

Kim:

Welcome back to #SistersInLaw with Barb McQuaid, Jill Wine-Banks, and me, Kimberly Atkins-Stohr. Joyce is away, but she'll be back soon. Today we will be discussing the mounting legal problems for Donald Trump. Also, the newest legal troubles for Senator Bob Menendez. As well as how law firms are dealing with the new challenges to DEI programs. And as always, we look forward to answering your questions at the end of the show.

And just in case our listeners hear a bit of ambient noise on this podcast, it's because we are so committed to making sure we bring you a show every week that two-thirds of the current SistersInLaw on this episode are in airports, because we are traveling and this is literally the only hour we could find to record this. How are you doing, Barb? You still on time?

Barb:

I think so. I am at the LaGuardia Airport where you may have seen photos, there knee-deep flooding in parts of the airport, but it appears that my flight back to Detroit is on time. I'm going to curl up in a comfortable airport chair and enjoy the next hour or so talking with my sisters.

Jill:

Comfortable. I want to say comfortable and airport chair do not go together ever, but you guys are brave.

Kim:

I probably am a bit more comfortable. I am at Boston Logan Airport, after a delay. I'm coming here, y'all know that Boston's my home away from home. But I just didn't have time to get to my hotel, so I too am still at the airport recording this podcast. Jill, you look comfy in your home.

Barb:

Yeah, you sure do.

Jill:

I am. Yes. I hate to make you guys feel bad, but I have the comfort of Brisbee, a nice chair, no water under my feet. So I'm really good. But I admire the two of you for bearing with this and doing this on your phones, and however else you're doing it. Barb is standing in line waiting to get through security. It's amazing.

Barb:

Hey, TSA man-

Kim:

Barb, do you need-

Barb:

... don't wrestle me TSA, man. I'm talking to the SistersInLaw now.

Jill:

Don't talk bad to him or he will. Don't do that. And besides, in 36 hours he's going to not be there. So be grateful that he's there, say, "Thank you for your service."

Barb:

Yes, I'm grateful to all the [inaudible 00:02:33] federal workers who are on the job.

Kim:

That's absolutely true. That's absolutely true. And I hope you're wearing your Wellies, Barb.

Barb:

Yeah, I'm going to need them.

Jill:

This week Donald Trump suffered huge losses in New York Attorney General, Leticia James's civil fraud case against him, his sons, others, and the shell companies owning his real estate holdings, including Trump Tower in New York and Chicago, Mar-a-Lago, and more. There's a lot to cover. So let's dive right in. Barb, I'm going to ask you the first question before you go through TSA, and that is, he lost his motion for summary judgment, but Attorney General James won her motion for summary judgment for one of the seven charges against him. It's rare to get a summary judgment granted, so talk about the rarity and why the Attorney General won. And if you can, include some of the great language that Engoron used in his opinion.

Barb:

Yeah, the judge is Judge Engoron, as you said. And summary judgment really is a decision by a judge that says there are no factual disputes here for a jury, or in this case a judge in a bench trial, to have to decide. We've been able to decide this case on the documents. And by reviewing the documents, the judge was able to conclude that the allegations by the Attorney General were accurate. And they could tell that Donald Trump had overvalued his properties to the tune of \$2.2 million. And so in representations to mortgage companies to get loans, and banks, to insurers, he had overstated the value of various properties. For example, I think the most egregious one is overstating the value of his apartment in Trump Tower, saying that the square footage was 30,000, when in fact it's 10,000. And these are verifiable facts that were misstated in his statement of wealth that was used when these companies, these financial institutions were deciding whether to make certain loans, or provide insurance coverage.

And so the judge found against him and said a number of things, Jill. As you point out, finding not only was this an egregious violation of the law, but that the lawyers had advanced really frivolous arguments and had simply repeated again and again arguments he told them he had already decided against. And so he did use some colorful language in ruling against them saying that the arguments bordered on the absurd, that the arguments were frivolous. And really-

Jill:

He said... Yeah, I was going to just help you out there. It was preposterous, obstreperous, bogus. That he also said he felt like he was in a loop of Groundhog Day, because they were making the same arguments he had already rejected. That they were in a fantasy world. Quite amazingly strong language.

Kim:

I loved obstreperous. I don't think I heard that word before, but now I'm going to use it all the time.

Jill:

Really?

Kim:

Obstreperous.

Jill:

Oh, my God.

Kim:

I don't think I did.

Jill:

Maybe a generational thing. In my generation we used to use that. I love it. Yeah, Kim, there are a lot of counts against him. This was only summary judgment on one, and tell us what happens next. What's going to happen with the other six and everything else?

Kim:

Yeah, so there are, as you said, still six remaining charges against Donald Trump and his adult children, and others. As well as questions about the valuation of damages, what kind of potential penalties they can face. And so all those issues move forward to trial. But the summary judgment, I can't state enough how ground shaking that was, because the fraud is at the center of all of the charges. The behavior that he has already been found as a matter of law to have engaged in is at the center of it. I think you're going to see the defense really have to scramble here and try to decide what sort of defenses they may put forward, what defenses are even available to them.

Because to win on summary judgment, the judge is basically saying it doesn't matter what defense you mount, what has been alleged here is so clear that no defense that you can mount can defend against it. So as a matter of law, the attorney general wins. I think that the attorneys are probably scrambling right now to figure out what to do. They certainly don't want to draw the additional ire of the judge in this case, who has already admonished them for basically making nonsense defense claims up until this point, and try to limit losses as much as they can.

Jill:

Kim, you just mentioned, and Barb has already alluded to the fact that the lawyers were sanctioned in this case, and this is getting to be a quite common result for lawyers who represent Donald Trump, but talk about what happened in this case and what it means going forward.

Barb:

Yes. In addition to imposing orders against Donald Trump, the judge in this case imposed sanctions on the lawyers. Lawyers in cases representing individuals get a lot of leeway to make arguments, even creative arguments. But those arguments have to be grounded in fact. And once a judge rules on your

decision, unless you are raising new facts for them or arguments not appropriately considered, you're supposed to stop. And what the judge said in this case is because these lawyers continued to advance these legal theories that he had already rejected, and he was tired of it. As you said, he referred to it as Groundhog Day. He imposed sanctions on these lawyers of \$7,500.

Now, it's not the biggest number in the world, but it's not nothing, and it sends a message. I think judges are so loath to impose sanctions because they don't want to discourage lawyers from making good faith arguments if they exist and representing their clients. And let me be a lawyer, let me represent my client, it's something you hear lawyers say from time to time. It's really quite extraordinary to see a judge impose sanctions whatsoever. So \$7,500 would be a lot of money for me, and for most lawyers it is. And I think it sends a real shot across the bow that this judge is not going to tolerate these kinds of frivolous, repeated arguments that have already been rejected.

Jill:

I agree, and I think that it means that they're on warning that they better be careful for the rest of the trial. But besides the attorney sanctions, Kim, there were severe penalties imposed in his decision on the summary judgment. So if you can, talk about what Judge Engoron ordered and what the cancellation of certificates to do business in New York means.

Kim:

Yeah, it means that basically everything that Donald Trump has done for decades and everything he values, and everything he derives his worth in outside of the White House could end. His businesses are all done, mostly established and done in New York City. And the inability to do business there means that all of that comes to an end. I think you've seen the memes on social media about what Trump Tower will be named after this, and things like that. It's important to know that most of Donald Trump's properties, he does not actually own them. He actually has a licensing agreement to put his name on them. But he will not, under his LLC, be able to do that anymore.

But one interesting thing that I think about this when I think of LLC, LLC stands for Limited Liability Corporation. So one way that Donald Trump has remained in business as long as he has, even though fraud and failures in business have been a steady part of his professional life, is because he usually is able to sue people or file for bankruptcy to get out of trouble when he gets in trouble. And he's able to do that through his businesses, through his LLCs, so that none of that affects him personally. If those LLCs are dissolved, he can no longer use them as a shield against liability or as a shield to try to get himself out of trouble if he faces some sort of legal peril. So it also really removes a massive defense that he has already had legally to having to pay up when he's found of wrongdoing.

Jill:

It is amazing. This is probably everything he's ever cared about in his life being evaporated. And in addition to saying that the certificate should be canceled, the judge also ordered that each side recommend three potential independent receivers to manage the dissolution of the canceled LLCs. And he gave a continued role to retired Judge Barbara Jones, who is already monitoring the operations of the Trump organization. She is probably familiar to our listeners because she was the one who reviewed Rudy Giuliani's and Michael Cohen's documents for privilege early on in what seems like years ago. She's amazing. She was the chair of the Pentagon Committee I served on looking at sexual assault in the military, so I got to know her, and I respect and admire her. And I know she's going to do a good job as they look at the dissolution, which means they could sell all of this to pay the fines. And of course we don't know how big the fine will be in this case, but the Attorney General [inaudible 00:12:26]-

Kim:

... don't know the actual valuation of all of these properties. But it's also important to know there is precedent for this. There's precedent for this with Trump. Remember when he was sued for misusing his charities by the New York Attorney General, they said that he can no longer have charities, and everyone involved in that case. So Ivanka, Donald Trump, they cannot go set up charities in New York City anymore because they've abused that right from the previous settlement. So there is actual precedent for this within the Trump family.

Jill:

And if I remember correctly, they aren't even allowed to serve on the boards of charities because of their bad behavior. Barb, Trump also lost his motion to delay the trial. So it's going to actually start on Monday. And talk about the witness list from both sides and whether Trump will testify, as he's claiming he will, or whether he'll even be in the program.

Barb:

Yeah, this is fascinating. A lot of this will be about the valuation of assets. There will be experts who will come in and try to help the judge determine what is the actual value of these properties. There have been estimates of the range, and we know that based on the judge's finding there have been gross overstatements. But experts in real estate will help the judge to determine what these things are really worth. But the fascinating name on the witness list, as you point out, Jill, is Donald Trump himself on his own witness list, says he's going to testify. Now, when you put forward a witness list, it really is only the people you may call, not the people you will call. And you're not committed to calling anybody who shows up on your witness list.

I would be stunned if Donald Trump actually gets on the stand under oath and testifies in this case, because it would be just a recipe for disaster for him to talk about the value of these properties. When he gets interviewed, you see the way he just meanders from topic to topic and says a lot of things with variable degrees of truthfulness. And so in court, truth matters, and a lawyer is going to pin you down to specifics. And I just can't imagine that he would have the discipline to do that. I'd be surprised if he actually testifies.

Jill:

Although he's also on the list of the prosecution, and he has been deposed and he can't get out of that. They can use that. And so he might be forced to testify.

Barb:

And remember, this is the thing where he can take the fifth so that things can't be used against him in a criminal case. But if he takes the fifth in a civil case, the fact that he took the fifth can be used as an adverse inference that the answer would've been unfavorable. So that's an interesting dynamic in the civil case like this one.

Kim:

Barb, can his social media posts be entered as evidence? Because he's out there saying, oh, Mar-a-Lago is worth 50 to a billion dollars, and they're totally wrong.

Barb:

Yes, all of that is. Anything. It's why lawyers always tell their clients to not speak about the matter when they're either under criminal indictment or involved in civil litigation, because anything you say in the public domain, what you say to your friends, what you say on social media, what you say publicly, all of that is fair game. And so it's quite possible that we'll see the Attorney General's office offer big blowups on the screen of Truth Social posts and other kinds of things.

Jill:

So last question to you, Kim. As a former civil litigator, talk about the fact that this is a non-jury trial. What does that mean? How did it happen? What's the consequences?

Kim:

Yeah. In civil cases there is the option in most cases, if the parties agree, to have a case tried by a judge as opposed to a jury. There can be a lot of advantages to that, tends to move faster, it can take out some of a little bit of the uncertainty about it. And it's usually a move that is seen to be favorable often to the defendant, in this case, as opposed to the plaintiff. I'm not sure, based on what we've seen, that it's helping Donald Trump out that much. But I'm sure one thing that we will see as a result, is that undoubtedly if more things go wrong, if he's found liable on more charges, he will go after this judge and attack him. Which is a problem.

But it is something, I don't think it's terribly unusual. In my time of practicing, there were some cases that were bench trials, which is what you call it when it goes before a judge with no jury. Bench trials are not entirely unusual, but I think this was probably a move that his attorneys agreed to because they're throwing everything at the wall and they thought perhaps there would be a benefit there, but it doesn't seem like it's happening so far.

Jill:

I had one bench trial, and it turned out to be before a judge who was found guilty in Operation Graylord, which was the judicial integrity investigation here in Illinois. So it was quite interesting to have that outcome come.

Kim:

Barb, I know you may love bacon as much as I do. Where is the best bacon you've ever tasted?

Barb:

Oh, bacon. If I could, I would use it as a perfume with just a dab or two behind the ear. Because I think it attracts-

Kim:

My dog would love you.

Barb:

Yeah, I would attract small animals and large men. But it's at Moink, Kim. The best bacon in the world comes from Moink. And with Moink, they have small family farms that bring their bacon and everything else right to your dining table. Moink, which is also known as moo plus oink, gives you access to the freshest, sustainably sourced meat and fish all while supporting American family farms. You can help save the family farm and get access to the highest quality meat on earth when you join the Moink

movement today. Moink delivers grass fed and grass finished beef and lamb, pastured pork and chicken, and sustainable wild caught Alaskan salmon straight to your door. Moink farmers farm the way our grandparents' generation did. And as a result, Moink meat tastes the way it should. The Moink difference, is a difference you can taste. And you can feel good knowing you're helping family farms stay financially independent too.

Jill:

You choose the meat delivered in every box. You can pick rib eye or chicken breast, pork chops and salmon filets, and much, much more. Plus, you can cancel any time. I have found that the quality of every single piece of product I've gotten from Moink is really high quality. The chicken breasts are juicy and tender, and really work well. Shark Tank host, Kevin O'Leary, called Moink's bacon, the best bacon he's ever tasted. And you heard Barb and Kim talk about how great it is. Ring Doorbell founder, Jamie Siminoff, jumped at the chance to invest in Moink. Plus, they guarantee you'll say, "Oink, oink. I'm just so happy I got Moink." You'll love it like we do. It's the perfect option for a family meal or summer party.

Kim:

I love when you say that, Jill.

Jill:

Me too. It's one of my favorites.

Kim:

Keep American farming going by signing up at [moinkbox.com/sisters](https://moinkbox.com/sisters) right now. And listeners of this show get free ground beef for a year. That's one year of the best ground beef you'll ever taste, but for a limited time. Spelled M-O-I-N-K [box.com/sisters](https://moinkbox.com/sisters). That's [moinkbox.com/sisters](https://moinkbox.com/sisters). And you know where you can find the link, it's in our show notes.

Barb:

While US Senator Robert Menendez and his wife were charged last week in a bribery scheme, the alleged plot involved interfering in criminal investigations by the New Jersey Attorney General and the New Jersey US Attorney, and even assisting the government of Egypt by sharing sensitive information. Of course, these are all allegations, the person is presumed innocent. But these charges are very serious, especially in light of the fact that it includes information that during a search of Senator Menendez's home federal agents found \$430,000 in cash, a Mercedes sports car, and some gold bars, including bars that were traceable by serial number to one of the alleged bribers, and an envelope of cash with the fingerprints of one of the other alleged bribers. The evidence looks very serious. And Jill, let me ask you, Senator Menendez has maintained his innocence, and he's actually beat a federal case before. Can you remind us about that case? And do you think he might find that experience to be empowering to go to trial in this case?

Jill:

Yeah, it's really interesting because that case was a completely unrelated and separate case. It was in Florida with a donor who was a longtime supporter of his, and it went to trial several years after the indictment and ended in a mistrial. And then the US Attorney had a chance to retry him, but decided not to retry him. You would think that might give him some hope that he can overcome this too. But I think

that the evidence in this case, and you've mentioned in your introduction some of the dramatic pieces of evidence that were found that link him to bribers. I don't know how much this will actually result in him getting away with this. And as you said, these are only allegations, we don't know what his defense will be. And he has made very clear that he intends to very strongly defend himself, and he will not resign. He was forced off the chairmanship of the Senate Foreign Relations Committee, but he has said he will not resign from the Senate. It will be interesting, totally different facts, but the same allegations of bribery.

Barb:

Kim, one angle about this case that came out recently is the notion that these charges are not just about accepting bribes, but could also be about compromising national security because of those allegations about assisting the government of Egypt. Do you think the indictment goes so far as to allege a breach of loyalty to the United States?

Kim:

Well, I think that it could. One of the pieces of information that was really gob smacking to me in the reporting of what the senator is alleged to have done in terms of giving sensitive information to Egyptian officials, is information about the alleged assassins of the late Washington Post columnist Jamal Khashoggi, about whether or not they stopped in Egypt on route potentially to pick up whatever they used to poison him. And so that is really serious stuff. I can see why there are national security implications if that's the type of information that was being shared. And I think that is something that the government would be highly interested in, and I think that could be essential part of this.

Just to underscore, this is not just turning the other way at a no-show union job or something like that. These are really serious allegations that get to the heart of exactly what a politician is not supposed to do, which is be corrupt, trade favors, use his position in order to enrich himself. And I think that is one reason, especially this is the second time he's brought up on these charges. This is a really big deal, and I think you're seeing the political implications of it, which we'll talk about a little later.

Barb:

Yeah. One other that struck me was he is the chair of the Senate Foreign Relations Committee, and in that role he's privy to a lot of sensitive government information, and one of them that he's alleged to have provided to the government of Egypt is the staffing at the US Embassy in Cairo, which could compromise US interest there. Really interesting angle in the case. Jill, in public corruption cases in recent years we have seen this Supreme Court really gut some of the theories that have been used by prosecutors in public corruption cases. We've seen cases like Skilling, which was part of the Enron case, Virginia Governor McDonnell. Bridgegate, which was staffers of Chris Christie when he was governor of New Jersey, who shut down some freeway lanes to punish the mayor of Fort Lee, New Jersey for not endorsing Chris Christie for governor.

And they've really narrowed the scope of some of the theories of public corruption that really almost now has to be tied for money in exchange for an official act. Do you think that narrowing of the legal theories could be problematic in this case? Or do you think these allegations overcome any of the problems that existed in those cases?

Jill:



The short answer is, I think that the facts here do overcome it. But before I go on to explain why, I just wanted to say, Kimberly mentioned the fact that there were no show union jobs in other cases. Well, there was in this one too. Senator Menendez's wife had a no-show job that she got paid for at a halal certification company. So even that is there. But in terms of the Supreme Court, yeah, they've really, really pulled back on what constitutes public corruption. And they would say that they are trying to make sure that ordinary acts that a member of Congress, senator or representative, or the governor as in the case of McConnell, or of a corporation in the case of Skilling, that the ordinary things they do as constituent services to a donor, even to someone who donates to them, cannot be barred from their doing it.

But I think in this case, versus in McDonnell or Skilling or Bridgegate, show that there were specific official acts that Senator Menendez did in exchange for the Mercedes, in exchange for the gold bars, in exchange for his wife getting that no-show job, in exchange for the cash. That they have very specific provable links between the acceptance of what can only be called a bribe and the doing of a particular act.

There's been an amendment to the law, that even after the amendment the court has ruled that honest services fraud in a corporate case where there's no financial damage, financial loss, no bribery or kickback is not valid. And it is provable that there were official acts here, I think, and so that is why I think it will overcome all of the limitations already in place. And I also want to mention that I think Congress is and should be looking at how to define bribery or official acts beyond the way it is currently defined, which limits it very much. But even under the narrow definition that we now have, I think that Menendez interfering with the lawsuits and the investigations falls within an official act. And of course, as you said, the sharing of information with the Egyptian government.

Kim:

And also the fact that he's getting money. I think that the biggest difference in honest services is in some of those other cases involving the former governor of Virginia and others, Chris Christie with Bridgegate, is that there wasn't a quid pro quo per se, that he didn't benefit in that. He got gold bars in this case, I think that clears the hurdle.

Barb:

There's even an allegation in the indictment that Menendez did a Google search for the value of gold bars.

Kim:

Oh, he's so bad at this.

Barb:

Yeah, pro tip, if you're going to take bribes, don't take them in the form of traceable serial numbers on gold bars. As alleged. As alleged. Well, Kim, let me just ask you one last question then about this. As Jill suggested earlier, a number of Senate Democrats are calling on Menendez to resign his Senate seat. That seems like a rare move these days in this post shame world where people circle the wagons of members of their own party. So quite extraordinary that these Senate Democrats are calling on him to resign. Why do you think they're not rallying to his defense? He said he's not going anywhere, but I find it really interesting that they're not rallying to his defense, but to the contrary, urging him to resign.

Kim:

Yeah. And the dam seemed to break on that fairly quickly. I was talking to Senator Elizabeth Warren for a completely unrelated column.

Barb:

Oh, what a name-dropper. You guys having lunch or something?

Kim:

I do write for the Boston Globe, she's part of the congressional delegation. But I asked her in that, it's like, "By the way, do you think that Senator Menendez should resign?" And usually that's the kind of question that someone may equivocate. And she said yes. She just said yes, full stop. Period. And it surprised me. It seemed that this week a lot of senators just realized, look, enough is enough. Corruption is a bad look. How can, particularly Democrats, try to decry what Donald Trump has done if their own house isn't clean? And I think just the gravity of this indictment made it very difficult for a lot of them to stay on the sidelines. And it's also a big distraction, right? He is on the Senate Finance Committee, he's an important position. And the Senate is so evenly divided that there's just no room to have someone in there who is accused of this sort of bribery. As the senator told me, he needs to focus on his legal defense. He should be busy right now.

Barb:

Yeah, he's got [inaudible 00:31:31].

Kim:

Exactly. So he should focus on that right now.

Barb:

Yeah. And besides that, Kim, don't you think that you could make the argument, in light of these national security allegations, that he might... There are allegations, but-

Kim:

He might be compromised.

Barb:

... he might be subject to blackmail, right?

Kim:

Yeah.

Barb:

Compromised.

Kim:

He very well might be compromised. I think that alone is [inaudible 00:31:51]... What I think is funny is some of the... I think Tom Cotton and some other Republicans that are like, he deserves his day in court.

He's innocent until proven guilty. I'm like, that's real convenient. That's real convenient. That's a cute little move.

Barb:

Yeah.

Kim, even on this tiny camera, I'm looking at you on my phone. I can tell from here that your skin looks beautiful. What's your secret for that beautiful glow?

Kim:

Thank you. Even getting off a plane, which is hard to have a glow when you get off a plane. Well, I love using Osea Malibu products. After burning all summer in the sun and drying out under the breeze of the air conditioner, and on planes, Osea Malibu has an amazing solution to rejuvenate overloaded skin and get your perfect glow. It's Osea's Undaria Exfoliate and Glow duo, the perfect combo to refresh your skin so you look and feel your best going into the fall. We love how clean our skin is after using it, and its nourishing seaweed based ingredients make you feel younger and fresher every time you use it. You get two of their bestselling products in the combo. So if you've been looking for the best in class body care, this is it.

Jill:

You're right, Kim, Osea is terrific, and it takes your shower routine to the next level with the essential Undaria Cleansing Body Polish. You get easy one-step exfoliation, moisturizing, and clean skin all in one. And you might never get out of the shower because it's unique silky texture feel so great on your skin. I like to follow it up with the Undaria Algae Body Oil to seal in my skin's hydration. And the rich texture even makes it feel like you're getting a massage with no greasy effect when you apply it. Another thing that's really important to us is that Osea is a one-stop shop for clean, vegan, cruelty-free, clinically proven, and climate neutral certified products for both face and body. Even better, they've been making seaweed infused products in California that are safe for your skin and the planet for over 27 years. Never choose between your values and the best skincare you can trust. We know it'll work.

Barb:

Save and glow at the same time with Osea. Right now you can save 16% on the Undaria Exfoliate and Glow duo, with an extra 10% off from our promo code. Plus, you get free samples with every order, and free shipping on orders over \$60. We can all use that when it comes to treating ourselves. So prep your skin for fall with clean vegan skincare from Osea. And right now we have a special discount just for our listeners. Get 10% off your first order site-wide with code: SistersInLaw at oseamalibu.com. Head to O-S-E-A malibu.com and use code: SistersInLaw for 10% off. You can also find the link in our show notes.

Kim:

One question that the Supreme Court left unanswered after its ruling, striking down affirmative action last term is what it means for corporate workplaces. Republicans, and those opposed to diversity, equity, and inclusion efforts, say the ruling means those efforts are unconstitutional. But others, including former Attorney General Loretta Lynch and former Department of Homeland Security Secretary Jay Johnson, have another take. Jill, what are these former cabinet members up to?

Jill:

Well, they're not alone. They're joining a large group of lawyers, including my old law firm Jenner & Block, who have created DEI practices or task forces or strike forces within their law firms to help their corporate clients to deal with what may be coming, which is lawsuits to stop them from any kind of DEI efforts. And it's interesting how the practice is developing, because so far the solutions that are pretty mild and vague, both Lynch and Johnson were head of a New York bar activity to bring in a lot of law firms to talk about how to solve this. And they came up with what I would consider to be not really actionable detailed plans of action, which is what it's going to take. But I think the argument mostly is there's an economic value to diversity. And it's been proven that the more diverse you are, the more you can market and sell to a diverse audience.

And I think that will go a long way toward it. But there's another difference, which is the lawsuits that were successful, the Supreme Court decision against the two universities, was based on Title VI of the Civil Rights Act. And for corporations it's under Title VII, and the standards are a little different. So that may help. And DEI is broader than affirmative action. Affirmative action is one specific part of DEI efforts. And so I think it's going to be harder to shut down DEI efforts, at least that's my hope with this Supreme Court. Who knows?

Kim:

Well, that's definitely true, and I think the point about it being broader is a good one. Barb, one reason that we're seeing these law firms do that is because state attorneys general have been very vocal about what the implication of that affirmative action case could be for employers. But the reaction, the vocal reaction is split on party lines. What have they been saying, and what does it mean?

Barb:

Yeah. When the Supreme Court decision came out this summer, very shortly thereafter a joint letter was put together by attorneys general around the country who are Republicans. And they said, hey, businesses beyond notice, you could face "serious legal consequences for discriminating against different groups, even for benign purposes with DEI programs". Corporate America, which is very white and very male, and wants very much to improve their diversity. Because as Jill said, it's good for business, it's good for the bottom line. Customers, consumers, clients all want more diverse decision-makers because they make better decisions, are working hard to try to improve their diversity. They might have recruiting programs, they might have support groups for various constituencies who find themselves alone or a gross minority in an organization. And so there are a lot of programs in corporate America designed to provide that support. These Republican attorneys generals say, you might be discriminating and there might be serious legal consequences for your DEI programs.

But conversely, we saw the Democratic attorneys general around the country write their own letter, that said to the contrary, "We support you. We support your efforts to take diversity into consideration in hiring and retaining and training, and other kinds of things. And if you want to continue your important DEI work, we will back you up, and don't let these politicians intimidate you into rolling back the progress that you have made." And these letters were sent out to the CEOs of Fortune 100 companies. The battleground has been set. And if you're the general counsel of one of these corporations, you on the one hand want to advance the important DEI goals, but on the other, you don't want your company to be sued. And so they're really on a little tightrope here.

Kim:

Yeah, it's quite amazing. And I want to ask you both, I'll start with you Jill. You mentioned that a lot of things so far that former Attorney General Lynch and Secretary Johnson have been involved with have

been broad. There's not a lot of specifics in it. What can be done? What can they do as practicing private practice attorneys now defending these businesses? And what can Democratic attorneys general do in the effort to try to protect these programs in workplaces?

Jill:

Well, first, I think they can get involved early by helping to formulate policies that will meet the standards, and that will continue the DEI efforts to broaden the workplace. And so they may have to adapt certain of the rules that are in place. There've already been some lawsuits brought against law firms who have mentorship programs that are limited to a particular group, have fellowships that are for a specific group, and maybe they'll have to work on how to make that not be vulnerable to a lawsuit from these conservative legal organizations that are bringing these lawsuits. And then, of course, they can be prepared to defend, and to make some of the arguments that I mentioned that are why this is different than the two affirmative action cases. And remember, in the affirmative action decision, West Point was accepted because they really needed a diverse workforce.

Now, I worked in the Pentagon, they do need a diverse workforce. But I've worked in corporations, and they need a diverse workforce. And the voices of women and minorities are very valuable to the company in expanding their reach. I think that these law firms are doing the right thing developing this practice. Jenner was a participant in the Muldrow case, which I mentioned in our last episode as one that if we had been able to take a second case, I would've mentioned that one, which was against the city of St. Louis for a transfer of a police officer. I think they can start developing specific plans of action to continue to increase the diversity, to make sure that it is a welcoming culture to all people, and then to defend them if they get sued.

Kim:

Yeah. And I should mention that the law firm where Johnson and Lynch are is Paul, Weiss. Barb, I want to ask you that question. What can private attorneys and state attorneys general do? But also, it's worth noting that several corporations have reached out to the Biden administration saying, give us guidance, tell us what to do. What do you think the Biden administration should say here as well?

Barb:

For much respect to Jay Johnson and Loretta Lynch, they're both forces, and I'm really glad to see them getting behind this effort. Whatever they do, they will do it superbly, I'm certain of that. But you're right that there's some groups, including a group that represents the tech industry, called the Chamber of Progress, that have asked the Biden administration to issue guidance. One of the things that the Justice Department does from time to time is they issue these things they call Dear Colleague letters. They push them out maybe to higher education in certain fields, or they push them out to various constituencies around the country. One of the things they could do is issue guidance describing, we have now studied these cases on higher ed that came out in the summer, and it is our view that it would be lawful in compliance to do X, Y, and Z.

Now, that does not have the force of law, of course, until a case is tested and goes to court and a decision is made. But it could give some assurance to companies that if they're following that guidance, then they would have some legal protection if they were to be found in violation of the law down the road. Because as Stacey Abrams has said, one of the points of these letters is not because they're certain they're right, but they have a chilling effect on corporate America. Because if you're a general counsel of some large corporation, your goal is to keep your company out of litigation and to avoid litigation risk. And if you say, well, if we do this program, we might run afoul of something some Republican attorney

general wants to do to make his name, we might be the subject of a lawsuit. My advice is to be risk averse and to stand down.

But if there is guidance out there by the Biden administration through the Justice Department saying that we studied the issue and we think these kinds of programs are lawful, and then you comply with those kinds of programs, then you at least have a good faith defense that what you were doing was lawful, even if it turns out after the fact that it wasn't and could perhaps help you minimize any damages. It would give some comfort and help minimize that chilling effect.

Jill:

Hey, Kim, I used to think Kitch was a Yiddish word for stuff you had around the house. And then I discovered Kitch the product, and its amazing products that they have. Have you tried it?

Kim:

Oh, I love them so much. If anybody has seen me walking snickers in the morning, you often see me with this cute little turban on my head as I do it. That's from Kitch. It's this really cool little satin line turban, which means it protects your hair. And especially if you have curly hair like me, it can be very fragile, so that's really important. But they're also really cute, so you don't mind going out in them. Kitch has been called game-changing. That's what Kitch's biggest fans, including my SistersInLaw and I say about its time-saving beauty essentials for hair, skin, and body. So ask yourself, are you ready to take your beauty game to the next level? We think it's amazing how they started in 2010 by selling hair ties door to door, with literally just a hustle and a dream. Plus Kitch is self-funded, female founded, and is now carried in over 20,000 retail locations.

Jill:

I have to tell you about the latest Kitch viral craze, rice water shampoo bars that can improve your overall hair growth and density. Reviewers say they'll never use bottle shampoo again, and that their hair feels and looks 1000% better between washes. And yours will too. Plus, right now for a limited time you can live the Barbie dream life with the Barbie by Kitch collection, featuring Kitch's bestselling satin pillowcases in iconic Barbie pink. And I saw the movie, and I want that pink pillowcase.

Barb:

Wow. And it's the latest Kitch viral craze too. After we're done recording, I'm going to have to go record a TikTok video of myself shampooing my hair with rice water shampoo bars, so we'll have to wrap this up quickly. But right now, Kitch is offering you 30% off your entire order at [mykitch.com/sisters](https://mykitch.com/sisters). That's right, 30% off anything and everything at [mykitch.com/sisters](https://mykitch.com/sisters). That's [K-I-T-S-C-H.com/sisters](https://K-I-T-S-C-H.com/sisters). One more time, it's [mykitch.com/sisters](https://mykitch.com/sisters) for 30% off your order. You can also take your beauty to the next level by finding the link in our show notes.

Kim:

And we have reached the part of the show which we really truly like best, and that is questions from our listeners. If you have a question for us, please email us at [SistersInLaw@politicon.com](mailto:SistersInLaw@politicon.com) or thread or tweet using #SistersInLaw. If you're on Threads, make sure you tag SistersInLaw so that we are sure to see it. If you don't get to your questions during the show, keep an eye out on your feeds throughout the week. We answer as many of your questions as we can. Let's start first with Jenny from Fresno, who

asked about some breaking news that was happening as we were recording. What is the significance of the guilty plea by Scott Hall in Georgia? Barb, can you give us an answer to that?

Barb:

Yeah, this is big news. One of the defendants, now, he's certainly a lower level defendant, has entered a guilty plea in the Georgia Rico case. He's one of the 19 in the case against Donald Trump. His role was that group involved with Sidney Powell in Coffee County to tamper with voting equipment as part of this overall plot to subvert the outcome of the election. But it's huge. We always knew that somebody would crack and then the defendants would start pleading guilty. Oftentimes it just takes one and it opens the floodgates. But he agreed not only to plead guilty, but he's going to cooperate and testify against others. He's pleading to, not the Rico felony, but a series of misdemeanors. But he also gave a recorded statement to prosecutors and promised to write a letter of apology to the Georgia voters. And now instead of having a case with him on the other side of the V, he is now coming over to team Fani Willis, and we will be testifying for the government in this case. So really important early development in this case. I expect we'll see more.

Kim:

On the other side of the V would be a great name for a band. I think we should start that up.

Barb:

Maybe that's an episode title.

Kim:

And our next question comes from Dawn and Lesland in Olympia, Washington. They ask, what is the difference between pled and pleaded? I love this question so much, it hits my heart. I recall hearing pled for many years, now it seems like I hear pleaded more often. For example, Trump pleaded not guilty or Trump pled not guilty to the charges, which is correct? Jill?

Jill:

Well, I am so glad you asked this question, Dawn and Lesland. Because it really, as it did with Kim, touches my heart because I have grown up with the word pled. The defendant pled guilty. But nowadays, in all reporting it's called pleaded. A stupid word, pled is perfectly good. And as far as I know, there is no difference except that it's a matter of grammar now to say pleaded, which sounds so awkward to me. So I often slip and say pled guilty.

Barb:

Should I chime in?

Jill:

Yes.

Barb:

I grew up in the world of pleaded. And I was told it is plead for present tense, pleaded for past tense, and has pled for past participle. What about you, Kim? What's your preference, pleaded or pled?



Kim:

It's never pled, it's always pleaded in legalese.

Jill:

It is a matter of generations, Kimberly. I'm sorry, [inaudible 00:51:23]-

Kim:

When I practiced, if I said pled, I'd have been laughed out of a courtroom.

Barb:

You said pleaded?

Kim:

Yes.

Barb:

Oh, me too.

Kim:

Yeah.

Barb:

[inaudible 00:51:32] sister, pleaded. It's all about pleaded. Thank you, sister.

Kim:

And our third question, this episode comes from Zach in Cape Town, South Africa. Who asks, how often does the SCOTUS hear cases in which they have original jurisdiction? Ooh, a nice, nerdy, wonky question. Are they forced to hear the case or can they refuse? What would such a case look like? That is great. A lot of our listeners in America may not know that the Supreme Court has something called original jurisdiction, in addition to granting cases that they agree to take. There are certain cases that only the Supreme Court can hear as a trial court, which is unusual. And they don't have, excuse me, they don't have an option to turn them away. And those are disputes usually between states or between also heads of states. So if there are consulates that are fighting or something, some sort of high ranking officials that have some dispute between them, it would go straight to the Supreme Court.

From covering the court for a long time, usually a handful of original jurisdiction cases around the docket each year. All of them. I've never seen the officials, the dispute between officials, but it's usually between states over things like water rights, like where is the water boundary between New York and New Jersey, or something like that. Or rights to water or land disputes. But both of the parties, it will be New York versus New Jersey, and the Supreme Court is the trial court in those cases. And that happens very rarely. And thank you for that very wonky question.

Thank you for listening to #SistersInLaw with Jill Wine-Banks, Barb McQuaid, and me, Kimberly Atkins-Stohr. And remember, you can send in your questions by email to [SistersInLaw@politicon.com](mailto:SistersInLaw@politicon.com) or tweet them, X them for next week's show using #SistersInLaw. Please support this week's sponsors Moink, Osea Malibu, and Kitch. You can find their links in the show notes. Please support them because they



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Barb:

What do you mean my flight's been delayed?

Kim:

Oh, no.

Jill:

I'm sorry, but at least you'll have enough time to stay with us for the whole podcast.