

Joyce: Welcome back to #SistersInLaw with Barb McQuade, Jill Wine-Banks, and me, Joyce Vance. Kim is off this week, but she'll be back with us soon. If you're in Chicago, Detroit or Boston, make sure you grab tickets because we're taking the podcast on the road for live shows in May. And if you don't live in Chicago, Detroit or Boston, consider taking a road trip. We'll be in Chicago on May 2nd, Detroit on May 9th, and Boston on May 30th. Grab your tickets now while they're still available at [politicon.com/tour](http://politicon.com/tour). We are looking forward to seeing y'all in person, but before we get there, we have to get through all of the month of April, which I don't know about y'all, but for me it's spring and I've been actually doing a little bit of spring-cleaning.

I know everyone who knows me is shocked by that, but I cleaned out the washing machine and did that sort of cleaned out all the traps. Very unlike me. I've been planting stuff out in the yard, making food with some of the first fresh vegetables. Are you guys celebrating spring or is it too early?

Jill: Well, in Chicago, of course, it's too early. We've had a couple of days that are good. I have to say it would never occur to me to do spring house cleaning. That would be not even in my vocabulary, but I do think of spring gardening and I love gardening, and I've spent years building a sort of mostly perennial garden in shade because I have too many trees for it to be anything else. And I spent the good weather last week cutting down all the old hydrangeas and bamboo, amazing bamboo, which I made into bamboo steaks that I can use to hold up plants anywhere.

Barb: Bamboo steaks. That sounds delicious.

Joyce: Oh [inaudible 00:02:02]

Jill: Oh, that's a good one.

Joyce: My chickens eat our bamboo. It's really high in protein, and so they'll eat the fresh young leaves when I cut down fresh for steaks, I cut off the leaves for them and they really do eat them up, so they must be yummy, Barb.

Barb: Again with the steaks.

Joyce: What about you? What's spring like in Detroit?

Barb: Well, it's still a little chilly here, Joyce, but for me, spring is all about baseball. Yesterday was opening day for the Tigers, their one and 0, looks like we're on pace for an undefeated season after the one and 0 win.

Joyce: Yeah. No.

Barb: But I really love baseball. I love all sports, but baseball is the one that means the most to me. I think it goes way back to my childhood. My dad was a girl dad, and so baseball was something that we shared together. He taught me how to read the box scores in the newspaper and we watch games on TV together and we listened to games on the radio, and so there's much to love about baseball for me. It's not just a fun sport and I get

excited by the games, but it brings this, I don't know, warm, fuzzy feeling for me. So I really love baseball and I'm excited that the season is here.

In baseball, even a bad team wins a third of its games, and so it makes any game, anything is possible.

Joyce: I'm totally with you on that. I grew up at Chavez Ravine with my granddad watching the Dodgers play, learning how to keep score, and every spring I just get excited about baseball. My husband on the other hand is a football fan and he says watching baseball games is about as much fun as watching paint dry. I think he's dead wrong on that. And I'll be interested to see what our listeners take is on spring activities and baseball, in particular.

Hey, Barb. I have so many old family pictures I need to frame. Do you have a good suggestion for me?

Barb: Oh, do I ever. Framebridge is the answer. I have been using Framebridge for... you know what I really love? I've got all these national park posters from places we've gone on family vacations, and I've used Framebridge for that. Framebridge makes it fast, easy, and affordable to custom frame just about anything. They use only the highest quality materials and every one of a kind frame is handcrafted from their curated selection of frame styles. They even have design experts on hand to make it fun and easy to choose the perfect frame for your piece. They ship your finished frame directly to your house in days.

Jill: It is wonderful, and if you're like me and have an abundance of things to frame and to hang, if you're looking for a whole house look instead of a one-off frame, then you should go to Framebridge because they have a popular line of curated gallery walls in addition to just one-off frames. Each wall comes with a life-sized hanging guide to make installations simple, foolproof and fun.

You can upgrade an entire space in minutes when you order online at [Framebridge.com](https://www.framebridge.com). Here's how it works. Upload a digital photo for them to print out and frame, or you can mail in your art with the free secure prepaid packaging that they'll provide, then Framebridge custom frames your piece in their studio using the highest quality materials and ships it directly to your door for free.

Barb: And may I interject here and say Jill's home is a curated gallery. You see that red room on our promos and on MSNBC, that whole house is like a gallery with all kinds of pieces of art. So believe Jill when she says Framebridge is where it's at.

Joyce: If you're the type who likes to shop in person, Framebridge now has 21 retail stores in New York, Boston, Philadelphia, DC, Maryland, Virginia, Chicago, and Atlanta. When you visit a store, and I should point out by the way that when you come to see the #SistersInLaw live podcasts in Boston and in Chicago this May, you can stop into your local Framebridge store. When you visit, you get one-on-one expert design advice, and you see their collection of frame styles in action.

We love how Framebridge's pricing is fair and transparent. It's simply based on the size of your piece and they let you know exactly what you'll pay upfront. There's also a happiness guarantee, so if you're not 100% happy with your piece for any reason, they'll make it right.

Barb: Framebridge makes it easy and fun to give incredible personalized gifts that are perfect for someone you care about. Join the satisfied customers who framed more than 2 million pieces and counting. Visit [Framebridge.com](#) or a retail store to custom frame just about anything. Again, for the perfect frame for any piece, go to [Framebridge.com](#). You can find the link in our show notes.

Joyce: #Sisters-in-Law is going on tour in May. Get tickets at [politicon.com/tour](#). You can see us live at the Athenaeum Center in Chicago on May 2nd, the Royal Oak Music Theater in Detroit on May 9th, and the Shubert Theater in Boston on May 30th. Go to [politicon.com/tour](#) to get your tickets now.

Jill: Like the sands in an hourglass, so are the days of our life, and that now means Trump world is a daily continuing series. So I've picked three of the many things that happened in Trump world to talk about today, and the first is the Manhattan gag order. And so Barb, I'm going to start with you about the narrowness of the order and it was very narrow and I want you to talk about why it was so narrow.

Barb: Yeah. And the timing of this, Jill, is so good. I'm teaching criminal procedure this semester and we've just been talking with our students about pre-trial publicity and the various cases out there. And I think it's easy at a superficial level for someone like Donald Trump to say, "Any restriction on speech is a violation of my First Amendment rights." But of course, as the judge says in this order and is consistent with the case law, the judge has two duties.

One is to permit free speech, but the other is to prevent outside influences including extrajudicial speech from disturbing the integrity of a trial. And so that can happen in a lot of ways. Intimidation of witnesses, chilling of witness testimony, tainting a jury pool. And so you're right that the judge is trying to craft an order that's narrow enough to serve this purpose without being overly broad and impinging upon Donald Trump's rights to free speech, especially because he's a candidate for president and wants to be able to be to campaign.

And so the judge does enter a very narrow order here. I actually have it in my hand, and it says that the defendant is directed to refrain from making or directing others to make public statements about known or reasonably foreseeable witnesses concerning their potential participation in the investigation or this proceeding.

And what's interesting about that Jill is it would allow, say for example Donald Trump to talk about Mike Pence all day. Mike Pence is weak for not endorsing me. Mike Pence didn't have the courage to do what he was supposed to do, but if he starts talking about his role as a witness in this case, it would violate this.

There's also a protection in here against making statements about prospective jurors or actual jurors in the case, which I think is really important. The next one, the last one is

where I think it is so narrow that I worry about its enforceability, and this is about statements concerning the district attorney, the members of the court staff, the DA's staff, family members of counsel or staff members.

It excludes the judge himself and Alvin Bragg himself. But here's the kicker, if these statements are made with intent to materially interfere with or cause others to interfere with their work in this criminal case, I think it could be very difficult to demonstrate that level of intent. Right?

I mean if Donald Trump is just saying a bunch of crazy stuff on truth social, I think it might be so narrow that it could be almost impossible to enforce. And so maybe that's the best Alvin Bragg thought he could get. It is very similar to the order that was entered in the federal election interference case with this intent to interfere with the case. But I don't know. I mean other than coming out and saying it, I think a lot of the criticism could be difficult to prove that intent.

Joyce: You know, Barb, I think you're absolutely right. And the reason I think that this is still a smart way of phrasing the gag order is if the judge had written something broader, then Trump might've objected. Now the situation is that if Trump goes beyond the clear parameters of the gag order and the judge has to make it stronger, then Trump will have earned that and it won't be as objectionable. So I think this may have been a smart move. This judge looks very heads up. He has taken Trump's measure and figured him out.

Barb: Yes, I agree with that.

Joyce: I think that's a possibility here.

Barb: Interesting. So it's sort of like progressive discipline, right? I'm going to start low, but as you earn it's going to get higher.

Joyce: Yeah. I think that's right.

Barb: Interesting. Yeah.

Jill: Yeah. I also want to point out it excludes not only the judge, but it excludes his daughter who was the subject of some vitriol from Trump. And so he was being really cautious in avoiding an appeal that would've delayed anything in this case.

Barb: Yes.

Jill: So I think he was smart, but it is really narrow. Another question for you, Joyce. There was commentary from a sitting federal judge, Reggie Walton from the District of Columbia. He's a senior judge and he was on CNN talking about this order and the danger to judges and the need for security. And at first I responded as, "Oh, my god. How can a judge go public on something like this?" But I've checked with my friends who are judges who say, "Yeah. The rules allow it and he stayed within the parameters."

What do you think about the ethics of a judge from a different district, from even a different jurisdiction, it's federal versus state, commenting on a decision by a judge?

Joyce: Yeah. So I actually met Judge Walton a long time ago. I was on a California junket for prosecutors and judges back when I was the appellate chief in my office. And we went to visit a federal prison in California, FCI Terminal Island.

Jill: I love Joyce's definition of a junket.

Joyce: A junket.

Barb: Yes.

Joyce: We call those sometimes boondoggles, but I actually-

Jill: Boondoggle in prison or prison boondoggle.

Joyce: ... it was a punishment trip. My US attorney didn't want to go and I think I had done something. I was on her bad side. So she sent me off to California where I met Judge Walton. We sat next to each other on the bus and I doubt that he would remember me. I mean this is like 10 or 15 years ago, but we had a really fascinating conversation about prisons and criminal justice reform and it was really sort of the origin of my thinking about criminal justice reform.

I've always been grateful to him and I was very impressed by him at the time. He was thoughtful, he was clearly someone who engaged with ethical issues. He was very forthright. He said what he was thinking and he wasn't apologetic. He's a Bush appointee. So he was probably fairly new at that point in time.

And I've followed his career ever since I met him because he was an important influence on me in the way he made me start to think about the criminal justice system. So I say that to say that perhaps I'm biased or inclined to lean in his favor, but I suspect it took an awful lot for him to decide to give this very unusual interview. As Jill says, he crosses no lines in it. He didn't talk about, for instance, specific criminal cases. He gave his views about the rule of law and I think what was a very appropriate way, and he's a senior status judge, he's likely close to retirement.

So I think he decided to take the burden on himself of standing up for the judiciary. We've seen Supreme Court justices give public talks where they've come far closer to crossing the line. I'm thinking about Sam Alito in Rome. Was it last summer or the summer before they all blend together?

This was a concerned judge doing the right thing in a moment where no one seems to be willing to speak out because, look, there is a real risk to the judge and to his family. We have seen Trump supporters attack judges before. Judge Esther Salas's son, Daniel, was murdered by someone who left quite a paper trail of his pro-Trump support. And Trump can't say, "Well, I'm not responsible for my followers." Because at this point he knows that when he puts a target on someone's back, he is animating the fringes of his base to take action, sometimes violent action.

For him to continue to do it and for no one in the Republican Party to speak out is reprehensible. So I think we should all stand up and applaud Judge Walton for his willingness to stand up for the rule of law here.

Jill: I agree with you. And he did mention a friend of mine, Judge Lefkow, whose husband and mother were murdered by an unhappy litigant. The target was her, but she didn't happen to be at home when he broke in. And so she has publicly testified before Congress about the need for security. And I think that Judge Walton was amplifying that message. And of course that message shouldn't be necessary and Trump is responsible for the foreseeable consequences of what he says for reasonable interpretations of his conduct, of his words.

So I think it's really important that we think about the consequences of this. And Barb, you mentioned the First Amendment, but there's another First Amendment argument going on and that was in Georgia. So let's move to Georgia from New York.

And the Georgia hearing this week was about dismissing the whole case because everything that he is charged with in the Georgia case Trump is saying is protected by the First Amendment. And so let's talk about that. It's not First Amendment when it's used as an instrument of a crime, as the indictment alleges here. So what did both sides argue Barb and who had the better argument?

Barb: Yeah. If our viewers or our listeners could see me, you could see that my arms are firmly folded across my chest here. Just like, "Come on." I think this is the kind of argument that has superficial appeal. What the defense argued is, "This is core political speech. It's about an election. Of course it's protected First Amendment speech."

And I think if you look literally at the language of the First Amendment, it says, "Congress shall make no law infringing the right of free speech." But of course, we have to look at 250 years of interpretation of how that's been applied. And like all fundamental rights, speech may be limited when there is a compelling governmental reason and the limitation is narrowly tailored to achieve that reason.

And so one those reasons is there are a lot of crimes that can be committed only through speech. So communicating a threat is a crime. Committing conspiracy requires speaking and say, "Hey, you guys want to rob a bank?" Fraud usually requires speech. And so the mere fact that speech is part of it does not thereby immunize it from criminal prosecution. The argument that the prosecution made was that speech is being used here as an instrument of a crime. And when that's the case, there is not First Amendment protection against it.

So I think this is a very strong argument in favor of the prosecution. I think this goes nowhere, but I do think this one is filed as much for political talking points in the court of public opinion as it is for the court of law. I think this is, even the defense has to know this is a very long shot type of defense, but it gives them something to talk about when they say, "Oh, this is all a violation of Donald Trump's First Amendment rights and this judge is rigged against him. Look at this. What an outrage, because the First Amendment protects your right to free speech.

And I think for people who are not familiar with the First Amendment, maybe that has some superficial appeal, but it has zero weight I think with this judge.

Jill: Yeah, I think we all probably agree with that. But let me ask you Joyce about a more technical question because a lot of the argument focused on ripeness, not on the merits of the First Amendment argument. And of course last week we talked about standing in the Mifepristone case. And so talk about ripeness in this context and why that becomes an issue.

Joyce: Yeah. There was an enormous amount of back and forth during the argument on this issue. Can you decide the First Amendment question now or do you have to wait until some later point maybe during trial where more of the evidence has come in and you can assess whether or not Donald Trump's First Amendment rights are being violated? And look, the argument is bunk. I think Barb is being overly generous when she suggests that this is a issue that even the defense knows probably isn't meritorious.

It absolutely is not meritorious. It is abundantly clear. For instance, that if I walk into a bank and say, "Stick them up." That can go into the indictment. That can be-

Barb: First amendment.

Joyce: ... part of the [inaudible 00:20:09].

Barb: Come on. Free speech. What are you a fascist?

Joyce: If you commit a crime using words, then there's no First Amendment violation. And that's precisely what's going on in this setting. So I think Trump is making noise here. I think Barb is right when she says he wants to make the political argument. I'm not critical of the prosecution, but I was a little bit disappointed to see them give it so much oxygen. I thought that they should have really cut it off very quickly and taken the judge's temperature on whether he was willing to entertain it before they gave it the level of, I don't want to say credibility, but before they really argued it seriously. It's not a serious argument and it shouldn't be treated like one.

Jill: Right. But in fairness, Trump's lawyer Sadow did say to the judge, "Before we get to the merits, let's talk about ripeness because if you decide that it can't be argued now, there's no point in making the arguments on the merits." And McAfee sort of let him go ahead and said... But eventually it got to the question of were they attempting to rewrite the indictment? Because in order to make the argument, they have to accept everything that's alleged in the indictment.

And they were sort of like, "Well, everything except allegations about willfulness and knowingly making false statements." And they were arguing falseness alone is not enough. And of course it isn't because we're saying now it has to be in furtherance of a criminal conspiracy. So what do you all think about that issue and whether willfulness is already, it's alleged and must be accepted, and so it isn't ripe and it isn't a violation of the First Amendment?

Joyce: Look, Steve is a good criminal defense lawyer. He's been doing this for decades and he knows that he can argue in the alternative up to a certain point. That's what he's trying to do here. He's trying to say, "Well, it was First Amendment." But at a bare minimum it has some sort of an impact on whether he had intent. That's really what he's driving at here. If this case gets in front of a jury, he'll say, "He was just exercising his political rights, this wasn't a crime, and you can't show willfulness."

So it all gets a little bit muddy in front of a jury. And that I think is why we're seeing him pursue these different lines of argument. He's maybe not arguing exclusively to a client of one at this point, but these are arguments that Donald Trump wants his lawyer to be advancing on his behalf if for no other reason than Trump can turn them around and make them in the political arena.

Barb: Yeah. I don't want the jury involved in making a decision as to whether somebody's First Amendment rights were violated, right? That's a legal question. And that risks confusion of the issues if Donald Trump is arguing to the jury that this is a violation of my First Amendment rights, because as we said, it has a little bit of superficial appeal. And for lay jurors who don't know the law, you don't want them making that decision. You want a judge making this decision.

Joyce: So that I think is such a good point. And we will see the government demand that ruling and file a motion in limine excluding Trump from making the legal argument because insider pro-tip on prosecutions, judges decide legal issues, juries decide issues of fact. So smart prosecutors file motions in limine before trial to prevent litigants from trying to re-up legal issues that they've already lost on in front of the judge, prevent them from re-upping those in front of a jury for exactly the reasons Barb says.

Jill: That's a great point, Joyce. And we're going to have to wait because the judge did not rule yet. So that's pending. And now let's go back to New York. We are going cross country multiple times. The bond in the civil fraud case was reduced from 454 to 175 million and some of the other restrictions on Donald Trump doing business in New York and with New York Chartered banks were lifted. And Barb, what was the basis for doing this, and is this a win for Donald Trump and is it fair?

Barb: The court didn't really explain why it was doing it, and so I think it is a win for Donald Trump. Remember, he tried to kind of negotiate out from under this 400 plus million dollars bond to down to 100, "How about 100 hundred million? Will you take 100 million?" And the prosecutor and the court said, "No. What are you talking about? It's the full amount." Because when you think about the reason behind the rule, the idea is you can appeal, which will delay the final judgment in this case, and that's fine, but right now we're going to presume regularity, and that means that the taxpayers of New York should be getting this judgment.

And if you're going to delay that while you appeal, that's fine, but we want to make sure that in the meantime that those assets are not dissipated so that if you lose on appeal, we can't say, "Oh, you know what? Sorry. I don't have the money anymore. I spend it on other things." And so there is a goal of putting up a bond so that if and when you lose your appeal, you can make good on the judgment that the Attorney General and the taxpayers in this case are entitled to. So that's the idea.



And if you only put up a quarter of it, it doesn't really serve the purpose. Right? If after the appeal comes back and the prosecution wins and the defense has dissipated three quarters of his assets, it doesn't do the prosecution much good. So that's the idea behind it. But I suppose one reason is just the sheer amount of it. It was over \$400 million, which is an awful lot of money. I suppose they wanted to save him from the fate of having to sell off real property and having a fire sale. He did represent that he had reached out to 30 different bond companies that had all refused to deal with him.

And I suppose there's even the possibility that the court thinks that ultimately the penalty is too high and maybe reduced. And so rather than make him put up a bond for the full amount, 175 million was sufficient, but I don't think it's right. I think this was a windfall for Donald Trump. I think this was a success for him, and it's the rich get richer.

There is an example of a bigger bond in the Texaco versus Pennzoil case of the 1980s of \$10 billion, and the court said it was improper to bring... It's a slightly different posture in that case where a federal injunction was sought to prevent the payment of the bond and the Supreme Court held that was inappropriate. So it's a big bond. It's not the biggest ever. And so I do think this was kind of a boondoggle for Donald Trump, not quite like when Joyce got to go to prison, but kind of close.

Jill: Right. So Joyce, let's move to the protection the state needs in order to collect on the judgment that it has been awarded. And Barb's right, it could be lowered, but right now the amount was already set and we don't know what the amount will ultimately be. But they need protection and without the full amount being bonded, is Barbara Jones who is the monitor enough to protect against him divesting some of his properties or not depositing his new income from Truth Social revenue into his account so that it could be used to pay the judgment? What do you think? Are we looking at Barbara Jones rather than a bond?

Joyce: Yeah. I mean I think these are really interesting questions, Jill. I had not really thought about whether the court viewed Barbara Jones as the surety in essence with a lower bond amount for the reason that Barb pointed out, because the court didn't write an opinion, they didn't tell us why they took this unusual step of lowering the bond.

The state folks had argued that the court did not have the discretion to lower the bond amount. That's a pretty good reading of New York law. So this is a little bit of a mystery, and I think you may have solved it. I mean it's unusual. Trump has a lot of real estate. So even without a formal bond, there's some reason to believe that if the judgment is affirmed on appeal for this full amount, that there would be a mechanism for the state to collect. But the question is how long does it take them to collect if they have to force fire sales a couple years down the road and how much trouble is it for them?

And that's why we have appellate bonds. That's why legislatures pass this requirement to make it relatively easy for a litigant who has lost a case to pay up without indulging in unnecessary delay, which seems to be Trump's MO all the way along. But Barbara Jones, one thing that this court did do when it lowered the bond amount was it made it clear that she was to stay in place and the judge had already expanded her powers. So I think what she'll do is she'll make sure that Trump doesn't siphon off or engage in any fraudulent conveyances or transfers of resources that would defeat the state of New York's ability to collect its judgment down the road.

Jill: And I completely trust Judge Jones to be on top of all this. Let me just ask both of you to comment on one other thing, which is Trump is saying, "I can't post this bond." But then he out and says, "But I have \$5 billion in cash." And then, of course, that was before he collected like 4 billion more from the sale of Truth Social stock. So is there any reason why a court would lower the bond in the face of him saying, "I have \$5 billion, but I want to use it for my campaign." Even though he's never used a penny of his own money for his campaign. And then finding out that he got 4.6 billion, which will ultimately, in my opinion, implode to be worthless, but right now it's worth something. So what do you think about the lowering in light of his statements?

Barb: One thing that Letitia James could have asked for I think is a creditor's exam. That's where a person is put under oath and asked about their assets and where they are. Because when Trump's spouting off on social media or something, it's hard to know whether he's being truthful. I suppose even if he's under oath, it's a little harder, but that's where you say, "Where are your assets? We want to know where everything is so that we can go after them," or at least attach them. Put some sort of security interest on them.

And so I thought that would be the ultimate resolution is that either the court or the Attorney General's Office would just file some security interest on some of Trump's assets so that he couldn't dissipate them rather than actually collecting them. That would preserve everybody's interest. So I don't know, Jill, and with regard to this stock purchase merger, I think he doesn't get any of the money for six months, but I suppose someone could lend him money on the basis that he's going to get that in six months, but I think it's just a little speculative in terms of what that's going to be worth six months from now.

Joyce: Sounds like an opportunity for someone to make a campaign contribution to candidate Trump.

Jill: And the six month can be waived, so he could actually get it right now. But yeah, I think we're going to have to wait on that too. So I'm sure there'll be another episode of the Days of Our Lives with Donald Trump.

Joyce: Nicely played, Jill.

Jill: Yes. Well, I want our listeners to know that if they could see me, I'm wearing an hourglass pin.

Joyce: It's the end of the week and I've been gardening. I'm looking at my hands thinking I could really use a manicure, but I just don't have time to get out. And that means Olive and June is just perfect for me. It's great when I can give myself the perfect home manicure with Olive and June salon grade tools. Their mani system has everything I need and that you'll need for a DIY salon quality manicure in one box. You can customize it with your choice of six polishes, and we love how their polish doesn't chip. You can expect it to last seven days or more. Plus you get a fantastic savings because it breaks down to just \$2 a manicure.

Jill: Not only is the price amazing, but I have a funny story. My father, who was the most masculine person I know felt as a CPA that his clients deserved clean well-manicured nails, and so it was really him who inspired me to really care about weekly manicures.

And Olive and June provides a mani system that I can count on for salon-worthy nails. It's so convenient and relaxing to do at home.

You definitely won't miss scheduling appointments or traveling to a pricey salon. It's great knowing you'll be looking your best while saving time and money. My friends, family and sisters are always so impressed. Once you try it, you'll never go back to using anything else. I just wish my sisters were in the same city where we'd all be having Olive & June manis all night long.

Joyce: The thing that I'm really into these days is the quick dry polishes. I just don't have an hour to sit around and let my nails dry when I'm done and Olive & June's quick dry polishes only take about a minute to dry and you can feel confident knowing that even with quick dry, your mani will last for five or more days and you only need to put on one or two coats. The colors are beautiful and we love having 40-plus cruelty-free and vegan polishes to choose from.

Olive and June also has amazing looking press-ons that go on quickly, look real and last a long time. I mean I never thought that I would be a press-on person until I tried them with Olive and June. The press-ons come in a lot of different sizes so you can get the perfect fit and you can get a non-damaging mani in less than 10 minutes for only \$10 a set. It's no surprise that they're an Allure best of beauty winner.

Barb: They have so many amazing products. You need to try them out for yourself. Visit [oliveandjune.com/SIL](http://oliveandjune.com/SIL) for 20% off your first system. That's O-L-I-V-E-A-N-D-J-U-N-E.com/SIL for 20% off your first system. You can also find the link in our show notes.

Joyce: On Tuesday, the Supreme Court heard oral argument in the Mifepristone case, a case out of the Fifth Circuit that raises concerns the Supreme Court might ultimately end or seriously limit access to medication abortion. So let's dive right in.

Barb, this case has had a sort of tortured procedural history from when it was first filed in Amarillo, Texas. So the plaintiffs got to pick their judge. They chose anti-abortion, Trump appointee, Matthew Kacsmaryk, because this is one of those one judge divisions that we've heard a lot about lately. But before we get to that issue, let's talk about the procedural posture of this case and what the issue in front of the Supreme Court was for this round. This is not its first go-round in front of the Supreme Court.

Barb: Yeah. So this case went up from Judge Kacsmaryk, who is the district court judge to the Fifth Circuit Court of Appeals who kind of curtailed the decision of Judge Kacsmaryk and focused only on the FDA's rule, not making Mifepristone available generally, but making it available more broadly based on a decision it had made later after the FDA approved the drug, making it available by mail and without a doctor being present.

Joyce: So Jill, as Barb was saying, this wasn't the final decision on the merits of the case. There hasn't been a trial yet. We're still sort of in the early procedural fight, and a lot of the focus in this argument was on standing. You asked me about standing a minute ago. Now it's my turn to ask you. Talk with us a little bit about what it means in this case and why it's important and explain the positions both sides took in the argument?

Jill: Well, let me start with the fundamental, which is that our courts do not issue advisory opinions. They decide actual disputes between people with a real problem with what's going on. And the question here is, are the plaintiffs here at all impacted by this? They are not doctors who prescribe Mifepristone. They do not perform abortions. They basically have religious objections to it as a moral standard, not anything to do with their being involved.

And so the court could avoid a decision on this by saying, "They aren't the proper plaintiffs. They don't have an issue or an interest in the outcome of this case." And the argument really surprisingly did almost entirely focus on whether these were the right plaintiffs. Did they have standing to bring this case? And I think it's clear that they do not.

And when pushed, Senator Hawley's wife who was arguing for the anti-abortion groups really couldn't come up with a particular plaintiff who had a particular standing in this case. So I think that that may be where they go, and obviously that was the Solicitor General Prelogar's position as well, is that they don't have standing, and if they don't, then you don't get to the merits. And so that's the end of the case until it comes back in another form.

Joyce: We had talked about that when this case first sort of arose out of Texas. We were scratching our heads wondering, "Who the heck had standing in this case?" So it was gratifying in some sense to see that become the primary focus of the argument for I thought most of the justices. In fact, I thought it looked to me like standing would be the deciding issue in the case and it would go out on that basis. But Sam Alito, Clarence Thomas, an entire faction of this court that has never let legal doctrine stand in the way of eroding women's rights to abortion and medication abortion accounts for more than half of the abortions that take place in this country.

So do you really expect that this court will take the standing pass or do you think that they'll find some way of letting this case move forward in front of the district court so we can lose more of our rights? Am I being unduly cynical here? I mean Kim's not around, I'm on the ledge by myself. Talk me off of it. What do you think, Barb?

Barb: I don't know. This case was procedural, I suppose. They did seem to focus a lot on standing. I think I get the vibe that the court here is going to reject this challenge on the basis of standing. Of course, that means that there could be some other challenge that comes along later. But I don't know. Abortion has been kind of a loser of a political issue for the right. And so the courts, I suppose, are the place where these challenges are going to stay, especially when you can stack the deck and find a judge that might be favorable to you. But I'm feeling a little more optimistic after the oral argument in this case.

Joyce: Wow. Jill, do you agree?

Jill: No.

Joyce: Oh, I'm back out on the ledge with Jill apparently.

Jill: Yeah. I would say a couple things. One is I think they will avoid a pre-election hit in the head to themselves and to the Republican Party.

Joyce: Wait. Are you suggesting that the court is a political body?

Jill: Yes. These days it is and you can't trust them. But first of all, they obviously want to protect their own reputation, and right now it couldn't be lower. And so for them to do this on the merits. And right now as Barb correctly pointed out, the merits is really only a question of the amendments to the availability about whether you could have it by telemedicine, whether you had to be in a doctor's office, which were amendments to its availability, not to the basic fundamental, did they make the right scientific decision 20 years ago when they approved the drug? But they can avoid doing even the merits by saying there's no standing.

But my big fear is that if they do that, they're just waiting for after the election and another plaintiff, someone who actually has, and although I'm having trouble figuring out who would, because it is such a safe drug. It's hard to think of a proper plaintiff. But they'll wait for another plaintiff or they will use the same sort of things to ban birth control. There was also, let's not forget in this argument, the court has sort of referred to the Comstock Act, which is from the 1800s and which banned a lot of stuff before women had the right to vote. And there's some talk, at least among some of the most conservative of the justices that maybe that could be used to bar more stuff, including certainly birth control and Mifepristone being mailed anywhere.

Joyce: Well, Barb, the reason that we're in this position in the first place is where we started out. This case happened as a result of judge shopping. This was a judge who actually... I want to be careful about how I say this, lied on his judicial questionnaire form when he was going through the confirmation process because that questionnaire calls for you to disclose everything that you have ever written and published. And knowing that he was about to go through the confirmation process, this judge had his name removed from a piece that he was authored that was anti-LGBTQ and anti-abortion rights, had other names of people at the conservative Republican think tank that he was at, had their name substituted for his.

He was a known quantity in conservative circles, and so they very deliberately chose him because he's the only judge that you can get in Amarillo. There's been a lot of talk about putting an end to judge shopping and there are some measures that have been proposed. Do you think that they would've helped in this case? And do you think they have a chance of ending up as the law?

Barb: Yes and yes. I'm encouraged as a result of this case and some others. We've seen a rule announced by the Judicial Conference of the United States. That is a group that makes administrative policy for the judiciary in the federal system. It's chaired by a judge I know, Jeffrey Sutton. He is a Republican-appointed judge on the Sixth Circuit Court of Appeals.

So it suggests that there is consensus among judges regardless of the president who appointed them. And the new rule is that when you've got one of these single-judge divisions, if the case implicates either a statewide or a nationwide injunction, then those cases have to be randomly assigned within the entire district. So to think about the way

districts are divided up, you've got usually a headquarters city. So I'll use Detroit as an example that I'm familiar with.

Detroit is the headquarters city, most of the judges are in Detroit, but in addition, there are satellite courts in Ann Arbor, Port Huron and Bay City and Flint. And so cases could end up in any of those places as well. If you file the case in Bay City, Michigan, it is guaranteed that the case will be assigned to one particular judge who was appointed by a Republican president. And so sometimes people file there because they want that judge.

What this rule would do is say, "No. No. No. If it does have the possibility of a statewide injunction or a nationwide injunction, that case goes on the docket and could be assigned to any of the judges in that whole district and there's 20 some." So you might have to travel to Detroit even though you want to be in Bay City, which is a couple hours away, but them's the breaks. That's the way we're going to do it and that will help avoid judge shopping.

Jill: But not ticket shopping for the Detroit show on May 9th.

Barb: Product placement. Joyce, you seem so, I don't know zen today. What's your secret?

Joyce: I'm always pretty zen because I use calm.com. It can feel like plans, worries, and to-do lists are never ending these days. And if you ever feel like your brain is constantly racing on overdrive, Calm can give your mind a break from the noise. Calm softens anxiety symptoms in the moment and helps you handle day-to-day stressors. That's why Calm is the number one app for sleep and for meditation, giving you the power to calm your mind and change your life.

Calm recognizes that everyone faces unique challenges in their daily lives, that mental health needs differ from person to person and that time for meditation may vary. Since self-practices are deeply personal, Calm strives to provide content that caters to your preferences and needs.

Barb: Calm can help you dedicate just a few minutes each day to reduce stress, improve your focus, and increase your overall well-being. There's something for everyone. Their meditations cover reducing anxiety and stress, relaxation and focus, building healthy habits and taking care of your physical well-being. They even have sleep stories with hundreds of titles to choose from, including sleep meditations and calming music that will have you drifting off to dreamland quickly and naturally.

We also love their expert-led talks on topics such as overcoming stress and anxiety, handling grief, improving self-esteem, caring for relationships and more. I really like their guided meditations and walks. I'm not one for controlled breathing because that always gets me more anxious than not, but I do like the ones that just help you focus on the moment instead of having your mind racing to all the things you need to do today.

Jill: So I agree with you about some of what you're saying, but I do love the practice breathing. Four minutes of that and my blood pressure goes down right away. It's really helpful. And the Calm app puts the tools you need to feel better in your back pocket. If you go to [calm.com/sisters](https://calm.com/sisters), you'll get a special offer of 40% off a Calm premium

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Barb: Calm.com that's like the rural juror, it's not easy to say. Well, two of Donald Trump's lawyers involved in the January 6th plot faced disbarment proceedings this week. On Wednesday, a California judge recommended the disbarment of John Eastman, the lawyer pushing the fake electors scheme. And on the very same day, meanwhile in Washington DC, former DOJ attorney, Jeffrey Clark, was in the midst of his own disbarment proceedings. So let's define our terms here, Joyce. First, what does it mean to be disbarred?

Joyce: Yeah. So the dictionary definition is pretty good here. It means to expel a lawyer from the bar so that they no longer have the right to practice law. And I would add to that, when you're disbarred, your license is revoked. It's the most extreme sanction except for perhaps criminal charges that a lawyer can face for misconduct. The procedure is conducted not by a national licensing authority, but by each state bar as lawyers were licensed by states that were admitted to practice in. And so each state conducts these proceedings, lots of time and due process involved. It is not something that happens every day. When you see a lawyer being disbarred, you know that they have sinned grievously.

Barb: Yeah. I agree with that. It's not a little thing, right? Now does it have to be a crime? What else could constitute a grievance that could lead to disbarment?

Joyce: The biggest one is when you commingle client funds, right? I mean that's always the big one. Sometimes you see lawyers with substance abuse problems who have been given several chances to get treatment and to be better lawyers, but when their personal situation is impacting the representation they provide for their clients, progressive discipline can be used to disbar them.

Barb: And so as lawyers, we are all bound by these ethical rules. There are model rules of professional conduct. We have Michigan Rules of Professional Conduct. There are ABA rules of professional conduct. And so every state has their own rules, but they're all very similar and they're all tied into these ABA model rules about not having conflicts of interest, duty of candor to your client. As Joyce just said, co-mingling of funds, but certainly criminal behavior is also frowned upon. Lawyers are considered officers of the court and so all of those things could result in disbarment. So Jill, let's talk about the Eastman case.

Jill: Let me just first add, candor to the court is also one of the things that will get you disbarred.

Barb: Absolutely.

Jill: If you are found to have lied to the court or misrepresented to the court.

Barb: Candor to the tribunal, I believe, they often refer to that.

Jill: Yes.

Barb: Let me ask you first about the Eastman case. I'll ask Joyce about the Clark case. So the Eastman case, the judge issues this 128-page order. It's pretty scathing. And I noticed the judge even compared John Eastman to a Nixon lawyer, Segretti. Can you explain the judge's decision here to disbar John Eastman and maybe even tell us a little bit about that Nixon comparison?

Jill: Absolutely. I read the whole 128 pages and it is remarkable in its analysis of allegations and defense and basically finding no credibility to anything that Eastman or his witnesses said in his defense. And lack of candor to the court was definitely one of the charges among many against him. But she did find there was one where the state or the Bar Association hadn't proved that he knowingly made the false statements. And so it led him off on one count, but there were all these others, so it didn't matter.

And it's not until page 125 that you get to Donald Segretti. So for someone like me who was looking for that, I had to go through the whole thing to get there. Donald Segretti was the head of the Plumbers unit for Richard Nixon. And the Plumbers unit was formed to plug leaks because that was one of Nixon's really big issues was he couldn't stand if anything about White House policy or activities leaked. It was those Plumbers who broke into the Watergate offices of the DNC and led to the Watergate scandal.

So Segretti was part of that, and he was like, at least more than a dozen lawyers were involved in the Watergate scandal. He was actually only suspended. And I think the reason he was mentioned was to contrast his behavior and to say that specifically the scale and egregiousness of Eastman's unethical actions far surpasses the misconduct at issue in Segretti, unlike Segretti, whose offenses occurred outside his role as an attorney, because he was acting in this role of leading the plumbers, Eastman's wrongdoing was committed directly in the course and scope of his representation of President Trump and the Trump campaign.

This is an important factor as it constitutes a fundamental breach of an attorney's core ethical duties, exactly what you were just referring to. And then additionally, while the Segretti court found compelling mitigation based on his expressed remorse and recognition of his wrongdoing, no such mitigating factor is present with Eastman. To the contrary, Eastman has exhibited an unwillingness to acknowledge any ethical lapses regarding his actions, demonstrating an apparent inability to accept responsibility.

And then it goes on to say, because of his behavior, there's a heightened risk of future misconduct and the purpose of disbarment is to protect the public and uphold public confidence in the legal system. And that's why they recommend that he be disbarred as opposed to the suspension. And Segretti, by the way, went on to get readmitted and to practice law. So disbarment is forever pretty much as opposed to a suspension which is always temporary. They also awarded monetary damages in addition to the disbarment because of his behavior. So that's why Segretti got mentioned.



Barb: All roads lead to Watergate, Jill. Always the Watergate reference.

Jill: They do. They do.

Barb: Well, Joyce, let me turn to Clark. At the same time that this decision was coming down on Wednesday, Jeffrey Clark was on the witness stand in his attorney discipline hearing for his role in what happened on January 6th and leading up to it. He was at the Justice Department as the Assistant Attorney General for the Environmental Natural Resources Division, and was also the Acting Associate, I think, Attorney General at the time, or was he Acting Civil?

Joyce: Yes. For civil.

Jill: He was civil.

Barb: Acting Civil, okay. Acting Attorney general for Civil. So he's there and he invokes his Fifth Amendment right against self-incrimination. What's the purpose of invoking there? There's no criminal consequence for a disbarment proceeding. And what's the impact of invoking the Fifth Amendment in a disbarment proceeding?

Joyce: Yeah. This guy is such a loser. As bad as John Eastman is, it's Jeffrey Clark willing to tarnish the Justice Department to get advance in his life-

Barb: Special place in his life who-

Joyce: Yeah. Absolutely. So look, I spent actually a few years on our disciplinary action committee here, and as a practical matter, when a lawyer has to invoke the Fifth Amendment in this setting, you know that they've done something really, really awful. Right? I mean the practical impact I think is what I take away the most in this setting. Clark has been indicted in Georgia. He doesn't want to give testimony in another body that could be used against him. There are a lot of questions he doesn't want to have to answer, but there is plenty of evidence in the public record that means he should be disbarred even before that trial takes place.

And Barb, I got to ask you a question. I mean can we talk just a minute about how horrible it is that he was asked who his client was and he said, "Donald Trump."

Barb: Yeah.

Joyce: I spent 25 years at DOJ and the huge honor was standing up in the courtroom and then saying, "May it please the court. I represent the people of the United States of America." I never represented any president. What's up with Jeff Clark?

Barb: No. It's so telling, isn't it?

Jill: Well, it's also so wrong. It is completely wrong because all roads lead back to Watergate as a result of Watergate. Seriously, the ABA responded by changing the code of the model rules, which now govern everybody. And by the way, leading to the ethics being part of the bar exam, which it wasn't when I took the bar exam.

Joyce: Wow. I didn't know that.

Jill: Yeah. And it is absolutely clear from the new rules. And I want to point to an upcoming article in Vanity Fair by James Robenalt, who works with John Dean on teaching ethics courses and has this article coming out. Under the rules it's absolutely clear that if you represent, if you're the general counsel of the United States or counsel to the president, you represent the office of the presidency, you do not represent the incumbent.

It's the same thing in a corporate situation. If you're a general counsel for a corporation, you represent the corporation, not the incumbent CEO. And there could be nothing clearer from the ABA rules. So it's just completely wrong to his making this argument. And also, keep in mind, because you were talking about the Fifth Amendment. In a criminal case, it can't be used against you if you invoke the Fifth Amendment, but if you invoke the Fifth in a civil case, it can be, they can make conclusions.

And I would assume that a disbarment proceeding is in the mode of a civil case. And you're right when you say if he had testified it could have been used, those words could be used against him. So he was in a bad situation because he did horrible things, not because of any rules that relate to the Fifth Amendment.

Barb: Yeah. It's an interesting place, this is like the definition of a rock and a hard place because if you answer the question, it can be used against you in a criminal case.

Jill: Yes.

Barb: And it's clear he doesn't want to answer these questions because they're not going to be favorable to him in a criminal case. On the other hand, invoking the Fifth is something I think that can be considered that an adverse inference that we can infer that the answer would've been bad for you and that's why you chose to invoke the Fifth. In a criminal case, of course, you may not use it in any way whatsoever, but in a civil case you may draw that adverse inference. And so I'm ready to infer adversely.

Joyce: There's such an easy answer here, right? If you're a lawyer, don't commit crimes. I mean that shouldn't be that difficult, but for all of the lawyers around Donald Trump, that seems to have been really difficult to understand.

Barb: Alleged crimes, Joyce.

Joyce: We're so past that with Jeff Clark. We're done with him.

Jill: There are by the way, at least 22 lawyers who have been involved in Trump and several of whom have either been suspended or are on trial for things. It's not just these two. You have Sidney Powell and Rudy Giuliani and Jenna Ellis who have already pled guilty. And unfortunately, not all of them have lost their license. But I will say that the bar associations are standing up maybe better than some of the prosecutors in terms of taking action against these people.

Joyce: They're going to need to go back and rewrite the ethics exam though. Make it a little bit tougher to pass.

Jill: I think so. ABA if you're listening, go to work.

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Joyce: Well, y'all, our listeners had a lot of great questions this week, and I love this part of the podcast. It always makes me think, it helps us understand, as lawyers sometimes it's easy to take for granted the knowledge that we have. It's great to hear what our listeners want us to talk about and great questions to today.

If you've got a question for us, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tag us at [sistersinlaw.podcast](https://sistersinlaw.podcast) on threads, or Tweet using [#SistersInLaw](https://twitter.com/SistersInLaw). And if we don't get to your question during the show, keep an eye on our threads and our Twitter stuff during the week, we'll answer as many of your questions as we can there.

We start off, Barb, this one is for you from Holly in Saline. She asks, "What if one of the Trump trials gets scheduled for after the election, but before inauguration and Trump wins the election? Would the trial go forward?"

Barb: Oh, whoa. So the trial is in November or December, right? Trump gets elected in November. God, I think my mirror's just cracked in my house. What am I saying? Trump

gets elected in November and then he goes to trial saying one of these cases in November or December. Would the trial go forward? I think so, right?

I mean I guess there is this idea that based on an office of legal counsel opinion that a sitting president cannot be charged and a sitting president cannot go to trial, but he's not a sitting president if he's just a president elect. I suppose Donald Trump would file a motion saying, this has to wait until after my presidency because I'm too busy in the transition. But I don't think as a matter of law it ends. I think that maybe it would go forward. What do you guys think about that?

Jill: I think as a matter of law, you're right. I think as a matter of policy, it would depend on the judge in the case. I can only speak from Leon Jaworski, who was the special prosecutor at the time who wanted to indict Richard Nixon, that interfering with the conduct of the business of the president. And I would say transition time is part of the business, or could be argued to be part of the business. And it depends on whether the delays that got it to November were because Donald Trump was supposed to go to trial in September, but said, "It's too close to the election, I need the time to campaign." And got that as a delay that maybe then you would say, "Too bad. You made it be now, it's going to be now."

And then the question is, would the charges be something like insurrection, and I use that term because that's one that would bar him from holding office. But short of it being a conviction for insurrection based on what the court did in saying that he could be on the ballot, would they also let him assume office? And that's where the trick comes in, because the way they ruled, it might be that, "Yeah. He could be on the ballot, but he could not be inaugurated." And so they'd still have to decide it.

Barb: Yeah. Well, he hasn't been charged with inciting insurrection. It's just other things. But, boy, you think about the election interference case. If they're ready to go and they set a trial date for, I don't know, November 15th, would they have to stand down? Maybe so, right? He would be taking office by January 20th.

Jill: Yeah.

Barb: I don't know. A good question Holly in Saline.

Joyce: Our next question comes from Joanne in Birmingham, Alabama. She asks, "Can any appellate court judges put a stop to obvious shenanigans by a lower court judge without action from the defendant or the prosecutor?" I think I know what lower court judge you're thinking about, Joanne. And the answer is no. Appellate courts don't have some form of plenary jurisdiction here. They decide issues that are brought to them from the lower court. So it would have to be an appeal brought by prosecutors or by the defendants.

The only real exception is that the judges acting as a judicial inquiry committee can occasionally take action on ethics violations committed by judges. That's very rare. I've seen it happen. For instance, in cases where a judge was accused of criminal conduct and the Court of Appeals would act to take sanctions against them in that sort of a setting. I don't think that that's where we are in this case. And so I think if Aileen Cannon is going

to be removed, it will happen because there's an appeal. And in the course of deciding that appeal, the 11th Circuit decides she should be removed from the case.

Our last question comes from Noel in Northville, Michigan. And Jill, this one's for you. Noel asks, "If Trump wins the 2024 election and pardons himself, except in Georgia, could any of the cases restart or start over after he leaves office?"

Jill: So that is such a good question, although we hate to take the premise of the if clause there. As Barbara said, mirrors are cracking in the house from saying that. But if in the event that Trump pardons himself, the first question is, can he pardon himself? And I would say there's really no precedent for that. But let's take it even further and let's say that someone else pardons him for some unknown reason, and except in Georgia or New York where the federal authorities could not pardon him.

Could the cases restart after he leaves office? No. If he's legitimately pardoned, a pardon is forever. Richard Nixon was pardoned preemptively before he got indicted. And our research proved to us that that was the end of the case, even though it was not a pardon of a specific charge, pre-trial or post-trial. And pardons really technically should be post-conviction, post-serving sentence, post-rehabilitation. But even assuming all of those things aren't necessary, the answer is no. It couldn't start after he leaves office. And not because of the statute of limitations, but because of the pardon.

Joyce: Thank you for listening to #SistersInLaw with Barb McQuade, Jill Wine-banks, and me, Joyce Vance. We hope that you're as excited about our live shows as we are with all of the great questions we had to choose from this week. I know we're going to have engaged conversations in Chicago on May 2nd, Detroit on May 9th and Boston on May 30th. Go to [politicon.com/tour](http://politicon.com/tour) now to get your tickets.

And please show some love to this week's sponsors, Framebridge, Olive and June, Calm and Lomi. You can find their links in the show notes. Please support them not only because we love them, but because they really do make this podcast possible. Please follow #SistersInLaw on Apple Podcasts or wherever you listen and give us a five star review. It really does help others find the show. See you next week with another episode, #SistersInLaw.

Jill: And by the way, I got hooked on Days of Our Lives while I was studying for the bar exam.

Barb: We used to watch it in law school.

Joyce: We would go home every day to watch it.

Barb: Yeah.

Joyce: Roman and Marlana.

Jill: Oh my god. Yes.

Joyce: Yeah.

Jill: They're probably still alive enjoying it.

Barb: Hope and Bo and yeah. I haven't seen it in years [inaudible 01:11:40] all the same characters.

Joyce: Yeah. That's funny.

Barb: It was super fun.

Jill: It was really an addiction.

Barb: Oh, yeah.

Jill: It was a total addiction.

Joyce: [inaudible 01:11:45] for sure.

Barb: Yeah.

Jill: Did I ever tell you my husband plays back pipe?

Barb: No.

Joyce: No way.

Barb: You never did.

Jill: I know. What can I say?

Joyce: What? I love it.

Jill: Yeah. It's true.

Barb: Amazing.

Jill: One of the judges was performing a wedding for friends of ours, and she got called into an emergency hearing while we were in her chambers waiting for the wedding, and Michael was practicing and she sent her clerk out to say, "Please?" Sort of like, "Ms. Surrey, please tell them to be quiet upstairs." The clerk was saying, "Stop playing the bagpipe."