

Joyce: #SistersInLaw is going on tour in May. Get tickets at politicon.com/tour. You can see us live at the Athenium Center in Chicago on May 2nd, the Royal Oak Music Theater in Detroit on May 9th and the Schubert Theater in Boston on May 30th. Go to politicon.com/tour to get your tickets now.

Kim: Welcome back to #SistersInLaw with Joyce Vance, Jill Wine-Banks and me Kimberly Atkins-Stohr. Barb will be back soon and we already miss her, but we are still very excited because guess what's coming up? The Hashtag Sisters-in-Law live shows, and we always love getting together and seeing our audience in person. But this tour is especially fun because they're all cities that we know and love so well.

Jill: We'll be starting our show in my hometown Chicago on the 2nd of May at the Athenaeum Theater, and we've already sold out the VIP tickets, but there are still good seats available, so I'm really looking forward to seeing my friends and making new friends at this show.

Kim: And then on May 9th, we will be going to the Detroit area at the Royal Oak Music Theater. I'm a Detroit native and so I could not be more excited and what could be even more fun than coming to a #Sisters-in-law show then coming to one where a lot of my family members will be in the audience, which they will be in Detroit.

Joyce: I'm especially looking forward to Boston on May 30th. I know we have a lot of fans in Boston. I know you guys are all going to come, but for me this is a little bit of a hometown event because I went to college up in Maine and I've heard from a lot of friends from my college class, Bates class of 1982 who are already planning on coming down. I hope we'll get a full turnout from the Bates, Bowdoin and Colby crowd. Boston is not that far away and the Schubert Theater is huge, so this will be our biggest show ever. Come help us sell it out.

Kim: And the tickets are selling fast. So for tickets, go now to politicon.com/tour. Joyce, it sounds like your kiddy wants to come too.

Joyce: I think he does. That's Dingus and he is definitely interested in touring with #SistersInLaw.

Kim: Well, in the meantime, we've been talking a lot about the Supreme Court on this podcast and it made me wonder, as I often do in the middle of the night when I have insomnia, which justice do you think would be the most fun at a dinner party? I mean, we all know that they have to think about constitutional things and they can be intellectual, but also which justice do you also think would just be a lot of fun? Jill, I'm going to start with you.

Jill: So that's a hard choice because I think some might be fun that I wouldn't want to hear their views. And I know Justice Breyer because he was part of the Watergate team, so I'm ruling him out because I already know him. I have been working on a children's book and in doing that I've been going to the library and reading children's books by or about Justice Sonia Sotomayor. And so I would really love to meet her because I now have read her story focused on everything from third grade to young adults. And of course I read her adult memoir as well. So I would love to meet her. That would be my choice.

Kim: What about you, Joyce?

Joyce: I think they'd all be fun to sit down with and get to know, I adopt Jill's caveat that it would be tough to sit down with some of them right now. Although I would note that Justice Thomas, who's from Savannah, Georgia, was the Circuit Justice for the 11th Circuit where I live for a long time and was really great for the Appellate Chiefs and at our annual appellate conferences. So I think that they would all be pleasant, but I confess I would love to sit down and talk with Justice Amy Coney Barrett and figure out how she manages having such a serious job and having a huge family. She makes it look sort of effortless. I'm sure it's not effortless that it's very intentional and I think it would be great for other moms to hear how she makes that all happen.

Kim: That's really, really interesting. And yes, justice Clarence Thomas, who is actually from Pinpoint, Georgia, he's from very tiny little rural town, is known to be very personable. He at least used to do things like invite the Supreme Court clerks up to the higher court it's called. It's a basketball court in the attic of this Supreme Court building that I believe was installed there at the request of Justice Byron White and play hoops with him and stuff. He's known to be a personable guy, but he would not be my dinner party guest.

Jill stole mine. I was going to pick Justice Sotomayor because she can break down constitutional construction, but she can also dance salsa. She also hangs out with heads of states but she also hangs with JLo, like I mean she would be, I mean, I just think she would be a scream, but since Jill picked her, I'm going to go with Elena Kagan because on the bench she's really funny, she's witty, she's sharp. I think that she would be a lot of fun. I've never chatted with her personally, but I think that she would be a hoot. So if Justice Sotomayor is not available, I would invite Justice Kagan.

Joyce: Well listen, I mean Justices Kagan, Sotomayor and Barrett, if you're listening and I'll throw in for Justice Jackson too, #SistersInLaw, we are here to have dinner with y'all. You just named the time and place.

Jill: I think we should do a group dinner for all of us with all of our choices.

Kim: Wouldn't that be interesting?

Jill: Yes.

Kim: And it's interesting, we picked all the women.

Jill: Oh yeah, we did. Wonder why.

Kim: Let's take a break from talking about the law and have a brief little history lesson on toilet paper. Did you know the first toilet paper rolls were introduced in 1890, but really until 1930, people just used whatever was available. Nowadays that doesn't happen, but in a way it's much worse because we're clear cutting our forests just to make something that we use once and flush down the toilet, literally. That's really terrible. So we gladly switched to Reel paper.

Jill: That's because Reel makes a sustainable toilet paper that contains no trees and uses 100% bamboo instead. Their products are certified by the Forest Stewardship Council, meaning that they are responsibly harvesting the bamboo grass used for their paper. It's so soft, sustainable and comfortable. We're never going to go back to the old stuff. While other conventional tree-based papers are wrapped in plastic in the grocery aisle, Reel Paper is packaged not in package, it's compostable and offers free shipping on all orders. Reel partners with One Tree Planted. So every box of Reel that you buy funds reforestation efforts across the country, unlike other toilet paper that cut trees down Reel is helping to actively plant them.

Joyce: Reel Paper is available in easy hassle-free subscriptions or for one-time purchases on their website. All orders are conveniently delivered to your door with free shipping and 100% recyclable plastic-free packaging. If you head to reelpaper.com/SIL and sign up for a subscription using our code SIL at checkout, you'll automatically get 30% off your first order and free shipping. That's R-E-E-L-P-A-P-E-R.com/SIL or enter promo code SIL to get 30% off your first order plus free shipping. So let's stop flushing our forests and try Reel's free paper. Reel is paper for the planet and you can find the link in our show notes.

Kim: Well, this wouldn't be a week if there was not a ton of Trump-related legal news. And this week there's so much, it's really hard to know where to start. It's going to be a lot to get through. So I'm going to jump right in. I think we'll do it geographically and start in New York because if Trump can't make bond there, you can't make it anywhere. It's up to you. New York, New York. So first question, do we think he can make bond there? Do we think he's going to post bond by Monday? And if he does Jill, my second question is, shouldn't that concern us because what might the source of that money be if he can come up with it?

Jill: So let me start by saying today's news makes him the luckiest, I'm not going to say the word that I want to say, the luckiest person in America because of the sale of Truth Social, the merger of Truth Social, going through giving him a potential windfall. And although it's not immediately available, I think it might be immediately available as security for someone actually loaning him the money. But that doesn't evade your second question, which is, yes, of course I'm worried about where he's going to get the money. Whoever it is is going to have expectations that I would find uncomfortable.

I'm also going to be looking forward to the disclosure as he is now being required of what he did to apply for it. Because did he always go around saying, I need a half a billion dollars, or did he say I could use 10 million from you or 50 million from you? Because it's a lot easier to get 50. And I also would like to hear more about Letitia James's suggestion that he post his buildings, that he not sell them to come up with the money, but he posts them in escrow with the court so that he can't disgorge them or sell them and cheat the state out of the money he owes them. So I think there's a lot going on here, but yeah, this last thing with the going public of his company is just amazing to me.

Kim: Well, I would like to see the valuations of True Social to understand these headlines because if Twitter is thinking in value, well, for obvious reasons, I just can't imagine that it is, I don't know anything about evaluating a social media company, but I have questions. I'll just-

Jill: They lost 10 times more money last year than they made.

Kim: I don't get it. And so yeah, I am with you. I don't think suddenly if he has this kind of liquidity that we can say that it had anything to do with that, that worries me a lot. But Joyce, what about you? Do you think he's going to make it? And if he does, what questions do you have?

Joyce: Yeah, I mean, I think you and Jill hit on the big ones. I've always been intrigued by this notion of the very timely merger with the Shell company that will be publicly traded, which looks like a thinly, very thinly disguised effort to give him some liquidity just when he needs it. And this morning he had these, I forget what we call them now, truths, which I just hate saying that Trump posted a truth, but he posted something that didn't really look very true, saying that he had had half a billion dollars that he was going to use to self-fund his campaign. Like that man has ever self-funded anything when he could use the five and \$10 donations from his poorest followers, but he claimed that he had that money.

I think the logical next step is he'll say, and now I'm being forced to use it and maybe we'll see another 11th hour bond like we saw with the \$83.3 million from E. Jean Carroll. I do love though this stepped up scrutiny that Judge N. Goran has imposed in the New York Attorney General's civil fraud case because now the monitor retired, Judge Barbara Jones has the explicit authority to look into any efforts to obtain surety. Trump will certainly resist that and claim it's beyond the court's jurisdiction, but I don't think Judge N. Goran will look kindly on any effort to get around his dictates.

Kim: Yeah, I have to say, when I saw that news that Barbara Jones would be on now, she was already appointed during the course of the trial, but that she is being extended for three years to oversee the assets and the governance of the Trump organization. I was really relieved because I was just like, are we going to ask questions about where this money is coming from and what's happening? And she already flagged a couple things that we talked about during the course of the trial about maybe he was trying to evade taxes and maybe the accounting going on in there still was not up to snuff. So I feel much more confident with her at the helm.

But let's go down to Florida now. A lot of people, myself included, were a little perplexed by an order from Judge Aileen Cannon who is the judge in the classified documents case directing both parties to address in jury instructions. Now, keep in mind, a jury hasn't been in panel, we don't even have a trial date, but somehow there's this order to talk about jury instructions. That's problem number one. But to address this nonsensical defense that Donald Trump is making, that the Presidential Records Act, which covers notes and stuff that a president makes during the course of his time in office is a defense to a charge under the Espionage Act, which is what Donald Trump is facing for improperly handling classified documents. Like she's actually going to allow them to give this credence what is going on, Joyce? Make it make sense.

Joyce: I don't think I can make it make sense, but I'll tell you what I'm afraid of and it's sort of complicated. So I've been trying to work through this step by step and here's what I see in this whole complicated situation. Trump files a motion to dismiss the prosecution based on the Presidential Records Act. And as you point out, Kim, that's legally meritless. The Presidential Records Act is about letting a president designate some of his papers as private so he can retain them at the end of the presidency. And it's clearly not meant to permit a president to designate as private classified materials that are generated by the

intelligence community. PRA is about a president's personal stuff like his diaries or something like that. So this motion should have been a non-starter and Judge Cannon should have dismissed it.

Instead of doing that though, she had a hearing on it. She sat back after the hearing without ruling and she subsequently issues this order that you're talking about, directing the lawyers to write jury instructions. And the jury instructions she's asking for would be based on the assumption that the Presidential Records Act does apply. So by not ruling on it, she's deprived the government of the ability to appeal what would've been a bad ruling. If she had issued an order that said Presidential Records Act applies, Jack Smith would've been off to Atlanta to the 11th Circuit and would've had her reversed. Now though, he's supposed to submit jury instructions that presuppose that the judge will permit Trump to use this as a at defensive trial. And the judge says, "Look, here's two alternative scenarios under the Presidential Records Act. I want you to write me a jury instruction for each of them because I haven't made up my mind yet." And that is really weird.

That's not what lawyers do when they're proposing jury instructions at a criminal trial. It is up to you as a lawyer to write proposed jury instructions that go beyond the ones judges usually give that you think are correct. Maybe if a judge decides that they're going to do something a certain way, they might ask you for your input. I've never had a judge say, "I don't really know what the law is. I'm thinking about these two things. Write me jury instructions." So it's crazy off the bat. And what Cannon is really doing is she's asking the government to buy into her bad ruling, the ruling that she won't make about the PRA and then try to limit the damages. The first scenario in her jury instruction request is the Presidential Records Act applies, but jurors get to decide if Trump designated these records as personal or not.

And the second one is even worse. The second one essentially says the Presidential Records Act applies. And once Trump says he's designated something as personal, no one can look behind that, not this jury, not a judge, not the National Archives. Once he says that, it's a done deal. And if that's the law, she would just dismiss this case in the middle of trial, which would mean the government would be unable to appeal because of double jeopardy. And I think that that's where we are. This is a dangerous scenario. It permits her to acquit Donald Trump and the government is incapable of doing anything about it. The only thing that Jack Smith can do given this scenario, is go ahead and file a motion to recuse her. She's forced to respond to that in writing and then he would be able to take an appeal.

Kim: So I want Jill to respond, but I specifically have two questions about everything that you just laid out well, Joyce. One, do we think that she is just terrible or do we think that she's nefarious? Because if I wrote a law school exam confusing the Presidential Records Act as a defense for the Espionage Act, I'd fail that exam. It's one thing to be new to the bench, and I was willing to give her some grace for that because every judge is new at some point, but that's just nuts. Do you think that she is just badly mistaken, Jill, or do you think something nefarious is going on and do you agree with Joyce that Jack Smith should try to have her recused from the case?

Jill: So let me start with, I from the very beginning feared that she would create death by a thousand cuts. That she wasn't going to say, "Okay, we'll have the trial after the election," but she was going to do things that would delay it a little at a time and then it wouldn't be

appealable interlocutory. And then we'd end up, oh, well yeah, now we can't have the trial until after the election. So do I think she's clever enough and devious enough and Machiavellian enough to have plotted what she just did? Or is it just an accident of her newness or is it just an accident, period? I'm afraid, I'm thinking that she may have thought about the double jeopardy that Joyce raised because that is what could happen. If she does not rule on this motion until after the jury is impaneled, that's the end of the case. There's no appeal by the government of a directed verdict or of instructions that basically force the jury to reach a not guilty verdict.

I'm very terrified of that, and I'm not going to look at her motives. I'm just going to say that I'm afraid that Jack Smith maybe should have done this sooner, although it is also arguable that you need a longer record than, for example, her first huge mistake that the 11th Circuit pushed back on about the use of evidence from the search warrant. And maybe that wasn't enough then. But as she has dragged out and refused to set a trial date, refused to rule on what are obvious motions, I just have to add about the Presidential Records Act.

It was passed as a result of Richard Nixon thinking he could take the tapes as his personal possessions and Congress went, nah, no, that's not right. That is not personal. Richard Nixon dictated to what was then called a dictaphone, a sort of huge tape machine recording thing that were his thoughts at the end of every day. He was very faithful about doing that. Those were personal thoughts. That's something you could use in your memoir. That's what the Presidential Records Act says is personal. You cannot under the Presidential Act ever consider saying that a document someone else prepared that you happen to read and that is classified-

Kim: Classified.

Jill: You cannot even think about it. And it's so obvious that it is ridiculous that she didn't rule on that, and it would be a waste of time for the government to prepare instructions based on what is clearly not the law. So I'm offended by her behavior and although I think Joyce wrote a very good civil disobedience substack on the subject of her being asked to be recused and what are the chances that it would happen, I think at the very least it would warn her that she's under scrutiny. And I think there may be no choice left because I fear something happening once double jeopardy attaches.

Kim: Yeah, I do too. A lot of our listeners ask that as a question this week, could she be removed and how? And I will say to all of them, besides from this good discussion, if you have not signed up for Joyce's substack, you really, really have to because that's the best examination of those options.

Jill: That's so sweet, thank you.

Kim: Oh, it's the truth. All right. It's too hot in Florida. So let's go back to New York where actually New York is the place where the very first criminal trial where Donald Trump is a defendant, might get off the ground led by Manhattan D.A, Alvin Bragg in what we'll call the New York election interference case. It's where he is charged with falsifying business records in an effort to hide something before the election. So in that sense, it is presidential interference. Jill, I think a lot of people think that this is the least important case. It's called the Stormy Daniels Hush Money case. It sounds like a B-movie plot or

something. Well, tell us about that. Do you think that it's a problem that this "less important criminal trial" is the first that might actually see the light of day?

Jill: It is definitely the first that is likely to go forward and I believe that the delay from this document issue will be no more than 30 days and so it will start pretty soon.

Kim: Yes. And I forgot to mention that there was this whole kerfluffle about these thousands, eleventy million documents that suddenly turned up. It turns out it was just the federal prosecutor's office producing everything that they had, and only a tiny percentage was actually responsive to the request. And Alvin Bragg said, "All right, we're ready to go."

Jill: There's only a few hundred that might be relevant. And let me point out, these were not documents in the DA's control. He did subpoena them from the Southern district, and lo and behold, they didn't turn them over. Then Donald Trump very belatedly, issued a subpoena for them, and lo and behold, they did turn them over. It now looks like maybe they weren't in their possession at the time the DA requested them and that they then were, and so they turned them over on the eve of trial, basically less than two weeks before the trial. And so a 30 day delay is of perfectly reasonable solution to allow both sides to analyze whether there's anything exculpatory or incriminating in those documents and to have them fully reviewed. But there is no basis for dismissing the case on them.

By this point, I've already forgotten what your original question was, but I think it was about how important the case was. And let me just say words make a difference. You're a journalist, so you know, pick your words very carefully. And this is not a hush money case. This is an election interference case and we must stop calling it. It's that my hashtag say this, not that, call it an election interference case. The reason this money was paid was to make sure that Stormy Daniels did not go public right after the Access Hollywood tape where he said, you grab him by the, you know what, when you're a star, you can get away with it. That was going to hurt him with women. And so think how bad it would've been combining that with, and oh, by the way, while his wife was nursing their firstborn, their only son, he was off having an affair with Stormy Daniels. And there's another woman involved too, but I think this one focuses on Stormy Daniels payment.

So I basically think it is an important case. Any case that's a crime committed by a president or former president or soon to be president, because remember, some of this stuff happened before he was elected. Some of the payments came after he was in office. So there's a complication about he was president, he wasn't president. But I think it's a very important case. Is it as dramatic and exciting as the January 6th investigation or the confidential records or the Rico case in Georgia? Maybe not, but it is an important case and I think we should be taking it very seriously, and I'm hoping that the jury will take it seriously and won't be sort of bamboozled by the phrase that it is just a hush money case paying money to a porn star.

Kim: Yeah, Joyce, I like the framing that the Manhattan DA's office has been using lately that this is an election interference case because at the heart of it, that's what it is. He was trying to suppress some information to get a leg up, something of value to hide in order to help him get elected.

Joyce: Yeah, I mean, that's how this case struck me when it was first indicted. I remember writing about it that night on my substack and calling it an election interference case and being so surprised that a lot of people were like, well, it's just about hush money. To me, this case has always been about context. It's the first time Trump ever made an effort to cheat in an election in order to win it. And the judge really reinforced that in his pre-trial rulings where he says, "You know, government, you may not be able to play the Access Hollywood tape, but you can talk about it." Because that's the entire reason that they paid off Stormy Daniels. They were worried about additional damage.

I think this case will come down to the DA's ability to sell that theory in trial and publicly. But it seems to me that if there hadn't been this situation that Trump got away with, Michael Cohen was prosecuted by the feds, Donald Trump got a pass. I'm not sure we would've gotten to January 6th if this first effort he made to interfere with an election had been dealt with appropriately by the criminal justice system.

Jill: And can I add something to that, Kim? Because when you talk about hush money, Watergate was a very good example of hush money and that was a part of the obstruction-

Kim: Money paid.

Jill: Exactly. The president and his committee to reelect the president creep paid the burglars to remain silent because he was running for reelection and he didn't want the link between the White House and the committee to re-elect to be clear that the burglars were hired and paid for by them, so they paid hush money. So we should also not demean the phrase hush money. Hush money is an illegal, horrible crime. It's an obstruction of justice. So let's just put it in context. Hush money is bad.

Kim: Yes, yes. And finally, but certainly not least this week, we also saw Donald Trump's legal team file their brief with the Supreme Court in the immunity case. For those who TLDR, they said absolute immunity, but if not absolute immunity, at least remand it down to the court below so that they can examine the facts to determine whether it's absolute immunity, which would be a stalling tactic. Joyce, make that brief make sense?

Joyce: Look, it's not a serious argument for the same reasons we discussed when this case was in front of the court appeals. If the Supreme Court buys it, then Joe Biden would be able to do anything he wanted to do to hold onto office if he lost. He could even send SEAL team six out to take out his political opponent, Donald Trump. And we know that that's not how any of this works. That would be dictatorship, not democracy. The court can't support Donald Trump's argument at least in its entirety. So Kim, I think to the question that you ask, I would chalk this one up as purely a delay tactic.

Kim: Yeah. What do you think, Jill?

Jill: I agree completely. It's such an absurd argument that I can't believe that the Supreme Court gave the amount of time it has given and is holding up the setting of a trial date and the continuation of jury selection for this and possibly interfering even not just with the January 6th federal case, but with the Georgia case. It's absurd. There is clearly no such immunity. And I have to say it's really bad lawyering from Trump's lawyers because

there might have been a narrower argument they could have made, but they went whole hog-

Kim: They went broader.

Jill: They went broader than they had to go, and it's ridiculous. And the other thing is that I'm not hearing enough people say that any immunity that might possibly exist has to be linked to an official act. And there's no way that January 6th and interfering in Georgia, interfering with fake slates of elections, there's no way that any of that is an official act. An official act would be Truman saying, "I think we need to bomb Hiroshima." That's an official act. None of what is alleged here is an official act, and that should have been taken judicial notice of. You don't even have to have a trial on it. It should have been over and done with.

Joyce: I mean, right. He calls Brad Raffensperger and says, "Listen, I know I lost your state, but can you create exactly the number of votes I need to win?" Not the official act.

Kim: He's claiming, of course, that it was somehow the president's job to guard against election. I mean, it's so not sensible-

Jill: No federal role for the government-

Kim: It's nonsensical.

Joyce: We know what a president's job is. If he thinks that there's been fraud, he calls up his Attorney General and says, "Hey, can you look into these allegations?" And DOJ told him no.

Kim: Bill Barr was like, dude-

Joyce: When Bill Barr tells you there's no fraud after Bill Barr has pitched the Mueller investigation as a total exoneration of Trump, that guy, when he says there's no fraud, you can take it to the bank, man.

Kim: Well, I would just leave it by saying, I think what you both say is correct, but the fact that the Supreme Court is actually considering this keeps me on the ledge for now, I have absolutely no idea what they're going to do. I want to believe that they would just rule very quickly on it, but I thought that that would've already happened.

Joyce: We might need to cancel our-

Jill: It was fully briefed at the court of Appeals. There was no need for the delay in filing briefs. It's all ridiculous. And you're right, the way they phrase the question they're considering, although they did limit it to not all of the things they could have considered-

Kim: But it's still pretty broad.

Jill: But it's very weirdly phrased, and that's terrifying.

Joyce: Well, you know what scares me about the way it's phrased is it creates the possibility that they'll make this ruling that you're talking about Jill. And what they'll say is no immunity for unofficial acts, immunity for official acts. And then they'll send it back to the trial judge and say, decide which this is? And then there will have to be another appeal. And then we are looking at President Trump.

Kim: Even if Judge Chuckin immediately writes a ruling saying none of it, none of it, none was official, go, it will still keep the trial from going.

Joyce: Right. It'll go back to the Supreme Court and it won't get decided until next term.

Jill: Not this term. Yep.

Kim: Support for today's episode comes from OneSkin. And if you are like us, you are glad that the weather is turning warmer and sunnier. But if you're like me, I have allergies, seasonal allergies, and they show up on my skin too, I can get these rough itchy patches in the springtime. And that's why it's really important to take care of your skin through those transitional seasons and do it on a cellular level. That's why it's important to nurture your skin from the inside out with products that do more than just protect against the sun's UV rays, even though that's really important. Thankfully, OneSkin's products are by their scientifically proven peptide called OS-I. This peptide reduces the damage aging cells that make skin less resilient and prone to lines and wrinkles.

Jill: That's really important. Instead of hiding your lines, OneSkin works at the cellular level by boosting your skin's natural barrier to lock in moisture and help protect against the elements. They have a full line of face and body products, including OS-01 Shield. It's an SPF that prevents UV-induced aging and repairs, cellular aging all at once. And for a limited time, our listeners will get an exclusive 15% off OneSkin's products using the code Sisters, when you check out at OneSkin.co. No matter the season, when your skin's looking and feeling healthy, it's better. And that's what'll happen when you use OneSkin.

Joyce: So I just took the travel kit with me on a trip to New York earlier this week, and it's my new favorite travel companion. I know it'll keep me at my best. The formulas felt amazing to apply, especially on my face and my neck, which got awfully dry with all of the flying. The regimen worked fast, it was easy to use, and it was a great companion to take along on a trip. I'll never go anywhere without OneSkin, and we know you'll love it too. Oneskin is the world's first skin longevity company. By focusing on the cellular aspects of aging, OneSkin keeps your skin looking and acting younger for longer. Get started today with 15% off using code Sisters at OneSkin.co. That's 15% off OneSkin.co with code Sisters. After you purchase, they'll ask you where you heard about them. Please support our show and tell them we sent you. Help your skin stay younger and healthier for longer with OneSkin. You can find the link in our show notes.

Jill: Are you ready for March Madness in Texas?

Kim: No. I'm not.

Jill: Well, I'm afraid we're going to have to deal with it today anyway, because Texas passed a immigration law known as SB-IV, not to be confused with Texas's draconian SB-VIII.

And it makes it illegal to cross the border and it makes it a state misdemeanor punishable by up to six months in jail, and it makes it a felony if you repeat offend, and that could be two to 20 years in prison. The law scares me because it authorizes Texas law enforcement to arrest migrants suspected of illegally entering the U.S. And it allows magistrate judges to issue deportation orders to those suspected of being in the U.S illegally. And if migrants refuse to return to Mexico, they could face penalties of up to a second degree felony. The Justice Department is challenging the law saying Texas is overstepping the federal government's immigration authority while Texas argues it has a right to take action over what the governor says is an invasion of migrants on the border.

So I want to dive into all of this and talk about what the law has given all of us, which is severe whiplash. And that's not the law itself, it's just that it started out with an injunction against it being enforced while it was being appealed, and then it was overturned and it was enforceable and then it wasn't. And we're now back to it's enforceable even though the Supreme Court said no, they would continue the injunction. So Joyce, let me start with you. Is the DOJ correct that SB-IV violates the Constitution's Supremacy Clause that is long given the federal government supremacy over immigration and foreign policy, or is it even remotely possible that it is constitutional, especially given the Supreme Court's ruling in the Arizona case where they said, no, you can't do that?

Joyce: Yeah, I mean this shouldn't be a tough call. The fact that the Fifth Circuit was inclined to rule in Texas's favor is somewhat misdefined because as you point out in 2012 in *United States V. Arizona*, the Supreme Court says the Supremacy Clause means that the federal government gets to set immigration law and policy. Arizona had done a bunch of really bad things, including what was called a papers please requirement, sort of like what this statute does requiring people to establish their citizenship or face arrest. So look, I sort of am at a loss here to understand why this case is being entertained.

And the reason the Supremacy Clause applies, I think is pretty obvious. You can't ask foreign countries to interact with 50 different state policies. They're entitled just to have one national policy in addition to really making... This has the potential to make things bad for Americans abroad, right? If Texas treats people badly in Texas, foreign countries could retaliate. It really burdens state and federal law enforcement. But the problem with this court is we've seen them be completely willing to abrogate long-established solid case law in the past. And you've got to be a little bit nervous about that here too.

Jill: So Kim, as a journalist, part of your job is to use words carefully. So I want you to describe the use of the word invasion in Texas's argument for its right to enforce this law. Texas argues that they are the victim of an invasion by these migrants, and that Biden isn't doing enough to protect them so they can defend themselves. What does invasion mean as it is used in the Constitution, which would entitle a state to do something,

Kim: I'm getting into that. Invasion has two meanings in this context to be very, very sure. On the one end, constitutionally, states can only claim to be able to wade into the area of federal law, which federal law governs immigration, federal law governs international relations, things like border control, things like the ability to declare war. All of that stuff is under federal jurisdiction. And the only time that the Constitution even envisions that a state can take any of those actions upon itself is if somehow it is subject to a foreign invasion and the federal government perhaps can't act quickly enough. So ostensibly the bombing of Pearl Harbor, if Hawaii began to act in a militaristic way, perhaps that could

have been a justification. But no, that's not what's happening here. So they're calling people crossing the border without authorization, an invasion in order to justify passing this law, which is absolute nonsense.

But be sure, they're also carefully using this word invasion for political reasons, to demonize people who are crossing the border in order to try to do what this law is about. We've said it before, let's say it again, the people, the governor in Texas, the lawmakers in Texas, everyone in Texas knows that this law is unconstitutional. They know it will be struck down, they do not care. They think it's still going to help them politically, and so they're doing it anyway. The same with the razor wire, the same with all of this. They don't care that it puts people's lives in danger. They're doing it for the political show, which makes all of this even more disgusting. So invasion is serving two purposes there.

Jill: So yeah, it seems clear to me that invasion meant an armed invasion by a foreign country. It didn't mean the peaceful entry of people seeking asylum. And just to make it clear, and maybe I should have started with this, the constitution does make it clear that the federal government is supreme in the area. Article six, paragraph two is the Supremacy clause, and it establishes the federal constitution and federal law generally as taking precedent over state laws and even the state constitution. So it's important to keep that in mind.

And Joyce, we are both former prosecutors, so I want to go back to that word suspected, which I stressed in reading the beginning part. Do you share my concern about the implementation of this law, even assuming it isn't struck down as completely unconstitutional? Normally, the police have to have some reasonable suspicion. They have to see a crime being committed, they have to have a warrant based on some reasonable cause to believe that there was a crime, as opposed to if you suspect that there's someone who's here illegally, you can arrest them. Does that not concern you and doesn't it worry you that it could lead to racial profiling?

Joyce: I think that that's a very fair concern. And so to your point, this current challenge is to the law as written saying it's unconstitutional on its face. And Texas has said that they've been planning for a period of months about how they would implement it, when and if it goes into effect. And I think that there's a very good chance that we'll see a second tier of challenges to it if the Supreme Court lets it go forward arguing that it's unconstitutional as applied, for instance, that there's profiling or other constitutional violations that take place as Texas begins to enforce it. I mean, as you and Kim have been saying, this is not a law that's meant to be good policy. This is not an effort to prevent Texas from an invasion in its borders. This is political theatrics and political theatrics make for bad governance.

I think this is going to be one full of unintended consequences. And I'm reminded that after US versus Arizona, the case we talked about before, Alabama had a similar really bad immigration law that I challenged that following year. And while it was in effect briefly before we were successful in getting the worst parts of it, unconstitutionalized what happened was farmers in Alabama were not able to bring in the tomato crop that year because they didn't have workers to bring in the tomato crop.

And Alabama is a headcount state, which means that school funding is based on the number of kids that are in school on whatever day that is early in the school year where they count the number of kids. Well, that year, kids who had parents who didn't have

legal status stayed out of school because the state law also involved an effort to force kids to give up their parents status even if they were American citizens. Alabama gutted its school funding that year in some parts of the state by doing it, unintended consequences because it's bad policy. But this is a governor who simply is trying to make a political name for himself.

Jill: That is a horrifying prospect you've laid out. Kim, you mentioned and alluded to a foreign affairs complication of foreign governments having to deal with 50 different state laws. And in fact, Mexico has already responded to this particular statute of Texas, and they've said they are not going to accept anybody that is sent back. And the law actually says you don't have to even be from Mexico to be sent to Mexico just if you're here illegally, no matter what country you're from, that's where you're sent. And they've said, no way. And so how does that affect how the Supreme Court should rule on this?

Kim: I think it makes it even easier. I mean, of course it is completely unworkable, not just to have 50 different states having 50 different immigration policies, but for other states to understand what to do. I think I saw an interview where a Texas official was asked, well, what happens if the person is Canadian and they cross the boarder? What do you do? And they said, "We don't know." And I'm like, exactly. That's why you shouldn't be doing this. This is not how it works. There is no precedent for this. Nobody's going to know what they're doing. Can you imagine border agents having to deal with this? These are the people who they claim to support having to go through this ordeal of finding out if this person even crossed the border illegally. If they do or do not have a right to be here, where they're from.

What other policies might be involved if somebody who is Canadian, but who crossed the border, I mean, it's just nonsensical. All of this should be a reason why quick work is made of this. And let me be clear, I think in this case the Supreme Court will make quick work of this, but the whole point of it is it's going to take so long to get there. Although I should caveat that by saying they could have stopped it from going into effect, which they did, but then they didn't. And then the Fifth Circuit did, but then they didn't, and then they did again, that was a mess. And again, I just broke my rule of never predicting what the Supreme Court will do. So I'll go back on that, but I think that this is a lot easier case than any of the ones that we talked about today.

Jill: Yeah, not even easy. Well, maybe easier, but as easy as immunity, for example. I think immunity is a really clear one, but since you've raised this issue of the whiplash of it's on, it's off, it's on, it's off, it's off, it's on. Joyce, you are of course an expert in appellate matters. And so I want you to try to tell our listeners what they really need to know about the district court, the appellate court, the Supreme Court, the appellate court, where are we on this and what is going on with the whiplash effect?

Joyce: Nothing comes to the Supreme Court these days from the Fifth Circuit without being a mess. This is the same circuit where lots of bad things have come from. Can I just add to the point that Kim was just making? There is something I think interesting that goes on in here. When you're making these determinations, it's pretty easy to determine that someone who's really poor, who crossed the border or maybe a central American national to determine that you're going to use this law to sweep them up in your net. But the people that are most able to evade this are the people that the governor has said he is the most worried about. Terrorists, people who are part of sophisticated groups, those are the

people who may have a backstory that lets them avoid detection. And so I think that's a really good example of the reason that we need to let federal law be the determinant for where we focus our enforcement.

When you let a state do something like this, they can really mess up the incentives that are in place and let truly dangerous people slip through. And I think it's worth underlining that. I think I did that Jill, because I wanted to try to avoid answering your messy question about procedure, but I'll do my best. What happened here is that after the Fifth Circuit ruled that the law could remain in effect while the appeal was ongoing, they entered an administrative stay. DOJ went to the Supreme Court and said, "Hey, you got to stay this law. It shouldn't be in effect while we're litigating, whether it's constitutional or not." And the Supreme Court didn't do that. They let the law stay in effect, but they did this sort of weird thing where Justice Barrett wrote separately joined by Justice Kavanaugh, and as far as I can tell, what she said was, "Hey, Fifth Circuit, it's okay for now, but don't take too long to make up your minds."

So the Fifth Circuit sort of took her at her word, and later that night they actually said, "Well, we'll schedule argument not on the merits, but on this stay issue. We'll schedule that argument for tomorrow morning." And then later on they said, no, no, we take it back. The law can't stay into effect. So if you're confused about it, you really have, I think, a right to be. What happens next is we'll see if the Fifth Circuit and the Supreme Court will abide by the very clear prior case law or if they're going to let Texas become the driver for federal immigration policy.

And what worries me is that since both courts have been okay with letting the law go into effect, at least temporarily, it's giving me PTSD from what happened before the Supreme Court reverse Roe versus Wade, where they let the Texas vigilante, the abortion vigilante justice law stay in effect while they were taking a look at whether that law was constitutional. And at the point where that happened, I think that we all on this podcast said, uh, oh Roe versus Wade might be in danger. I have that same bad feeling here. So Kim, I hope that you're right. For once you're the one who's bringing me in off the ledge, but I'm pretty much on the ledge here.

Jill: And you're justified in that. And I think what you just said about SB-VII and SB-IV, maybe I was wrong to say, don't confuse the two. Maybe the two are the same. Maybe they're both predictors of bad future Supreme Court decisions.

Kim: I don't know if our listeners know this, but I love a good croissant, and that's why it's so great that this episode of #SistersInLaw is brought to you by Wild Grain because there's nothing quite like the smell of a fresh baked croissant in your own oven, and that's what you get with Wild Grain. I'd maybe do it a little too much. So what if I told you that you could get the experience of delicious home-baked bread right in your home, but with none of the time that's usually involved and none of the work? Well, you can from Wild Grain. Wild Grain is the first ever Bake from Frozen subscription box for sourdough breads, fresh pastas and artisanal pastries. Every item bakes from Frozen in 20 minutes or less, and no thawing is required. The team at Wild Grain just sent us a new box, and there's so much delicious stuff inside, let Joyce tell you all about it.

Joyce: So look, this is something that we are advertising for on this podcast that we have all become big believers in. The pastries taste amazing, and there is a great variety to choose

from. The only problem that I've really found is that in my house, at least once you pull them out of the oven, it's a free-for-all to see who can get to them first. But the color and flavor comes alive when they heat up in the oven. It only takes about 20 minutes. Right now for me, what I can't get enough of is the sourdough. Wild Grain is easy and it's delicious. It's the perfect combination. You'll want to try everything that they have to offer.

Jill: And you can, because now you can fully customize your Wild Grain box. You can choose any combination of breads, pastas, and pastries. And I'll tell you, it's really hard to pick what you want and not overorder because it's all so good. You can even build a box of only breads, only pastas or only pastries if you like. Plus, for a limited time, you can get \$30 off the first box plus, and this is the best of all free croissants in every box when you go to wildgrain.com/sisters to start your subscription. You heard me free croissants in every box and \$30 off your first box when you go to wildgrain.com/sisters. And if I didn't say it enough, let me tell you those croissants are amazing and then they puff up to the flakiest best smelling thing you've ever taken out of your oven. So look for the link in our show notes or just go to wildgrain.com/sisters.

Kim: I'm hungry.

Joyce: And now for something completely different. On Thursday, DOJ sued Apple alleging that iPhone's monopoly power violates antitrust statutes. DOJ is joined by 15 state attorneys general and district attorneys in the lawsuits, and it accuses Apple of harming consumers by limiting competition. Antitrust law can be a little bit obscure, but I'm going to read you the first paragraph of the complaint before we get started to give you a sense of what this case is about. This is DOJ's first allegation in the case.

They write, "In 2010, a top Apple executive emailed Apple's, then CEO, about an ad for the new Kindle eReader. The ad began with a woman who was using her iPhone to buy and read books on the Kindle app. She then switches to an Android smartphone and continues to read her books using the same Kindle app. The executive wrote to Jobs. One message that can't be missed is that it is easy to switch from iPhone to Android, not fun to watch. Jobs was clear in his response. Apple would force developers to use its payment system to lock in both developers and users on its platform. Over many years, Apple has repeatedly responded to competitive threats like this one by making it harder or more expensive for its users and developers to leave than by making it more attractive for them to stay." So that's I think a good sort of a segue into what this case is. But Kim, can you talk about the key allegations in the complaint?

Kim: Well, yes, and I can try to break them down in a way that makes it, I think, understandable to just about everybody who has an iPhone or has an iPhone user in their family. It basically is saying that Apple phones work best when they interact with other Apple phones. We know this to be true, but that is not by accident.

Joyce: Wait, why do we know that to be true, Kim?

Kim: Oh, I'm going to get to that.

Jill: You're picking on me. I know you are.

Kim: I'm going to get to that.

Joyce: This is personal,

Kim: But the reason that we know that to be true is because Apple, well, we do know that to be true, but the reason that that happened isn't accidental. It's because Apple purposely "blocks super apps" interfaces that make it easier for Apple to talk with Android phones or Google phones. It's possible they could get along really great, but Apple does stuff to make it hard, and that's what the Justice Department says, no, they cannot do. Apple also makes it harder for different types of devices to get along in the cloud, right? If you're streaming or if you're playing video games and everyone doesn't have an Apple device, it's a lot easier for them to do. Also not by accident. Apple does that on purpose.

Apple also makes it really annoying for people like me who have friends like Jill who use Androids and I have been giving a hard time to Jill and also another friend of mine who listens to this podcast, Shelly, I'm sorry, I'm apologizing to both of you publicly for giving you a hard time for having an Android and causing me to have a green bubble on my phone. It was not your fault. It's the fact that the company allegedly, that makes my phone is doing bad stuff and now Merrick Garland is going after them. So the complaint alleges that this creates a monopoly across web browsers, across video communications, not just when it comes to phone calls and texting. Even location services and advertising are affected by this according to the Justice Department. So it's a big deal, and I am really sorry, Jill.

Jill: Can I just say even though you're getting a green bubble, I'm getting the weirdest things that are totally incomprehensible and I know that I've missed out on the prelude so that I'm like, what are they talking about? I have no idea. I really don't.

Kim: That's because Apple wants you to buy an iPhone.

Jill: And I almost was going to give in except they're going to lose this case and I'm going to be right not to do it. It is very frustrating to me because of our communications between the four of us.

Kim: Yes, that is true.

Jill: Barb, I'm talking about you too.

Kim: Like photographs will be lost or somebody tries to send a video or a clip or something and it doesn't. It's weird for everybody. Weird stuff happens for me too, even though I have an iPhone.

Joyce: My needs are much more basic. I just like being able to have names for my text groups. I know that they both listen. I have one group of girlfriends that's called the Durkens, and another called the Valkyries. Hi y'all. And I love that we have names for our groups. You see the text pop up, but when it's us, it just has all of our names. And sometimes, as you say, Jill, because you're an Android user, you get discriminated against. So maybe Apple will actually take steps to fix this. I don't know what has their response been so far, Jill?

Jill: Well, first of all, I also have to add, I worked for Motorola and so iPhone was not something that I ever professionally would use, and that's part of the reason why I have chosen Android and been very happy with it for my needs except for getting weird phone numbers as opposed, I don't even get your names, I just get phone numbers and I have to look, oh, is that a Birmingham area code? Is that a Detroit area code? It's really crazy. Anyway, of course not surprisingly, Apple says, "We're innocent. These allegations are denied and the government is overreaching. They've gone way beyond what it is. We don't have to do anything to use anything from a developer or designs or policies that would hurt the experience for our users just to make it better for Android users."

And so they say that it hasn't developed a version of iMessage, which is of course the thing that is causing me distress and you guys distress. They haven't developed it to be compatible with non-iPhone devices because it wouldn't provide the same service and benefits as it does to its iPhone users. Well, it may not be the same as you guys get, but it would be better than nothing. So boo on them and I think they should do it.

Joyce: I think that that makes sense and we'll see more of a detailed defense from them as we get into the case. But Kim, is there a larger context for this case? It seemed like it hit sort of out of the blue. Is there a bigger picture we need to know about?

Kim: Yes, there is and it actually isn't out of the blue. If you recall, and I think we talked about it at the beginning of the Biden administration. Under Merrick Garland, the DOJ really beefed up its antitrust enforcement unit hired an antitrust czar. And one of the big points that it was looking at was social media and other tech companies that were using practices that in any other industry would be clearly seen as illegal antitrust violations. But somehow these social media companies and tech companies were getting away with it. So far though, the antitrust department has not been super successful. So there are a lot of cases pending right now against Meta and against other social media companies. But if you recall, there was a big suit against Microsoft that the DOJ lost and they also lost another suit against Booz Allen over some cybersecurity software.

So they haven't been batting awful well on these, but clearly it's still a priority I think of all of them. The Apple one seems pretty clear. I mean, if I can understand it, I may not have fully understood everything that Microsoft was doing, but I could totally understand everything that Apple was doing just by the fact that I was watching Merrick Garland's press conference on my iPhone and then I had to move to another room. So I just picked it right up on my iPad because they're connected to each other and I'm like, "Yep, see, this is what he's talking about right now I'm doing it." And it's tangible to people and I really honestly don't know how Apple's been getting away with it for this long because it's so clear that they do do this for the purpose of keeping that market share and trying to push people to make a decision that they probably may not have made otherwise. I have no idea if an iPhone is better than Android because I've just been using iPhones because Apple makes me do it.

Joyce: It's worth noting that it's not just in the US either that Apple's falling prey to regulators because they were hit with a \$2 billion fine by the European Union earlier this month for restricting competition for music streaming services in the App store. Of course, Apple said that it would appeal, but in some ways the Europeans have been ahead of the US in regulating all these sorts of online sorts of interfaces and I wonder if we won't see some

sort of a settlement forced on Apple, mostly because the Europeans are willing to be a little bit more aggressive than typically we have.

Although to your point, Kim, I think Merrick Garland, this is important to him. He's devoted a lot of resources to it and I think he brings the lawsuit because he's serious, which makes me wonder how this proceeds, and Jill, you're our corporate lawyer, as you pointed out, you spent some time with Motorola. You have a good understanding of what the pace looks like in a case like this. Should we expect progress on this? Will we wake up in a week or a month to an announcement that Apple has agreed to send no more? Or what does the timeline look like here?

Jill: I wish I had Kim's laugh because that's what I would be doing right now. But first of all, let me-

Joyce: That's a meme.

Jill: ... clarify that I was on the business side at Motorola. I never practiced law at Motorola, but I was in private practice and did represent corporations. And I also remember graduating from law school, one of my classmates was interviewing with a firm that had an antitrust case about peanut butter. And he decided he wasn't going to take the job because the person who was the partner on the case had started like 15 years earlier as a junior associate on the case, and he could not see spending the rest of his career litigating about the antitrust aspects and the definition of how much peanuts have to be in peanut butter to be called peanut butter. So I think what I'm saying here is it's going to be a long time before this gets going. My law firm Jenner & Block was involved in the AT&T case and it takes years. So this is not going to be something that we could expect to go to trial next year or the year after, maybe not even during the Biden administration four years from now. That's my hopeful thinking.

Joyce: And we thought the Trump litigation was on a slow track.

Jill: Exactly. It's going to take much longer than that.

Joyce: You know traditionally, I've loved Aura because it's great for protecting your credit cards. In fact, I woke up in the middle of the night one night last week to an alert that said that my credit card had been used at a downtown Birmingham strip club for a \$357 charge. I thought Bob Vance was going to die laughing. Still haven't figured out who did it, but Aura caught it. But Aura does more than just that. If you're worried about your kids being online with all the dangers lurking in the digital shadows, Aura is also for you. Securing your family's online experience is not just essential but urgent. That's why we teamed up with Aura. It's an all-in-one online safety solution built to shield your family for digital threats. Aura's parental controls are the protective force every parent needs to ensure their children's online safety.

Kim: Aura empowers parents to guard their kids from online predators, cyber bullying, harmful content, gaming addiction, mental health challenges and privacy issues. When Aura takes charge, your kids stay safe while navigating the digital landscape. There are features like content filtering and activity tracking in customizable time limits. Aura even empowers

you to regain control by setting daily time limits customized for specific apps or categories. You can pause the internet on your child's device with a click.

Jill: Aura even has a new game changing feature for the gaming enthusiasts in your household. You'll get real time cyber bullying alerts and 24/7 in-game voice and text monitoring for over 200 of the most popular PC games. More than 19 million kids face bullying in gaming world, Aura fights back by instantly notifying you if it detects any cyber bullying. It feels so much better knowing that Aura is protecting the digital spaces in your family's use of online sources. We know you'll feel great that you are using Aura to protect your children.

Kim: And for a limited time, Aura is offering our listeners an exclusive opportunity to explore the effectiveness of Aura's parental controls with a free 14-day trial. Dive into the world of online safety for your family by visiting [Aura.com/sisters](https://aura.com/sisters). That's [Aura.com/sisters](https://aura.com/sisters) to sign up for 14 day free trial and start protecting your family. That's A-U-R-A.com/sisters. Certain terms apply, so be sure to check the site for the details. And you can also find the link in our show notes.

Now is the time that really is our favorite part of the show and we can't wait to do it in person when we have live shows and ask questions from our audience. But luckily our listeners send us questions every week, and if you have a question, email us at sistersinlaw@politicon.com or tag us [@sistersinlaw](https://twitter.com/sistersinlaw) on threads. Or you can also just use [#sistersinlaw](https://twitter.com/sistersinlaw) on wherever you are texting, posting, x-ing. And if we don't get to your questions, keep an eye on your feeds because we often answer questions right there in response to you. So first let's go to a question, and I think I'm going to throw it to Joyce. It's from Fred. Fred asks, employee number five testified he was involved in moving boxes of documents from Mar-a-Lago to Bedminster, New Jersey over the intervening year. Why has Bedminster not been searched and why have no charges been filed in New Jersey? That's a great question, Joyce.

Joyce: It really is. And first off, I think it's important to say we don't know what he testified to in front of the grand jury because that's secret. But this gentleman, employee number five, Brian Butler, has recently been on both CNN and MSNBC and I actually had the opportunity when I was in New York earlier this week to be hanging out with Ari Melber on his show when he interviewed this fella. And a comment following his sort of creation for Ari of what he had testified to. And here's the problem, I think, Fred, we've talked about it in the past, but it's a really technical legal point. In order to get a search warrant, you not only have to show that the stuff you think is evidence or fruits of a crime was there, at some point, you have to show that it was there very recently.

With documents, you get a little bit more of a grace period from a judge than you do for drugs. The drugs, they really want to know that they were there in the past few days. With documents, he might get a matter of a couple of weeks. But the problem here is that by the time all of this comes to light and the government learns that it has gone on, it's been an extended period of time and there's no fresh probable cause that would let the government get a search warrant to search Bedminster.

Kim: All right. Our next question comes from Jackie, who asks, what is a directed verdict? Is there a chance Judge Cannon will issue one? Jill.

Jill: So the answer is yes, there is a chance, and we talked a little bit about that while we were discussing the Trump world cases in Florida. A directed verdict is where the judge directs the jury to acquit the defendant saying there just is no evidence that could possibly allow a reasonable jury to reach a conclusion that this defendant is guilty. That ends it, and it's not appealable, as Joyce was talking about earlier, double jeopardy attaches from the time the jury is sworn. So if a jury is instructed to acquit a defendant, that's the end, the government cannot appeal. And I think there is a chance that Judge Cannon is going to either say, the law is so flawed and there's no way that this can be a violation of any laws that have been alleged or that there is not sufficient evidence to justify this going to a conviction. That's what I worry about. And it's not appealable, even though it would be outrageous and wrong factually and legally.

Kim: Okay. And our final question on that cherry note, it comes from Jan who asks, imagine yourself in the shoes of one of our three liberal Supreme Court justices. Would you feel like you could make a difference? How? Or would you feel very disheartened? That's a great question, Jan. I think speaking for myself, I think both. I think it would be really hard at times to be on the court. I think about Justice Katanji Brown Jackson who came onto the court into a six-three ideological shift, but also in the midst of this whole hunt for the leaker of the Dobs, remember? The court was a mess. It was the court was just coming out of a pandemic. I just thought, oh my gosh, the high point of her career is surrounded by all of this absolute chaos and I know that must have been hard.

But it's still such an important job because even if you are in the minority, one thing that you can do is you still have just as much of a voice when you sit around the table and you deliberate a case after it's argued as every other justice, including the chief. And they have to hear you. You make your arguments. And one thing that you can do, even if you are in the minority, which I think we've seen this court evidence that this court has done is limit. If there is a decision that you're on the other side of, perhaps you can limit its breath or you can try to find some sort of consensus on a narrower outcome that would not be as bad as if the majority had its own way. And I think in that sense, it is really, really crucial to make your voice heard.

One way, and we don't have any evidence that this happens, but remember the case, the Voting Rights Act case Milligan, where we all thought, oh, the Voting Rights Act is going to be dead after this, where the conservatives have been waiting to destroy it. Well, somehow they not only did not disseminate what's left of the Voting Rights Act, they actually applied it. And what happened, this didn't turn up in the opinion which was written by the chief, but during oral arguments, Justice Jackson gave a brilliant discussion about the originalism of the 14th Amendment and how the Voting Rights Act was exactly the kind of law that the framers of that amendment, the writers of that amendment had in mind. And lo and behold, the Voting Rights Act survived that. So I'm going to give her credit for that, even if I don't have direct evidence that that's what she did.

Jill: There's another reason too, which is that oftentimes the dissents become majority opinions later on, and so that you can influence the future development of the law by writing a clear and convincing dissent.

Kim: Thank you for listening to #SistersInLaw with Joyce Vance, Jill Wine-Banks and me Kimberly Atkins-Stohr. New York Times best-selling author, Barb McQuade will be back next week and we can't wait to talk to her. We also can't wait for our live shows. We

will be in Chicago on May 2nd, in Detroit on May 9th and in Boston on May 30th. Everyone should go right now. Drop what you're doing, go to politicon.com/tour and get your tickets today. No, get them now, get them right this minute. Push pause, buy your tickets, and then come back and listen to the rest of the show in the Coda.

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Jill: I have a pin that says it's a picture of Stormy Daniels saying, "The only contractor that Trump ever paid." I have another one that says, "Elect Stormy Daniels. Put an even bigger boob in the White House."

Kim: Oh my God.

Joyce: That's awful.