

Jennifer:

Hi, I am Jennifer Palmieri.

Claire:

I'm Claire McCaskill. We're the host of the MSNBC podcast, How to Win 2024.

Jennifer:

We both know firsthand that winning an election is hard, and having been in and around tough races for most of our adult lives, we have some unique insights into what it will take to win this 2024 election.

Claire:

Some crazy stories to share too. Search for how to win 2024 wherever you're listening and follow new episodes every Thursday.

Jill:

Welcome back to #SistersInLaw, with Joyce Vance, Kimberly Atkins Stohr, Barb McQuade, and me, Jill Wine-Banks. Today, while we all regret the chaos in Congress and the devastation of the attack on Israel, we have three great topics for you. The Supreme Court will be weighing in on South Carolina's gerrymandered map, and is it racial or partisan, tomato, tomato? There are two superseding indictments for us to discuss. One for Senator Menendez and one for Representative Santos, and that means a Trump-free week. That, I'm celebrating. As always, we will look forward to answering your questions at the end of the show. Before we get started, I wanted to start with talking about what we're doing to divert ourselves from the week's events and news.

I personally have taken to reading the first novel I have read in years. I do so much nonfiction reading for what we do here today that I don't have time for novels. One of my best friends recommended Lessons in Chemistry, and I couldn't put it down. I highly recommend to all of you, my sisters, and to all of you listening Lessons in Chemistry. It really is a smart, funny, diverting book. Of course, there is a dog as one of the central characters, so I know that at least most of you who are dog lovers or cat lovers will love this character, for sure. What are you reading, Kim?

Kim:

I actually read that too.

Jill:

Did you love it?

Kim:

I really did enjoy that. I read that. That was one of my summer books and I enjoyed it from beginning to end. I have been thinking a lot about history, especially at the beginning of a new Supreme Court term. I actually have been rereading The Brethren about the Supreme Court during the time of the Brennan Court and it has been really enlightening. One of my favorite parts of the book is I'm just getting to the point where Justice Brennan was outraged when one of the justice's friends tried to talk to him about a pending case. He immediately shut down the conversation, threw the friend out of his chambers and said he would recuse himself from any consideration.

It's sort of like, wow. On the one hand, that's so commonsensical, but on the other hand, it feels like a different world from the ethical standards that the current justices are holding themselves to. It's actually helpful to me to say, okay, I'm not crazy in the way I'm reacting to the things that are happening now. When you look at history and you look at the way that other justices have treated their jobs, it only underscores what is needed now. I often turn to history just to understand the present a little better, and right now, The Brethren is helping me do that

Barb:

Was Justice Brennan offered a fishing trip though with a 10-foot that otherwise he's gone unoccupied?

Kim:

Was it after he stepped off the private jet or before? Oh, my goodness.

Jill:

Barb, what are you reading?

Barb:

I just finished a great book that was recommended to me, by Ann Patchett. I've read a bunch of her stuff, which I really like. This one is called Tom Lake. In fact, I don't know if I can say I read it because I listened to it on Audible as read by Meryl Streep, and it's unbelievably good. It's about a woman who's exactly my age, that probably helps, who is home at her cherry orchard near Traverse City, Michigan, during COVID. Her three adult daughters have come home to help work on the farm because all the seasonal workers aren't able to come and they're in college or beyond and have come home to be with her. During those quiet times of COVID, which I'm sure we all remember, she regales them with a story of a young romance of hers. It's an amazing story.

In fact, after reading, I'm putting reading in air quotes, listening to that one, someone else turned me on to another book by Ann Patchett called The Dutch House, as read by Tom Hanks. That's really good too. Highly recommending both. I have found them to be so enjoyable. I've made a project of cleaning my daughter's room. Don't tell her. Hope she's not listening. She's in college, because I can't stand it anymore. I listen first to Tom Lake and now to the Dutch House while I'm doing that, and I can't wait to get in there to do the work because my time when I get to listen to that as a reward, so highly recommend both.

Jill:

You've convinced me. I'm going to download it.

Kim:

If you're a fiction writer, the key is to get good people to read your audiobook.

Barb:

Good. They're so good.

Kim:

That's amazing.

Joyce:

Impressed that you're cleaning your daughter's room. When you get done, can you come down here?

Barb:

I couldn't stand it anymore. My husband said, "Did you clean the room?" It was a test of wills. Who could stand at the longest.

Joyce:

That's hilarious.

Barb:

I can't take it anymore.

Jill:

What about you, Joyce? Weigh in on what you're reading.

Joyce:

Like Barb, I do a lot of listening to books on tape, but I confess that I've reached the point that I don't usually reach until after I'm brain-dead from grading 71st-year law school exams. I have already reached the point where I'm watching Lifetime TV this year. Last night, I sat there with my knitting. You can knit while you watch Lifetime romance movies. They are so lovely. They are so predictable. Everyone is happy at the end. I watched a great film called Pumpkin Pie Wars. The couple fell in love and lived happily ever after and everything was right in my world for whatever it was, an hour and 15 minutes.

Barb:

I love Christmas movies.

Kim:

People take them really seriously too. I, in the past, have occasionally guest hosted On Point, the NPR show. We did one about Christmas movies and the listeners were so serious about them. I was trying to crack some jokes and be kind of flipping about. No sir, people were not having it. They are so serious about their Christmas and holiday movies. It's that time of year and people take it seriously.

Joyce:

Friday is the kickoff. Next Friday is the kickoff for the new season of Lifetime Christmas movies. Believe me, I have advised my husband we will be staying home Friday night.

Barb:

It's good to know.

Jill:

I think everyone understands this and that there's no one who hasn't in some time in their life binge-watched something that is not their normal fair. I personally in this recent time have been binge-watching Heartland about a ranch in Canada. Unfortunately, this last, I think I'm on season nine now,

and there was a death that made me very sad. I can't wait until the next episode to cheer me up again. It's wonderful and I hope all our listeners will take comfort in our recommendations for this week.

Joyce:

I'd love to hear what our listeners are reading and watching too. I'm always looking for something new and good, so please tweet them at us or increasingly, we are finding ourselves on Threads, so if you will put them there, that would be great too,

Jill:

Would love that. And I'm already going to get Ann Patchett's books, so thank you very much for that recommendation. Hope you all found something great. Kim, I am so concerned about our environment and I want to take everything into consideration with everything I do, and I've just discovered Lomi as a way to help the environment and I want everyone to know about it.

Kim:

We have been using Lomi too. I have considered myself very environmentally conscious, but I didn't think about food waste and I didn't think about the damage that, that can cause, but I love Lomi so much. If you don't know, Lomi is a countertop electric composter. To me, composting always seemed like, "Oh, that's so complicated. I don't know how to do it. Where do I even start?" Lomi makes it so easy. You put your food waste inside this countertop device and it turns it into dirt. It really is that simple. It makes you feel so good knowing that you're making a difference for the environment, that you're transforming your own trash into a treasure. We put it in our gardens, we put it in our plant pots. It's really changed the way we thought about our food waste for good

Joyce:

Lomi is great. If you have ever worried about food rotting in your garbage, Lomi is the answer for that, and you don't have to worry about any more leaky garbage bags. That's because Lomi takes that waste and turns it into nutrient-rich dirt and you can use that just like compost. You can feed it to your trees, to your flowers, to your lawn. Our fig trees were gorgeous this summer and I'm convinced it's because of Lomi. Food scraps, plant clippings, even leftovers, everything that's hiding in the back of your fridge, you just put it right into Lomi and you let Lomi go to work.

Jill:

It's really an amazing thing because there's no odor coming from your machine. Now Lomi's new app lets you track your environmental impact. Earn points for every cycle and redeem your freebies from Lomi and other great brands. Plus, Lomi's sleek design makes it the perfect complement to a tidy, classy-looking kitchen. There's nothing better than knowing that your dinner party is going to enrich your own garden, right sisters?

Barb:

That's right. 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 lomi.com/sil, and use promo code SIL at checkout. You can also find the link in our show notes. Thank you, Lomi, for sponsoring this episode. This week, the Department of Justice filed additional charges against US Senator Bob Menendez of New Jersey. He was of course,

already under indictment for allegedly accepting bribes. Now, additional charges have been filed. Joyce, what are these new charges?

Joyce:

Yeah, so this is something we haven't seen before. Menendez is charged with violating 18 US code 219. It's a conflict of interest statute that makes it a criminal offense for a "public official." That's the important phrase here. Menendez is a senator. A public official of the United States in any of the three branches of government to be or to act as a foreign agent or to act as an agent of a foreign principle who would be required to register under FARA. That's a real mouthful. Menendez is in essence charged with conspiring to be an agent for the Egyptian government or for Egyptian officials, people working for the government who would've had to register under FARA themselves to engage in the behavior that they were engaging in the United States.

FARA, we've talked about a lot in the past, it's the Foreign Agent's Registration Act. Paul Manafort was charged under it. There's been a lot of discussion that Hunter Biden has been under investigation for violating it. It just essentially is a registration requirement. If you're going to act for a foreign government, you have to let us know. Menendez is not charged with the FARA violation per se. His charge is for a FARA adjacent crime. Although the government has had some struggles in FARA cases, this charge is very specific. For a sitting senator, if the government can prove the conduct that is alleged in the indictment, this is right on target for what the statute prohibits.

Barb:

Well Jill, certainly bribery charges were disturbing as they were, but why are these new charges so much more significant?

Jill:

They are significant because Senator Menendez was the chairman of the foreign relations committee. What this did was show disloyalty to the US, some interest in protecting the interests of a foreign country. It abused his position on the foreign relations committee and it compromised him and made him subject to blackmail. These are very significant risks that he poses to the national security. That's why it is so important that they be pursued. Again, we have to assume that he's innocent until proven guilty. The accusation is in the details that are laid out in the indictment. I think we should post the indictment on our show notes so that everyone can read the details for themselves and see that we're accurately describing this, but they do lay out some very specific conduct that risks our national security, particular things that he did.

Barb:

Jill, you raised the idea of blackmail and I think that's such an important point. You may remember when Sally Yates went to the White House to explain why it was so problematic that Mike Flynn had been caught having this phone call with the Russian ambassador during a time before Donald Trump had taken office and then lying about it. It's because it made him susceptible to blackmail. When a person is in a position of such power, the idea that they could be blackmailed, this is the kind of question you get asked all the time on background investigations.

I get interviewed all the time for people who are up for judge-ships or prosecutor jobs and they always want to know whether there's anything out there that could make a person susceptible to blackmail because it is such a threat to national security. The idea that he is still in his role, I think is one that

endangers our national security. Kim, DOJ has struggled with some foreign agent cases in the recent past with acquittal in a number of cases, like Greg Craig comes to mind. How is this case different from those cases?

Kim:

Well, I think a couple of reasons. I think one, just the fact and although the first time that Senator Menendez went on trial for fraud, it was completely separate set of facts and circumstances. I do think the fact that the DOJ went after him, it ended up in a hung jury and DOJ decided not to retry him, means that if they're trying him of all people, again, that they're confident in the facts that they have to move forward with this case of trial. The fact that they have done a superseding indictment here makes it seem that they're very confident in their case. The thing is, as we mentioned, under the statute that he's charged with elected, officials are prohibited from ever acting as foreign agents. They just cannot do it. They don't have to prove whether or not he registered or whether he was doing things that raised to the level of being an agent. That is already prohibited.

Based on the indictment and reporting, he is accused of doing some really messed up stuff, like sharing information, non-public information with Egyptian officials about the staffing of the US Embassy. If they can prove that, that is wild. He also has ghostwritten letters to US senators, to his own colleagues posing as Egyptian officials trying to release a hold on \$300 million in military aid. That military aid had been held up over humanitarian concerns. He's also intervened on behalf of Egyptian officials to do things like help someone get a businessman maintain a monopoly on selling halal meat in Egypt. Underlying this, it seems to be underlying all of the charges. It seems that a lot of this was motivated by greed, by the desire by the senator.

Barb:

Gold bars.

Kim:

By trying to get gold bars and other goodies for Senator Menendez and his wife. That is what they are alleged to have done. Jill is right. These are all allegations until it's proven guilty. This seems enormously serious. It's so funny when you mentioned Sally hates Barb, that felt like so long ago in a way.

Barb:

Remember those days?

Kim:

That to have someone voicing those kinds of concerns just based on the fact that, look, we have things like this happening and think about the classified documents cases we've been talking about for months. These are real concerns. When intelligence falls into the wrong hands, it can really have very dire consequences, not just for the individuals involved, but for the nation at large.

Barb:

Joyce, I have a question for you. It seems like the allegations that serve as the basis for these new charges were already present when the first indictment was filed. There aren't really new facts here. Do you think that prosecutors were strategically holding back these charges for any reason? I mean, could that have been part of their plea negotiation or trying to get leverage over Menendez in any way?

Joyce:

We don't know for certain, obviously. I'm going to indulge in a little bit of wild speculation and then tell me what you think. Because there's some possibilities, there are a little bit contradictory for what could have been going on. It's possible that as you say, this is just straight up charge bargaining. This is a charge that sounds really terrible, especially for a senator. You were disloyal to your country, so maybe the government originally said, "Look, we won't charge you with this if you'll plead guilty." That fell apart and the government superseded. Here's the contradictory possibility. Ironically, this charge, which sounds really bad to me, carries only a maximum two-year sentence. It's possible that the government is actually negotiating a plea with Menendez. They've superseded the indictment to include this charge, which carries a much lighter sentence than the other charges.

Maybe they'll let him plead guilty to this, dismiss the other charges, and he gets a better sentencing sort of a deal because he's pleaded guilty. Those are opposite ends of the spectrum. Then finally, there's another possibility. This charge, it's a conspiracy charge, the overt act, it's two meetings between Menendez, his wife and another defendant whose name is Wael Hana. Possibly, Hana is now cooperating with the government and he has put more flesh on the bones about these two conversations that let them bring this charge. A lot of these allegations were in the original indictment upfront, but maybe they now have enough that they believe they have proof beyond a reasonable doubt, so they've superseded to add this charge and they're also signaling, "Hey, we've got a cooperator." It could be one of those three, it could be none of them. What do y'all think?

Jill:

I think those are great explanations. I just want to question whether this is actually worse than having gold bars with the DNA of your briber on them and an envelope with hundreds of thousands of dollars with the fingerprints of a different briber's driver on it, is actually any less awful than this. They are both really serious and threatening to America that a US senator might have done these things. I think your three explanations are definitely in the ballpark of probably being an explanation and it's hard to know whether it was to get a better deal or a worser deal, really.

Barb:

Well, Jill, let me ask you about the strength of this case. Certainly, as you just said, it looks like they've got amazing evidence in this case. What about that old case that Kim mentioned, the prior bribery case? Could any of the allegations about that incident come into evidence if this case were to go to trial?

Jill:

Well, they could. There is a rule of evidence, 404B, that allows prior acts, prior crimes to be admitted into evidence in a current trial, and it's tricky. I want to raise first a possibility, which is how impactful would it be on the jury to introduce evidence that led to a hung jury? It may not be the most compelling evidence, but it is used to show sort of that it wasn't an accident that he did it this time, that there is a pattern and practice of behavior. It may have impact. It certainly isn't something that a jury would ignore. The prosecution is going to have to give notice, although the rule of evidence doesn't say how long that notice has to be before they attempt to use it. They will have to give notice that they intend to use it and what they are using it for. I think it could be admitted and the government may choose not to.

Barb:

Don't muck up a strong case with weak evidence, I suppose.

Jill:

Exactly.

Barb:

It's always a good lesson. Well, Kim, let me just ask you where you see this going. Do you think Menendez will resign a lot of senators including Corey Booker from his own state of New Jersey, you're calling on him to resign, or do you think maybe he's holding that back as a bargaining chip with prosecutors? If he were to resign, who would replace him?

Kim:

Well, I don't know who would replace them. I'm not close enough on the ground in New Jersey to know who the top candidates might be, but I'm not sure. If I were a prosecutor, I wouldn't care if he resigned or not. At least not in so much in making this case. You would think that if he's convicted, if you have the goods and he would be convicted that, that would take care of it himself. I suppose as long as he stays in office, he remains an ongoing risk for all the reasons that we discussed. I thought he was going to resign once the dam seemed to break among Democrats in the Senate. It took a day or two after the indictment was announced, if you can remember, before people including Senator Booker.

It was a matter of hours. I remember I was reporting, I was the one that found out Elizabeth Warren said that he needed to step down. I thought that by the end of that day he was going to resign, and he didn't. He didn't resign the first time and he actually was reelected. Maybe he thinks that he can beat it and he's just holding on. I don't know. I even am not in the senator's head, but if it were me, I would've stepped down if for no other reason, the sake of my spouse and my family and just to get through it. He hasn't done it yet, so we'll see what happens.

Barb:

Of course, his spouse here is a co-defendant. Maybe that complicates things. Having beat it once before, maybe he feels empowered or emboldened that he beat charges once he can do it again. I don't know, I think this is a case where prosecutors might consider his senate seat a thing of value and might value it as part of a plea deal. That's because of that risk to the national security that he poses as long as he's there in the sentence, there is value to public interest of having him resign.

Kim:

That's interesting. I hadn't thought about it in that way. You bring that up and that's a really interesting point. I can see how that would be the case.

Barb:

We don't know who might succeed him, but the process I think is that the governor of New Jersey, Governor Murphy, would choose a successor. I think Murphy is a Democrat and so would choose a successor and then that person would be up for reelection in 2024, I think is when the next election is for that seat. For the next year and change, the governor of New Jersey could fill the seat.

Kim:

The reason I said I didn't know what is on the ground, different governors do different things. Sometimes a governor will pick someone in the same party but make them promise that they themselves won't run so that they won't look like they're putting a thumb on the scale. Sometimes

they'll try to put somebody in who may want to run for that seat. It can be a lot of negotiating what's going on. New Jersey is a special place as we've learned from some of the people that we've covered. I'm not exactly sure how that's going to play out, but perhaps, we shall see.

Joyce:

Just from a raw political point of view, if you know that a senator's time is coming to an end when the governor appoints this early, it actually gives that person seniority. Better to go ahead and rip the Band-Aid off now and do it if you're thinking about the state's interests over time. I know that, that's sort of a crass political analysis, but there you have it.

Kim:

It is. It happens. It happens.

Joyce:

Did you know that your personal information is out there for anyone to find? Data brokers scrape public tax records and sell that information legally making it accessible to anyone. We all need to fight back. As lawyers, we know that, that's important, right y'all?

Jill:

It really is important. The danger of having your information hacked is unbelievable, and the difficulty of clearing it once it happens. I know it's happened to me and I wouldn't want it to happen to anyone else. Has it happened to anyone else here?

Kim:

It has. It's happened to me. It's horrible.

Barb:

I once got a bill for dozens of pairs of sunglasses from the Sunglass Hut. My husband asked me, was I shopping for sunglasses? No, I was not.

Jill:

I got it for thousands of dollars' worth of purses, which you might think was me, but it wasn't.

Kim:

I'm sorry, Jill. I won't do it again.

Joyce:

Well, look, I'll joking aside, y'all privacy is paramount and because of that there's Aura, A-U-R-A, to help out. Aura is an all-in-one online safety solution that helps protect you and your family from identity theft, financial fraud, and online threats before they happen.

Kim:

With Aura, you can rest easy knowing you're being looked out for. The app scans the dark web to look for your email addresses, passwords, social security number, and other sensitive information that bad

actors might have. If anything is found, you'll get alerted in real time. If you're an ID theft victim, their experienced white-glove fraud resolution team helps you navigate credit bureaus, initiate credit freezes or locks and works with you around the clock to resolve the problem.

Barb:

Bad actors, I hate those guys. They ruin every movie. Security is a great feeling, and Aura offers a suite of tools to protect you and your loved ones, including real-time alerts on suspicious credit activity, computer virus protection, parental controls, a VPN and a password manager. It's a comprehensive safety solution that provides almost every tool you'll ever need all in one place. Aura also helps reduce annoying robocalls, telemarketers and junk mail, by sending take down requests for you on a regular basis.

Jill:

Boy, if you could get rid of my robocalls forever, even on my cell phone, wouldn't that be great? Everyone wants that. For a limited time, Aura is offering our listeners a 14-day trial, plus a check of your data to see if your personal information has already been leaked online. All for free when you visit aura.com/sisters. That's aura.com/sisters to sign up for a 14-day free trial and start protecting you and your loved ones. Again, that's aura.com/sisters. Certain terms apply, so be sure to check the site for details. Of course, by now you all know you can find the link in our show notes.

Joyce:

Onto George Santos, bless his heart. George Santos picked up a new case this past Tuesday, actually superseding indictment in his existing case. It could not have happened to a more worthy crook. As calls mount for Senator Menendez, whose indictment remember is only a couple of weeks old to resign, and those are calls that are coming from his own party. Santos continues to get an absolute pass from Republicans. He's still there looking a little bit lonely and out of place, but Republicans need his vote because of their very slender majority in the house. I suppose when you're leading candidate to be president is an insurrectionist, Santos doesn't look all that bad after all. We, I think could probably make George Santos jokes all day and it might actually make for a fun show. I'll try to not make light of the situation and treat it seriously because the new charges are serious. As if the first indictment wasn't enough of a problem, this superseding indictment really adds to it.

Jill:

The original charges are pretty terrible, and there are six new ones added to the seven old ones. What it involves is some stuff that you just go, this cannot be a member of Congress who's doing this. For example, he's charged with credit card fraud, which is something like repeatedly charging contributors' cards without any authorization. You make a one-time donation, and then he just keeps charging and charging and charging. I guess I have to mention that Trump did that in a different way. He had a thing that said, you agree to monthly charges, which was the default rather than being something you had to accept. He also is charged with using the election process overall as a way to defraud the public and the government and to add money to his campaign and to his personal bank account.

He not only charged cards beyond the legal limit of anyone's ability, but he then stole family members' identities to change the name of who the donor was so that he could add it to his campaign report and for him to then qualify for certain funding and advantages that he wouldn't have qualified for because he didn't raise enough money. It's really an assault on our election process and the rules and regulations that govern how we do this. I mean, imagine stealing your family member's identity so that you could

increase the amount that you think has been contributed. I think it's really very serious stuff that he's now been charged with.

Joyce:

This guy is just such a schmuck. It's just you listen to this stuff and it really is tough to believe somebody could do this and then just stay in Congress. When these charges come to light, he's walking out of a meeting and he looks indignantly at the press and says, "Don't you know I'm innocent until I'm proven guilty?" Well, yes, Mr. Santos, maybe you are, but have you no decency, sir? Or whatever the phrase is. Kim, I'm interested in what you see as being the most serious charges, the biggest problems for Santos. One of the issues here is he will spend time in prison if he's convicted on all of these charges because among the new charges, aggravated identity theft carries a mandatory minimum two-year sentence. There is no possibility of probation attached if he's convicted on that charge. What do you think is most serious and do you think that the charges will stick?

Kim:

I do think that, that is very serious. I mean, it's one thing to be a smarmy politician who has a terrible relationship with the truth in any shape or form. It's another thing to engage in identity theft, not just for its own sake, but in a way as you so adequately, and Jill so adequately pointed out, is against our own election processes. He is defrauding the election process and donors, as well as family members. It's really, really horrific. I do think that these charges will stick. First of all, again, he is a public official. When prosecutors bring charges against public officials, they take extra care to make sure the Ts are crossed and the Is are dotted. Especially in the current atmosphere, they don't bring these things. That in itself makes me give special attention to this. The fact that the investigation into him continued, which is why we got this superseding indictment says a lot.

In terms of his defense that, "Oh, I paid somebody to look over my campaign finances. I don't know what they did. It was all them." That's not how prosecutions work. If an investigation found that a member of his staff was doing this unbeknownst to him, it would've been the member of the staff that would be facing these charges. He is the one that is on the hook for this. He also is going to be a terrible witness on his own behalf because he is completely unreliable. I mean, who knows? What do you guys think the craziest defense is going to be? That he actually is the only senator with the power to do this, that he has a special exemption, that he has special immunity or he's already pardoned everyone involved.

Joyce:

Space aliens.

Kim:

He's going to make up something, that there's been some doctrine of some, he's just going to make stuff up because he seems to, I'm not a psychological expert, but he seems to have a problem with lying that seems rather pathological. I think that this is pretty bad news for him.

Jill:

I do want to say in all fairness, that as with Senator Menendez, he is presumed innocent until proven guilty. The lies that you are referencing have started from his campaign.

Kim:

About everything.

Jill:

Everything. He's being Jewish, sort of. Remember, he has a criminal case pending against him in Brazil. This is not his first rodeo, to say it. I think that the kinds of things he's charged with are so unbelievably ridiculous that he cannot even take the stand. Think about the cross-examination. You would have, oh my God, he's the ideal.

Kim:

Delightful. He's stupid enough that he probably could take the stand.

Jill:

Absolutely.

Kim:

I just want to make a point that yes, he's innocent just like the senator until proven guilty. People who keep saying that in response to whether he should resign or something, that's not the standard for a public elected official. You have a standard that's a little high. Not a convicted crook, not a felon. The standard should fall someplace short of that. That doesn't mean that he shouldn't resign.

Joyce:

Al Franken resigned from the Senate when allegations came to light that he had engaged in inappropriate behavior, not sexual. Well, I shouldn't say not sexual assault, not rape. It was clearly sort of a crass kind of behavior, and he resigned. George Santos and others who have been credibly accused of all kinds of misconduct, no longer is there any shame in public life.

Jill:

Remember Richard Nixon resigned and Donald Trump brazened it out.

Joyce:

Yeah. Well, Barb, I have the same question for you that you asked me about Senator Menendez, in essence. My question is, what do we know about how the superseding indictment happened? Santos is campaign treasurer. Nancy Marks pled guilty to a fraud conspiracy charge recently. Do you think her case is related to the new charge? What's going on?

Barb:

I do. Like you said, you were going to speculate and you expressed some remorse in doing that. I Express none. I'm going to shamelessly speculate.

Joyce:

This is why I love you so much.

Barb:

I think this plea, it seems like no coincidence. A week ago, his former treasurer, Nancy Marks, enters a guilty plea and admits that they made false filings with the FEC to try to inflate what appeared to be his campaign donations. Because if you reach a certain threshold, then the Republican Party would provide funding and logistical support, but you had to meet that threshold. She admitted, she pled guilty to participating in this inflation of his campaign donations and to a conspiracy. Then right afterwards, we get this superseding indictment. It seems most likely to me that she's cooperating, that she sat down with prosecutors and she shared with them all of the things that she could and provided documents about how they were defrauding these donors.

My guess is once they heard from her and believed they had evidence that they could prove these additional charges beyond a reasonable doubt, that's what triggered the superseding indictment in these new charges. Now, maybe I'm wrong, but it sure seems coincidental. It's so often it's so helpful to have someone on the inside like that, even though they have some baggage. She's admitting that she committed crimes too, crimes of what's sometimes referred to crimes of moral turpitude, committing fraud, making lies. When you can support those and corroborate them with documentation, then usually, that person isn't so much being relied upon to reveal facts just to explain them because they can connect the dots and serve as a narrator to explain the documents that really provide the core of the evidence in the case. It seems most likely to me that she's signed on as cooperator and that the case against George Santos is very strong.

Joyce:

I think that that's absolutely right, and that just makes it more likely that he will suffer adverse consequences if this case goes to trial. Short of that, and I mean we've talked about this a little bit, but do you all think that the Republicans will ever call for Santos to step down and what would it take or do you think that they'll just let him stick around through trial until he's convicted?

Kim:

They couldn't even get the leader.

Jill:

Well, they do need him, but there is a movement to expel him. Some of his colleagues on the Republican side have decided that he should be expelled from Congress, which is not just asking him to resign, but taking some official action to get rid of him.

Joyce:

What do you think, Kim? You looked like you were going to jump in.

Kim:

I mean, the Republicans are having trouble even picking a speaker. I can't say what they might or might not do. I'm just going to stay out of that business. You know what, Joyce? I have such a problem cooking fish. I love fish, but I always overcook it, but I made it with HelloFresh, and it was like restaurant quality. How are you liking HelloFresh?

Joyce:

That is such a good point. Something that we don't talk enough about with HelloFresh, yes, it's easy, yes, it's convenient, yes, it's good, but the recipes really give you that confidence that you need to make

things that maybe you're less comfortable with, and that's a big benefit. With HelloFresh, you get farm fresh pre-proportioned ingredients and seasonal recipes delivered right to your doorstep. No trips to the grocery store. That's my favorite part. No time planning menus and a grocery list, and no wasted ingredients. Count on HelloFresh to make home cooking easy, fun, and affordable. That's why it's America's number one meal kit.

Kim:

I know Joyce, I really hate it when I think, "oh, I'm going to make X meal." Then I realize, "Oh, I don't have parsley or I don't have some other ingredient." It's really frustrating. And that never happens with HelloFresh. You always have exactly what you need and exactly how much. Even though the fall can feel jam packed, HelloFresh makes whipping up a home cooked dinner actually doable with quick and easy options, including their 15-minute meals. That's less than it takes to get delivery. With everything pre-proportioned and delivered right to your door every week, it really is a no-brainer.

Jill:

It's amazing because I use it as a way to spend at least an hour just thinking about the food and taking my mind off the terrible news, and the food is so delicious. This week I made for the first time a slow-cooker recipe. I'm going to have it for dinner tonight, which I can't tell you how much.

Joyce:

I love my slow cooker.

Jill:

It's fabulous. This had all the ingredients. You throw it in the slow-cooker and it smells fabulous. It has to cook for four hours. By the time we're done recording, I'll be able to have this fantastic tortilla soup. It's really, really good. You can even turn to HelloFresh Market for yummy add-ons, which I have done frequently now. You can enjoy the season's limited thyme fall flavors. They have a special lineup. Imagine feasting on desserts like apple cider cake with caramel sauce, or please a crowd with appetizers like the barbecue pulled pork nachos. Don't forget the mini pumpkin cheesecakes or the apple crisp. It's perfect for a me-time treat. In fact, I'm getting hungry just talking about this.

Barb:

Well, Jill, you may have a slow cooker, but I myself am a non-cooker. Even I recently made a delicious Shepherd's Pie with HelloFresh.

Jill:

That's one of my favorites, Barbara.

Barb:

Isn't it good? I know.

Joyce:

I have the Shepherds high.

Barb:

It's kind of getting into that time of year when you want the comfort food and the warmer fare. HelloFresh works, it even works with your schedule. Their plans are flexible and you can change your meal preferences, update your delivery day and change your address with a few taps on the HelloFresh app. Imagine getting fresh quality produce from the farm to your kitchen in less than a week so you can enjoy the flavors of the season right from home. Go to hellofresh.com/50sisters and use the code 50 sisters for 50% off, plus free shipping. Again, go to hellofresh.com/50sisters and use code 50 sisters for 50% off, plus free shipping. Everyone can also look for the link to HelloFresh, America's number one meal kit, in our show notes.

Kim:

Well, it wouldn't be a week without some Supreme Court news. This week, the US Supreme Court hinted that it would let a South Carolina congressional district that had been deemed by a district court panel to be an unconstitutional racial gerrymander to stand. That's right. We've been talking a lot about gerrymandering in recent months, but this case is a little different. I want to talk about it carefully so our listeners really understand. I want to start with you, Joyce. You wrote a really good substack piece on this. For anyone who has not signed up to Joyce's substack, you really need to do it. Tell us what's going on in the first Congressional district in South Carolina and how did it make it to the Supreme Court?

Joyce:

Thank you for your kind words. It's an interesting case. It comes on the heels of last terms Alabama gerrymandering case where the Alabama legislature is in the process of telling the Supreme Court, "We don't really think you meant what you said when you told us we couldn't engage in a racial gerrymandering, so we're just not going to comply." That case, which is sort of the backdrop for this one is working its way through the courts. It's very interesting how we get here in South Carolina and it all happens because in 2019, and I apologize for putting my law professor hat on, but just indulge me just briefly here. In 2019, the Supreme Court decides a case called *Shaw*. They hold that while racial gerrymanders are still unconstitutional, they won't address partisan gerrymanders. They tell the states, go ahead and partisan gerrymander all you want. We won't invalidate your maps if you do that.

South Carolina takes advantage of that invitation. They draw a new map after the census. When it gets challenged, they sure enough say, "Oh, no. This isn't a racial gerrymandering. It's a partisan one." They explicitly acknowledge that. Politics, not racial gerrymandering, is what South Carolina defends itself by saying. You judge for yourself. Here's what happened. When they drew the new map, they put almost two thirds of the black voters from district one, that's Nancy Mace, a white Republican. They take two thirds of her black voters and they put him into Jim Clyburn's district. Jim Clyburn is a black Democrat. He's in District six. They also take in district six hold different groupings of Republican voters. They pull them out of Jim Clyburn's district and they shove them into Nancy Mace's district, but it's just about politics, South Carolina says.

Their defense, in essence says, "We may be awful, but we're lawful." These maps get judged by the courts on a very different track than we're used to the normal case where there's one district judge and then a Court of Appeals and then the Supreme Court. That's not how these cases work. These cases are assigned when the map is first challenged to a three-judge panel in the district court. Two district judges, one court of appeals judge from that circuit. After that panel rules, the appeal goes straight to the Supreme Court. That's how this case got so quickly to the Supreme Court.

You can understand why they have to move fast. We are literally knocking on the door for the 2024 election. These maps have to be set before congressional candidates can qualify and the primary process can begin in South Carolina. There is a lot of time pressure on this one. In this case, the original

three-judge panel, as Kim said, found that this was a racial gerrymander. Unfortunately, despite that ruling, there is just not any certainty about what map South Carolina will proceed under. In fact, the Republican Party in this case has asked the Supreme Court to rule quickly and reinstate their map. That would be a real travesty.

Kim:

It's really incredible and we've talked about the Rucho case in the past, which said, according to the Supreme Court, not only is a partisan gerrymander, not unconstitutional. Federal courts do not even have the power to hear challenges to partisan gerrymandering. Very different from a racial gerrymandering, which is unconstitutional. You just can't do it. As I've said a couple of times, I think also in our live show, often in the South, when you take a Venn diagram of a partisan gerrymander and a racial one, it's a circle. Jill, it seemed from the coverage of this case, for those who didn't listen to it, I did listen to it, but the consensus is that the oral arguments didn't go really well for the challengers who say that this is an unconstitutional gerrymander and should be struck down. Explain to us why people don't think they're going to win.

Jill:

It's a great question, Kim. Warning, it's always hard to predict or it's dangerous maybe to predict the outcome of a case based on how the justices react during oral argument. In this case, it seemed pretty obvious that there was a six three divide along party lines. It's a shame to say that there are party lines in the Supreme Court. You know who six I mean and what three I mean. That the challenges to the arguments made against this map were being poo-pooed and ignored, and that the conservative side were setting rules that have never been rules.

They, for example said, "Well, you who are challenging this never created an alternative map. Well, what's the rule that requires that there be drawn an alternative map that shows you could have achieved a different result that just isn't something that exists?" The other thing that really bothered me was that the standard of proof that it would take to change this, because of how it's set up, normally, the Supreme Court accepts the facts found by the lower court. Here, they really weren't going on the standard of clear error in the findings. They were just like, "We're not going to pay attention to those findings." "They had expert testimony." "Well, we don't like those experts. We're not going to go with that."

That to me, was one of the most telling points in terms of why I think it's a clear case where the six are going to say, "No, that map is just fine." Of course, it is difficult when the same group happens to overlap if the Democrats are the black voters and when they all get transferred into an adjacent democratic district, to pack that as a clear winning district for Jim Clyburn. He's a great representative, so good for that. To then bring in all the white voters to make sure that Nancy Mace, who you can't go this week without mentioning her Scarlet Letter A, I'm sorry, but if you don't understand what I'm talking about, please just Google Scarlet Letter A and Representative Mace, who clearly never read Scarlet Letter.

Barb:

Wait, can we just take the time out? I think we need to digress and actually explain this.

Jill:

It really is good.

Barb:

She's wearing a white shirt with a red A.

Jill:

Yeah, I'll explain it.

Barb:

She says, "I'm wearing the scarlet letter." Jill, what does she say is the reason?

Jill:

I can't repeat it, it's just too ridiculous. She said, "Well, because I'm used to being trivialized as a woman." The scarlet A, of course, anybody who graduated high school probably read the book and knows that it was because someone who was accused in our primitive times during the pilgrims had to wear a scarlet A if they were accused of adultery. She was proudly wearing a very tight white T-shirt with a giant red A on it, proudly proclaiming herself as having a scarlet A with no idea of what the scarlet a means.

Kim:

Because she voted against McCarthy. Like, what?

Jill:

Yes.

Barb:

I think she read the cliff notes, not the book. She missed the point.

Jill:

Sorry to divert with that.

Barb:

No, it's got to be mentioned.

Jill:

You can't mention that she is the big winner of this illegal gerrymander. Supreme Court has said, only states can review whether it's partisan or not. We, the federals, can never do that. Only states that have something in the Constitution that says you can't partisan gerrymander are going to do it. I guarantee all the Southern states are going to change if they have that in their constitution so that they can go ahead and claim partisan gerrymander. As Kim said, it's not unexpected that when challenged, they said, "Oh, no. This isn't partisan." Sorry, "This isn't racial. This is partisan, and partisan is okay." Well, partisans shouldn't be okay. Democrats have as much right to vote as Republicans and they ought to get fair representation. Right now, only one of the six districts has a black majority or minority majority. That isn't fair. That isn't how it's supposed to be. It is not the same percentage as a represented in the state's population.

Kim:

Well, because I write for the Boston Globe as the representative Massachusetts, Mass-hole in this group, not only could I give Nancy Mace a lesson about the scarlet A since that is the origin of that, so is gerrymandering. Actually, we talked about this, Governor Gary of Massachusetts created the first gerrymandered district in Boston, and that's how it got the name. Perhaps she should wear a big red G, because that's how she gets to have and keep her job. I don't know, that's just a thought. Anyway.

Jill:

Going back to the gerrymander coming from your state, it was a crazy odd shape that really went out of its way to snake around to get everybody into one district.

Kim:

Like a salamander.

Jill:

Like a salamander. Exactly. That was how we created that. One of the things that makes me think that the Supreme Court is going to rule against it is that he said, "Well, there were no crazy shaped districts." Which isn't what the test is.

Kim:

No.

Jill:

It just isn't.

Joyce:

Can we just say that this case was argued in the Supreme Court by Leah Auden, who's a lawyer for the NAACP's Legal Defense Fund? She is an extraordinary lawyer, so it's a rare lawyer who can try a case and argue it on appeal as capably as she can consistently. The legal defense fund lawyers are just really good at this, but she was extraordinary. It's a rare day when a black woman argues a case in front of the United States Supreme Court. In that way, it was a real victory, I think, for lawyers and for the rule of law. She handled herself with enormous grace. Because the chief justice was so very negative about the case, and he sort of made what I took as a very snarky point where he said to her, "I'm not saying that it's impossible for you to win, but you would be asking us to break new ground here."

I have so much admiration for the fact that she just didn't look at him and roll her eyes and say, "Are you out of your mind, John Roberts? That's what you're here to do. You're here to break new ground if it's necessary to protect the rights of Americans. Here, where partisanship is being used as a marker for racism, you on the Supreme Court should not be afraid to say that out loud." Hats off to her for saying that in the nicest, politest way possible. I hope she wins her case, she deserves to.

Kim:

I hope that she does too, yes. John Roberts and the other conservative justices were raising the bars seeming so high saying, "You can still clear it, but we're going to put it way up here for you to prove a racial gerrymander."

Joyce:

Our friend Mary McCord said to me this morning, "Well, gee, maybe they could just start doing that on college admissions forms too, now that you can't consider race. Just put on a politics question as a marker." Certainly, the Supreme Court would say that's okay. Mary is so smart. I thought that was great.

Kim:

Barb, I want to wrap up with you. Usually, these types of challenges are limited to their facts. They don't really have wide presidential value because it's based on, or supposed to be based on the record of that specific district. As we mentioned after the Rucho decision, which said that partisan gerrymandering can't be challenged. How do we think if the challengers here lose in their claim that it was a racial gerrymander, what happens next? I'm concerned that this basically creates a roadmap for those who want to disguise racial gerrymanders as partisan ones to create a factual, a record in the courts below in any challenge, just to create enough doubt between the two to get past this very high bar that the conservatives on the Supreme Court seem to want to set. Am I hyperventilating here or do you share that concern?

Barb:

No, I share your concern. I think this is a classic case of a Justice Roberts two-step. This is the way he goes. He has one decision that takes one little step in a direction, but it doesn't get all the way there. Then he takes that second step that really cements the deal. What I mean by that is the first step was the Rucho case in 2019. Even in that case, he said, "We're not talking about racial gerrymandering. No, that would be clearly unconstitutional. All we're saying today is that partisan gerrymandering is something that is a political question and we really can't decide it." As Elena Kagan, my favorite justice, said at the time, remember she wrote, I went back and looked at it and she said that, "Gerrymanders, whether they're political or racial, whatever they are, gerrymanders dishonor our democracy. Left unchecked as the court does today, gerrymanders like these may irreparably damage our system of government."

Then she ended it with, for a Supreme Court justice, this is screaming out loud, with respect, but deep sadness was the way she said, "I dissent." That was very powerful then. I think she could see it coming. She could see where this was going to go. This was step one, and now along comes step two. As you say, it's almost impossible to distinguish a partisan gerrymander from a racial gerrymander when you're talking about a district in the South where most racial minorities are going to vote for the Democratic Party. By calling it partisan, you can also really strip the voting rights of people of a racial minority. I find it only in this upside-down world of the Roberts Court could protecting the right to vote be considered breaking new ground? Unless there is a smoking gun that says, this is for race. Then they can just call it a partisan gerrymander, and they say, all you have is circumstantial evidence, which in most cases is sufficient. That it's not going to be enough. I think, Kim, you're not hyperventilating enough, frankly.

Kim:

Oh, dear. I was afraid of that.

Joyce:

Hyperventilates some more, honey. Skincare is something that I have been thinking a lot about as the seasons are changing. No matter who you are, male or female, old or young, as we head into harsher cold weather, it's time to think about taking care of our skin. That's why we're happy that support for

today's show comes from OneSkin. Like us, you probably had a little bit too much fun in the sun this summer. It's no secret that those UV rays can take a toll on your skin, leaving it dry, tired, and less vibrant. If you want to hit the undo button on UV induced aging, say hello to OneSkin, your secret weapon against the summer's toll on your skin.

Jill:

OneSkin Products are all powered by the revolutionary OS-01 Peptide. This proprietary peptide is scientifically proven to reduce senescence cells that translates to age cells. They are a central source of skin aging. Their scientists have shown that OS-01 can actually reverse the biological age of skin by several years in their groundbreaking research. Healthier, more youthful looking skin doesn't just look great, which we all want, of course, but it is good for overall wellness too.

Kim:

As the leaves change color this fall, help your skin undergo its own transformation with OneSkin. Their products work tirelessly to repair, rejuvenate and erase the signs of summer damage, ensuring you step into autumn with the healthiest skin of your life. Head over to oneskin.co and explore how their products can become your skin's new savior. For a limited time, our listeners can get 15% off OneSkin with our code, [sisters at oneskin.co](https://oneskin.co). Since we've been using it, we've been looking and feeling great and it feels amazing to apply, especially on the face I have gotten. I use SPF and I'm very careful with the sun. Summertime, you go out and I do get some melasma on my face, some discoloration. I do find that by using that, it really minimizes the effect of that. I feel so fresh each time. It's like a massage at the Fountain of Youth.

Barb:

OneSkin is the world's first skin longevity company. OneSkin addresses skin health at the molecular level, targeting the root causes of aging, so skin behaves, feels and appears younger. It's time to get started with your new face, eye, and body routine at a discounted rate today. Get 15% off with the code [sisters at oneskin.co](https://oneskin.co). That's 15% off oneskin.co with code [sisters](https://oneskin.co). We only have one body, one skin, and only you can choose to make it better. Age healthy with OneSkin. You can also find the link in our show notes.

Jill:

As much as we have enjoyed discussing these topics, we're now at the point of the show, which is our very favorite. It's the questions you send us and we really appreciate them, so send more. In fact, if you have a question for next week, please email us at sistersinlaw@politicon.com or Thread or tweet using [#sistersinlaw](https://twitter.com/sistersinlaw). If we don't get to your question during the show, you can keep an eye on our Thread feeds throughout the week where we'll answer as many of the questions we've already gotten as we possibly can. We have some really good questions this week. I'm going to start with you, Barb. A question from Susan, how does someone who does not qualify for a security clearance qualify for President of the United States? What is done if Trump wins to protect our national security?

Barb:

Susan, this is such a good question. Because the president is elected by the people, there is no security background clearance done for them. When you hire somebody to work in the intelligence community or in law enforcement, there is an extensive background investigation that gets done. If a person fails, they don't get the job. With all kinds of questions about dealings with foreign countries and assets

overseas and susceptibility to blackmail, all kinds of things. Because the Constitution says that the only qualifications for being president are age 35, natural-born US citizen and continuous residence in the United States, it would be unconstitutional to require anything more of a president, including passing of a background check. If Donald Trump is elected president again, he is elected at our peril.

Jill:

Terrifying answer, Barb, but accurate.

Barb:

Well, Halloween's coming.

Jill:

We have a related question from Ryan, and I'm going to pose it to you, Joyce. He asked, hypothetically, if Trump were convicted and sentenced to jail, spend time in federal court and New York and or Georgia, would he first serve the federal sentence and then transfer to state prison to serve the state sentence? How would that work?

Joyce:

This is a really interesting question, and it's one that comes up in real life more than rarely because people will frequently be prosecuted in multiple jurisdictions. The answer is, it depends on what the judges do. Usually, the first jurisdiction that gets you and sentences you, you will serve your sentence there. Then if you have to be tried in another jurisdiction while you're in custody, you will be transferred to the custody of that jurisdiction. There are complicated questions about where the time counts. In reality, when we're talking about Trump though, I would expect, and please don't throw rotten vegetables at me for saying this, but he will get appeal bonds to stay out on appeal after he's convicted because there will be novel, substantial questions in his cases. I hope that I'm wrong. I suspect that I'm right.

He won't actually be serving a sentence and he'll go through a series of these proceedings and then be sentenced and the judges will structure where he goes first. Most defendants have a strong preference for serving federal time. Conditions in federal prison are certainly better than they are in Georgia's prisons, which are under investigation by DOJ. Typically, the sentences will run concurrent. That means that if he's in federal custody, that time will count for state convictions, but not always. It's up to the judge. The judges can require that time be served consecutively. All that to say, I don't have a great concrete answer to your question. All I can do here, play out some of the possibilities.

Jill:

Our last question is for you, Kim, from Beth. She asks, if, heaven forbid, Donald Trump becomes speaker of the house, would he be exempt from standing trial in his multiple criminal cases and civil cases?

Kim:

That's a good question. The answer is no. As we've discussed, there are members of Congress who are under indictment and can still face charges. There is no exemption. There is no DOJ policy against prosecuting sitting members of Congress. That would really provide him no cover in that sense, which is why I think that's one reason why he would never consider that job because it won't get him what he wants most.

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Jill:

I certainly agree. Although, I promised in the beginning that this would be a Trump-free segment or episode, obviously, the questions drove us to have some Trump in this episode. Thank you for listening to #SistersInLaw with Barb McQuade, Kimberly Atkins Stohr, Joyce Vance, and me, Jill Wine-Banks. Remember, you can send in your questions by email to sistersinlaw@politicon.com or tweet or Thread them to us for next week's show using #SistersInLaw. Please support this week's sponsors, Lomi, Aura, a HelloFresh and OneSkin. You can find their links in the show notes. Please support them as they make this show possible. To keep up with us every week, follow #SistersInLaw on Apple Podcasts or wherever you listen, and please give us a five-star review so that others can find us. See you next week with another episode, #SistersInLaw.