banks, and me, Barb McQuade. Today, we'll be discussing the federal cases against Donald Trump, as well as the state court cases against Donald Trump. And finally, an interesting case that's been taken up by the Supreme Court about censorship on social media. And as always, we look forward to answering your questions at the end of the show. But before we dig into it, I've been thinking about, we know that Jill has had a lot of interesting jobs in her life, but how about the rest of you? I am curious to know about either the most interesting job you've ever had or interesting side gig or side hustle you've ever had in your life. Joyce, how about you? Have you ever had any interesting jobs that you've not disclosed to the rest of us?

Joyce:

So the best job I ever had was in law school. It was my work study job and I worked in the law school bookstore at UVA, which was just this real small student-run place for essentials or maybe just for law school books. So not very big, not a lot of traffic. And I would sit there for a few hours every morning doing the New York Times crossword puzzle and as people came in and out, I would make them help me with their clues and then when they bought what they needed, I would read them their horoscopes. It was so much fun. I think I must have a little bit of the Starbucks barista inside of me writer or maybe it's the Walmart greeter, I'm not sure which. But I just love that sort of simple casual interaction with people.

Barb:

That's excellent. How about you, Kim?

Kim:

Yeah, I think the most unusual side gig I ever had was in college when I sang in a band and we actually gigged, we would perform at some small venues in Detroit just like bars. You'd go into a bar and you see a band playing there sometimes we would do that, but we wanted to be as marketable as we could be. So we learned a bunch of songs that are crowd pleasers, even if we wouldn't have performed them ourselves and even adapted once we were hired to do, I can't remember if it was a wedding or a bar mitzvah, but we took September by Earth, Wind & Fire, which we played and we learned how to put Hava Nagila on the end. We would go straight from (singing). It was really fun. I don't remember exactly what the arrangement was.

Barb:

Oh, I love it.

Kim:

But the crowd would always just love it whenever we did it, which was a lot of fun, but it didn't pay a lot, but it was a lot of fun. I did that for a few years in college.

Barb:

So you were the singer in a band. What was your genre? Were you mostly pop covers?

Kim:

Yeah, it was like pop and the R&B covers. I was one of two. It was a male singer too, and me, so we were like the pop R&B, I don't know who has a male and a female singer like Fleetwood Mac or something. I don't know. But we would switch it up. But to this day when I hear some songs where I was singing backup, I still sing the backup harmony because I'm so used to that being my part when a song comes on.

Barb:

Oh, that's awesome. And what was the name of your band?

Kim:

I was in different iterations of it and we just said our name. I don't think we really had a name in that sense.

Barb:

You needed a good manager, Kim. I could have made you a star.

Kim:

We did. We were not well-managed.

Barb:

But I bet you sounded great. Wow, that's fun.

Kim:

Thank you.

Barb:

In Detroit, maybe I attended one of your performances.

Kim:

You might've been there. You might be walking in a bar and I was singing.

Barb:

I love it. Well, Jill, we know you've had every job in the book. Anything that you have not shared with us about a job or a side gig?

Jill:

It's so hard to remember what I've shared. I think I shared my surprise at learning that I had worked for the CIA. That's certainly was a surprise.

Barb:

Well, tell us more about that.

Jill:

Well, I took a year off law school and I got a job as assistant press and public relations director for the Assembly of Captive European Nations, which was run by all the former prime ministers and heads of state in countries that had been absorbed by the Soviet Union, Hungary, Lithuania, Poland, et cetera. And we did lobbying and we had a bimonthly newsletter and I didn't know until I was researching my book and I looked up whether they still existed and everything that I learned that they were a CIA front. So I actually worked for the CIA.

Barb:

Are you allowed to tell us that? Should you be telling us that? Do you have to tell us that?

Jill:

I learned it online so anybody could look up the assembly and find it. What I learned there also was that I really loved the advocacy part. I love the lobbying. And so I returned to law school still not planning to be a lawyer, but because I wanted to be better at putting together persuasive arguments, which I thought law school was a good way to learn, and that I would be better at lobbying. I still didn't plan to practice law until probably my third year when I thought, oh, I like trial stuff. I like moot court. Maybe I should actually practice law. So it was a great place for me to be and I really enjoyed it.

Barb:

Wow. Well, I have nothing nearly so interesting. When I was in college, I had a summer job at the Mackinac Island Michigan Town Crier, which was the island newspaper. That was pretty fun. Mackinac Island is this little resort between Michigan's two peninsulas. It's in the Straits of Mackinac between lakes Michigan and Huron. And in the summer it's a booming tourist economy and they have a little weekly newspaper. And there were three of us who were college students from the University of Michigan who did everything for the paper, from selling the ads to writing the stories, taking the photographs. And in those days we actually developed them in a dark room and we posted them. And so it was great fun.

It was also the site of my life's most embarrassing moment, which was when the then governor's staff called on a Saturday and I was in the newsroom and they said, "We've got a breaking story for you. The governor just hit a hole in one on the big Grand Hotel golf course." And I thought, this is my scoop. This is the big break I've been waiting for in my journalism career. I'm on it. So I got on my bike because there are no cars on Mackinac Island, and I raced to the site of the golf course and there they were at the fifth hole by now or something. And I ran out and I found them and I had my camera and I had the governor pose in various poses in his backswing and his follow through and took all these pictures and was very excited to report this big story. And then when I got back to the office, I discovered the five worst words in the English language, and those are no film in the camera.

Back in those days you had to put film in the camera and in my haste and excitement, I forgot. So my side gig was not such a success, which is probably why I ended up in law school in journalism.

Kim, you've got those long lashes today. Are you wearing those false eyelashes again?

Kim:

No, but they only look false because they are from Thrive Causemetics. It's the Thrive Causemetics mascara that I have been using and loving for many years and it's why I'm so excited to have Thrive as one of our sponsors. Whether you like fresh face or full glam or somewhere in between, you've probably seen Thrive Causemetics' viral tubing mascara, the one in the turquoise tube all over your socials. Thrive Causemetics beauty products are certified 100% vegan and cruelty-free made with clean, skin-loving ingredients, high performing and trademark formulas and uncompromising standards. It's easy to see why their bestsellers have thousands of five star reviews. And I know this mascara deserves every one of those stars.

Jill:

I too have been using them for a long time and I know that all of us love their products. They are certified 100% vegan and cruelty-free causes in the name for a reason. Every purchase supports organizations that help communities thrive from education to cancer research or fighting to end homelessness along with many, many more causes. You'll feel great and look great with Thrive, but I also love how the products perform. The mascara, as Kim mentioned, and the primer with SPF are really wonderful.

Joyce:

Today, we get to tell you about their impactful trademark semi-permanent smoothing lipstick. It's brand new and gives you visibly fuller, smoother nourished lips with a creamy satin finish. It's perfect for fall when the heat and the cold weather conspire to dry out your lips. It's fade-free for up to eight hours and doesn't bleed dry or settle into fine lines thanks to its infusion with moisturizing ingredients like botanical oils and vitamin E. Your lips will feel great and with 12 shades to choose from, you can enjoy everything from natural everyday tones to vibrant statement making colors

Barb:

Thrive Causemetics is luxury beauty that gives back. Right now you can get an exclusive 20% off your first order at [thrivecausemetics.com/sisters](https://thrivecausemetics.com/sisters). That's Thrive Causemetics, C-A-U-S-E-M-E-T-I-C-S.com/sisters for 20% off your first order. You can also get your glam on with Thrive in the show notes.

Jill:

As Barb always talks about getting her glam on.

So as we've already said, this was a very busy week and we try not to do an all Trump show, but this time we have to have two segments about Trump, one for the two federal cases and one for the Georgia case. And in terms of the Mar-a-Lago case, let's start with that. Barb, it isn't charged in the Mar-a-Lago indictment, but we just had some new reporting about an incident at Mar-a-Lago. It was breaking news on Wednesday and it raises national security concerns. So I'm turning to you as our expert on national security. Reporting is that Trump shared potentially sensitive information about nuclear submarines including how many nuclear warheads they carried and how close they could get to Russian subs without being detected. He shared it with a member of his club, a billionaire from Australia who then spread it far and wide. The estimates are between 40 and 60 people. So give us the details of what he

shared, your expert opinion on the risk of his sharing such information and why you think it wasn't part of the indictment.

Barb:

For those who say that Donald Trump is a walking national security risk, this is what they mean. This is really unbelievable, and if these allegations are true, this is a crime. This is an indictable crime. Now whether charges will be filed, I don't know, but it is a crime not just to possess or disclose classified documents. It is also a crime to disclose classified information and it can be conveyed orally as it appears to have been here. In fact, it was this Australian businessman who said, "I don't think he should be telling me this," who reported that he was told these things. So it's absolutely a crime. I will say though, it can be difficult to prove a case like this just because there isn't any documentary evidence. And so you'd have to have this Australian businessman testify about what he heard. He doesn't know what level of classification this information is or whether it really is classified.

He just knows that Trump looked around and then whispered it to him as if this is something I shouldn't be telling you. So was it really classified or was Donald Trump really puffing about it? It's hard to know, but it related to nuclear submarines and the number of warheads that are on them and other details that are kept confidential. I think it even included how far they can get or how close they can get before they can be detected. So the kind of information that could be used by a hostile foreign adversary to the detriment of the United States. So it's potentially extremely dangerous stuff, but I think one way it could be used against Donald Trump rather than in a standalone case is as further evidence.

There's something called 404 (b) evidence that gets used in criminal cases, and that is evidence used to show that a person has a modus operandi or an intent to commit that crime. It could be used to show the reckless disregard with which he handled classified information. And so in the case that he's already charged in the Mar-a-Lago documents case, this could come in as just a little episode to just show how incredibly reckless it is. He's a big talker and he boasts even at the expense of compromising national security.

Joyce:

Hey, Barb, can I ask you a quick question about that? Assume for the minute that you can get around the proof issues, maybe that because of the nature of the information that Trump conveys to the businessmen, the intelligence community can confirm that it's classified and the reporting says that the businessman then shared it with some of his employees and journalists and other foreign leaders. So maybe you could get additional corroborating testimony from them. What my question for you is in that situation, would you charge it as a superseding count in the existing case or might you not go ahead and charge it in a separate case because it's really not related to Trump's retention of classified documents. It's a whole separate sort of an incident. And then maybe you might get a judge who's not Aileen Cannon even.

Barb:

Oh, that's super interesting. I think you're right. In fact, technically there are rules about joinder, about when cases are properly joined together and when they should be apart. And if it arose on a different occasion and there's not a common nucleus of facts, then it's really properly filed as a separate case. And I like your strategic thinking here. There's concern about whether Aileen Cannon is a truly impartial judge in light of some of the favorable rulings that she's given to Donald Trump in the past. Might it not be better to take a fresh start and yet a new judge in a second bite at the [inaudible 00:16:07]. That's a really interesting theory. We'll see. But I think that those proof issues on the oral communication might

make this a case they're reluctant to charge. I also think they've got a lot on their plates already in cases with Donald Trump as a defendant. And so it might be just too much for them to take on at this time. But I think that's a very interesting theory, Joyce.

Jill:

It is an interesting theory, but I also think there may be a problem. They might be able to find out whether the information that he conveyed was accurate, but you wouldn't want to prove that in court because to the extent that you want to keep it secret, that would be the worst thing you could do. I think that might be an impediment.

Barb:

You know what that's called, by the way, Jill?

Jill:

What?

Barb:

The Barbara Streisand effect? Do you know about that? You know what that is?

Jill:

No. What is that?

Barb:

This is in my book. The Barbara Streisand Effect is she was angry because some photographer took a picture of her private home like in Malibu or something and put it on the internet. And so she was really mad, so she sued him. And as of the time she filed a lawsuit, only four people had looked at it. But once she filed the lawsuit, like 4 million people looked at it. So be careful what you highlight lest you make the problem worse. And that is known as the Barbara Streisand effect. So I agree with you that in a case like this, they may not want to go through a case that will just highlight these facts because of the Barbara Streisand effect.

Jill:

Right. So let's go back to the actual case that was filed and Judge Cannon, who is the judge for that case.

Barb:

Oh, that's no fun.

Jill:

Well, it is sort of fun because the Trump team just filed a motion to delay that trial from May of 2024 to two months after the DC federal case election. I'm sorry, not to two months after, it was set for two months after the federal elections case, but they wanted to lay it until after the 2024 elections.

Kim:

Convenient.

Jill:

So Joyce, would you talk about that, analyze the basis for their motion, the likely or the unlikely chance of success, and what would the domino effect be if that gets moved?

Joyce:

Yeah, so this is such an interesting situation and not particularly unexpected, right? Because this is Donald Trump asking a judge to delay the moment when he will have to face accountability in a legal proceeding. It's pretty much on brand. The rationale for the motion is that Trump's lawyers say they have not received all the records that they need to review to prepare his defense. And those sorts of things happen. Sometimes a little bit of extra time is necessary, but the government says that all of the discovery was essentially completed yesterday on Friday, October 6th. And so it doesn't really look like there's a problem here. But here's the bottom line, even if there's some merit to what Trump's lawyers are saying and some extra time is needed, the timeline here is really illustrative. It's now October of 2023. Trial isn't scheduled until May of 2024, months off, almost a year off.

And Trump's lawyers say that they need until at least mid-November, but preferably December of 2024, which just conveniently happens to fall after the election is over. Even if everything that they say about the government delaying in discovery is true, that request is crazy. There are months here before the trial is scheduled where that could be worked out. They've not offered any reason that it can't be worked out. If the judge thinks the government has been dilatory, she could enter an order tomorrow and give the government three weeks to fix its problems or face having some of its evidence excluded. There are a lot of ways to handle this that don't involve denying justice to the American people. So if this was any other judge, I would feel safe predicting an outcome, but it is Aileen Cannon. She does not seem concerned about delaying this case, so I'm not going to predict, but she has entered a stay on some of the CIPA deadlines, the classified discovery deadlines, while all of this is in play, which just seems absolutely nuts to me, cascading schedules if she does go ahead and delay the trial.

Part of Trump's justification for the delay here is that he's got all of these other tight trial timelines. His lawyers are very busy people, but all of the judges have been in communication. There's been some reporting on that. They seem to have carefully scheduled the cases around each other so that they don't overlap. And this seems like a particularly poorly taken complaint by Trump. But one interesting thing that could happen, let's just say that Aileen Cannon is true to form and she does give him a delay, then there's all of a sudden this big open block of time that's been held in May and some other judge might decide to insert an additional proceeding in there. So be careful of what you ask for, right?

Jill:

Absolutely. I think that is the absolutely right premise, but somehow it made me think about the fact that Donald Trump showed up in New York for the first few days of his fraud trial. And I have believed that the only reason he showed up is because he was supposed to be deposed and it was his way of delaying the deposition. The deposition was now set for next week, and guess what he did? He got rid of that case. He was the plaintiff against Michael Cone and rather than be deposed, he gave it up. So he uses different delay tactics for sure.

But Kim, I want to move to the DC federal elections case, which is set for trial in March of 2024. And that would've been or may still be hopefully two months before the Mar-a-Lago trial. And since your home is now DC, we want to talk about the broad outline of the motion that Trump's lawyers filed to dismiss the elections case. They base the motion on a never directly decided claim of total immunity for anything Trump or obviously any president does during his presidency. And it's reminded me of what Nixon said

to David Frost in an interview that if the president does it, it's not illegal. No court has ever held that. Kim, if you could talk about what's going on in that case and what this motion is based on.

Kim:

Yeah, so much of what we talk about in this context, Jill, as you know it references back in my mind and I know yours too about the Watergate era, but there is not in fact a court case called Nixon v. Frost, which holds that. There is nothing that holds that. Still in a 52-page motion, Trump's attorneys suggest that he has presidential immunity from prosecution for actions performed within the "outer perimeter" of his official responsibilities. And those are acts that according to them, and I'm reading from this motion, okay, this is me reading from the motion, these are acts that are from "the heart" of his official responsibilities as president in doing so, meaning in bringing this action, they claim the prosecution cannot argue that President Trump's efforts to ensure election integrity and to advocate for the same were outside the scope of his... Like what? You know how these attorneys have already gotten in trouble for making arguments that are absolutely ridiculous and have been admonished to act like serious attorneys in the proceedings before them.

I wouldn't be surprised if this is met with that kind of reaction. First of all, even if you're trying to say the outer perimeter of anything that a president might touch, that would be really broad immunity. I don't think that's anything that anyone has contemplated for a president. Secondly, he wasn't trying to ensure election integrity. He was trying to overturn the results of an election. And even though we talked before about the Hatch Act, and that's how Mark Meadows, his claim of immunity really got torched because you're not allowed to do campaign stuff.

You're federally prohibited from doing campaign stuff from the White House. Well, the president is not covered by the Hatch Act, but the idea of it remains in place that you could not supposed to be doing campaign stuff. Campaign stuff is never within your official duties. That's why you see presidents just like everybody else, step outside before they make phone calls about their campaign, do things from headquarters instead of doing things from the White House. This is a pretty foundational principle. And I mean this claim that all of this is covered under some sort of imaginary privilege is just nonsense.

Jill:

Man, it sure is. And Barb, does this ignore his obligation when he is told that there's no fraud that would change the results to prepare for a peaceful transfer of power. And Kim mentioned that the Hatch Act doesn't apply to him, but it did apply to Mark Meadows and the court said that was one of the reasons they wouldn't transfer his case to federal court because it was not within the ambit of his responsibilities.

Barb:

If you read the motion here, it does a little sleight of hand because it talks about what Kim was just saying, this idea about the outer perimeter of the official responsibilities of the president. And I think when we think about what the president's duties are, I think sometimes we think of it as this all powerful leader of the country who controls everything and can do whatever he wants, but that's not right. And then they talk about how the president has, and they say, the sacred obligation, which is sort of creepy to refer to it as sacred because there's separation of church and state in our constitution, but the founders tasked the president and the president alone with the sacred obligation of taking care that the laws be faithfully executed. That is true, but it is the federal laws that should be faithfully executed and that's why the executive branch has all these agencies and law enforcement to execute the laws and take care that it be faithfully executed.

But the administration of elections is a uniquely state role, and because of our system of federalism, the president cannot interfere in state roles including the fair administration of elections. So this is completely outside of that perimeter. And what the judge talked about in the Meadows case was that when Meadows got involved in Georgia, just as if the same argument could be said about Trump being involved in Georgia, he was not governing, he was campaigning. So we need to think of Trump wearing two hats. One is his hat as the president of the United States who has this duty to take care that the laws be executed. That's one job.

But then this other job is he's a candidate for president. And when he's calling down to Georgia and saying, how about finding me some votes and all that sort of stuff, that isn't wearing his hat as a candidate, he's involved in campaign activity. So none of that is protected by any of this immunity. As you say, Jill, what he does have a duty to take care to do to execute the laws is to do things like tell the people in the Capitol to go home on January 6th. I think he's got a duty to do that and to ensure the peaceful transfer of presidential power. He doesn't even show up at the inauguration of Joe Biden. What a shameful omission that is. And so I think this motion is doomed to fail.

Jill:

So Joyce, let's follow this up because the argument from the Trump team raised some questions for me, even though I read it carefully, but I couldn't tell whether arguing for total immunity for anything he did while he was president, skipping whether it was part of his job as president or whether they're just ignoring the difference between official presidential acts and candidate conduct and the differences between culpability and civil and criminal cases. And you are an appellate expert, but looking at the cases, they're citing a lot of civil liability cases, not anything that has to do with criminal conduct. And so if we look at Nixon v. Fitzgerald, it's civil liability for acts and the same thing as in the Clinton case, that was something he did before he was president. So can you clarify what these previous cases say and what Trump's lawyers are arguing? And I recommend everyone read your Substack about the interlocutory nature of this motion, and I know you'll explain that to our audience and we should put your civil discourse newsletter in our show notes so that they can read the full explanation.

Joyce:

Thanks, Jill. That's nice. And I have to say this is a 52-page motion that they filed. I read it carefully. I had conversations with some friends who were Supreme Court advocates because I think in some ways it's difficult to understand. You're absolutely right when you say it's confusing. I didn't like it structurally. I had to bounce back and forth to try to make their arguments for them. And I don't say that critically. I mean, I just say it was tough for me to figure out what their precise argument was. So look, I have long believed that we would see this executive immunity, this presidential immunity argument made here. It's clearly the argument, although it's maybe a little bit of a stretch to be generous, it's still a legitimate non-frivolous constitutional argument. And I thought perhaps they would make it in a way that would be appealing for the Supreme Court.

This argument is a swing and a miss in front of Judge Chutkan, but there is a federalist society inspired belief in a, I won't say imperial presidency, but something that's not that far off from that. You'll remember that Bill Barr, when he was auditioning to be the attorney general, he wrote this memo that got circulated in the White House and at DOJ about what was called a unitary executive, a powerful president. And of course, Donald Trump seized upon that because Barr opined that the president could not be prosecuted for obstruction of justice no matter what Bob Mueller said that was pre Mueller report. And so that's part of this very appealing conservative philosophy of expanding the power of the presidency.

So it's always seemed like there would be some option that Trump's lawyer, Chris Kise, who comes out of federal society origins was Florida's solicitor general, their top appellate lawyer, might position that sort of an argument to go to the Supreme Court. They're absolutely arguing for total presidential immunity. Under their theory, anything that a president does while he's in office would prevent him from being criminally prosecuted. And of course, that's not the law. If a president commits a murder or robs a bank while he's in office, I don't think anyone would argue that that conduct was insulated by the office that he held. And similarly, Trump is not immune from prosecution for the three conspiracies and the one substantive act that he's charged with. You flagged the Nixon case and it's a very interesting case because Nixon is a civil case. It's about civil immunity for a president. There is no case law that says presidents in criminal cases have immunity. So that is an undecided issue of law that a court here will have to address.

But even if a court does decide to extend that immunity to criminal cases, and there are good reasons not to, an effort to overturn an election just isn't part of a president's job, as Barb has pointed out, it's not even in the outer periphery of it, Trump tried to meddle in the outcome of state elections. Yes, a president has some legitimate role to play in ensuring that the election itself has integrity. But going down to Georgia and asking the Secretary of State to find him the precise number of votes he needs to win an election that he has lost is clearly out of bounds. So Trump's lawyers are essentially arguing that presidents are above the law. It will not fly with Judge Chutkan, but here's the risk that this motion creates for the process. Trump will be entitled if Judge Chutkan rules against him to take an interlocutory appeal.

That's an appeal before the case is tried. And that's really unusual. In criminal cases, virtually anything that a defendant wants to kibitz with an appellate court about has to be delayed until after there's a conviction for the pretty obvious reason, right? Why waste the time to take an appeal if there's not even going to be a conviction. So pretty much everything gets put off. However, immunity issues do not get put off. And there is fairly solid case law both in the DC circuit and in the Supreme Court that would warrant an interlocutory appeal here. Interlocutory appeals take time. It would go to the DC circuit, it would undoubtedly go to the US Supreme Court and that could get this trial sidetracked unless those courts are prepared to act very quickly.

Jill:

Well said. Although did you say kibitz with the court about? Is that what you said?

Joyce:

Yeah. Sometimes defendants want to go kibitz with the court, right? They have beef.

Jill:

I never thought of it that way, but I also want to point out when you said the Nixon case, it's Nixon v. Fitzgerald that we're talking about, the civil case because there is a US v. Nixon case, which is a criminal case, but it only deals with whether a president has to comply with a subpoena in a criminal case. And it may give us some guidance as to what would come next as to whether someone could be indicted. And the Justice Department, as we all know, and as I think is wrong, has long maintained a policy that a sitting president cannot be indicted. But this would expand that so far beyond because it has always been believed that he could be indicted for anything he did during or before his presidency or after once he was out of office. And I hope that we get back to that sometime.

But Kim, do you think Trump's conduct charged by Jack Smith in this election case is conduct even remotely within his role as president, the need to separate candidate activities versus official presidential acts? And I think that's being ignored in the argument put forward by his lawyers.

Kim:

Yeah, I mean I think that you even have to give this a very, very generous reading even to get to the political because one fundamental thing that we have mentioned before is that you do not get privilege to commit crimes. He's accused of criminal behavior, criminal interference with election processes, as you all have rightly pointed out, that is plainly in the purview carrying out elections is plainly within the purview of states. So that was not his job. Yeah, he can campaign, he can urge people to vote, he could do all that stuff, but he's got to do it outside the White House. There is nothing here that he did was privileged, getting on the phone and demanding just enough votes be found in order to push him over the limit in order to change the results of the election. Everything that's alleged is illegal. So no, none of this is privileged. This is going to fail.

Jill:

Absolutely. So one more motion I want to cover because it's one of passions now, but there has been a motion filed asking for cameras in this federal trial and I wrote an op-ed in the Detroit News advocating for cameras in all courts because of the values of the public. But it is especially appropriate in a case of this magnitude. Do any of you think the motion will be granted? Should it be granted?

Barb:

Well, I guess I would say, Jill, and I saw your piece in the Detroit News, it was very compelling. I think there's a strong public interest in seeing what goes on in these cases, especially in light of Donald Trump's propensity for disinformation and to spin things in ways that are not accurate. And so I think for the public to see for themselves, it would be very valuable. That being said, I'd be very surprised if they grant it just because there is this very strong tradition in federal court against cameras in the courtroom. Most of the judges I've talked to about this topic are adamantly opposed to it. I think they worry that it will somehow diminish the dignity of the courtroom in some way. So I'd be surprised if it happens. I don't know if others disagree.

Joyce:

Federal judges live in a little bit of an ivory tower and I think they're not always in touch with public opinion. And this issue really demonstrates that the judicial conference of the United States, which is the convening body, the sort of ruling body for the federal judges nationwide, has refused repeatedly and even despite a successful pilot project to bring cameras to the court. So whether or not Judge Chutkan has the authority to do this, I think technically she does. It would be weird if she exercised it given all of the dynamics here. I think it's wrong for John Roberts, the chief justice, to keep this burden on her shoulders.

And I think this is a moment where the chief justice of the United States, or certainly the Judicial Council should recognize the compelling public interest in the moment and should authorize cameras in the courtroom. I think it's a dereliction of duty for them not to do that in this situation.

Kim:

So I agree with everything Barb and Joyce just said. I would limit that though to Donald Trump's or everyone, all the witnesses' testimony happening in live court with the witnesses under oath. One thing that I think that the courts need to stop is allowing Donald Trump to do his little impromptu press gaggles outside the doors of the courtroom spreading lies and misinformation that's been happening this week in New York. And I think that that is dangerous. It is outrageous. I think he should be held in contempt for doing that because he's trying to usurp the power of the courts. He's trying to turn people's faith away from the courts. He's really trying to destroy an essential pillar of our government and democracy and how judges are putting up with that crap is beyond me.

Jill:

So I think we're pretty much out of time. So I'm just going to mention that these weren't the only motions this week. There was a motion to recuse Judge Chutkan, which was lost. There was a motion to dismiss the New York criminal case, the business records for hush money to Stormy Daniels on the grounds that it took too long to indict him. It's not a statute of limitations case, it's just it took too long. And then there was a motion to delay the civil fraud trial, which is of course underway. And I don't think that will happen, but I think it's something that we all need to watch.

Kim:

Jill, it was great to see you in New York and in Austin, Texas recently, in part because I always love, I marvel at how well put together you always are head to toe right down to your fingernails. I can't believe you're using Olive & June and doing your own manicures. Is that really true?

Jill:

It is. And I'll bet you will be surprised to know who inspired me to pay attention to a manicure. It was not my mother, although she did have manicures. It was really my father who was a CPA and who said his clients would always see his hands when he was working with them and that it was really important that they always be clean and buffed. So it's really true. And so I mostly use a French manicure because it looks clean and buffed even though it's a polish. And it's great to be able to give yourself the perfect home manicure with Olive & June. They have everything you need for a salon quality manicure in one box, and you can customize that box with your choice of six polishes. We love how their polish doesn't chip and last seven or more days. And when it comes down to it, you're getting great savings because it breaks down to just \$2 a manicure. It's a lot less than you would pay anywhere else.

Kim:

With Olive & June, not only do you get salon worthy nails at home, you'll also immediately notice the difference you get when you craft your perfect nails with their Mani System. That means no appointments, no traveling to find a suitable salon, and it saves you money while putting your nails on your schedule. Looking your best, saving time, and saving money is about as good as it gets. And your friends, family, spouses and co-hosts will all be amazed. I wouldn't think of using anything else before going on air, going out for the night or meeting up with Jill Wine-Banks.

Joyce:

Absolutely. Same for me. And I love that Olive & June gives me options. You can use their great looking press-ons that go on quickly, they look real, they last for a long time, and they come in every size that you can imagine. So you're going to get the perfect fit. But if you don't want press-ons, you can use traditional nail polishes. They are my favorites. I love that I get a non-damaging mani. I am not someone

who loves gel polish, and this feels much better on my hands. Also, Olive & June's polishes are an Allure Best of Beauty winner. And with the quick dry polishes, you only have to wait a minute and then you can feel confident knowing that your Manny will last five or more days with only one or two coats.

Barb:

Well, my contract stipulates, I need not say the word mani, but I will say visit [oliveandjune.com/sil](https://oliveandjune.com/sil) for 20% off your first manicure system. That's [O-L-I-V-E-A-N-D-J-U-N-E.com/S-I-L](https://O-L-I-V-E-A-N-D-J-U-N-E.com/S-I-L) for 20% off your first manicure system. You can also find the link in our show notes.

Joyce:

Next we turn to Georgia where in just over two weeks, jury selection will begin in the first trial in the Fulton County case. That seems really fast. There will be a number of hearings in the next couple of weeks as the judge sorts out pretrial issues. And in the midst of that, Barb, there's reporting that the district attorney has sent plea deal offers to a number of Trump's co-defendants. What do you make of that news?

Barb:

Yeah, that was interesting news. And I guess it's not surprising really. I mean, this is about the stage when most often a prosecutor does send plea offers out to defendants shortly after arraignment, after you have sent all the discovery materials so that the lawyer can assess the strength of the case. That is kind of a routine thing to send out plea offers to co-defendants. We had one accept the plea deal, we saw last week, the first guilty plea. And boy, that's just got to have a powerful effect on the other defendants to see the deal he got, which is quite favorable. And to think about if I can get in the door now, I might be able to get away without going to prison if I am willing to testify truthfully. So this is the time for those negotiations to occur. So this strikes me as a very expected, normal and routine practice at this stage of the case.

Joyce:

Yeah, I think that's right. I'm waiting with bated breath to see if anybody else will take the DA up on her offer. Sidney Powell has to be thinking long about now about whether she wants to spend the next couple of decades in state prison in Georgia, and I've got to believe that the answer is no if she's being sensible. But so, Jill, assuming that that first trial does start at the end of the month, it does feature those two lawyer defendants, Kenneth Chesebro, the Cheese, and Sidney Powell, and assuming that they don't plead guilty, they do go to trial. Trump will not be there with them. He's not being tried alongside them. Will we learn anything about Fani Willis' case against Trump or will that stay behind the curtain for now?

Jill:

I think we will learn something about the case because they are charged in an overarching conspiracy that includes Donald Trump and there's every reason to introduce the evidence about his role in this case. And I think you're also right about Sidney Powell being in really big trouble because the person who pled or pleaded, depending on-

Joyce:

Pled, I'm a firm believer of pled.

Jill:

Okay, whatever. That was someone who is directly involved in a scheme that's part of the conspiracy that involved Sidney Powell. So he's going to testify against her and it's going to look really bad. So I think we're going to learn a lot about the overall case. And it may be that after that a lot of the plea deals are going to start coming in, not only because people don't want to spend the money on defending, but because they see the power of the evidence that's been presented.

Joyce:

Yeah, I think that's a great point. Fani Willis has said that her case is the same. Every time she tries it, she's got to prove the full conspiracy. Some of the defendants may or may not like what they see once that evidence is on the table. But so, Kim, we learned this week a little bit about the substance of that case and just how good it is. The DA is going to call at least six witnesses who reside out of state, and we learned about that and some of the substance of their testimony because this is unlike the federal government, whereas a federal prosecutor, I could subpoena any witness nationwide and make them come in to testify.

Fani Willis, if she wants an out of state witness, has to apply to the court for something called a certificate of need. It's sort of a subpoena substitute that then goes to a judge in the witness's state of residence for approval, and then it functions more or less like a routine subpoena. What did you think was interesting in what we learned about the out-of-state witnesses she intends to call? Who do you think has interesting testimony to offer?

Kim:

Well, I think they all do because the list includes people that are just as essential to this alleged plot as Chesebro, the Cheese, and Powell, the Kraken Releaser. It begins with Boris Epshteyn, who we've talked a lot about. He was Donald Trump's top lawyer and one of his closest advisors, and he's an essential part of this timeline. Now, the one of the potential hinges there is that it could take a while to get him to testify while his attorneys and the prosecutors work out to what extent the attorney-client relationship may play in his testimony, but we'll see that happen.

There are also three Republicans who were involved in this whole false slate of electors scheme, including one Lawrence Tabas, who was the former head of the Pennsylvania GOP, who didn't actually sign the document. He pulled out of this scheme before actually signing them, which signals to me that he understood what the potential liability was here, that this was phony. And I think that his testimony would be very interesting. And also finally, you have both Lin Wood and Aaron Vick. These were people who hosted Powell and other allies, including Mike Flynn at the Carolina estate of Lin Wood. They all gathered together to draft a plan to seize dominion voting machines. So I think they all will have a lot to say that would be of a lot of interest to both the prosecutor and the jury in this case.

Joyce:

Well, I know we'll all be waiting to see if this case really goes out to trial on October 23rd like it's scheduled to do. And we will be back with more then.

Jill:

So Barb, it's been a really, really, really hectic week. I mean, every week is really busy with news, but this week was super unbelievable, hard to keep your head straight. How did you get yourself to be able to absorb everything that was happening?

Barb:

Yeah, well, in addition to trying to keep up with the head spinning pace of the news, I tend to run a little overcaffeinated. And so I find that after long hours and the pressures of juggling family and work and social life, all that can take a toll on your mental health. Not to mention the constant notifications on your phone with text messages and apps and all kinds of things that can break your concentration. It can feel hard to be present and in charge. But I have found that the answer lies in calm. Because with Calm, you can practice exercises that help immerse you in the life around you. You can fall asleep easier and have a deeper connection with the people you love.

Joyce:

So I'm a longtime practitioner of yoga, but meditation has never come easily to me as much as I love yoga. Calm has really changed that. It's the number one app for sleep and meditation. It gives you the power to calm your mind and it really can help to change your life. That's because 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 may vary. And since self practices are deeply personal, Calm strives to give you the options, you need to provide meditations that cater to your preferences, to your personal goals, and it can help you focus on anxiety or stress or on relaxation, building habits and taking care of your physical wellbeing.

Kim:

They also have sleep stories, which I love as an insomniac. There are hundreds of titles to choose from, including sleep meditations and calming music that will have you drifting off to dreamland quickly and naturally. Plus, they even have expert-led talks on overcoming stress and anxiety, handling grief, improving self-esteem, caring for relationships, and many, many more. But I really do love those sleep stories. They make a really big deal for me at the end of the day when I'm trying to wind down and drift off.

Jill:

It really does work. And the Calm app puts the tools you need to feel better in your back pocket. If you go to [calm.com/sisters](https://calm.com/sisters), you'll get a special offer of 40% off a Calm premium subscription and new content is added every week. Join us in stressing less, sleeping more and living better with Calm. And for listeners of the show, Calm is offering an exclusive offer is offering 40% off a Calm premium subscription at [calm.com/sisters](https://calm.com/sisters). Go to [C-A-L-M.com/sisters](https://C-A-L-M.com/sisters) for 40% off unlimited access to Calm's entire library. That's [calm.com/sisters](https://calm.com/sisters). You can find the link to your inner piece in our show notes.

Kim:

So the new Supreme Court term is underway, and of the many cases on its docket includes a battle between social media giants and state Republicans in Florida and Texas who want to reign in what they call anti-conservative bias in those social media companies content moderation policies. So Jill, I think our listeners know that these laws that were enacted in Florida, in Texas aimed at Twitter X or whatever they call that, and Facebook and other social media giants, those laws were about politics, right? They weren't really about policies. And you can weigh in on that aspect too, but what is the legal justification that they offer these state Republicans for having the right to try to regulate Facebook and X and other platforms like that?

Jill:

So it is definitely political. This is so far as I can determine, there hasn't been any presentation of evidence that in fact, there's any evidence to support an accusation that any platform is using point of view to censor conservative viewpoints on their platforms. And that to me is sort of a missing element of this, where they need to get that done. The court has taken up two questions in there's two cases, and one is from Texas and one is from Florida. And there's a split in the circuits because one upheld a stay on the new law going into effect and the other did not. And so that's why it got to the Supreme Court. The questions before the court are, you are denying equal access to these platforms and whether you have to explain all of your rulings about whether or not you have done this for illicit purposes.

And for me, the media does not have the right, according to what is being argued here, to deny public undifferentiated service. But of course, we know that, for example, in Master Cake, you can, because if the platform doesn't like a certain viewpoint, their service can be cut off.

And in terms of it being a explanation required, the platforms are arguing that it is unduly burdensome and that is the standard. So I think before we can answer all these questions, we need a fact trial. But the argument seems to be from the other side that this law violates the First Amendment by compelling publishing views that the platform doesn't agree to and that the reporting is burdensome. I find those arguments much more compelling than anything that is being argued on the other side. And the other side is saying it's a public accommodation, it's a carrier, so they cannot discriminate against any users.

And of course, the media platforms are saying it is not anywhere near like a public accommodation and that you can't limit publishing speech. And they're saying, "Well, the answer from the laws, the lawmakers, is that we're not limiting your speech. We're limiting you from limiting the speech of users of your platform." And the answer is, you can't force anyone to publish or disseminate views that they don't approve of. Think about if it was applied to you, Kim, as a journalist with a newspaper.

The newspaper doesn't publish every potential letter that it gets or any op-ed that it gets submitted. You have a right to discriminate in who you will publish. And there was an argument made that, well, that's because there's limited space in a newspaper and that's what makes it different and that there's unlimited space on social media platforms. But I think when you get down to the fundamentals of the First Amendment and the right of the press and the right of free speech, that doesn't apply. And so I think the arguments is pretty good on the side of the complainants about the laws.

Kim:

And we're going to talk a little bit more about how this might apply to the free speech realm in a little bit. But Joyce, let's go to you. Jill anticipated my question to you, which is what's the view of the social media companies? What do you think? What is that and who do you think has the better argument?

Joyce:

Yeah, so it's such an interesting argument because the companies are arguing that the Republican backed measures in the States violate the free speech rights of social media companies by limiting their freedom to decide how material is presented and requiring detailed explanations for content moderation decision. And I think Jill has the perfect example here when she talks about how that would apply to you as a reporter. The media, so they've actually formed into groups and they're represented as group entities. They argue that the laws would impose onerous requirements and put the platforms at risk of being overrun by spam and bullying. That's maybe a little bit ironic when you think about it because of course, Elon Musk on the site, formerly known as Twitter, is fairly aligned, I think, with what these laws would seek to accomplish. And so it's, I think, interesting to watch this appeal progress and see if all of the parties will stay aligned the way they currently are.

But although there are interesting arguments on both sides, as there often are in cases that reach the Supreme Court, the First Amendment principles seem to me very important here. And if the social media platforms were to lose this case and states were able to impose these sorts of rules and restrictions, I think we would be living in a country with a very different First Amendment environment when it comes to the media than what we've had traditionally. I think it would be a very disturbing development and call me a hackeyed optimist. I just don't think even this Supreme Court will go there.

Kim:

So Barb, the DOJ has weighed in this case, as it often does, and they are siding with the social media companies here. But wait a minute, didn't we just talk a couple episodes about the fact that the Biden administration has gotten in its own legal trouble because it stands accused of meddling in the matters of content moderation at these very businesses. So how does the administration thread that needle, Barb?

Barb:

Yeah, they're really in a tough spot. It seems that everything that the executive branches tried to do to try to address and mitigate this problem of not just disinformation online, especially when it came to COVID and you're pushing some of these false cures and dangerous preventative medicines, they've been accused of censorship or heavy-handed pressure about what to say and content pressuring about messaging. It's a really tough position to be in. At one time, the Department of Homeland Security had opened this disinformation board to try to address these problems. It was part of the Department of Homeland Security and it was open for a week before they had to shut it down because the new director, who was a very accomplished cybersecurity person, was getting so many threats and harassment that they had to shut it down. It's a really tough space in a country where we really deeply care about free speech and about government hands off my speech.

But I think the government has an obligation to try to share important, accurate information. Social media is really just a messenger for getting information out there, and when they see these false claims on there, it seems like they have an obligation to flag that at the very least for some of these companies. I think where they may go astray is when they start getting very heavy-handed and talking about things like veiled threats. If you don't, then this bad thing will happen. Or if you do, then this good thing will happen. They do have a bully pulpit. They do work with private industry all the time.

When I was in government, we would reach out to the private sector about cybersecurity issues, about export violations, about various threats, and telling them that we urge you to come to us when you see these kinds of things. So there is a role to play in the government to work with private industry to try to make the country a better place and to protect public safety. But I think it's when it becomes heavy-handed or coercive that it could be problematic. And so I think we haven't quite figured out what the right balance is there in terms of what's the government's role.

Kim:

Yeah. And back to the issue of the free press, I'm really concerned about the potential free press implications of these cases because as Jill pointed out, yes, for the most part, newspapers like mine get very broad First Amendment protections, not just because of the limitation of space, but I think it's because that's what people traditionally think of when they think of the press. And one of the problems is we don't have laws or interpretations of the constitution that apply to new technologies like social media companies, but I still think it's really important for really broad first amendment protections. I

mean, think beyond newspapers, right? Even there is regulation of things like cable news networks or broadcast stations based on the scarcity of the bandwidth.

But I still think the free speech implications need to trump that to prevent lawmakers from trying to regulate them based on their content. And this is not a theoretical exercise. You remember, there've already been candidates who have tried to run on doing things like saying they're going to make newspapers register if they're in office or do other things that really run afoul of the Constitution in the same way they're trying this gambit with the social media companies. Am I alone in this fear, you guys?

Jill:

You are not.

Joyce:

No, you're not.

Jill:

It's a very scary possibility that they could prevail. And obviously I think that the stay that was left in place is the correct decision that this should not be allowed. And one of the laws bars you from ever barring a candidate for office. Now, think about all the crazy people who run for office.

Joyce:

Donald Trump.

Jill:

Well, Donald Trump and Robert Kennedy Jr. That is something that is total misinformation. And if that isn't controlled by the platform, who is going to control it? And if we can go back to what happened with the Biden administration and they're being told that they were meddling and pressuring, I really didn't see any evidence that they were pressuring. I saw evidence that they were calling up and saying, "If you'd like to know the facts, here's what is true and correct." I used to argue before a jury, you have to wait till you hear both sides because no matter how thin the pancake, there's always two sides to it.

Well, now that there's alternative facts, I no longer think that's true. I think there is only one set of facts and the rest are just garbage. And so we have to be careful about that.

To find your perfect mattress, take Helix's two-minute sleep quiz and match with a customized mattress for your body type and your preferences for the best sleep of your life. I took the quiz and I matched up with the Helix Midnight Mattress, and it was perfect for me. With Helix, buy a mattress tailor just for the way you sleep. It is a wonderful night's sleep after you get your Helix.

Kim:

Yeah, sleep is so important, and having the right mattress really can make a massive, massive difference. And a mattress is a very personal thing. Everybody sleeps differently. And Helix offers 20 unique mattresses, including the award-winning Luxe Collection. The newly released Helix Elite Collection, a mattress designed for big and tall sleepers, and even a mattress made just for kids. There's really something for everybody, and each one is designed for specific sleep positions and feel preferences.

Barb:

Yeah, if you're a side sleeper, they've got the memory foam that cradles your body for support in any sleeping position. If you're a back or a stomach sleeper and you're a heavy sweater, they've got cooling features to keep you from overheating at night. If your spine needs some extra support, they've got these hybrid designs with individually wrapped steel coils in the base for premium foam layers on top. It's the perfect combination of comfort and support with something for everyone.

Joyce:

We love our Helix mattresses and to prove Barb's point. In our house, everybody in our family has a different mattress because we all took the quiz and it came out differently for everyone. I think that's part of the reason that we're all so happy. Helix has been named the number one mattress by GQ and by Wired Magazine and leading chiropractors and doctors who study sleep habits use Helix as a go-to solution for improved sleep. Helix is offering 20% off all mattress orders and two free pillows for our listeners. It's a great deal. Go to [helixsleep.com/sisters](https://helixsleep.com/sisters) and use code Helix Partner 20. This is their best offer yet and it won't last long. With Helix, better sleep starts now. You can find the link in our show notes.

Barb:

Well, now comes the part of the show that is our absolute favorite, the part where we answer your questions. If you have a question for us, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or Threads or Tweet using #SistersInLaw.

If we don't get to your question during the show, please keep an eye on our Threads feeds throughout the week where we will answer as many of your questions as we can. Our first question comes to us from Katie in Arkansas, and the question is, why do vicious personal verbal attacks on the prosecutor and judge by Donald Trump not lead swiftly to large fines, gag orders, and possibly some detention to get the point across? We've all been wondering this. In fact, Kim, you wrote a nice piece about this in the Boston Globe this week. Can you answer that one for us?

Kim:

Yes. So we have seen both state and federal prosecutors ask for, and in some cases be granted, gag orders against the former president, limiting what he can say publicly about the case that's going on, limiting what he could say about certain individuals. And that is the first step to me in what needs to happen in this case, if the shenanigans that Donald Trump seem to be engaged in continue, which I think he ought to be held in contempt. Now I can understand why prosecutors and judges may be wary of seeking and holding Donald Trump in contempt because what he's trying to do is disparage the entire legal system because right now he sees that as his adversary, and we know anytime he sees an adversary, he thinks he needs to destroy it, even if it is a branch of our government.

And that is really dangerous. But by being held in contempt and by having to pay a fine or even being put in jail, what that will do is only reinforce his claim of being a victim here. And I can see a weariness to play into his hands. I personally don't care. I care more about the administration of the judicial system and what he's doing is trying to interfere with that. If I had a client that was doing that, my client would be in jail, and I think that he should face the exact same kind of penalties as everyone else.

Barb:

I agree with all of that. Our next question comes to us from Bill in New Jersey, and Bill asks, what happens if Donald Trump doesn't pay E. Jean Carroll? How is non-payment penalized? Joyce, you've been following that case carefully. What's your thought there for Bill?

Joyce:

I have been, and Bill, it's a really great question, because Donald Trump is notorious for not paying his debts. Typically, in a case when there is a judgment against you as there is against Trump, and you want to take appeal, you have to get what's called an appeal bond, and that serves as your promise to pay. You pay a certain percentage, and if you don't pay up at the end of the appeal, if there's still a judgment against you, then the bond acts as your surety. Donald Trump, however, did not file, did not get an appeal bond. He paid \$5 million directly into the Southern District of New York, so E. Jean Carroll will get paid one way or the other. What I'm so fascinated by here is why didn't Donald Trump get a bond? Perhaps he couldn't satisfy some of the conditions. We don't really know, but it is a very intriguing question.

Barb:

All right, and our final question comes to us from Fran in Portage, Michigan. And Fran asks if a person has been convicted of a crime and must make restitution, and if that person is pardoned before the restitution is made, is that person still required to make the restitution? Jill, what do you think?

Jill:

I love the question. I hate the answer because I think the answer is a pardon is irrevocable and final and a pardon means you're pardoned and therefore you would not have to make restitution. That would be really sad in all of these cases. So let's be glad that some of them at least are in state court because my answer pertains only to federal trials

Barb:

Spoken like a true prosecutor. Thank you for listening to #SistersInLaw with Jill Wine-Banks, Kimberly Atkins Stohr, Joyce Vance, and me, Barb McQuade. And remember, you can send in your questions by email to [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tweet them or thread them for next week's show using #SistersInLaw. Please support this week's sponsors HelloFresh, Thrive Causemetics, Olive & June, Calm, and Helix. 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](https://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, #SistersInLaw.

I'm sure Greg knows this, but the nickname of the Everton soccer team are the Toffees, which is so funny and so British.

Kim:

It's so British.

Barb:

And the reason they're called the Toffees is like a hundred years ago when the club was newish, there was a little toffee store down the street or candy store, and during the, do they call it halftime or they

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call it intermission? Maybe they call it intermission. The toffee lady would come and walk through the crowd and toss toffee to the fans. But of course, at some point someone caught one in the eye. So she can't throw the toffee in the stand.

Kim:

No, she can't. Talk us of liability.

Barb:

But that's how they became known as the toffees.

Kim:

That's really funny.