

Jill: Hi, this is Jill and before you listen to this full episode, which I know you will enjoy, I want you to know that there was a dramatic reversal in one of the segments that we recorded. We recorded it just hours before the US Defense Secretary Lloyd Austin revoked the plea deal for Khalid Sheikh Mohammed and two other 9/11 defendants. It's just two days after a plea agreement was reached with prosecutors and Austin said he's now taking oversight of the military tribunal at Guantanamo. So keep that in mind as you listen to our discussion and enjoy the show.

Barb: Welcome back to #SistersInLaw with Jill Wine-Banks, Joyce Vance and me, Barb McQuade. Kim is away this week, but we look forward to having her back soon. Before we start, we wanted to let you know that Kim is launching an incredible new podcast called Justice by Design. Justice doesn't happen on its own, and Kim is here to introduce you to the people applying it to the most challenging issues facing our country.

You can find Justice By Design wherever you get your podcasts or watch it on the Politicon YouTube channel. You have to check it out. And we also want to make it clear that she is not leaving the SistersInLaw. Kim is now doing 2, 2, 2, count of 2 podcasts each week and we know that you'll enjoy listening to both. But that is not all. In other big news, #SistersInLaw will be doing a live show at the 92nd Street Y in New York City on September 20th. You can get tickets at politicon.com/tour or the 92nd Street Y website. We can't wait to see you there.

Now, let's get on with the show where we'll discuss this week in Trump world. The 9/11 plea agreements and our latest installment in our deep dive on Project 2025. But before we get to the heavy stuff, I want to ask my sisters... I don't know about you, but I've been watching the Olympics like crazy. I love the Olympics. I watch all the time. I record the evening and I watch some of it the next day. I just love it and I can't get enough. It has me wondering, if you were an Olympian, what sport would you want to participate in? Assuming you could be like gold medal caliber in any sport. What would you do?

Jill: That is so hard for me to envision because I am the most awkward person when it comes to sports.

Barb: Well, assume you were world class.

Jill: If I could even envision that in the same way that I could envision being Bette Midler when I can't sing or dance, but I would be a gymnast. I think it is so fantastic to watch them. The grace and the power of the women, the strength of the men, it's fantastic and I love, love watching them.

Joyce: So look, I'm like you, Barb. I just cannot get enough. I mean, my husband did not grow up in a household where the Olympics were shut everything down for a couple of weeks sort of level events. And in my family, no holds were barred. My mom who never let us eat in front of the television. During the Olympics, she would bring out these old metal TV tray tables and she would give us dinner and not make us leave the Olympics for a minute.

I think, I may have missed school to watch Peggy Fleming. I'm sort of dating myself now.

Barb: Oh, wow.

Joyce: But so in any event, to the point of your question, now that it's an official Olympic sport, California girl here would want to be in surfing, I think. Just watching-

Barb: Surfing? Oh, nice. That's cool.

Joyce: Did you see the guy who shot all the way through the pipeline and came out with this great look on his face? I was a horrible surfer growing up. Not very good at it. Absolutely loved it. Did it every minute that I could get away with cutting school to go down to Malibu. And so I think that would be my sport.

Barb: Oh, I love it. That's fantastic. And I think that the surfing is like in Tahiti or something, right?

Joyce: It's in French Tahiti. Yeah. France.

Barb: Amazing. Well, there's so many I would love to try, but I think the one I would like the most is the Heptathlon. That's what Jackie Joyner-Kersey used to do in the '80s. And so I loved watching her. I think what I would like about it is the variety. I lose attention. The idea of spending 10,000 hours at your craft would drive me crazy, but it's seven events all in one. So you get to do seven for the price of one. It's got running, it's got hurdles, long jump, high jump, shot put, javelin, all of those things.

So I think it would be fun to try all of those things. But no, I love watching the Olympics and we'll continue to enjoy watching them as the week goes on.

Joyce: Gold medals for all of us.

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Jill: This Thursday, August 1st, almost 23 years after almost 3,000 people died in the September 11th attacks, it was announced that Khalid Sheikh Mohammed, aka KSM, the mastermind behind that attack and two of his accomplices had agreed to plead guilty to murder in exchange for removing the possibility of the death penalty.

That leaves life in prison as the maximum sentence for the three. Seeing KSM's picture from the time of his arrest and the one of how he looks now and reading the description of how he appeared in court to agree to the plea, brought back some very vivid memories and I'm wearing a special pin in memory of those lost. We can post the photos that I was referring to and the one of my 9/11 pin as well.

But one other accomplice wants to risk it and go to trial and that's KSM's nephew. And a fifth has been deemed mentally incompetent to stand trial. All are at Guantanamo and have been there since 2003, for 20 years, 21 years almost. Before that, they were tortured at CIA black sites under the George W. Bush administration, including over 183 water boardings of just KSM. There was also sleep deprivation, forced nudity, and much worse.

The same was true for the more than 700 others that were originally at Guantanamo, which is now down to only about 30. Barb, I want to start with you because this is a national security issue and that falls right within your expertise. So let's talk about that. I know you feel strongly about it having taken 23 years and believe it could have gone to trial in 2012, but for it being in a military tribunal, can you talk about that?

Barb: Yeah. So you may recall shortly after 9/11, there was this big push that terrorists ought to be tried in military tribunals and we set up this prison at Guantanamo Bay and put a lot of prisoners down there. It went up and down through the courts. Courts found them unconstitutional. Congress passed a statute. But all of the cases that went through military tribunals were just a mess. And that's because it was not a tried and true system. And the idea that it was somehow tougher or more rigorous than the civilian court system was really a myth pushed by people who just wanted, I think to look strong and look tough.

In my own experience, we had a terrorism case when I started at the US attorney's office as the US with an al-Qaeda operative who tried to blow up a plane over Detroit in 2009, and there was a big push to push him to a military tribunal and instead we held the trial in civilian court in Detroit. He had a trial. On day two, he entered a guilty plea. He was sentenced to life in prison and he's still there at the supermax in Florence, Colorado. Statistically since 9/11, there have been hundreds of cases successfully prosecuted in our ordinary civilian courts and just a handful that have made it through the system in the military tribunals in Guantanamo because it is such a procedural mess and there's so many unanswered questions.

So he knew when this happened that they got Khalid Sheikh Mohammed in 2009, Attorney General Eric Holder announced he was going to be tried in a civilian court. The case was on track to go to trial in 2012. And then Congress intervened and passed that year's military appropriation. And it included a rider that said it was illegal to transfer any prisoner from Guantanamo to the United States.

So they made it impossible to try him in a civilian court. And so instead, a trial that would've been over, what, 12 years ago with the death penalty on the table by the way, now finally gets resolved 12 years later with all kinds of messy litigation in these military tribunals and death has been removed from the table. Now, I'm not a fan of the death penalty anyway. I don't know that that consequence matters so much in terms of the plea, but those victims had to wait an additional 12 years for their time to receive justice. And it was so unnecessary. It was this idea of talking tough when in fact that's just an absolute fallacy.

Jill: So I just want to mention that we should add Eric Holder wrote an opinion or talked to the media about this, and I think it'd be worth publishing on our show notes what he said because it was very interesting. I do want to say one thing. In defense of military tribunals, having been general counsel of the Army, I know that they are very well staffed, very well run. They have very good rules and regulations.

I do agree in this case that it was the wrong thing to do. I also think Guantanamo was a bad place to put them. It raises a lot of issues that maybe we'll have time to talk about today. The conditions that they were held under and what happened to them before that are all things that we need to worry about. But aside from being a complex human rights issue because of the torture, that's also a legal issue. So we've been criticized from a human rights perspective from multiple countries for the torture. But Joyce, let's talk about the legal hurdles to a trial in both federal and military courts in terms of what are those hurdles as a result of the torture?

Joyce: Yeah. So the argument that the cases couldn't be prosecuted in article III federal courts, it was driven by politics. Not law, as Barb mentioned, and the hurdles people had thrown up as examples of reasons the cases couldn't be prosecuted, I don't think, hold up. I mean, we can discuss them. I just think it's important to say upfront, I'm a fan of Article III Courts in these sort of settings.

And in his statement at the time, Attorney General Holder identified two of the big hurdles and then explained it was possible to work around them. So that first issue is implicated, as you say, Jill, by torture, right? Whether in federal courts as opposed to military tribunals, prosecutors might lose the ability to use some of the evidence that they wanted to present because it had been obtained in violation of defendant's rights by torture. And Holder said that they had carefully evaluated the evidence and concluded that we could prove the defendant's guilt while adhering to bedrock traditions and values of our laws.

That means in DOJ speak that he had looked at the evidence that he was going to lose because of torture, which none of us at DOJ would've approved of and he certainly would not have, and that he still had sufficient evidence to obtain convictions. I mean, I think that's important by the way, to note that that evidence should be excluded when it was obtained that way.

Another hurdle, by the way to trying these cases is the use of classified evidence. But again, Holder had an answer. He said at the time that they had consulted extensively with the intelligence community and developed detailed plans for handling classified evidence. And Barb knows this like I do. When you've got a case that involves classified evidence, there's always sort of a dance that you do with the IC, with the intelligence community to negotiate for what evidence they're comfortable with letting you use and then how it's protected.

So Holder was comfortable here that they could do that. And look, the reality is that when the attorney general, the top prosecutor who's going to have to try the case and take responsibility for the outcome, when he tells you he's comfortable with Article III courts, I think that you can listen because he's the one who bears ultimate responsibility if something goes wrong. And he was convinced here.

Federal courts convicted hundreds of terrorists after September 11. There weren't problems with court security. These folks were able to be held in federal prison. No security risks occurred. They were safe, they were secure. The court system was capable of meeting the challenges. And I think frankly, we got it wrong here in large part due to the politics.

Jill: So, Barbara, I want to follow up on one thing that Joyce was saying, which is DOJ obviously had a role in this, but then it ended up being taken over by the Department of Defense. Right now, the outcome where people are complaining about it is being blamed on the White House. Can you talk about the roles of those three agencies and whether the White House had anything to do with this at all?

Barb: This resolution was all the Department of Defense, the idea that the president is there, calling the shots on all of these big things is really a fallacy. I know that's the fantasy that Donald Trump wants to remove all professionalism in our cabinet agencies and be this unitary executive who is just calling all the shots and making all the decisions. But in fact, the Department of Defense is apart from the military, apart from the President, he certainly is the commander in chief. And so if he wanted to assert himself in something like this, he could.

But there are separate chains of command when it comes to resolving individual cases. In fact, there is a phrase that is referred to as something like command interference, which if a president calls for certain conduct for a detainee, that can be a basis for a mistrial in military tribunals because there should be some independence of the people who are making decisions based on the best interest of military justice. So the idea that anyone is criticizing President Biden over this, I mean, that's just nonsense.

This is a case that should have been resolved decades ago. Finally, the Department of Defense found an opportunity to resolve it. I think it's actually a good resolution, but it's just too late in my opinion, needlessly so because DOJ was not allowed to handle it in the normal course of criminal cases.

Jill: I think as you said earlier, the fact that the victims' families had to wait over 20 years for this resolution is just that is a denial of justice, and it could have been done faster. But, Joyce, let's look at what the evidence of guilt that would've been admissible is, and whether it will be made public as part of the plea agreement being accepted or the

sentencing, which isn't expected to happen for about a year, and it's going to be delayed in terms of what I understand until KSM's nephew's trial jury is sworn. So that's why it's going to be so delayed.

Joyce: Yeah. So they've agreed to plead guilty to both the conspiracy and the murder charges. And at a guilty plea hearing, the government makes a proffer of what their evidence looks like. And the judge will ask the defendant if they agree that the government could prove every element of the crime beyond a reasonable doubt. The defendant has to agree or the judge doesn't take the plea. And in this case, that's an important part of the process because the government, by virtue of obtaining a plea, in this case, the military, won't have to use all of its evidence in open court and that will have the effect of protecting some of the classified information in a case involving classified information.

That can sometimes motivate the decision to take a guilty plea. So we'll hear this very top line of the government's evidence just enough to make sure that the plea is constitutional. We won't hear everything they have that will protect some of the sources and some of the means of collection. The short answer, Jill, is that we may not ever know what all of the government's evidence is or just how strong it was, but we will know enough to have confidence in the outcome.

Jill: And we do know that they will be imprisoned for life under this plea agreement. I want to know where you think they're going to be held, Barbara. There's an effort that has been made in a promise that's been made by several presidents to close Guantanamo. Obama and Biden said it should be closed. Why isn't it? And where do you think they might end up serving their time?

Barb: Yeah. At the moment, I would imagine they will have to serve their time at Guantanamo only because it is still illegal to transfer prisoners from Guantanamo to the mainland of the United States. And so until that changes, it's impossible to move them. But I think long-term, the answer is they should be housed at the supermax facility in Florence, Colorado. That is the place where all the very high level terrorism defendants are held like Eric Rudolph, who Joyce prosecuted, and the underwear bomber, and the shoe bomber. All those guys are there, and it's the absolute maximum security prison in the United States. It's where the Unabomber was. They've never had an escape.

So it's really not a serious issue. I think that we have heard President Obama and President Biden seek to close Guantanamo, and I think there are very good reasons to close it. We have prisons in the United States. We have courts in the United States that can do the job. And as long as we have Guantanamo, it is used as propaganda against the United States. It is seen as a place where human rights are denied.

So often they depict people in orange jumpsuits showing how Americans deny people human rights. And in fact, we have the best criminal justice system in the world. And rather than showcase that and give a public trial to terrorism defendants, instead, we house them at Guantanamo. And it's used as a recruitment tool for terrorist organizations all around the world. So there are very good national security reasons to close it, and yet there is political pushback from people who I think just... In the same way, people want to look tough on crime by talking about three strikes you're out and all that sort of stuff.

I think talking tough about terrorism by wanting to fund Guantanamo and keeping it open sounds tough. And so I think that is the political obstacle. But it would require every year congress appropriates funds for the defense department. So there's an opportunity every year to review this issue. And I'm hopeful that at some point we will get a congress that understands why it is more dangerous to our national security to keep Guantanamo open than it would be to close it.

Jill: Well said. And it's also very expensive and it is very dehumanizing for the people that are still there, some of whom have never been charged and some of whom have been cleared. But Joyce, let's talk about those who are ready for release. Why are they still there?

Joyce: To release people, you've got to have a country that's willing to take them. And no stable country that's willing to guarantee that these people won't return to involvement in terrorism can be found for some of them. So the approximate numbers right now, I'm not sure that these are a hundred percent accurate, but this is the most recent that I've seen. 30 men have been released without charge from Guantanamo, and they've often been there for years. Many of them have been endured abuse and other forms of suffering.

About 40 prisoners remain detained, and many of those people have not been charged or haven't had a fair trial. Some of them have already been cleared for release. So it's a real problem of keeping them there. As you say, Jill, it's a dehumanizing environment and I think the problem in many ways is difficult to reconcile. That's what President Obama found out when he promised to close Guantanamo and then found out it wasn't quite that easy when he tried to do it.

Jill: President Biden is the first president to allow an independent objective observer to go there. And her report is quite devastating. I think maybe I'll add that to the show notes as well for anyone who wants to dive deeper into this situation. In another national security event with an emotionally joyous outcome, President Biden and Vice President Harris got Americans, Evan Gershkovich, Paul Whelan and Alsu Kurmasheva. If I'm saying it wrong, Alsu, please tell me. I'm glad you're home. And American permanent resident, Vladimir Kara-Murza, as well as allies of Victor Navalny who sadly died while still imprisoned or he might have been released with them.

We and our allies got 16 hostages back and we in other countries released eight Russians as part of the prisoner swap, the largest I believe in history at least recently. And apparently dozens of people were involved. Seven countries. And according to the Wall Street Journal secret negotiations on three continents, spy agencies, billionaires, political power players, and Gershkovich's fiercest advocate, his mother.

Also released were Victor Navalny's associates. Joyce, in the view of many, we traded 16 innocent hostages held as Brittney Griner was in a Russian prison without cause versus releasing convicted assassin, jailed in Germany and seven other prisoners. Is that a good deal? Is it negotiating with terrorists?

Joyce: So look, it's a political call and it's a value judgment, and I know prosecutors who fought hard to get convictions in some of these cases probably weren't happy about it. Family members of victims may not have been. But sometimes you have to make these sorts of hard decisions. And the people who were languishing in Russian prisons, these are folks with families and with real lives, and there's a chance that they can return to them.

So it seems to me that bringing them home while difficult and while requiring you to really make some tough calls is worth it because those are the people who are still here who can be brought home. But there's also a lesson here, which is that people should stay out of these countries. Americans don't go to Russia, don't go to Iran, don't go to North Korea. We have to use our common sense to prevent this from happening again.

Jill: Barb, are there consequences for national security? What does it say about how Putin rules and what could happen here if Trump is reelected?

Barb: Yes, I think it shows that Putin is a ruthless authoritarian. None of these people who were detained in Russia were criminals. The people that we traded back were criminals. As you just said, an assassin, criminal hackers, people who committed serious crimes. Those are the people that we had jailed. They had locked up people like Brittney Griner, a basketball player, Paul Whalen, who was just an American tourist from Michigan, journalists. People who are there accused falsely of spying because it is not an open society.

And so the idea that anybody who might... Or people who were dissidents, people who were speaking out against Russia, anybody who does not toe the party line is subject to being locked up and being used as trade bait. So he is not our friend. And I'm so offended by the idea that when people like Donald Trump say things, how much they admire Vladimir Putin or Tucker Carlson did this series where he went over to Russia and talked about how clean everything is and how sparkly the supermarkets are and all that. What are they doing?

Russia is not our friend, and I think this really should demonstrate that Russia is not our friend. Clearly, they want to discourage journalists from the West from showing up in Russia because you might get abducted and detained if you do. And without journalists from the West who expose what's happening in Russia, they can continue their authoritarian ways unchecked. But I say bravo to those journalists who are brave enough to go over there and report what's really happening.

Jill: I just want to close by noting that Trump's reaction was, "I would've done it better." And he suggested that the Biden administration paid an unjustifiable price for the exchange, even though there is absolutely no evidence and a total denial that any money was exchanged and no sanctions were loosened. Biden simply replied, "If it was that easy, why didn't he do it when he was president?"

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Joyce: So legal news seems to have been on the back burner or at least Trump legal news for the last couple of weeks after a roller coaster month of politics. But there's a lot going on, so we'll jump right in. Barb, Judge Chutkan just a little bit before we tape the podcast, it's Friday afternoon, and just shortly before we started, she received jurisdiction back in the election interference case. We talked about this a little bit last week. What are you expecting to see happen here now that she's good to go?

Barb: Yeah. So this is super interesting. I think if I were in Judge Chutkan's shoes, I would want to ask the parties, "What is it you want to do?" I'd be inclined to call them both in for a status conference. Some have suggested requesting letter briefs on how they want to proceed. That strikes me as unnecessarily cumbersome. Just come on in Wednesday or Thursday, whatever it is next week and let's talk through how best to proceed because the judge has a task in front of her, and that is to decide how each allegation lines up.

Because remember the court said there's sort of three categories of conduct that which is presumptively immune because it's within the core constitutional duties of the president, that which is not immune, which is unofficial acts of the president. And then there's this in-between category, which they said were presumptively immune, but the presumption could be rebutted if it was not within the core constitutional duties of the presidency.

So she needs to decide each allegation which of those three categories it falls in. And then of course, the other question is the court has says, "You cannot use as evidence even of an unofficial act, evidence that is itself an official act." So I think the prosecution is going to have to proffer or in some way show the court, "Here's what we allege," which category does that go in? And here's how we intend to prove it. Is that admissible evidence?

Some have suggested that she'll hold some sort of mini trial where witnesses will actually come in and testify. I tend to think not. I don't think the prosecutor wants that because prosecutors always want to limit the number of times their witnesses testify because you're creating a record. And every time any of us tells a story, we are likely to diverge in the details, the irrelevant details every time we tell the story. And a skillful defense attorney on cross-examination, use those discrepancies to try to undermine the credibility of a witness.

So for that reason, prosecutors don't like witnesses to tell their stories too many times. I also think it would just take a really long time to do that. And although I know people are all worried about what's the point, the election is in November and there's no way this case goes to trial in November. There is still urgency. There's still the public's right to a speedy trial. It's still quite possible.

Donald Trump loses the election. So let's get on with the show. And so I think some sort of status conference followed by a hearing where the government proffers that is just tells the court what the evidence would be is probably the most efficient way to go.

Joyce: So would that status conference be public? Would we be able to see what's going on in real time?

Barb: Probably not. Although sometimes in high-profile cases, courts do have status conferences on the record in public. Many times in less interesting cases, the court just has it in chambers and says, "How do you folks think we ought to proceed?" Hears from both parties and then makes a decision? But in a case like this, I think it could be on the record. I think maybe she would hold it in open court just because there has been so much keen interest in this case. What do you think?

Joyce: Yeah, and even-

Jill: We won't see it though because there's no cameras in the courtroom.

Joyce: True. That's right. But there'd be a transfer.

Jill: They may be able to read it.

Joyce: But even if it's in chambers, we'll get some kind of a minute order or maybe even a longer order where she'll tell us what happened. So that could be super interesting. Jill, one of the people who pushed back on Trump's plan to steal the election harder than anyone else, someone who Barb and I have both gone on record is saying as one of our prime candidates for prosecution is Jeffrey Clark, who is the acting assistant attorney general for the civil division.

He tried to usurp the attorney general's seat so that he could use the Justice Department to throw a lot of weight behind Trump's fake claims. And in addition to being indicted in the Fulton County case, he's the subject of disbarment proceedings in the District of Columbia. Yesterday, the committee made its initial finding public. Can you tell us about it? And whether you agree with the outcome there?

Jill: It was a quite surprising outcome, Joyce. They proposed a suspension for only two years, and I think what he did is of such import to the rule of law and to the outcome of an election that he deserved at a minimum disbarment. And so I certainly do not agree with the outcome. I think disbarment was warranted. And it isn't over yet. That's only a recommendation from a committee that looked at it. Then it goes up to the actual examiners who will make a final decision and they could still impose disbarment.

Joyce: Yeah. I mean, it's really important because this is someone who's frequently mentioned as a possible attorney general for Donald Trump, as tough as that is to believe. Barb, there was a new Trump news this morning, a sort of bombshell story in the Washington Post about Trump possibly taking a \$10 million donation from Egypt in the run-up to the 2016 election. Just some small change. What are the allegations and what do you make of this?

Barb: Yeah. This is really amazing. So the reporting, and this is from Carol Leonnig of the Washington Post who writes some really great stuff. The reporting is that just before the election October of 2016, the Trump campaign was running out of cash and Trump was asked to make his own campaign contribution to himself, and he refused to do it until it got really tight. And he did. He put 10 million in. And then there was an intelligence report from the CIA that in early 2017, the government of Egypt transferred \$10 million to Trump.

So there's a theory. It's a theory only, but if Trump knew that he was going to be reimbursed by the Egyptian government, the \$10 million, maybe that's what persuaded him to put up his own money because it was really just sort of a loan until he got this payment from Egypt. And it's a crime to accept campaign donations from foreign governments or foreign individuals. And for very good reason, because they don't have America's best interest in mind. They have their own best interest in mind.

And then we also know that during his administration, he reversed a lot of government policies to the favor of Egypt. And so it's very interesting. It appears that this was part of the investigation that Robert Mueller was investigating, and that William Barr and others shut him down and refused to allow him to look into President Trump's own financial records that would've allowed them to reach the conclusions about this case.

And so a lot of unanswered questions about William Barr's replacement of Jesse Liu as the US attorney in DC with first, someone named Timothy Shea. And then very quickly after that, someone named Michael Sherwin, who was more of a loyalist, who publicly said, he's the one who shut down the investigation because there was insufficient evidence. But the undisclosed investigators who spoke to the reporters say, "Insufficient evidence? We weren't allowed to seek it." So it really does stink a little bit as to why this investigation might've been shut down.

Joyce: I mean, I'm just imagining, you're Bill Barr, and here's the evidence. Trump injects 10 million bucks into his campaign on a very similar timeline. Egypt gives him 10 million bucks, and you say nothing to look at here? I'm really scratching my head. I've got to believe that the career agents, career prosecutors were all pretty angry about this, and we will learn more about it now that this first story is out. But, Jill, what do you think here? Is there a crime to be prosecuted? Could we see a prosecution?

Jill: Well, there is a crime. But number one, the president and former president, are wholly immune. But more importantly, they managed to delay this long enough that the statute of limitations has run and there can be no prosecution. So I don't expect to see one.

Joyce: I mean, it's hard to not play both sides here and to imagine what would've happened had Barr had evidence of Hillary Clinton doing something like this. But it's not profitable to go there. I'm not going to undo a decade of therapy, so I'll just leave that alone. One last question, you guys. I mean, it was just last Thursday. That was the one-year anniversary of Trump being indicted in the election interference case. Here we are with it back in front of Judge Chutkan.

And looking at everything that's happened so far, the four criminal cases, the civil cases, Trump's continuing dominance of Republican politics, how would you grade our criminal justice system's ability to handle someone like Donald Trump who's willing to ignore the constitution? And depending on your grade, do you think that we need to make some upgrades to the system itself? Jill, what do you think?

Jill: Boy, that is, as you said, a really hard question. And the answer is obviously in the same way that the Secret Service failed to protect Donald Trump in his Pennsylvania rally, the Department of Justice was unable to accomplish, and not just the Department of Justice, state prosecutions. I will turn to, we had a conviction in New York. We've had civil cases that have gone forward. So it hasn't completely failed, so you can't give it an F. But yeah, we need to have a faster way of approaching this, and that requires a different Supreme Court.

I will say that that is one of the biggest impediments to the delays here. And so I guess I would give it a C with the hope that in a new administration, you would have different people at the top and that this wouldn't happen. This Department of Justice, the Biden Department of Justice has prosecuted Democrats, not just Republicans, and they've gone speedily. So it is possible to raise the grade to an A.

Joyce: Yeah. I want to say that for me, the system working well doesn't mean Donald Trump gets convicted. It means that cases that have been brought go to trial. And if that's your metric, this has been problematic. I'm reminded of when Donald Trump first became president, and I remember a good friend said to me, "Oh, it's not going to really be as bad as everybody's saying it is. Once he gets into the White House, he'll feel the gravitational pull of history, blah, blah, blah, blah, blah." And of course we know that that didn't happen.

And Donald Trump, who has no respect for the rule of law, doesn't play by the rules of the system. Jill, you make the point that even Richard Nixon turned over the tapes when a court ordered him to. That's not how Donald Trump operates. I think that's what the system was unequipped to deal with. And maybe we do need to think about whether it's training people, whether it's writing this up as a textbook lesson that people will study and learn from or changing some of the rules of the road. But what got to find a way to do this better? Hopefully it'll never happen again. Barb, what do you think?

Barb: Yeah, my grade is, I'll go B minus a little better than Jill. I think that one of the things that's important to remember is that when it comes to justice, the election is not the deadline. And I think that so many people... And I know there's a real litigation risk, that

if Trump wins, he is likely to order the cases against him dismissed. That does not affect the case in Georgia, does not affect the case in Manhattan. So I think Manhattan did a great job. I think the civil cases did a great job. The really great one was the one that AG Letitia James brought in New York for \$450 million or something for fraudulent business practices throughout his career.

Thought that was a great victory for the rule of law. But these cases aren't over yet. The documents case out of Florida is not over, the election subversion case is not over. And as long as Trump does not win, those cases will go to trial. And the evidence is strong. And as you say, Joyce, the measure of success is not conviction. That's up to a jury. But whether they're able to put together a strong case and present it to a jury, and I think they ultimately will.

So the reason not for a higher grade is the system does work so slowly. There's so much delay. And Trump has really played that to a T, just dragging out everything he possibly can and in many ways has been successful because of the delays that get built into the system. I wish there were a way for the system to move more quickly.

So, Joyce, my friend, Mojo, who uses all of the products that we discuss here on SistersInLaw told me that she swam across Torch Lake in Michigan, one of Michigan's beautiful lakes up north without messing up her Thrive mascara. It held up through the whole swim. What do you think about that?

Joyce: Well, of course she did. I mean, you have to know Mojo. We were all lucky enough to meet her at the live show in Detroit to appreciate that I can see that working out for her. But Thrive is just that good, to be honest. And whether your style is fresh-faced, full glam, or somewhere in between, you've probably seen Thrive Causemetics, viral tubing mascara. It's the one in the turquoise tube all over your socials, and it's also on Mojo's eyelashes.

Thrive has so many other amazing products, and each one is certified as 100% vegan and cruelty-free with zero parabens, sulfates or phthalates. It's easy to see why their best-sellers have thousands of five-star reviews, including ours.

Barb: We love that cause is in the name for a reason. Thrive not only defines luxury beauty, they give back too. Every purchase supports organizations that help communities thrive. Thrive Causemetics donates to eight major causes, including those impacted by cancer and domestic abuse, veteran and education organizations and more. I'm so glad we're a part of it. Like us, you will look and feel great with Thrive. What's your favorite product right now, Jill?

Jill: I think that the best product is my longtime favorite, which is the tubing mascara. But I also like the eye highlighters. They're really terrific and their new lip balms come in so many colors that you are sure to find one that will be good for you. And I can't get enough of Thrive's new EmpowerMatte Precision Lipstick Crayon. Not only does it make your lips pop, but it feels great knowing that it lasts forever without giving you that dried, caked-on, flaky feeling and not bleeding into, for those of us old enough, your lip lines that come out of your lips. It really does work.

I have been using one of their lighter pink ones as under a gloss, and it works perfectly. And Brisby is agreeing with me. I can hear that. He likes it too. It goes on smoothly and it looks so natural no matter what color you choose, this Perfection two-in-one lipstick and liner allows you to line, define, and fill all in one step. It even has a built-in sharpener included. Better yet, it's waterproof, sweat-proof, and lasts up to 12 hours. That's through eating probably Mojo's swim as well.

And we'll have to ask her to try that next time. It's really a wonderful product. It is an opaque, rich pigment, and you'll love how it glides on tug-free giving you even color across the lips with a bold non-stick, velvety finish. Just allow it to set and you'll get up to 12 hours of hydration and wear.

Thrive has so much more to offer. So refresh your everyday look with Thrive Causemetics, beauty that gives back. Right now you can get an exclusive 10% off your first order at thrivecausemetics.com/sisters. That's Thrive Causemetics, spelled C-A-U-S-E-M-E-T-I-C-S dot com slash sisters for 10% off your first order. And if you need to, you can find the link in our perfect show notes.

Barb: Well, and now as part of our series on Project 2025, today, we'll take a look at its plan to "manage" the bureaucracy. This is at pages 69 to 87 of Project 2025. Among the things that it proposes to do to manage the bureaucracy that is the federal workforce. It talks about reducing pay, reducing benefits, a reduction in force, reducing the number of people working in government through a hiring freeze and reducing retirement pay. But that's not the worst of it.

To me, the worst of it is it calls for return of what Donald Trump called Schedule F of the Civil Service Act, and that was Trump's executive order to replace members of the Civil Service with political appointees. But first, before we talk about that, Joyce, I wanted to ask you about some of the news this week. Donald Trump has distanced himself from Project 2025 saying it's not his agenda. He doesn't know much about it. And this week, the director of Project 2025 even resigned. What do you think that's all about?

Joyce: Yeah. I mean, Trump wasn't so distant that he couldn't force the director who, by the way, ran OPM for Trump, Paul Downs. He couldn't force him to resign from the project. So to say on the one hand that you know nothing, you have no affiliation. On the other hand, to have the director immediately step down suggests that you may have a closer relationship with the project than you're willing to publicly admit.

This sort of happened in two stages. Downs, stepping down was the drama this week. The previous drama involved the head of the Heritage Foundation. Heritage is where Project 2025 is being formally written, although it's sort of the work of more than a hundred conservative groups. But there was some video that was released, I think, much to the concern of the President of the Heritage Foundation where he was making apologies for Trump saying, "It's okay for Trump to distance himself Project 2025 because it's politically difficult for him right now."

What had happened was that even a couple of months ago, the public really didn't know what Project 2025 was, and people kept talking about it and educating folks. And finally, it really broke through in a big way. It was on TV. Podcasts were talking about it, radio.

There were stories written about it. And you would notice that when you went out and talked with folks that they would have questions about it.

I think it really became a political albatross around Trump's neck. And so he decided that it was time to get his way out of it like he does with most things, just to lie about his connection to it. And much of what is in Project 225, it aligns with what we hear Trump talk about at his rallies, and even what's in his own Agenda 47, his platform that's on his website. So we're going to talk about the Federal Civil Service today, turning the Federal Civil Service into a core of Trump loyalists.

That's something that Trump talks about. That's something that's in Agenda 47. In fact, it's something that Trump did in October of 2020 when he was president the last time invoking Schedule F. This stuff is just core Donald Trump.

Barb: What do you think, Jill? Do you think that Trump's disavowal from Project 2025 means we don't need to worry about it? I mean, after all, they just talk about the next conservative administration. They don't say that this is for the Trump administration. This is just the Heritage Foundation's policy ideas for the next conservative administration.

Jill: Well, let me first point out that when you say they, the authors of this, if you look at the chapters and who wrote them, they are the former employees at the White House and in the various cabinet offices of Donald Trump. So it is not believable that, A, he knows nothing about it. And it is unbelievable that you wouldn't have to worry about it because those are the same people who he's going to have back in government. And maybe even worse. I mean, the chapter on the Department of Justice was written by Gene Hamilton, the right-hand man of Stephen Miller who is another person widely rumored to be the next attorney general.

So he would run the Department of Justice that way. And so, I think you have to worry about Project 2025 because we've seen that in the past, other Heritage Project 20s, different years, for Reagan, most of it was implemented by the Reagan administration. And the other thing that I'd worry about is when Donald Trump says, "Well, I don't know anything about this. I don't know who these people are." If he doesn't know who those people are or what it says, he's not competent to be president.

Well, I mean, I know he isn't competent to be president for many reasons, but that certainly would be a disqualification. So I think absolutely, you have to worry about it.

Barb: Yeah. Well, regardless of whether Trump accepts all of it or part of it, I think we can be sure that as Joyce says, he will most certainly accept the proposal regarding replacing the civil service with political appointees because he's done it before. At the tail end of his administration, Trump issued an executive order creating what was called Schedule F to the Civil Service Act. So there are these various schedules that categorize groups of employees and the kinds of protections they get.

When Joe Biden became president, he quickly revoked it, but Trump has promised to restore it. And as he says, the reason is to bring the deep state to heel. Joyce, what is the gist of this schedule?

Joyce: Yeah. I mean, Trump really, I think clarifies it perfectly to bring the deep state to heel. The deep state, that means people who are not Trump loyalists. This is, "Don't make any mistake about it." This is a purge of people who Trump suspects, thinks, believes, might have some democratic leanings or even Republicans who don't support him. Schedule F creates a new tier of employees who will be classified as political employees who are terminable at will with the start of a new administration or at any other time.

Typically, civil service employees have a lot of protections. It's very hard to fire someone. Even for cause you have to jump through a lot of hoops. But not so with political appointees who are just let go at the end of the administration or who can be replaced. And what Trump does, he uses this very artificial criteria for deciding that anybody who arguably has a policymaking job or even a job that just touches policy would go into Schedule F.

Federal workforce experts who've looked at this have said that the bare minimum is 50,000 employees who would be impacted? It's likely tens of thousands more. And so what some of the folks involved in Project 2025 said was, "Well, we won't have to fire all of these people. They'll just come into line." And when you stop and think about that, that is really astonishing. These are scientists. And a lot of this, by the way, has to do with climate science. Something Trump is not a fan of.

Folks involved in medical emergencies like pandemics. Other folks who theoretically are involved in making policy decisions because of their expertise, those are the people that he wants to cut out. I agree with Barb. This is one of the most terrifying parts of Project 2025. If Trump gets to do this, the federal government will not be able to protect us or work for us in the ways that so many of us take for granted and don't even think about. And we will be much worse off for it.

Barb: And in addition to those risks that you point out, Joyce, Jill, I want to ask you about the evolution of the federal workforce. We went from this at one time, a spoils-based system, right? Where if you were buddies with the president, you got to be the postmaster or something back in your home state. And things change, right? With the passage of the Pendleton Act to professionalize the civil service so that we had career professionals who would stay from administration to administration. What do you think happens to that if we end up implementing the Schedule F and that becomes the way that we fill the ranks of government employees?

Jill: I think Joyce has said it very well. We would be in bad trouble because expertise would no longer matter. Friendships would, and loyalty to one man. The oath of office that all civil servants take is to the Constitution of the United States. It's not to the president by name or otherwise. And so I think we would be in very bad shape. And it's also, once it starts, I think that the 50,000 is a very low estimate. It might start with 50,000, but it will snowball into hundreds of thousands.

Department of Justice wouldn't have civil servants who are prosecutors. They would have people who are loyal to the president and who will do his bidding. The same things you had with Jeffrey Clark being offered to be this Attorney General. So it's a very, very dangerous and slippery slope.

Joyce: With HelloFresh, get farm fresh, pre-proportioned ingredients and seasonal recipes delivered right to your door. There are no trips to the grocery store, no wasted ingredients and no menu planning or grocery lists. You can count on HelloFresh to make home cooking easy, fun, and affordable. That's why they're America's number one meal kit.

Barb: With a changing menu of 50 recipes to choose from each week, HelloFresh makes it easy to always find something the whole family will love. Plus HelloFresh meals can easily be customized to fit into your family's taste with protein and veggie swap options. You and your family can choose the perfect combos for each week's deliveries. There's something for everyone. I recently made the Slow Cooker Slammin' Barbecue Chicken. It was delicious and everybody enjoyed it.

Jill: I've made that one too, Barb. But this week I made three different kinds of food that I would never have cooked or picked on my own, but which I tried and my husband said each night, "Oh, that's the best." And then the next night, "Well, that's the best." So it's really been a hit. And I love taking the time to do the actual cooking with the fresh ingredients that HelloFresh sends. And I love that they work with your schedule. Their plans are flexible, and you can change your meal preferences, update your delivery day, and change your address with a few taps of the HelloFresh app. Imagine how great it will be getting fresh, seasonal produce that goes straight from the farm to your kitchen. Just don't forget to order dessert.

Joyce: For a limited time, kids eat free. So go to hellofresh.com/sisterskids to unlock this exclusive offer. Get one free kids meal per box for two months while your subscription is active. That's free kids meals just by going to hellofresh.com/sisterskids. You can also look for the link to HelloFresh, America's number one meal kit in our show notes.

Barb: And now comes the part of the show that we enjoy the most, answering your questions. If you have a question for us, please email us at sistersinlaw@politicon.com or tag us on social media using #SistersInLaw. If we don't get to question during the show, keep an eye on our feeds throughout the week where we'll answer as many of your questions as we can.

Our first question comes to us from Trish in San Francisco, California. Trish asks, "Can you please explain why Trump doesn't have to register on the National Registry of Sex Offenders?" Joyce, you got an answer for that?

Joyce: I do. This is a really great question and it's got a simple answer though. The answer is because Donald Trump wasn't convicted in criminal court of a sexual offense, and that's what triggers the obligation to register. Trump, of course, was sued for defamation by E. Jean Carroll, and implicit in the jury's verdict was the finding that he had sexually assaulted her. They actually had to make that finding, but not a criminal case. So no obligation to register.

Barb: All right. Very good. Our next question comes to us from Beth in Santa Inez, California. Wouldn't this be an opportune time for President Biden to sign the Equal Rights Amendment into law? Oh boy, that one's tailor-made for you, Jill. Here we go. How much time do you have?

Jill: Beth, I will try to keep it short, although I'd like to make it long. But thank you for this question, Beth. I think exactly like you do. And so the answer is. Yes, this would be an opportune time. The ERA should have been recognized as our 28th amendment way back in 2020, except that Donald Trump said no. Could it have changed the outcome of Dobbs? I think it could have. Luckily, President Biden is known as a woman's rights champion and a strong supporter of the rule of law.

So maybe he could undo the erroneous decision from Trump's office of counsel that said that you couldn't recognize it. It has met all the hurdles that a amendment needs to have. It was ratified by the right number of states. Any state that tried to rescind its ratification is completely without any grounds that you cannot rescind. Once you've ratified, that's it. The time deadline, which has been talked about is not in the part that states considered and voted on. It was in a preamble, so it has no effect.

So we have 38 states that approved it. We have nothing that bars it going. And I will point out that the 27th Amendment, which is the one just before this took 200 years from its proposal until it became the 27th Amendment. This is a long time. It's 48 years, but it's only less than a quarter of the time it took for the 27th. So let's go President Biden and following you, President Harris that could be your first act in the same way that Obama did the Lilly Ledbetter Act as his first proposal. Go for it. One of you has to do it.

And by the way, I just want to mention that the ABA has finally taken a position. It's going to come before the House of Delegates at this meeting, which is just in a few weeks in Chicago. And the resolution is very well done and will be presented for the house to approve urging that this become an amendment.

Joyce: Jill, don't you think this is a legacy issue for President Biden? I mean, if you're Joe Biden who's been a champion for women your whole career, don't you want to be the president who signed the ERA?

Jill: Yes, I would think so. And I certainly would argue that if I had a chance to make that argument to him, and I have argued it to someone who is in charge of this for the White House, but they are still relying on the Office of Legal Counsel opinion, which needs to be challenged and recognized that it could be different. And all it would take is for President Biden to tell the archivist, publish. That's it. And that would publish it. So that makes it an official part of the constitution and enforceable in all our courts.

Barb: All right. Our final question comes to us from Katie in Calgary in Canada. That's Alberta, I believe. Beautiful part of the world. Katie asks, "Will it be Kamala Harris's job to declare the winner on January 6th, 2025 when the electoral votes are counted and certified?" Yes, it will. How joyful will it be to announce her own name? Or possibly not.

You may recall that Al Gore had this job back in the 2000 election when he was running at... He was the vice president at the time, running against George W. Bush for president, and it was he who had to certify the election against himself in favor of George W. Bush. So it's something that has done. The one thing that's changed since the last election though, is the amendment of the Electoral Count Act, which does make it clear that the vice president's job is purely ceremonial.

It's to open the certificates and to count them and not to change them or refuse to change them, or refuse to accept them. So it's purely ceremonial. But, yes, it will be the job of Vice President Kamala Harris to count those ballots on January 6th, 2025.

Thank you for listening to #SistersInLaw with Jill Wine-Banks, Joyce Vance and me, Barb McQuade. Kim will be back soon. Remember to mark your calendars. #SistersInLaw will be doing a live show at the 92nd Street Y in New York City on September 20th. You can get tickets at politicon.com/tour or the 92nd Street Y website. We look forward to seeing you there. And please show some love to this week's sponsors. Honeylove, LolaVie, Thrive Causemetics and HelloFresh. Their links are in the show notes. Please support them because they make this podcast possible.

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So Sunday morning early, like 8:00 AM, we hiked into the backcountry at Mount Rainier. There's no cell coverage whatsoever, zero. And we didn't come out until Wednesday afternoon, and so we heard nothing.

Jill: Wow.

Barb: By the time my phone blew up with tons of emails and text messages and it was all about... Not only was Biden out, but Kamala was in. It was, "Whoa."