

Barb: Welcome back to #SistersInLaw with Jill Wine-Banks, Joyce Vance, Kimberly Atkins Stohr, and me, Barb McQuade.

Jill: And Frisbee.

Barb: Frisbee is along for the ride today. We're very excited about our live tour. We're going to be on the road starting in May. We'll be in Chicago on May 2nd, Detroit on May 9th, and Boston, May 30th. And you can get tickets, though they're going fast, but I'm told there are still a few available at politicon.com/tour. The link is in the show notes, and we're really looking forward to being together soon. And now, on with the show, where, this week, we'll be discussing the very first Trump trial that is scheduled to begin on Monday. Some very consequential arguments coming up next week in the Supreme Court and an abortion decision in Arizona that makes us feel like we're back in 1864, but first, what I want to talk with you guys about is we've been nominated for a Webby Award. How about that?

Joyce: Pretty cool, huh?

Barb: Yeah. I hope our listeners will go vote for us. We'll put the link in our feeds on social media. But here's my question. Is there a red carpet ceremony at the Webbys?

Jill: Well, if there is, I know who I want to design my dress, and that's our very own, Kimberly Atkins Stohr.

Joyce: Kim, can you do that for dresses in like a month?

Kim: No, I can't.

Barb: Do we need a gown? You think we need a gown?

Kim: I don't know. I don't know what's the dress code at the red [inaudible 00:01:43]. It's been so long.

Joyce: I'm not really a gown kind of girl.

Kim: It's been so long since I've gone to fancy events since it's been since the before times.

Barb: Well, we know you get the shoes.

Kim: Well, I'm totally set with the shoe, although I cleaned out my closet, so I have fewer shoes than I did before, but I still have plenty. I still have plenty.

Joyce: Well, okay, Webbys, we hope you have something that's Kim shoe worthy.

Jill: I'm just worried that our listeners will see that we are still in first place, and that they'll get complacent. And if you haven't voted yet, it's really important because there could be a last minute push for one of the other competitors, and every vote counts. We say that about elections, and we're saying it about the Oscars of podcasting. So please, please vote for us as the best law and politics podcast.

Kim: Are you worried about your children being online with all the dangers lurking in the digital shadows? Securing your family's online experience is not just essential but urgent. That's why we teamed up with Aura. Aura is an all-in-one online safety solution built to shield your family from digital threats. Aura's parental controls are the protective force every parent needs to ensure your children's online safety. Aura empowers parents to guard their kids from online predators, cyberbullying, harmful content, gaming addiction, and privacy issues. When Aura takes charge, your kids stay safe while navigating the digital landscape. There are features like content filtering, activity tracking, and 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 one click.

Joyce: I'm wondering if that'll work for my husband, too. That would be utterly amazing. But seriously, Aura even has a new game-changing feature for the gaming enthusiasts in your household. You'll get real-time cyberbullying 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 the gaming world. Aura fights back by instantly notifying you if it detects any cyberbullying. It feels so much better knowing that Aura is protecting the digital spaces my family uses online. We know you'll feel that way, too.

Jill: 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. Visit aura.com/sisters. That's aura.com/sisters to sign up for a 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 details. You can also find the link in our show notes.

Welcome back to another episode of Days of Our Life. This week, of course, there's another firehose of absolute developments coming at us concerning Trump, but because the thing's starting on Monday, the DA Bragg trial in New York, I want to focus on that, because it's only a few days away, and it will be a historic first trial of a former president much as I try to make that happen 50 years ago, a half century. Okay, so let's start with the fact that he's made three consecutive losing arguments in a desperate attempt to delay the trial, because I don't think he ever had any concept or that his lawyers had any hope that they would succeed. Joyce, can you talk about the motions that he made and what the outcomes were?

Joyce: Yeah, so Trump has tried and then tried again, right? He's rehashed most of the legal arguments that he can possibly make, and some of them, like he's now on his second motion to recuse the judge. He's appealing the gag order. Those motions are still technically under consideration, but it's unlikely any of them will go anywhere. I think the caliber of the motions he's bringing at this point is best exemplified by his motion to continue the trial indefinitely because of extensive pretrial publicity in the case. And of course, the problem with that was that Trump was the one who was causing all of the pretrial publicity, so that motion was laughable, and it got the treatment that it deserved. I think the courts have caught on to the fact that these motions are about delay, not substantive legal merit, and we've seen appellate judges now starting to rule within hours. Trump is just out of time and out of luck.

Jill: And Barb, why do you think that Trump wants this delay so, so badly?

Barb: Well, I think he's afraid of the facts. I mean, the facts in this case are going to lay bare. Not only that he falsified business records, which in itself is a crime in his dishonest, but it's going to reveal all the things he was trying to keep concealed, the relationship with Stormy Daniels. Karen McDougal is also on the witness list. She is another person who claimed to have been paid off by Donald Trump for her silence. And so I think all of these very ugly facts about him are going to come out.

I mean, remember, at least as alleged, the whole point of the scheme was to conceal these facts on the eve of the 2016 election and right after the disclosure of the Access Hollywood tape. Remember the one where he talked about grabbing women by the private parts? And it's hard to put yourself back then, because so much has happened since then. But remember, like Reince Priebus and others were calling for Donald Trump to step out of the race like, "Get out and let Mike Pence be the candidate." It was that bad. There were people ready to give up on him. And imagine if these revelations came out right at that time, and so the allegation is he decided to make these payoffs, because he just couldn't afford another hit. And so he made these payments in hopes that he could survive this access Hollywood thing. So I think a reason that he wants to delay and delay and delay is he'd like to get past this election before these sordid facts come out into the public domain.

Jill: Boy, I agree with you now that we're on the eve basically of the trial and so close to the election. So, Kim, Barb mentioned the witnesses, some of the witnesses, and I want to ask you first, but everybody else feel free to weigh in afterwards. Obviously, we know that Michael Cohen will be a key witness, because he's already made these allegations both in pleading guilty to his own crimes and before the Congress. So who do you think is... Talk about him as a witness and anybody else you want to mention who might corroborate him.

Kim: So Michael Cohen is going to be the most important witness in this trial. That is because keep in mind what Donald Trump is being charged with, and it's a particular thing that the prosecutors have to prove, right? I don't love when everybody says, "This is the most flimsy of all the cases against Donald Trump," because it's really important. What he's accused of doing, as we've discussed, is trying to get an edge in the election. It's basically a form of election interference, and that can't be countenance that needs to be punished when it happens. But the way that the New York law works is that it's sort of a crime on top of a crime, right? And you have to prove them both. You have to prove not only the falsification of business records, but also the use of that as an effort to subvert this, to keep quiet information that is valuable in an election. You have to prove both of them.

And the person who's best situated to prove both things is Michael Cohen. That was Trump's right-hand man. He was the one in charge of negotiating this deal with Stormy Daniels to keep her quiet in exchange for money so that this wouldn't come out in public, the affair that she alleges he had with her in the public for the election, so he wouldn't be doomed by this thing. The reason he's so important is just it keeps being called the hush money trial, and it shouldn't be, because honestly, paying hush money is not a crime. If you think of all of the nondisclosure agreements that Donald Trump has with everyone, including his ex-wives, why do you think you have not heard a peep from Marla Maples in the last decade? Nondisclosure agreements, right? Those can be upheld unless they're done for a criminal purpose, which is what's being alleged here.

You have to put those pieces together. And because Michael Cohen was the one central in putting this deal together and executing it, he's the most important witnesses. Of course, there are other important witnesses like those from the publications that were, like American media, that were going to publish this thing, and that Michael Cohen helped kill those pieces. Of course, there are other people from the Trump organization that were instrumental in seeing how these business records were falsified, but Michael Cohen is the one who brings it all together. I think the whole idea that because he's lied before, because he's been convicted hurts his credibility, I don't think so, because there are papers, there's receipts, as we like to say, attached with it that back up his testimony. I think that will make it very, very persuasive to jurors.

Jill: Yeah, he's really important, Kim, because he's like John Dean in the Watergate trial.

Kim: Exactly.

Jill: He can narrate a full story that a jury can understand. It's not bits and pieces. He goes from start to finish, and there's evidence of his being in the White House, and all those things are going to make him really important. Barb, do you want to add any witness that you think is particularly interesting?

Barb: Well, I think Hope Hicks is pretty interesting, right? She's on the list, and she is a Trump person. She was a communications director for Donald Trump. And so the reason I find her so interesting is she's obviously got some facts to share. She wouldn't be on the list. She was in a position to observe Trump either writing these checks or the documents or figuring out how to message it. And so I don't know exactly what she's going to say, but she's in a position to provide information. And of course, because she's on the inside, not only does she have an insider's perspective, but she's less suspect in terms of a credibility situation in terms of cross-examination and suggesting that she's got an ax to grind in the way you might be able to do with Michael Cohen for Hope Hicks. She's kind of aligned with Donald Trump, and so she doesn't work for him anymore, but I think it's a little harder for the defense to portray her as someone who's out to get Donald Trump. So I find her kind of intriguing. I'm going to be looking at her testimony.

Jill: Joyce, is there any witness you want to maybe comment on for corroborating Cohen?

Joyce: So I think that's the whole name of the game here, right? Everybody has to corroborate Michael Cohen, and I suspect it won't just be one witness, it'll be all of them together. I'm sort of interested to see what Jeff McConney, who was the controller will have to say. He appears to have been cooperating. I'm not sure if that's the right word to use for people from within Trump's orbit, because sometimes, people would go into the grand jury and testify, but not be fully cooperating. But I mean, he was in there I think two years ago, I think April of 2022, the district attorney puts him in front of a grand jury, and he starts talking back then. So it may be that he can corroborate some of these details or talk about catch-and-kill. I think it's going to be really interesting to watch this trial unfold.

Jill: For me, I'm looking forward to Madeleine Westerhout who is the White House secretary who sat outside his desk and who knows who went in and out and probably took notes and knows a lot about--

Joyce: The Rose Mary Woods on current day.

Jill: Exactly, exactly. I am looking forward to the Rose Mary Woods of Trumpgate to testify. Also, I would have to say you mentioned McConney, but I'm very interested in the fact that Weisselberg is going to jail again rather than testify, and he's going to jail. He has no cooperation agreement. So, to me, that's pretty interesting. But okay, let's move to jury selection, because I know our listeners want to know what is the procedure for that. So let me start with you, Joyce, talk about how long it will take, who asks the questions? Who gets to do follow-up? Talk about peremptory challenges and challenges for cause, sort of a general background in jury selection, as it will happen in this case.

Joyce: Yes. So this is, I think, the best information that I've been able to put together from a number of different sources. And the judge has actually given a roadmap for how it's going to work. So this is very helpful. The goal will be to bring in hundreds of potential jurors and get down to a jury of 12. I think it'll be six alternates. Each of the potential jurors will fill out a 42 question questionnaire. First off, when they show up at the courthouse, the judges said he'll accept it, face value, the word of any juror who says they can't be fair and impartial and he'll let them out of jury service. In other words, he's sort of letting potential jurors self-report that they should be struck from the panel for cause.

He's doing this really for practical reasons. He says the courthouse doesn't have space that could accommodate all the lawyers, Trump, plus his Secret Service agents. And he also says in his experience, he's found that virtually everybody who self-identifies like this ends up being struck for cause. So, as a practical matter, he's going to permit them to do it that way rather than conduct individual inquiries. But once those folks are excused, the judge will put 18 potential jurors in the jury box at a time. They'll each read their answers to the questionnaire and then the prosecutors get to ask follow-up questions followed by the defense lawyers who get to ask follow-up questions.

And after that, the lawyers will begin to strike from among the first 12 jurors. There are two kinds of strikes the lawyers can strike for cause. They can say, "This juror has said something or indicated somehow that they can't be fair and impartial," and the judge rules on that, but each side also gets 10 peremptory strikes. Those are just strikes for no cause. You don't like how the juror answered questions. They looked like somebody who was nodding off to you. They've had a life experience that you think will make them biased against the outcome that you want to see.

And so you can have all of those sorts of strikes. There is a limitation on them under a federal case called Batson, which the state of New York has adopted, so you cannot use a peremptory challenge to exclude a juror on the basis of race, national origin, or gender. And now, once that strike process is complete for the first 12 jurors, they'll do it for the six on the back end, and then they'll rinse and repeat until they have the full number of jurors and alternates that they need. It's pretty complicated. I mean, there's a lot of information in that simple roadmap, but that's pretty much how we expect it to go.

Jill: So I would just want to comment on Batson. In the days before Batson, I had one trial in Boston against a boxing promoter who was very popular and his lawyer was worried that women would be appalled by how violent boxing was and who the witnesses were. And the defense lawyer asked for extra peremptories to strike all the women on the panel.

Joyce: Nuh-uh.

Jill: And it was granted, it was granted. So, back then, you could get rid of all the women, and I heard the defense lawyers debating whether, "Well, maybe, because Jill is on this case, we shouldn't do that." And then they thought, "Well, okay, we have to, it's just too violent." So, guys, these are old times, but that's how it was. Anyway, so let's move on, Barb, because Joyce mentioned the questions that have been publicized as to what individual jurors will be asked to answer, and I'd love you to talk about some of those cases and how good they are, how they will weed out a really truly mega liar who wants to be on the jury. And also people have asked, and so we should answer this too, "Can a juror be asked who they voted for?" And if not, which, of course, is the answer is it's not, what's the substitute for finding out that type of information? Let's start with those questions.

Barb: So there's this jury questionnaire, these get used in high profile cases. I've used them from time to time when you really want to make sure that the jurors are going to decide the case based on what they hear in the courtroom and not based on their pre-existing biases. And so it's got some pretty standard ones. What do you do for a living? What do your family members do for a living? And those kinds of things. And those are not really very strong predictors of how somebody might vote. I mean, I guess, what you're looking for there is just somebody who is... I was looking for someone who follows the rules, someone who works and pays taxes and understands how life works. Those can tell you some of those things.

But specifically, to this case, there's some interesting things. One is publications that they read or watch. Do you watch Fox News? Do you watch MSNBC? Do you read the New York Times? Do you get your news from TikTok? I thought that was pretty interesting, Wall Street Journal, New York Post, and that could, I think, help you identify maybe people's political leanings.

And you're right, they can't ask who you voted for in a particular election, but they did ask, "Do you listen to podcasts in which ones?" I'm sure many people will be listing SistersInLaw on their list. They really should ask, "Other than SistersInLaw, which you, of course, all listen to, what else?" But radio, it asks about whether you've ever worked for any of the Trump organizations, whether you subscribe. I thought there was one thing that was kind of funny. "Do you subscribe to any pro-Trump Listservs?" What is this? The '80s? It did not ask as my friend Joyce Vance pointed out, whether you subscribe to any substacks, which I think would've been interesting. I think they get to most of these Trump biases. There's one question I like to ask that's not on here. I can't remember if we've discussed this before, but do you have any bumper stickers on your car? And if so, what did they say?

Joyce: My favorite venari question.

Barb: Isn't that so interesting?

Joyce: Yes.

Barb: If you got asked question-

Joyce: You've learned a lot.

Barb: What would your answer be?

Kim: Oh, come... That's terrible.

Barb: Why?

Kim: Because the place that I was called for jury duty twice when I lived in New York City, and I had a Boston Red Sox bumper sticker, they would've...

Barb: Trouble.

Kim: Excoriated me.

Barb: Oh, sorry, that happened, but you should know better.

Joyce: I don't think they would've cared, to be honest.

Barb: I have a lot of-

Kim: Well, my car did get set on fire on the street.

Barb: For your Boston?

Kim: So I don't even really care.

Barb: Well, lesson learned, don't bring a Boston Red Sox sticker. My answer would be I have Detroit Tigers, Michigan football bumper stickers on my car and probably too many. My children always say I'm the crazy lady with too many bumper stickers. I'm just one tweak away from the classic Ann Arbor vehicle with too many bumper stickers. Do you have any choice?

Joyce: I do. I've got a magnetic sort of a slap on that one of my knitting girlfriends made and it says 83.3. Do y'all know what that means?

Kim: Nope.

Jill: No.

Joyce: It's the amount of E. Jean Carroll's judgment against Donald Trump.

Barb: Oh, okay. Oh, so you would be stricken right away.

Joyce: That's my only bumper sticker-

Barb: Maybe, they didn't know.

Joyce: ... right now.

Barb: That's okay. How about you, Jill? You got any?

Jill: I have no bumper stickers, although one point I did have one about my dog was a star graduate of his training.

Barb: Of course, you did.

Jill: But I do have an \$88.8 million pin for the combined amount of the E. Jean Carroll verdict. So yeah, let me just add, I think some of the more interesting questions are have you ever attended a Trump rally or a pro-Trump rally or an anti-Trump rally?

Kim: But would that be too close to the prohibited question of whether you're a Democrat or Republican or who you vote for?

Jill: Those are approved questions. They're in the list.

Kim: Yeah, it's getting close, getting close.

Jill: And that was one of the things I was going to ask you is whether you thought that that was a good substitute for not being able to ask. And also, I want to ask, and anyone can answer this perjury, because if one of those MAGA jurors who wants to be on lies and says, "I never attended a Trump rally," and then becomes a holdout and gets investigated and they find pictures of him at January 6th, there's some other rally they could be charged with perjury that's lying under oath. What do you guys think?

Joyce: It is so, so hard to charge somebody in a jury venari with perjury because remember the question and the answer have to just line up perfectly with no wiggle room. I mean, I think we're mostly relying on jurors to honor their oaths, and that could be a problem in this case, but I think every other case, the lawyers and the judge will do a really good job of ferreting out people who aren't being truthful.

Jill: Kim, I want to ask about Weisselberg who is not on the witness list. He has just returned to Rikers Island for an additional five months and has no cooperation agreement. Can you give us some insight onto that?

Kim: No, because, I mean, I'm actually shocked that he's not on this witness list, because the only person who can give greater insight into what happened in this scheme with the book cooking, specifically Michael Cohen was more on the hush moneying side of the operation, but Weisselberg was essential part of this bookkeeping, and for a long time, it seemed that would cooperate and be a part of a plea deal, and now he's off to prison, and he's not on this witness list. And I just find that absolutely shocking since he is the person associated with this. So I don't know if the prosecutors can chime in on that, what inferences could be made from anything that he's already said or if there's any way to get that evidence in, but I just really find that gobsmacked, that's one of the surprises of this case. What do y'all think?

Joyce: I think one of the things this does is it keeps Weisselberg effectively off the witness stand at trial. I think he's now got too much baggage to testify. I don't know if they'll try to make hay out of the fact that he doesn't contradict Michael Cohen's testimony. Obviously, they would've preferred to have him cooperate, but they won't. And I think given that that's the situation, they've done the best that they can to neutralize them.

Jill: Yeah, it is surprising that anyone would keep refusing to cooperate and go to jail. I just wonder what payment he's getting from Trump. But let me move on and ask for some comments on the trial strategy that you're expecting for the prosecution and/or the defense. Barb, do you want to comment on what you're expecting?

Barb: So first, when it comes to jury selection, I want to say something about the strategy of jury selection, because one thing that perhaps our listeners don't appreciate is jury selection is actually jury deselection. As Joyce described, people show up in the box and you get to decide who's out, not who's in. There's called by number, and they sit in the box, and you can exclude the ones you don't like, but you don't really get to pick who's in.

And so what I found was more effective than looking for the ideal juror is looking for a group of people who can work together to solve a problem. So you might find somebody who you perceive to be your ideal juror who I don't know who they would be an answer to these questions, but if they are somebody who is a polarizing figure with a very strong opinion is going to be loud and bombastic and alienate other people in the jury room, I don't want that person, even if they might otherwise be good for me, I want people who are going to be open-minded, work well together. And how do you figure that out? Maybe, what they do for a living. Do they work in teams? Just getting a feel for their personality based on how they answer some of the questions. Those are the kind of people I want somebody who's a youth sports coach or somebody who's used to working on group projects at an engineering firm or something like that. I think those kinds of people are better than strong individuals.

Jill: How would you feel about lawyers being on the jury?

Barb: Probably not. The reason I don't like lawyers is I worry that it becomes a jury of one, that everybody will defer to the lawyer. So it's not a hundred percent no way. I'd want to know a little more about the person and what they do, but especially if they're a criminal lawyer or something close to this, maybe if they're kind of further afield, I might consider it if they work in a team, but I'd be a little skeptical.

Kim: That's so funny, because every time I've served on three, four juries, and every time I was a lawyer and I thought that would kick me off, and it never did anytime. But can I ask a question of you guys? Because the last time I was a part of, I was a lawyer with a jury, being in-paneled was before social media times, but we hear a lot now about appeals, about jurors who posted things on social media, whatever. When does that come up now during, is there something about voir dire that the lawyers actually scour the social media platforms of potential jurors in an effort to keep that from being grounds of an appeal later on saying, "Oh, this juror was posting about how much she hated Trump on social media."

Barb: Yeah, I think they do. I mean, I think they'll go look up all these people on social media. They'll get a list. It's anonymous jury, but not to the parties. The parties are going to know who they are. So I think they're going to put Kimberly Atkins Stohr right into the Google machine and see what she's posting, like...

Kim: "Oh, no."

Barb: "Here she is. Post not this one." Yeah, I think so. And you might come in and answer all the questions just right, but if you're posting all kinds of pro or anti-Trump stuff on your Threads, you're probably out of luck.

Jill: So I have a last question and I want all of you to answer whether or not you think the trial will actually start with jury selection on Monday.

Kim: Yes.

Barb: Yes.

Jill: Barb?

Barb: Yes.

Joyce: I would say 95% yes. I think there is the chance that Trump gets the last minute case of pneumonia or fires all of his lawyers or something like that.

Jill: Anything is possible, but I'm still a yes. I have recently tried LolaVie, and I am really loving it. It is making my hair shinier, less frizzy, and with spring being here and humidity looming, that's good for our skin, but not for our hair. Humidity causes frizz. And if you don't want your hair to look dull and one-dimensional or frizzy, I have a solution, LolaVie, the award-winning Hair care line founded by the fabulous, Jennifer Aniston. And that's why I'm proud to say this episode is brought to you by LolaVie. So give your hair what it needs and trust LolaVie for hair as iconic as hers.

Joyce: LolaVie's styling all-stars repair damage, shield your locks from future harm, and tame frizz in the process. Their clean plant-powered products work on every hair type and texture, so we've got a special treat for you. For a limited time, you can get an exclusive 15% off your entire order at lolavie.com with code SISTERS at checkout, and you won't believe everything they have. The lightweight, glossing detanglers spray, detangles, primes, shines, smooths and protects with the power of chia seeds, superfruit complexes, and botanical extracts. The perfecting leave-in conditioner, which is my favorite, hydrates, fights frizz, extends style with bamboo extract, protects with a vegan thermal shield, and smooths with a superfruit complex and rose of Jericho. And LolaVie's lightweight hair oil hydrates, fights frizz, smooths split ends, boosts shine and repairs damage with a vegan keratin complex and bamboo, chia, and coconut natural botanical extracts. All three multifunctional formulas work beautifully together to prime, prep, and finish for silkier, shinier Jennifer Aniston approved hair.

Kim: And I am just like Jennifer Aniston, because while LolaVie works great on her straight, beautiful, chestnut, blondish brown hair, it also works great on my black and gray

African-American curly kinks, like LolaVie works whatever texture you got. And you can unlock Jennifer Aniston approved and Kimberly Atkins Stohr approved hair at lolavie.com. As our loyal listeners, you get an exclusive 15% off your entire order when you use code SISTERS at checkout. That's 15% off your order at L-O-L-A-V-I-E.com with promo code SISTERS. Please note you can only use one promo code per order, and discounts can't be confined. So choose wisely, get all the stuff you want right away. After you purchase, they'll ask you where you heard about them. Please support our show by telling them we sent you. Your hair will thank you. And as always, you can find the link in our show notes.

Joyce: Well, June is that month where we often give ourselves over entirely to news from the Supreme Court as they wind down their term and issue decision after decision in the big cases. But the court is about to have a couple of big weeks leading up to the argument in the presidential immunity case on April 25th. So we're not quite there yet, but the government filed its brief on immunity last week. And let's start there. Kim, what did you make of the government's brief in the immunity case? I mean, the issue has already been briefed twice in the lower courts in the district court and the Court of Appeals. Was the government's brief what you expected and do you think as we've discussed in the past, that the government still has a winner in this case?

Kim: Yes and yes. So essentially, too long, didn't read. What Jack Smith argued is that there is absolutely nothing, nothing in the constitution, nothing in the documents that we know from the framers, nothing that you can turn to for any constitutional construction whatsoever that supports the proposition that presidents are supposed to be wholly immune from criminal prosecution, when they leave office, for what they did while they were in office. There is nothing at all like that. And that is essentially, remember that's what Donald Trump is arguing, he's arguing that he's completely immune for any acts that took place during his presidency, completely immune unless he was not just impeached but also convicted in the Senate for that thing first. That's this new novel claim that he's making.

And Jack Smith is just saying that that makes absolutely no sense. It's not only not anything that the framers intended when they were creating immunity, but it also wouldn't make sense. It would set presidents up to be like emperors. And that's precisely what our constitution and its framers guarded against, that you cannot say that a president is above the law, because to do so would have absolutely horrendous consequences. And anybody elected as president can turn around, and as the lower court pointed out, have their political enemies assassinated with impunity. There's nothing in that. And I think that is the strongest argument in this case. I honestly am surprised, maybe, I shouldn't be, because a good lawyer is hard to find for Donald Trump, but they didn't read the room and tried to make some more limited immunity argument, but they went full gusto. And I think that's exactly why this is a loser.

Joyce: I was so surprised. Surprise is maybe not the right word. I was so sad that as you're describing, most of the special council's argument is there just is an absolute immunity for former presidents for official acts, but then there's this argument at the end, Kim, the one where they say, "But by the way, if you think that there's some area where there's a scope of presidential immunity, you don't have to decide what the rules are in this case. You can just say whatever their carve out might be. It doesn't exist for a president who tries to steal an election."

And then they make this just very brief quick argument where they say, "And by the way, if you think there is some scope of immunity here, we can still use all of our evidence to prove purely personal acts by Trump and conspire and interfere with the election." That felt, to me, like the special council saying, "We are on to use Supreme Court. We know that you're not a normal court, and we are prepared for all circumstances." I mean, do you think that that's my unduly cynical out on the ledge read for this week?

Kim: No, and that's actually really important because, and I hope in arguments they're able to say this, the fact that this is so... Just to be clear to our listeners, for this immunity to even have a shot at being accepted, this immunity argument, Donald Trump has to argue successfully that he was acting in his official capacity on January 6th and around January 6th in all of his calls to Georgia officials and pressure on other state officials and all of that, that he was acting his official capacity as president. Well, he just argued in Georgia that he was acting as a candidate and exercising his right to political speech in trying to shut down this Georgia, these Georgia criminal cases. So he can't have it both ways. He just argued in a court of law. So that just cuts against this argument.

Jill: Oh, Kim, where have you been?

Joyce: And Jack Smith [inaudible 00:38:57] has never been-

Kim: Rammed that back down his throat.

Barb: Narrow-minded thing that Donald Trump is worried about.

Joyce: I mean, Jack Smith's footnoted that argument and sort of rammed it back down his throat. So I do look forward to that portion of the oral argument.

Kim: Yes.

Joyce: Okay, well that's two weeks out, big news, but this week a pair of important cases are getting argued. Barb, the first one is Snyder. Do you want to talk about the issue in that case and how important you think it'll be?

Barb: Yes. So this is a case involving a statute 18 USC section 666, and it's the statute that gets used for federal program fraud. It's kind of the state official counterpart to the federal bribery statute. The federal bribery statute applies only to federal officials. And so this statute is the one that gets used for corrupt public officials who are state officials. And this case arises from a mayor of a town called Portage Indiana who accepted \$13,000 in exchange for approving a contract to buy a truck for the city of Portage.

And the issue is whether it matters that he accepted the money after he performed the official act. And so the statute refers to paying bribes or being rewarded for, and the argument is because the payment came after the fact and there was not an explicit quid pro quo that is, "I promise that if you do this thing for me, I will give you this money." Instead, it was he approved for this truck, and then he took \$13,000 from this contractor. Does that count under the statute? The argument that the prosecution raises is rewarded means getting money after the fact. Now it doesn't say it's after the fact. It just talks about a reward, but they make equivalent arguments under the bribery statute which allows,

they use the word their gratuities, which can be paid after the fact. And so they say under that construction, it seems that it doesn't matter whether the payment comes before or after the act, it should both be illegal.

I worry though, Joyce, about this because why is the court taking this up? The court below, both the trial court and the Court of Appeals, rejected this argument by the defendant and said, "Nonsense. It doesn't matter if it comes before or after reward. Means after, you came after, you're guilty." But that means that for justices granted this petition, because they want to look at this, and I am concerned in light of a string of cases we've had in the courts in recent years in the Supreme Court, where they have cut back on some of the statutes that prosecutors use in public corruption cases. I'm a little concerned that this one is another effort to do that.

Now there is a circuit split, and maybe, the only reason they're bringing this case before the Supreme Court is to resolve that split and make it clear that, "Yes, indeed this is a violation of the law, end of story," stop squabbling districts, various circuits, but I am a little concerned in light of the track record of this court in recent years where they have cut back. It has to be an official act and Bridgegate fraud has to be for monetary payments. We've seen these things again and again that I'm a little bit concerned about it.

Joyce: I think that's a smart concern. I mean, this narrowing, it's not just to be precise. The current formulation of the Supreme Court, the court has been cutting back on prosecutors' ability to go after public corruption for at least 15 years, and it's a disturbing trend, and I agree with you, I'm nervous that they've agreed to hear this case. Jill, did you want to jump in?

Jill: Well, I'm only going to comment that 666 is also the address of Kushner's Fifth Avenue Building.

Joyce: Oh, the number of the devil.

Jill: Exactly. So just saying, I don't know if there's any connection, but no, I definitely share Barb's concern that they shouldn't have taken this case at all. But I am optimistic that it is because there's a circuit split and it must... Why not resolve it and that they aren't going to narrow any further public corruption statutes and...

Joyce: Okay, Pollyanna. Jill, last one's for you. One of the three statutes that Jack Smith used to charge Donald Trump with obstructing an official proceeding is also up for consideration this week in the court. Do you want to talk with us about that case and how the decision could affect the prosecution of Donald Trump in the District of Columbia?

Jill: Yes, it's a fascinating case and it's a little complex, but I'm going to try to make it simple enough that everybody can understand what's at issue. This is an argument that is based on the two of the four counts against Trump from Jack Smith, which is being challenged in the Supreme Court by a Pennsylvania law enforcement officer, former law enforcement officer who participated in the January 6th chaos. And he was charged with assaulting a police officer, disorderly conduct obstruction of a congressional proceeding. And it's that last one, the obstruction of a congressional proceeding, which the police officer named Fisher is challenging saying that this is based on a Sarbanes-Oxley post

and Ron fixed the problem with our obstruction laws, so that people, like the accounting firm who destroyed documents, can be charged. And they're arguing that because the first part of that law says documents, basically many words for documents, but focuses on destruction of documents that it therefore limits the second part, which says basically every other method of obstructing a proceeding, and it just eliminates the word that says, "Otherwise, all other means of obstructing." And so that's their argument.

I will say this, that unlike most of the Trump appeals that don't pass the red face test, this one is not what you say in Yiddish is a writ of rachmones, which is basically it just throw yourself on the mercy of the court. And this one passes the red face test. It's not a ridiculous argument. I think it's completely wrong, and that it will fail that a normal reading of the language of the two sections, two subsections of this law will say that the defense arguments are not ridiculous, but that the prosecution's answer is even stronger.

And I think the court will agree that these charges stand, and then I'll point out that even if somehow this applies, it might be based on facts rather than on strict law interpretation, and that it might still apply to Donald Trump, but Smith is prepared anyway. In another case, he commented that even if this fails that there can't be this charge, he has two other good charges, and as you pointed out before, can use the evidence of this act as part of proving those others. So it's not going to be a big deal difference.

Kim: Taking care of the environment is so important to us. And did you know your detergent pods are wrapped in plastic? Plastic is everywhere, you guys, it's in places you don't even think about. It's really true. The film around your pod is plastic and it's ending up in our oceans, our rivers, and our soil. And don't you hate it when they don't really fully dissolve? It's awful. So you can make a change for the better and do something about it by using Blueland.

Jill: Blueland is on a mission to eliminate single-use plastic by reinventing cleaning essentials to be better for you and the planet. There's no single-use plastic in any component of Blueland that includes the bottles, tablets, wrappers, and even shipping... Their tablet packaging is fully compostable and all of their products are effective and affordable.

Joyce: You'll still get the powerful clean you're used to. The laundry habits are proven to lift the toughest stains, and believe me, with a house full of dogs and cats and chickens, I know from tough stains and I love Blueland's detergent tabs. We also love how you can get even more savings by buying refills in bulk or setting up a subscription. It's customizable and convenient, so you never run out of your most used products, and especially the scents are always changing. I love getting the different scents, but I'm hooked on the blue agave.

Barb: That is a good one. Blueland is trusted in more than one million homes, including ours. Blueland has a special offer for listeners right now. Get 15% off your first order by going to blueland.com/sisters. You won't want to miss this. Again, blueland.com/sisters for 15% off. That's blueland.com/sisters to get 15% off. You can also find the link to a cleaner, greener home in our show notes.

Kim: Well, one of the biggest legal stories this week was the fallout from an Arizona Supreme Court ruling that gave fresh teeth to a long-dormant abortion ban, the decision throughout a lower court ruling that doctors could not be prosecuted for performing abortions in the

first 15 weeks of pregnancy. And while the State Supreme Court ruling did not specifically state that doctors or anyone else involved in an abortion can be charged, that's certainly the implication. So Barb, before we get into what this law means, tell us exactly what the Supreme Court held, and what happens next? Immediately, is abortion banned even in cases of rape or incest throughout Arizona? Can the AG as promised refuse to enforce it? What's going to happen now?

Barb: So the Supreme Court of Arizona had before it. One of these, so-called zombie laws, that is a law that was in place before Roe versus Wade was decided in 1973. And a number of states had these, they were on the books in '73, but when Roe versus Wade became a federal right, all of these laws kind of went dormant. So they were still on the books, but they were unenforceable, because of a federally recognized right to abortion.

The Arizona law had been in place since 1864. You think about that, that is in the midst of the Civil War before women had the right to vote while African-Americans were slaves. So this law without Roe versus Wade to say it's forbidden is back. And the Supreme Court said, "Yeah, this law's back." And as Kim said, it is an almost complete ban on abortion. It has no exception for rape or incest.

And one of the things that the court did allow is a 14-day grace period before it goes into effect. I imagine that is just to allow people to get their ducks in a row, wind down, things, procedures that might already be scheduled to give people a little bit of a grace period to resolve it. But 14 days is not a lot of time, especially if you're someone in need of reproductive health services. Good luck getting things taken care of in 14 days.

But what's next is sort of interesting. You mentioned the enforcement. Governor Katie Hobbs has said that she will direct her attorney general not to enforce this ban, so that doctors may still perform abortions, but I don't know how much that's going to stick, because you could have a county prosecutor who says, "I don't care what the attorney general's doing or not doing. I'm going to enforce this law." And so the worry is, of course, that doctors are going to have that chilling effect, that if there's any possibility, that they could be charged with a crime, they're very likely to avoid what could be potentially criminal behavior by performing an abortion. And so I think at the moment, their 15-week ban is in place, but I think in 14 days it appears that this total ban will be in place.

Kim: So, Joyce, you can't fully discuss what's happening in Arizona just talking about the legalities of it. Right? You also have to talk about the political and cultural realities surrounding this. And we saw state Republican lawmakers form a prayer circle on the Arizona State Senate floor during which one of the lawmakers began speaking in tongues. That reminded me of a recent New York Times piece that detailed Christian conservatives plan. If Donald Trump is elected in 2024 to use the Comstock Act, another dormant long dormant law to basically implement a de facto national ban. Talk about what that would look like, and frankly, how crazy that would be. Yeah,

Joyce: Crazy is a good word for it. Sometimes, a little bit of history goes a long way. The Comstock Act was passed in 1873, as you say, it's long been dormant, but it was named for a man named Anthony Comstock, who was one of those people who decided that he was the only guy who knew what was virtuous and right. And somehow, he managed to convince all sorts of other people, including enough people to get his act passed that he

was correct. He was a religious fanatic. He spent his life in a personal crusade for moral purity, of course, as he defined it. And women seemed to particularly be offensive to Mr. Comstock, especially women who thought that they should be able to engage in family planning or discuss sexuality or discuss abortion.

So the act bans using the mails to circulate information or drugs, misoprostol, that's been the argument in that case, can't be shipped under the Comstock Act. And you could envision some expansion of this circle of folks speaking in tongues on the floor of the Arizona legislature to a national expanse where people would revitalize the Comstock Act, maybe expand it to wires and use that to implement an abortion ban if Republicans controlled the House and the Senate and the White House. It seems sort of crazy. It seems politically impossible, but it's not. But Kim, I think one interesting dimension of this, and you and I have talked about this before, is Republicans are sort of like the dog that caught the car here, right? And especially before this next presidential election, pushing these ideas, pushing the Arizona view, pushing the idea of using Comstock to create a national ban, it really could be a challenge, if not a death knell for them in the election this fall.

Kim: So, Jill, this all represents an important point that often comes up when we talk about originalism, right? Originalism in interpreting the constitution or textualism in constructing a statute. In lay person's terms, that really means interpreting the constitution or the individual federal law with the intent of the drafters at the time. And as Barb pointed out, we're talking about a time where women couldn't vote, women couldn't own property. I would've been property in this period both when the Comstock Act was passed, as well as this Arizona law. Talk about the implications of enforcing laws written when the power was held wholly in this country by white men.

Jill: Yeah, I will. But first, I want to just add to something Joy said because one of our listeners asked a question this week, which was, does this mean that you could avoid this law by shipping through FedEx or Amazon? And the answer is no. It also includes transportation between states. So unless it's intrastate, it's not allowed even under Comstock and the 1864 law, which of course as you said, not only were you property, all women were considered chattel. And I want to just say in my first marriage, the Rabbi said, "And you will not be chattel," because he had met with my first husband and me and knew that that was not going to be the terms of our marriage.

But both in terms of the Textualist-Originalist point of view, let's just look at what our government look like in 1864, or for that matter, in 1950, or for that matter, even now. And I think the reason that we need diversity in our Congress and in our courts is because you need diverse points of view, and we're not getting that. The risk of a statute being passed and implemented and enforced be by people who are looking at what did the law mean at the time it was passed. And of course, they do this in a devious and dishonest way because for example, when the Second Amendment was passed, people used muskets, which were not automatic weapons, which took minutes or more to reload and do a second shot is now being applied to automatic weapons that cannot be what was meant. And of course, they are willing to overlook the militia part of that, which is what the Second Amendment was intended for.

Whereas here, they're saying, "Oh, it doesn't matter that the world was different. We're going to let it go." So it's unreasonable, it's unfair, and seems to me downright wrong to argue that this is an originalist point of view to allow this to be back in order. Obviously,

the answer is as the governor of Arizona has said, "We need to pass an immediate law that repeals this 1864 law and pass something that makes sense in two days' world." And so this is maybe a very excellent example of why the originalist point of view in analyzing legislation is just wrong.

Kim: As the seasons change, I can really feel it not just in my voice, which you can hear with the allergies, but I also can really feel it in my skin. And that's one reason I love, love, love OSEA Malibu products. The best body care routines promote healthy, glowing skin and even improved mental health. So when your skin needs a glow up, turn to OSEA's clinically proven seaweed infused skin care that provides results you can see and confidence you can feel. Using their products feels so luxurious. With OSEA, my self-care routine has become the most relaxing and enjoyable part of my day, and that's for sure. I particularly love the night cream, which smells so good and feels so good on my skin. It really helps me fall asleep very nicely. And in the morning, first thing I do is put some of that wonderful body butter on my hands, and right now, you can get 10% off your first order with our Code SISTERS at oseamalibu.com.

Barb: I'm putting that body butter on my toast. It's so good.

Jill: Well, I'm with Kim, not Barb, but I agree with her that the products are really rich and moisturizing and they feel good, and you feel like you've really done something good for yourself when you put it on. I love also that OSEA has been making clinically proven seaweed infused products that are safe for your skin and the planet for over 28 years. Even more, I love how well they work and how luxurious it feels to use OSEA products. Plus, everything is clean, vegan cruelty-free, and climate neutral certified. With OSEA, you never have to choose between your values and your best skin.

Joyce: We love the indulgent, buttery rich textures of their Undaria Algae body Butter. I mean, Barb talks about putting it on toast and she's joking, but not by much. This stuff is pretty rich. Its creamy goodness is definitely next level, and when it arrives, you won't be able to wait to put it on. Not only does it visibly reduce dry skin, it's clinically proven to hydrate for 72 hours. It is perfect for transforming your dry winter skin into skin that's soft, smooth, and supple. My skin is really perked right up from all the dryness this winter, and yours will, too.

Barb: Between the Mega Moisture Duo, Anti-Aging Balm, and Undaria Algae Body Oil, Undaria, that's fun to say, there's so much more they have to offer. Glow from the inside out with clean, vegan skin, and body care from OSEA. Get 10% off your first order site wide with Code SISTERS at iseamalibu.com. You'll get free samples with every order and free shipping on orders over \$60. Head to O-S-E-A, malibu.com and use Code SISTERS for 10% off. Look for the link in our show notes.

And now is the part of the show that is our favorite, the part where we answer your questions. If you have a question for us, please email us at SistersInLaw at politicon.com or tag us at [sistersinlaw.podcast](https://www.instagram.com/sistersinlaw.podcast) on Threads or tweet using #SistersInLaw. If we don't get your question during the show, keep an eye on our Threads feeds throughout the week where we'll answer as many of your questions as we can. So our first question comes to us from AA Blackman who asks, "Joyce used the following words 'Once the jury is sworn, double jeopardy attaches.' When talking about Trump's Florida case, what does this actually mean, Joyce, to have the jury be sworn?"

Joyce: Yeah, this is such a great question. This is one of those legal doctrines that lawyers take for granted, and I think it's important for us to help folks who don't have to deal with this in court, understand it. Basically, double jeopardy is a legal doctrine that bans the government from trying a defendant twice on the same charges. The rule is that once a jury is sworn in double jeopardy "attaches," which means that if the defendant is acquitted after that point, either by a judge or a jury, she can't be retried.

And there's one last gloss on that rule. The prohibition against a second trial only applies to the same sovereign or unit of government. So while the feds can't try someone twice, the state could come and try a defendant on the same charges after they were acquitted or convicted for that matter by the feds. We see it less often where the state goes first and the feds follow, but we have seen that recently in some civil rights cases, including George Floyd's murder, where the federal government brings civil rights charges after a conviction. So that's sort of double jeopardy in a nutshell.

Barb: All right, very good. Our next question comes to us from Susan who asks, "Can an attorney who is disbarred in one state apply to another state for a license?" Jill, what do you think?

Jill: So I was at a panel last night of women leaders and innovators, and there were five of them. And the first would answer, and the second, third, fourth and fifth would say, "Yes, and..." I'm going to answer yes, but so you can be admitted to multiple jurisdictions. I was admitted first in New York, then in DC, then in Illinois. And it is possible that you could be disbarred in one of those or that you were only admitted in one and got disbarred and you could apply to the other, but you have to pass the character in fitness.

For anyone who has been a watcher of suits, you know that is something that can happen. You can be permanently barred from being a lawyer in a state, and you can be forgiven in that state or you could apply in another state, but think how unlikely it is that you would pass character and fitness if you've already been disbarred for conduct. It would have to be such narrow conduct that only applied in the state where you were disbarred for you to pass character and fitness in another state. So you could apply, but I don't think you'd be admitted.

Barb: And our final question comes to us from Leslie who asks, "Is the New Judicial conference policy on random case assignments mandatory?" Kim, what do you think about that one?

Kim: Yeah, that is a great, great question because the answer is no, it is not mandatory. What the Judicial Conference recommended is in order to stop the practice of judge shopping, which is, we've talked a lot about it, people going to, particularly judges in Texas, but also Florida, to try to get nationwide injunctions against things like the mifepristone ruling or President Biden's policy on immigration or student loans, that when someone files a challenge in federal court, it goes to a panel of judges, and there is a random selection. They suggested that that is what judges do, but they don't have to. And there is a potential solution to this. When this issue was brought to the attention of the Judicial Conference, one thing that Chief Justice John Roberts said in his directive to have the conference study this issue is to impose a rule, make a policy, which they did. And if that wasn't successful, perhaps suggest whether the law needs to be changed. So that can happen, but it would take Congress.

So this, as I like to say, is an election issue. When you vote for your members of Congress and the Senate, it's important to know whether they agree that judicial judge shopping is bad. It is, and what they vow to vote to do that because it would be up to Congress. Congress can pass a law that requires that, but right now, the Judicial Conference's policy change is not binding, but let's hope that judges do it on their own, and if not, that Congress makes them.

Barb: Thank you for listening to #SistersInLaw with Jill Wine-Banks, Joyce Vance, Kimberly Atkins Stohr, and me, Barb McQuade. And please remember to vote for #SistersInLaw in the Webby Awards for Best in the News and Politics category, it would mean so much to us. The link to vote is in this week's episode's show notes, and on our social media pages, but you can also find our category by searching for #SistersInLaw on the Webby's voting website. Thank you so much for your support.

Also, our live shows are starting very soon. Remember, we'll be in Chicago on May 2nd, Detroit on May 9th, and Boston on May 30th. You can get your tickets at politicon.com/tour. And please show some love to this week's sponsors, Aura, LolaVie, Blueland, and OSEA Malibu. You can find their links in the show notes. Please support them, because they really do make this podcast possible. Please follow #SistersInLaw on Apple Podcasts, or wherever you listen. And please give us a five-star review. It really does help others to find the show. See you next week with another episode, #SistersInLaw.

Jill: Remember that?

Speaker 5: [inaudible 01:08:16]. You can get \$300.

Barb: Are you watching The Price Is Right?

Jill: Sorry, Pumpernickel.

Kim: That was Trump offering NDAs.

Jill: No, I don't know what that is. What was that?

Barb: She's watching game shows again while we're recording.

Jill: Well, I'm putting my phone on off. It is called Real Cash Game, and I don't know why it's there. They're asking me to install it. I will not. Sorry. How do I get rid of it? I can't even... There's no [inaudible 01:08:45].

Kim: Jill, you know how would make it easier to get rid of it? Getting an iPhone.

Barb: Oh. It's an antitrust violation right there.