

Kim:

HelloFresh can save you much-needed time during the hectic holiday season with meals like honey Dijon dill trout, which was a great hit in my household. Use code SISTERSFREE for free Breakfast for Life at HelloFresh.com slash SISTERSFREE. That's one breakfast item per box while your subscription is active. You can also find the link in our show notes.

Jill:

Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Joyce Vance, Barb McQuade, and me, Jill Wine-Banks. We're excited to say that it's the season to get your Sisters-in-Law merch. We have hoodies perfect for the weather now in the north, T-shirts for warmer climes, and our new mug for everywhere. Just click the link in the show notes or go to [politicon.com/merch](http://politicon.com/merch) and do it today to get yours right away.

Kim:

Wait, Jill, did you say climes? Is that what the kids say these days?

Jill:

Yeah. Don't you use that word?

Kim:

No, but I guess I should now. I rely on you to keep me hip Jill. Thank you.

Jill:

I wanted to get in the word of the year, but I can't figure out how to do that and now it's not what it's-

Barb:

You have so much riz Jill.

Kim:

You do.

Jill:

Okay. Well, before we start the show, we have a great little chitchat about something I'm really hot about, but we also have a great show where we're going to be discussing this week's myriad Trump and co-defendant news, Giuliani's pending conviction or being held liable in his defamation case and abortion is back at the Supreme Court, but I can't wait to talk about FSU not being in the Final Four and Alabama and Texas, who had a much less perfect record. FSU was undefeated. Joyce, you're from Alabama, so speak up about why a school that lost one game beat out FSU to be in the final four.

Joyce:

Roll tide baby.

Jill:

Totally unfair.

Joyce:

I mean, what else do you need to know? I think Alabama will prove itself in these games. I hate that it's at Barb's expense, but talent rises and rises to the top.

Jill:

Well, FSU had an undefeated season and the Florida Attorney General agrees with me. She has filed a-

Joyce:

Jill, I wouldn't be bragging about that. Are you serious?

Jill:

Well, good point, Joyce. Good point. But she is right on this. She's bringing a lawsuit to determine what the decision makers of picking the four, how they could have gotten to Texas with a loss and Alabama with a loss got in and FSU with a perfect record didn't. So Barb, do you want to defend that?

Barb:

It's indefensible, Jill. I'm with you. I think you have an undefeated record. You run the table, you get in. You've got Alabama over there claiming like it's their birthright or something to be in. I did hear.

Joyce:

[Inaudible 00:03:21].

Barb:

As a Michigan fan, it's-

Joyce:

Do you have a problem with that?

Barb:

I do. As a Michigan fan, we're undefeated. So I just watched this little debate unfold, but I heard this in Michigan. The argument goes something like this, Alabama, how could Alabama possibly be in this? They lost a game. Florida State was undefeated. It's ridiculous. It's SEC bias, it's Alabama derangement syndrome and they'll probably win.

Jill:

So FSU is going to probably drop out and join the Big 10 because of this, because they do see a bias there. Kim, do you have a neutral viewpoint on this since I picked on Barb and Joyce who clearly have an interest in the outcome?

Kim:

What's a football?

Jill:

I should have known you'd say that. Okay, so let's get on with the show. And listeners, you should let us know what side you're on. The perfect scoring FSU, should they be in this? Let us know. Joyce, I don't know about you, but if I put on mascara, I feel really dressed up and it's part of my everyday routine and I have the best mascara ever and I think you're using it too. What are you using?

Joyce:

I am using it, and it's funny because I normally don't put makeup on unless I'm doing television or going off someplace where I don't want to scare people too much. But I've sort of become addicted to Thrive's mascara, and a big part of it is it doesn't smudge all over your face, but it comes off easily at the end of the day. It's really good stuff. And now with the holidays coming on and needing to get dressed up from time to time, whether you prefer a subtle smoky eye or frosted glam or something in between and low-key like I do, Thrive Causemetics gives all your festive looks that holiday glow. It's certified 100% vegan and cruelty-free, made with clean skin loving ingredients, high performance formulas, and with thousands of five star reviews, it is so easy to see why Thrive Causemetics is on every makeup lover's holiday wishlist.

Barb:

And cause is in the name for a reason. Every purchase supports organizations that help communities thrive from education, cancer research or working to end homelessness. You'll feel great and look great, with Thrive.

Kim:

I am literally putting on Thrive Causemetics mascara as I say this. My sisters can attest, I literally put it on all day. I love it so much. And just in time for the holidays, Thrive has stocking stuffers for every makeup bag. Save extra on pre-made sets that include best-selling products like the Liquid Lash Extensions, which I'm applying to my lashes right now, Infinity Waterproof Eyeliner and their Luminous Brilliant Eye Brightener. So if you're feeling generous, treat them to everything.

Jill:

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

Kim:

I've got to tell you, I had not used it before, but the Thrive Causemetics lipstick this, what is this?

Jill:

It's like [inaudible 00:07:11].

Kim:

No, it's impactful. So first of all, it's really cool because you push this button and that makes it come out of the bottom so it doesn't accidentally open in your purse which mad props, but the color is really good and it feels like lip balm, but it's color.

Jill:

Wow.

Kim:

And I've been using it. I used it on air yesterday. It's really, really good.

Jill:

Fab.

Kim:

I'm a fan.

Joyce:

Well, let's jump right in because it has been another one of those weeks where some days it felt like you were just watching a ping pong match. I mean, there was one day where I sat down for 20 minutes with a cup of coffee and then just realized all sorts of crazy stuff had happened involving Trump's legal affairs by the 20 minutes it took me to resurface. There are a lot of moving parts involved this week, and I think one of the things we can do to help our listeners is try to figure out how everything fits together. The top line is sort of that Jack Smith asked the Supreme Court to jump over the Court of Appeals and hear Donald Trump's immunity appeal straight away. That immunity motion is a really big deal because if Trump wins the immunity argument that he has presidential immunity, then the entire prosecution goes away. It gets dismissed.

After Smith made his request to the Supreme Court, the Court of Appeals expedited their schedule. He had asked them to do that at the same time, he said, "Look, we don't know if the Supreme Court will hear this, so please Court of Appeals go ahead and issue an expedited schedule in case you keep the case." And the court in fact did that the briefs are due over the next couple of weeks. So that's sort of a tangle. Jill, can you sort it all out for us and talk about what you think will happen and what it means?

Jill:

Sure. And I think you have laid it out precisely correctly. He sort of it's belts and suspenders. He did both things at once to make sure that there was no unnecessary delay in getting to the trial, which is scheduled for March 4th. And we in Watergate did the same thing. We went to the Supreme Court and said, "This is a national interest case and it's going to end up with you anyway. The district court has ruled we don't need the Court of Appeals for the District of Columbia to weigh in on this. Please take the case." And they did. And within months we had briefing, argument, and decision. They heard arguments and within two weeks they had made a decision and within weeks after that, the result was Richard Nixon resigned from office because the evidence that we got as a result of that was so clear and compelling.

But it is safe to say that you can't know whether the court will take on a case without it going through the Court of Appeals. So it makes sense if you're in a real hurry to ask the Court of Appeals to expedite the case, and in this case they have next week briefs are due for the first part and then I think maybe 10 days later or seven days later, then the rebuttal is due. So that could happen very fast. The interesting thing is will the Supreme Court, seeing that this is being expedited, say, well, we can let them do this and we don't have to wait? We don't have to go ahead and jump in now, but it's going to end up with them

anyway because whoever loses in the Court of Appeals is going to go to the Supreme Court, and the Supreme Court does not need a lower court to weigh in on what is clearly an undecided issue.

There's not like they're going to misinterpret the law. There is no law. There are sort of clues as to what the court might do. I personally think the immunity issue is a loser and that it will be denied. But I'm not the Court of appeals in D.C. And I'm not the Supreme Court. So I think they did the right thing and that this will speed up and eliminate the delay from this particular issue.

Joyce:

Yeah, so I agree with you completely across the board on that and something that I'm looking for as the Supreme Court decides this issue is whether Clarence Thomas will participate. Do you guys think he will or do you think he'll recuse?

Jill:

He is not going to recuse. He should, but he's not.

Joyce:

Here's the only reason I flag it. Remember he had that case that involved John Eastman, who had been one of his law clerks, and he recused from that matter? I mean, I think the reason we all think he should recuse is because of his wife's activities. But I wonder if when the Trump case comes up, John Eastman, his former law clerk, he's already recused in a case involving him. He's one of Trump's co-defendants in Georgia. And I wonder how given the prior recusal he would justify participating in this case, especially since now supposedly the Supreme Court operates under those same rules that all other federal judges operate under. Don't y'all think that that's sort of ... I mean I hear you laughing, right, because it's Clarence Thomas and he clearly doesn't give a you know what about the ethics rules.

Kim:

He doesn't. And if anything, he's aggrieved, right Joyce. He feels like all of the smoke that he's gotten since Anita Hill testified at his confirmation hearings is some attack against him, some high-tech lynching including this. So I don't think he's going to do that. I think in a case directly involving John Eastman, Eastman was his [inaudible 00:12:56]. That's a place that is sort of like, it's really hard for him not to-

Joyce:

Even he can't go, right.

Kim:

Right. But I think for all other things, especially if the reason is Ginny Thomas's involvement.

Jill:

And he's already refused to recuse himself in cases with his wife's interests being at stake. So he's already said, "Nothing here, nothing wrong." So I don't think he will change his mind.

Joyce:

I mean it's just nuts. And if he doesn't recuse, it means that they've adopted these new ethics rules and they're meaningless, which I think was the conclusion that we reached when we discussed them anyhow.

Jill:

We did.

Joyce:

So there's that. Hey, so Kim, to make things more complicated with this whole Trump mess, Judge Chuck can state all of the further proceedings in her case while these appeals are pending, no matter who ends up hearing it. What does that mean that she has stayed and should we be concerned about the impact of that?

Kim:

So this is the one thing that I'm actually not on the ledge about. I think that this was something that was expected and it's not that big a deal, especially because I don't think that it'll last that long. Yes, she halted all proceedings while particularly the Supreme Court and the District Court decide this. I think on this issue, on the immunity issue, that's going to move quickly. I would be surprised if it goes beyond next month before we have an answer on that from the SCOTUS, if not the SCOTUS and the district court. So I think she sees that as pretty low stakes holding it until then. And I know it's complicated because there are a lot of other appeals that we're going to talk about in a minute, but I think for this, it's not, this alone, there are a lot of normal things that might push off the trial date further from March, but I don't think this alone is the thing. I think that it was what she was required to do and I think it is expected and totally run-of-the-mill and not a big deal.

Joyce:

Yeah, I know that there are people who are saying she could have taken a more aggressive view under Griggs, that's the precedent and could have said she didn't have to stay. But I'm with you on this one. I think she had to. And where it worries me is less the March 4th trial date and more, remember how she had announced her intention to start screening the jury in February? I mean, it is going to take a while to see the jury in this case. And so I hope that the appellate court gods are thinking about the fact that they need to be maybe closer to 30 days like you suggest. I guess it was 60 in Watergate for the Supreme Court, even in something like this. 90 is fast.

I hope that they appreciate the consequences of inaction here. And Barb, it's not like the Supreme Court doesn't have a lot on their plate just in this narrow area of their responsibilities because they've now agreed to take an appeal that involves the obstruction charge that's been used against some of the January 6th rioters, this obstruction of an official proceeding regarding the January 6th certification of the Electoral College vote. That's obviously one of the charges that Trump faces in the D.C. case. So how do you think that will affect his prosecution, if at all?

Barb:

Yeah, it's a really interesting question and I actually have some concerns about it. The statute on its face says that it's a crime to obstruct any other proceeding. It lists a whole bunch of other stuff before that. Any other proceeding, it's really broad language designed. It appears to me to be a catch all for things they don't specify in the other sections of the statute. And most of the judges who reviewed the January

6th cases, the cases against all the people who were charged with engaging in violence on January 6th who were charged with this, interpreted this statute to include an effort to stop that certification process, to obstruct it, to slow it down, to delay it, interrupt it, whatever. But there was one judge who had a different take. He's a Trump appointee, and his take was he bought into a defendant's argument that said, no, this statute, because it was passed as part of the Sarbanes-Oxley Act in 2002 in response to the Enron financial fraud scandal relates only to fraudulent documents, using documents to obstruct justice. It has to be part of the case and otherwise the statute doesn't apply.

It seems pretty goofy to me in light of the language of the statute, but that was the argument. And then the D.C Circuit Court of Appeals said, "No, that's wrong. It's any official proceeding." Well, the fact that the Supreme Court has taken this up when all the other judges found that it was appropriate really concerns me that they're taking it up because they want to reverse it. And we've seen this choice, I think you might've mentioned this in your substack. In recent years, the Roberts Court has been all about narrowing corruption types of charges. There was a case involving Governor McDonnell in Virginia. There was the Bridgegate case in New Jersey, there was the Enron case itself, and we've seen the Supreme Court kind of just cut back on the kinds of charges that can be used in public corruption cases.

And so this one worries me a little bit that they might find that. The idea that it was intended to apply to documents, of course completely flies in the face of textualism. There's nothing on the face of this statute that says it applies only to documents. And so it'll be interesting to see how this shakes out. But as you say, Donald Trump has been charged with two counts under this statute. He's also charged with a different count, conspiracy to defraud the United States and a voting rights violation.

And so if he were to lose, Jack Smith were to lose these two counts, it wouldn't end the case. But I think he has to think carefully about what he does and the timing here. Because he could get a conviction at trial and then find out that the case has been reversed on appeal and then the judge on appeal, the court could say, "Well, there was too much spillover evidence from these obstruction charges, and so the defendant's entitled to a new trial altogether." Or do you wait until June to try the case? I don't think so. So it definitely puts a little bit of a monkey wrench into the works here.

Joyce:

It does, and it really goes to the court's good faith, right? Because the court can either draw these decisions out, or we know that this is a court that can act very quickly. In Bush versus Gore. It ruled the day after the argument recognizing how critical the issues were. I don't know if this court has the same spine that the court had back then, to be honest.

Jill:

Can I just add, I want to read the exact language because it is so obvious that it isn't limited to documents. There are two parts to this. Whoever corruptly alters destroys, this is all about documents or, separate section, otherwise obstructs influences or impedes any official proceeding or attempt to do so. It seems to me that is clearly a catchall for anything that is not mentioned in one and it is any way of obstructing or impeding an official proceeding. And there's no question that the counting of the ballots was an official proceeding. So I think it should be a clear decision on the language of the statute and can be issued really fast. Because otherwise I do share Barbara's concern that you have a trial on four counts and you can't distinguish the evidence that may have affected the two counts that are unrelated to this. So I would worry about going ahead with trial until there's a decision.

Kim:

And I would just add this. This Supreme Court has been notorious for being all persnickety about language of statutes even after the fact. Remember the Virginia governor who was convicted on Honest Services fraud?

Barb:

Yeah, McDonald, that's the McDonald case.

Kim:

And then the Supreme Court was like, oh no, that's not, and if the Supreme Court this term takes that ruling, at the very least what I'm worried about is the political implications. If two of the counts against Trump is thrown out, all that will do is give the appearance of wind in the sails of his bogus claims that this was all just a political witch hunt against him and everything. And it's confusing enough that that would be enough for him to be able to make political hay out of it. That's what I'm really worried about. It's not even the law on it. I agree with you Jill. I think it's clear. The statute says what it says, textualists. It says what it says, but

Barb:

Textualism schmactualism,

Kim:

[inaudible 00:21:44].

Joyce:

Yeah, but here's the problem. McDonald was a unanimous decision by the court. It wasn't a case that split with progressives and conservatives on opposite sides of the fence. And I think that point that Barb makes, that's what keeping me up at night here is the court has had a trajectory in this area of looking at these statutes that have a clear textual meaning. I mean, Jill reads the language it says and otherwise, which to me means, in leaving those documents behind and just talking in general, right? This applies. And the Supreme Court seems to look at cases like that and say, "This is just too broad and too vague. And how are these poor politicians supposed to know what would be a crime? This statute is unconstitutional, so we are going to save it by making it a lot narrower."

And that's what happens in McDonald where they say for a bribe, it wasn't enough that the governor was in exchange for just this massive amount of gifts he was getting from a friend, like paying for his daughter's wedding reception, that he was setting up meetings, that an official act had to be something more like making a decision on a policy or something. I could see them doing something like this, and it's really-

Jill:

Now you're scaring me,

Barb:

I'll scare you one more.

Joyce:

It's what Barb makes, right?

Barb:

Let me scare you one more.

Joyce:

Why'd they take this case?

Barb:

Let me scare you more. Justice Kagan, who is my favorite justice and is usually the voice of reason, wrote an opinion called Yates. Do you know this opinion?

Joyce:

[inaudible 00:23:16], yeah.

Barb:

Yates was another case brought under the obstruction language as modified by the Sarbanes-Oxley Act and the language in that case, a guy was charged, he was caught fishing illegally without a license or something, and he had a bunch of fish in his boat. And as he sees the Coast guard come in and check it out, he throws all the fish overboard and he gets charged under this section of Sarbanes-Oxley that makes it a crime to destroy or conceal any record, document, or tangible object. And they said the fish were tangible objects and you threw them overboard and Kagan wrote the opinion, it was five four. But Kagan wrote the opinion. They said, nah, tangible object, they meant records and stuff like financial stuff, you can't be a fish, so government you lose. So I'm kind of worried about Kagan in this case.

Joyce:

Jill, there's room on the ledge out here. Come on.

Jill:

I'm holding your hand on the ledge.

Joyce:

I mean, this could be a unanimous decision against the government. So to y'all's point that the evidence, if it's tried and then there's a ruling that says you can't use this fifteen-twelve obstruction, I'm actually less worried about the evidentiary problem. And here's why. Jack Smith is careful in the indictment to make all of the allegations coextensive. The same allegations, the same evidence applies to all of the charges, but y'all are right. I mean, if his lawyers are able to single out some category of evidence that's admissible only on this obstruction charge and wouldn't be for the straight-up conspiracy or the civil rights conspiracy, then they would have an argument that they could make. I'm a little bit less worried about that. So maybe that backs us a little bit off the ledge. And I guess that takes us to Georgia, right? Because Jill, with all of this rough and tumble that's going on in D.C., do you think it'll impact the scheduling of trial in Georgia?

Jill:

It's such an interesting question because the D.A., Fannie Willis, has asked for an August 4th trial, and that was to take into account all the previous trials starting on the dates they were scheduled to start. If the March 4th trial doesn't happen on March 4th, then that impacts on a domino basis all of the future trial schedules. So it is possible. And then let's not forget, we haven't mentioned the Florida Mar-a-Lago federal case in which Judge Eileen Cannon, who has shown in the past to favor the defendant, Donald Trump, she has a trial date that could easily slip and she's sort of taking steps that could slip that, but there is some reason to believe that she's holding the trial date so that Fannie Willis couldn't ask for an earlier trial date, even though she might've asked for the same date that Judge Cannon was supposed to go to trial if that hadn't been set for trial.

So it could end up pushing. And August is really late for starting this trial because the election's in November, if you start in August, think about how long that is. And Watergate, we tried from October to December, had a verdict on January 1st, which is pretty fast for a lot of defendants and a lot of counts. But nowadays, trials take longer and I think you're running into a problem if you go beyond the August deadline to try and get this resolved before the election. And I don't know if anybody has, I haven't read anything about someone saying, when does the federal supremacy kick in? Is it after you're the president-elect, or do you have to be inaugurated as the president?

Barb:

Oh, I think inaugurated would be my argument because it's all about being too distracted to do the job.

Joyce:

Yeah, absolutely.

Jill:

President-elects have a job to do. They have transition and appointment. I mean, obviously I would argue for.

Barb:

No. You're right.

Joyce:

[inaudible 00:27:29].

Jill:

I would argue for inauguration.

Barb:

It's unprecedented.

Jill:

But I'm just saying they will argue that it starts as soon as he's the President-elect and he has to go to work picking his cabinet, et cetera. So it's concerning to me that it's August 4th to begin with and if it slips from that date, or it might be August 5th, which is Michael's birthday, happy birthday, Michael, in advance. So it's a concern.

Joyce:

Yeah, lots of concerns. Kim, this morning, the oral argument on the Mark Meadows removal motion took place in the 11th Circuit. Did you get a chance to follow along with that at all? How did it go?

Kim:

I did, and I am not concerned that this case is in any danger of being removed to federal court. So of course Mark Meadows is arguing that because he was acting in his capacity as a federal official that he can't be sued in state court and that the case needs to be removed to federal court for venue. As we've mentioned before, this is only a venue issue. It does not affect the law that's applied. It doesn't affect the prosecutors. It's still a state case, but he's arguing that it should be moved to a federal court. The logic being that federal officials somehow get a better shake in federal court. I'm not worried that he's going to win this. So his best argument is that it interferes with the administration of the federal courts in their prosecution of these cases, which literally did not pass the giggle test with the judges.

It was just really laughable that Mark Meadows is concerned about preserving the administration of justice in the federal courts. And the other argument was essentially, well, by allowing federal officials to be hauled into state court, it just will discourage people from running for office because they think once they're done, then a state court is going to indict them and haul them in the state court. Also laughable. Literally how many people who you know who've run for office said, I was thinking about it, but no, because I might be indicted. Come on. That's not an argument either. I don't think this is going anywhere.

Joyce:

Well, Barb, do your prosecutor's Spidey senses tell you anything about how this plays out? If Meadows loses in the 11th Circuit argument, does that maybe amp up his need to cooperate? And I know you hate to crystal ball. I do too, but I'm curious what you think about how this ends up and whether Jill might be right about Georgia being the first case to go out. Of course, Manhattan is still there in line. What do you think?

Barb:

Yeah, I have always been perplexed about the role of Mark Meadows in cooperation. There's some reports of some really dastardly things he allegedly did, like burning documents in the fireplace and being too scared according to Cassidy Hutchinson to ask Trump to call off the mob on January 6th. But the fact that Jack Smith did not describe him as an unindicted co-conspirator, although he did do so with many others, made me think he was cooperating there.

And then he turns around and gets indicted in Georgia, which made me think, well, no, he is not, but I wonder if he fails here in this removal, which was an effort to get everything into federal court, he doesn't start looking toward cooperation in Georgia. If he's already cooperating in D.C., it really makes sense to cooperate in both places. It doesn't make any sense to contest the charges one place and testify in another. If you are testifying against yourself in one place, it's going to be used against you in the other place. So I agree with Kim that this effort's going to fail. The case is going to stay in Georgia, and so maybe you're right, maybe it becomes more likely that Meadows enters a guilty plea.

Jill:

Going back to the removal question, I was interested in the arguments because I really never thought about how broad the language of the statute is. Under color of law is pretty broad, and that sort of

scared me and that there was an argument that the standard, you didn't have to actually prove right then that it was actually within his job. Now of course, it sounded like a Nazi defense of I just was following orders, because it can never be your job when the federal government has no state responsibility for elections. But it did worry me, and then he would take it and use the supremacy clause to say, "You can't prosecute me." So I just never thought about the standard being so low.

Joyce:

The 11th Circuit decided an en banc in October that presupposes that Mark Meadows loses this case. I think the only question is how long it's going to take Bill Pryor to draft and circulate the opinion.

Jill:

That makes me feel better. Thank you. I love my Blueland products so much that I just ordered a whole refill of things, including different fragrances of their hand soap formula. Have you tried it, Barb?

Barb:

I have. In fact, I've got the evergreen scent in my kitchen right now, which smells like the holidays, so I am enjoying it very much. And you know, Jill, the holidays can create even more waste than usual. What if we told you there was a way to get all your holiday shopping done without the guilty feeling over waste that comes with it? Meet Blueland. As Jill said, we have been buying Blueland for cleaning supplies for every room in our house.

Kim:

Same here. We have Blueland in every room. We clean with it, we wash our hands with it. We really love it. And Blueland is on a mission to eliminate single-use plastic by reinventing, cleansing essentials to be better for you and the planet. The idea is simple. Grab one of the beautiful forever bottles, fill it with warm water, drop in a tablet and get cleaning. Refills start at \$2 and 25 cents, so you don't have to buy a new plastic bottle every time you run out. You can even set up a subscription, which is what we do, or buy in bulk for additional savings. We feel great about using Blueland and know you'll love them too. I also just find it fun watching that little tablet like bubble and dissolve, but I'm a nerd.

Jill:

No, it's true, and I love how thick it comes out feeling. I mean, you're basically having a jar of water, you put in a tablet and it comes out foamy creamy, really wonderful. You'll never have to grab any bulky cleaning supplies in the future anywhere in your grocery run. This holiday season, Blueland is having its best sale of the year so you can save and shop sustainably for a limited time. Blueland's hand soap is getting a festive upgrade with a beautiful chocolate box inspired gift set, which is something I just got. It has a lot of great scents like Peppermint, winterberry, vanilla, and of course, the flavor that Joyce is now using The Evergreen. It's the perfect gift for a loved one or yourself.

Barb:

Did you just confuse me and Joyce?

Joyce:

She absolutely did.

Barb:

It happens to us a lot, but expect better from my sisters.

Jill:

Oh my god. Well, it's not a surprise. Everybody does it. I guess that was Joyce's favorite fragrance. I don't know. Was it yours Barb? Who likes evergreen?

Kim:

We all like evergreen.

Joyce:

It's actually both of ours. I have evergreen in all of our bathrooms right now. I mean, it's funny how Blueland is one of those things. You try it and then it just becomes your go-to

Jill:

And you feel so virtuous.

Joyce:

Yeah, I know, right? Because you're being better for the environment at the same time that you're really enjoying the product. All of Blueland's products are made with clean ingredients you can feel good about, and Blueland has a special offer for our listeners. Right now get 15% off your first order by going to [blueland.com/sisters](https://blueland.com/sisters). You won't want to miss this. Really, you want to join us in using it. [Blueland.com/sisters](https://blueland.com/sisters) 15% off. That's [blueland.com/sisters](https://blueland.com/sisters) to get 15% off. You can also find the link in our show notes.

Barb:

Well, a jury has just awarded \$148 million in damages against Rudy Giuliani and in favor of Ruby Freeman and Shea Moss in their defamation case. You may recall that Giuliani had previously conceded that he had defamed the two women who were poll workers when he publicly accused them of stuffing the ballot box in Georgia in 2020. So this week's trial was all about the damages that would be assessed against him for harming their reputations and unleashing threats and harassment against them. Moss and Freeman were seeking compensatory damages, damages for pain and suffering and also punitive damages.

I'm going to ask you about that, how that breaks down, Jill, but I wanted to mention that earlier this week, I got a great email from a listener who said that it's too bad Norman Lear isn't still alive because he could be inspired to create a new TV show that would be a mashup of All In The Family, Maud, and the Jeffersons in which part of the damages award was that Moss and Freeman get Rudy's million dollar apartment in Manhattan, and because Rudy's broke to pay off the rest of the damages he has to work as their maid. That'd be a good show. Sounds more like the odd couple to me, but I think it'd be a good show.

Jill:

I love it. I love it. That would be fabulous.

Barb:

But Jill, can you just break down the damages and explain the difference between what's compensatory and punitive damages?

Jill:

Sure. And that's a question that's come up a lot online. Compensatory is for actual compensation for making sure that you are returned to whole. So for example, in this case, Rubi Freeman and Shea Moss said that it was going to cost them 24 million each to restore their reputation. That would be actual damages they incurred was to do this. So that's compensatory. Punitive is intended to stop the defendant from doing this again, and that comes up not only in this case, but in the E Jean Carroll case where it obviously didn't work with a \$5 million verdict in trial number one because he redefamed her, Donald Trump redefamed E Jean Carroll walking out of the courtroom. And that led to the second case, which actually went to trial first. So you need enough punitive damages to be awarded to really make an impact and stop the defendant from doing the same thing again.

In this case, the jury awarded basically almost 17 million to each of the plaintiffs, a little bit more to Moss than to Freeman and then awarded them 20 million each for their emotional distress, and 75 million total for punitive damages. That should get his attention and make him and other people who go on TV and lie and defame someone with false statements like this, make them think twice before they do that again. So I would be watching everyone on Fox News and if you get defamed on Fox, you should bring a lawsuit, look at the damages you could collect. And so that's how the punitive and compensatory worked in this particular case.

Barb:

Great. Joyce, how is it that Moss and Freeman ended up on Giuliani's radar screen in the first place? Why did he select these two people to be his target?

Joyce:

It's such an interesting question, right? These are like just two women in Fulton County working on the election like so many Americans do all the way across the country. That's what makes our elections work, are volunteers who work at the polls and who count votes. The first time that I'm aware that this story shows up Barb, there's a Georgia legislative hearing about a month after the election, and one of the attorneys volunteering with the Trump campaign presents this snippet of grainy surveillance video. It's vote counting taking place in Atlanta, and he claims that it shows Freeman and Moss conspiring to clear all of the observers out of the room so that they could produce what Republicans begin to call suitcases filled with fraudulent ballots. And the far-right website, Gateway Pundit identifies Freeman and Moss by name and starts disseminating a very deceptively edited version of the video that tries to support that story.

A couple of weeks later, lo and behold, Rudy Giuliani shows up in yet another hearing in front of the Georgia legislature, and this time he's making the claim based on the video that Ruby Freeman and Shea Freeman Moss, and he says this, quite obviously surreptitiously passed around USB ports as though they're vials of heroin or cocaine making this incredibly racist. It's not even a dog whistle, right? It's just a flat out appeal to racism in the best traditions of southern vote suppression of black democratic voters. And that's how this whole thing gets started. It's an effort to discount the Georgia vote, the legitimacy of it, and Rudy Giuliani drags Ruby Freeman and Shea Moss right into the thick of things with no warning.

Barb:

Yeah, and of course one of the most memorable lines from the House committee hearings on January 6th was always, and what in fact was the item that you passed between each other? And the answer was a ginger mint and I love it. It is never just a mint or a mint candy. It's always a ginger mint. I love it. But your observation about that phrase, passing it like it was a vial of cocaine was so deeply offensive. I mean, do you think that was part of the whole effort by Giuliani? Was it casual racism or was it part of the effort to say this is a black criminal enterprise against white America? What do you think?

Joyce:

It's the racism that's embedded in the southern narrative about using voter fraud as a justification for suppressing voting rights. I mean, this is something that we hear routinely in every election down here, and I think in other parts of the country, it expanded. This voter fraud narrative, it existed before Trump, he just put it on steroids, but there was always this suggestion that those criminal black people were voting illegally or they were counting votes illegally. And so good people had to pass identification laws or whatever the measure du jour was for unquote protecting the ballot. I viewed this as being very much in that tradition and it is a purely racist tradition.

Kim:

And look at what Trump said, and he's still saying, "Go watch Philadelphia. Go watch Detroit." He's picking these places, not accidentally. He's saying to his supporters, "Go harass black people in these places where they're voting because there is something inherently suspect about it."

Joyce:

They must be breaking the law if they're winning, right?

Barb:

Well, Kim, after the first day of trial, Giuliani goes out and gives public remarks outside the courthouse where he says, he was asked, do you have any regrets about what you said? He said, "No, I don't have any regrets because everything I said was true." Did he defame them again? Was this like E Jean Carroll redux. What do you think? Is that another claim?

Kim:

Literally as we're recording this, I was watching him speaking outside the courtroom after the verdict was handed down.

Barb:

Did he do it again?

Kim:

And you could see his, I mean he's completely disconnected from reality, but you could see his attorneys on either side of him trying to usher him into the car before he committed more defamation. He was just saying, "I wasn't allowed to offer my evidence, and the only reason I didn't testify is because I knew this judge would hold me in contempt and throw me in the jail. So I wasn't able to prevent my ..." I mean, crazy. We've already explained this. He was already found to have defamed them as a matter of law. This was only to determine damages.

And just because of the damage he was doing to himself, his own attorneys went from at the beginning of this damages trial, they were saying, "Well, what they're asking to do would ruin Rudy Giuliani. He would be ruined financially by something like this..They went from that to trying to minimize to perhaps they thought they might try to, usually when it's a damages trial, you sort of go through and try to pick apart the evidence presented as to the damages. They didn't even do that after Ruby Freeman tested him. He didn't do that. He didn't do that. He didn't do that. He didn't do that after Giuliani was acting a fool outside the court. They didn't even cross. They didn't even ask her a single question.

Barb:

Don't make it worse.

Kim:

Exactly.

Barb:

Okay, let's just get out of here.

Kim:

She talked about the horrific what she and her daughter had been through, which is absolutely horrific. They didn't even cross. And at the end they were basically conceding like, look, what could they say? The defense all but gave up and it was because they didn't want, anything that they would say would make it worse. They were clearly trying to do all that they could to contain this man. I couldn't imagine him being a client, could you? I mean, he was still saying that he was going to present evidence that proved that the election was stolen. He has no intention of stopping what he's doing, and the only way to keep him from defaming anymore is to take his phone away and to keep him from going in front of cameras.

Barb:

Well, Jill, along those lines of what Kim just said, Giuliani chose not to testify in his own defense. What do you think of that decision? It sounds like Kim thinks that was a good decision. What do you think?

Jill:

I think it was an excellent decision.

Barb:

Well, he lost 148 million, so maybe [inaudible 00:46:46].

Jill:

Yeah, but he might've lost more if he had testified. I know it's hard to believe, but he, like Donald Trump, is uncontrollable and I am sure that his lawyers thought he's going to redefame them on the stand. He's going to make it worse. So I think it probably was a good thing. And he had, as Kim was saying, he had no defense and I was sort of outraged that in closing arguments, his lawyer said, "Well, they explained without any witness to have put this on the stand." And obviously your summation is supposed to be based on things presented in the court. He said, "Well, he didn't testify because he thought they had been through enough already." Did he say that? I mean, really. And if he was too much for them to bear,

it's because he did it. So I mean, I was outraged by them saying that I couldn't believe I was reading in the summary of their summation that they had actually said that and got away with it.

Barb:

You hear the hat argument so often in white collar cases. I bet you guys have heard this. You're there to sentencing for some high power person, whether it's a public official or some white collar defendant. And the defense is, they have the audacity to say, your honor, my client has suffered enough just by being indicted and the stress of going through this trial. You should sentence him to no prison time because just going through this has been an awful, awful experience. And then I always want to say, "Why, he can barely make eye contact with anyone at the country club, what shame he's been through." Give me a break. Are you kidding me? Everybody feels shame in going through something like that. Brother. Well, Joyce, in closing argument, the prosecutor quoted back some language from Giuliani's own memoir about bullies. Did you find that argument to be effective, using his own words against him?

Joyce:

I did. And it sounds like the jury did too Barb, right? Giuliani had said in his memoir that he wrote after obviously the trade towers went down, and this is what gets quoted in closing argument. Never pick on someone smaller than you. Never be a bully. Good words to live by, too bad Rudy Giuliani forgot him. It's going to cost him \$148 million. So I hope he's learned the lesson.

Barb:

Yeah, it's a good lesson. I can see why they used it against him. How about the closing argument of Giuliani's lawyers, Kim? I know you said it seemed like all they wanted to do was get them out of there and they didn't have a whole lot to work with, but what did you think of their strategy?

Kim:

Yeah, I'm with Joyce. I mean, yes, on the one hand it's ridiculous to say, oh, we think they've been through enough and that's why we didn't cross and just staunch the bleeding. I don't know what else could they have said? I mean, what else could they have said to this client? I feel actually, I don't know anything about his attorneys personally, but I feel for anybody, any lawyer who has to defend Giuliani, I mean in any case, civil or criminal, it is vital that people, defendants have robust legal representation. That's what makes the system work. And he should have that too. But good God, could you imagine doing that job?

Barb:

No, their defense really seemed to me to come down to. Remember he used to be mayor and he was kind of good then. Remember people kind of liked him then? Just remember that when you're calculating your numbers. All right?

Kim:

God, how he has fallen.

Barb:

Let's just do that one favor. I mean-

Kim:

I've been thinking about that throughout. How he went. I mean, the nonsense that he used to be a prosecutor. He used to be a mayor. He absolutely knew, at one point at least, how all of this works. So either this is a big show or he has been so deranged by his association with Donald Trump that it has literally dissolved him down to the smallest of small people. You say don't pick on people smaller than you. There's nobody smaller than Rudy Giuliani. So I mean, he has just been reduced to such a small person. But nonetheless, it is important for justice to work. And this is yet another example. We've talked about E Jean Carol. We've talked about the Fox News defamation cases and others where justice was found in a civil court, and I think that's really important.

Jill:

This reminds me of two things. One is one of the best lawyers I ever worked with was the senior lawyer on the Watergate team, James Neal. And I worked with him right after that in private practice. And he said to me, it doesn't matter how good a lawyer you are, it has almost no impact on most cases. Most cases, you either win on the facts or you win on the law, and when it's none of those, you pound the table. And another person said to me, you ask for a writ of rachmones, which I believe is Yiddish for a plea for mercy, because there's nothing else you can do. So I guess he was asking for a writ of rachmones.

Kim:

So Jill, I have a confession to make. There's so much going on with the holidays and we're so busy, and I wanted my nails to look good, but I didn't have a lot of time. So I did press-ons. I did the Olive and June press-ons.

Jill:

You did?

Kim:

Can you even tell that? They look good?

Jill:

They look great.

Kim:

I wore them on TV and everything. It was such a lifesaver at a time where I didn't have time to take off my whole old manicure and put on a new one, but I needed to look good really quickly. It's great to be able to give yourself the perfect home manicure with Olive and June. They have everything you need for salon quality manicure in one box, which you can customize with your choice of six polishes out of an array of so many beautiful colors. And we love how their polish doesn't chip and it lasts seven days or more. You'll be getting great savings because it breaks down to just \$2 a manicure. Or if you panic like me, you can just use the press-ons.

Jill:

I love the idea of the press-ons, but the colors they have are really fabulous. And with Olive and June, you get a salon-worthy nails at home. They have a great mani system. You don't need an appointment

or to travel to a pricey salon. Looking your best while saving time and money is about as good as it gets. Your friends, family, and co-workers will be so impressed, once you try it, you'll never go back to any other system.

Kim:

So let me tell you more about these press-ons. So I have unconventionally shaped nails. So I was skeptical that something like that would even work for me. And when I think of press-ons, I'm Gen X, I remember those commercials back in the '80s with those horrible things. But these are actually really, really good. I was able to easily find my fit and they look really, really natural. I'm not somebody who likes an unnatural looking manicure and they look really, really good. They went on very quickly. I usually use a nail gel because my nails are pretty weak, but these feel very secure and my nails feel well protected. It's just really great. It's understandable why they are an Allure best of beauty winner. And with Olive and June's quick dry polishes, which is what I usually use, it doesn't take long to feel confident knowing your manicure will last for five or more days with just one or two coats.

Barb:

So visit [oliveandjune.com/SIL](https://oliveandjune.com/SIL) for 20% off your first Manny system. That's O-L-I-V-E-A-N-D-J-U-N-E dot com slash S-I-L for 20% off your first mani system. You can also find the link in our show notes.

Kim:

So not two years after Roe versus Wade was overturned, the issue of abortion rights has landed once again at the U.S Supreme Court. So Barb, Dobbs was a constitutional challenge, but this new one takes an entirely different posture. It's a challenge to the FDA's action with respect to the drug mifepristone. Tell us what the Supreme Court will be considering here.

Barb:

Yeah, so they are reviewing the Fifth Circuit Court of Appeals decision. You may remember that the district court went so far as to say that all of the FDA approval of mifepristone was wrong and inappropriate, and they had exceeded their powers. But the Court of Appeals scaled that back a little bit. They said the initial approval was valid because the plaintiffs had waited too long to challenge it. But their revised recent guidelines that allowed mifepristone to be administered with without a doctor present and to be ordered by mail, that had gone too far. So that issue is before the court. But also one thing that is interesting and gives me hope is that they're also reviewing whether the plaintiffs had standing to bring this case at all in the first place.

And that is one I'm sure we discussed at the time when this case came down, because remember who these plaintiffs are. These are a group of doctors who say that they oppose the FDA approval of mifepristone because it could be in theory that someday some pregnant person may take this drug, it may fail to work as intended. They may end up in an emergency hospital situation. It may be their hospital, and it may be that they're on duty that day, and so that doctor would be required to perform an abortion against his religious views. That is so speculative that I remember we were aghast that there was standing at the time. So the court's going to look at that issue too. And so it could be that the whole thing goes away if they find that those plaintiffs lack standing.

Kim:

So I want to just take a step back here because yes, we have this group of doctors who are the plaintiffs here, and it's speculative as to whether they have standing even to bring it. But Jill, is it really these doctors bringing this case? There are people involved that make me recall the Dobbs case and that maybe this isn't really an administrative challenge at all. Maybe this is just Dobbs part two. You get what I'm putting down here?

Jill:

Yes. And you are of course correct. It is the same funding group that is doing this that recruited these plaintiffs. But there's two parts of your use of the word administrative. Because in fact, this could demolish our administrative state if this could somehow challenge the expertise of the FDA and substitute some judge's ridiculous interpretation of how a drug is approved. So it is in some ways aimed at the administrative state, but it is also a way, in my mind, of totally eliminating abortion nationwide. So if we go back to Dobbs, it was, well, let's let the states take care of this. Well, that wasn't good enough because what only 20-some states adopted an abortion ban or such a strict interpretation that it's a virtual ban. And the other states allowed it, which meant that people were still available to get abortions in those states, even if they were from out-of-state. Maybe not from Texas, because you could get prosecuted for going out-of-state.

But if you abolish this, more than half of all abortions are done through medicine, taking this pill combination. And so now you're not only eliminating the surgical abortion, but you're eliminating more than half of all abortions. And think about what that means to the abortion clinics. It's a lot easier to prescribe a pill and have someone take it at home than it is to perform a surgical procedure. So it would mean there'd be an undue amount of pressure on the surgical places that still exist in states that still allow it, because they couldn't dispense a pill that is perfectly safe, that has absolutely no history of danger to recipients, even as it was done under the relaxed rules where you could get it at home and you could get it through the mail. So I think it is really a very broad challenge to the country as we have administered it with appointed agencies looking to use their expertise and make decisions and pass regulations. And it would be a national ban and eliminate at least half of all abortions nationwide, even in states where it is still legal.

Kim:

Yes. Jill, I agree with you. If there's anything that the Supreme Court, this majority seems to hate more than abortion access, it is the administrative state. So this feels like it has potential to be a real one-two punch. So Joyce, as I was preparing this topic, the New York Times dropped a new deep dive in how Dobbs was decided. I know I talked about it a little on Threads. What's your takeaway from that and what, if anything, does that tell you about how this mifepristone case might go?

Joyce:

This is a conversation that we've had before, Kim. This notion that the Supreme Court has sort of a special jurisprudence when it comes to abortion, which means anything to get to the result that they want to get to. It doesn't matter how they have to contort themselves to make a legal argument that suits the end that they want to achieve, they will do that. And something that stuck out at me in this article was the fact that Justice Alito appears to have circulated his opinion among conservative folks early to make sure everyone was on board to shore up weaknesses in an effort to make sure he would be able to reverse Roe versus Wade. Mifepristone really cuts at the heart of reversing Roe. If mifepristone is permitted to be used along the lines that the FDA currently permits, which means telemedicine mail order, you don't to show up at a doctor's office to use it.

Well, that really undercuts what the court did in Dobbs. And here's what I think ends up being at tension. In Dobbs, the justices say, "This is an issue that will be left up to the states to decide." Well, in the mifepristone case, Judge Matthew Kuzmarek in Amarillo Texas said, "Hey, guess what? Nobody in the country can have ready access to mifepristone." And the court is going to have to resolve that. And normally I would expect them to be pretty states-rightsy, let's let the states do this. But given this special jurisprudence that the New York Times piece really goes over at great length, I think we have to be really worried about how this one comes out.

Kim:

I'm with you too. I mean, my takeaways were that it took Neil Gorsuch 10 minutes to say, "Yep, looks good to me." Amy Coney Barrett was objected not to the result, but to overturning Dobbs like five minutes after she got on the court because she didn't want that smoke. She wanted it done, but she just wanted to wait. Kavanaugh too was on board. He was more about also about optics, but there was not any internal struggle on the substance among that majority at all. Not a bit. This just makes me say, "Oh gosh, we're doomed. We're doomed here." Anybody else think differently?

Barb:

Yeah. The only thing about it that struck me is when the big leak came out, I didn't really know who it was, but I thought it was probably someone in the liberal camp who was just throwing out a panicked call for help at the last minute. For the love of God, somebody look what's about to happen. Is there any way to get a lifeline here? And now after reading this, I am far more convinced that as you said, Kim, it was somebody from the conservative camp who was worried about leaks and trying to lock in the vote. Of course, all of this is speculation, but that was the conclusion I was left with after reading that article.

Jill:

I agree with you Barb. Certainly it's a very lengthy article and very worth reading, and not just for those of us who love inside the court shenanigans and stuff, and it has plenty of that, but it does seem most likely that it was, the decision was really closer than we thought, and in order to make sure nobody on the conservative side wavered, it was leaked to lock them in. And I think that that was always my feeling, but it was confirmed by this article.

Kim:

Hey, Jill, I just put on some of one of my favorite dishes, which is veggie chili. It's great in winter. And do you know how much food waste I had?

Jill:

None. And I know why?

Kim:

I had none. I had none. Tell me why.

Jill:

You have a Lomi and you love your Lomi.

Kim:

I do.

Jill:

And your husband loves your Lomi.

Kim:

He does.

Jill:

It's a great addition to your kitchen. It is a countertop electric composter that turns food scraps into plant food in under four hours. It's the key to keeping your kitchen clean and wherever you use it, you'll feel great knowing you're making a difference for the environment. Plus, it's a great holiday gift to change the way your family and friends deal with food waste. It's safe to say that Lomi is the biggest innovation in the modern-day kitchen since the dishwasher.

Barb:

Lomi has helped us turn our homes into part of the climate solution because we can transform our organic waste into nutrient-rich, Lomi Earth that we can feed to our plants, lawns, or gardens instead of sending it to the landfill. Not only does it help the environment, but it makes life so much easier.

Joyce:

With Lomi, you don't have to worry about food rotting in the garbage and smelling up the kitchen, and Lomi cuts back on the amount of trash you have and puts an end to leaky bags. Lomi's new app lets you track your environmental impact, earn points for every cycle and redeem for freebies from Lomi and other great brands. There's nothing better than knowing that your dinner party is going to enrich your garden.

Kim:

And I look forward to my little scraps from celery and green peppers and all that fertilizing my beautiful plants come spring. Whether you want to start making a positive environmental impact, grow a beautiful garden, or just have a place to throw away those bits of vegetables so that they don't end up in your trash and smelling bad, Lomi is perfect for you. Head to [lomi.com](https://lomi.com) slash S-I-L and use the promo code S-I-L to get \$50 off your Lomi. That's 50 bucks when you head to L-O-M-I dot com slash S-I-L. And use promo code S-I-L at checkout, and you know where you can find the link to Lomi, who is a proud sponsor of this episode. You can find it in our show notes.

Jill:

Well, guys, that was a great show, great discussion, great breaking news as we were recording. And now we get to what is always our favorite part of the show, the questions from our listeners. And I just want to remind you all listening that if you have a question for us, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tag us at [sistersinlawpodcast](#) on Threads or Tweet using hashtag [sistersinlaw](#). If we don't get to your questions during the show, keep an eye on our feeds during the week following, and we try to get to some of the questions we didn't get to during the show. And for today, as always, we have so much trouble picking just three questions, but we try to limit ourselves to

that. Today we have a question for Kim from Dee in Walworth County. Wisconsin, a place where I love the county fair. It's a fabulous county fair.

Joyce:

Wait, you've been to their county fair? This is something new about you.

Jill:

Oh, I love county fairs. We don't understand anything that's happening there. We watch the horse show. We have no idea what the horses are. Although now that I'm watching Heartland, a Canadian series, I understand more about horses, so maybe I'll get it. Yeah. But it's so much fun and the food is so outrageous and the entertainment is great. We once saw the Beach Boys, the actual Beach Boys at the Walworth County Fair. Anyway, great place. So I'm glad that she sent a question in. And her question is, can you explain the concept of separation of church and state? She said, I was always under the impression that that was what was meant by the First Amendment. Kim?

Kim:

Yeah. So the concept of the separation of church and state does come from the First Amendment, which states Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. And what that was meant to do was to prohibit what existed in Great Britain beforehand, which is you had a state church, you had the Church of England, which was essentially a part of the government. The founders wanted to make sure that there was no government-established religion, but also that people would be able to practice whatever religion they chose without government interference.

We can have a whole segment about how that has gone left and that has strayed from what I believe the founders original intent was. I certainly don't think that it is the basis for all of the religious freedom challenges that we have seen in recent years. And I also don't think that it prohibits God or religion or anything from being spoken in a government place. I mean, it's on our money. I don't think that that's a problem with it. I think it's been taken way out of context. But let's put a pin in that. Let's do a topic on that in the very near future.

Jill:

I'd like to, because I have a different viewpoint, Kim. Yeah. The Pledge of Allegiance was changed to add under God while I was in grade school. And I do not say under God, I take the pledge as it was when I started grade school.

Kim:

And the First Amendment says, you don't have to say under God.

Jill:

Exactly. Exactly. And we should mention, of course, the First Amendment also gives us freedom of the press and freedom of speech, freedom of assembly.

Kim:

Right.

Jill:

So it's much broader than religion, but that is a good summary of the religion part. So Joyce, here's a question for you from Kelvin. When we hear something along the lines of Judge Chutkan issued a 45-page ruling, who actually writes these rulings? Is it her?

Joyce:

Yeah, so it's such a great question. Judge Chutkan is a district judge, so she's got law clerks who work with her. And the practice varies widely among different judges. Some judges give their clerks more responsibility for research and even drafting, other judges give them less. I know some judges who don't use their law clerks at all on the criminal side of the house. Their reasoning is that in matters of liberty, of actual liberty from custody, that the judge should do all the work. But usually judges will have a robust conversation with their clerks in their chambers. They'll go out, they'll read the law, they'll look at it, and then the judge will make a decision about how to rule, and will write the opinion in whole or in part.

But one of the really important things about our justice system is that there is this robust conversation that both trains the young lawyers who are clerks and also gives the judge the opportunity to explore different perspectives. Sometimes we all make better decisions when we have the chance to have a sounding board and to bat ideas around. And so that's how this part of the process works in the district court.

Jill:

And one more question, and Barb, I want to ask you this because I love the name of the sender. Too smart for most, and you are certainly too smart for most. And the question is, can't the President pardon Hunter? Will he?

Barb:

Yeah, that's a really good question, too smart. Yeah, he can. It's a federal offense. Hunter Biden has been charged now with illegal weapons possession and with tax violations. Both of those are federal offenses. There is nothing to prevent President Biden from pardoning Hunter Biden right now at this moment for both of those crimes. I think the trickier question is, will he? I think one of the things we've discussed in prior episodes is that on their face, these charges are sound. It appears that the evidence is there and that he could be charged with these crimes. I think the thing that makes people uncomfortable about these charges is it appears that he's been charged mostly because he's the son of Joe Biden and it's politically motivated in an effort to smear Hunter Biden to get to his father. I don't know whether I do or don't agree with that, but that's certainly Hunter Biden's view.

He was called to testify before Congress this week with a subpoena, and they wanted him to give a deposition behind closed doors. And he instead showed up, he defied the subpoena and gave a statement outside the Capitol saying that he's willing to talk, but he will only do so in a public hearing space. Well, he doesn't get to call those shots. And so I can understand why he might prefer that, but it's not really his call. So I think he feels like he's been a bit of a political football here. And so I think Joe Biden could issue a pardon if he so chose. Oftentimes these happen on the last day of a president's term so that they don't have to deal with the repercussions of it. But I think it's one to watch. My guess is if Joe Biden wants to be politically savvy, especially if he's seeking a second term, and he's always been committed to this idea of the rule of law, and he selected an Attorney General to adhere to the rule of law, I think you've got to let your kid take his lumps.

Jill:

Thank you for listening to #SistersInLaw with Kimberly Atkins Stohr, Joyce Vance, Barb McQuade, and me, Jill Wine-Banks. Remember, you can send in your questions for next week by email to [Sistersinlaw@politicon.com](mailto:Sistersinlaw@politicon.com) or tweet them for next week's show using hashtag sistersinlaw. And please show some love for this week's sponsors, HelloFresh, Thrive Causemetics, Blueland, Olive and June, and Lomi. You can find their links in the show notes. Please support them because they support this podcast. And if you're listening, I know you've probably already done this, but if you haven't, please follow #SistersInLaw on Apple Podcasts, or wherever you listen. And please give us a five-star review. It really helps others to find the show. See you next week with another episode, #SistersInLaw.

Kim:

So one thing that Ruby said was, "Rudy Giuliani isn't the only person who spread lies about us. Others did too, but that's the work of tomorrow." So ooh.

Joyce:

Go [inaudible 01:15:55] Ruby.

Barb:

Hinting at Trump.

Jill:

Good going.