

Barb: Welcome back to #SistersInLaw, with Jill Wine-Banks, Kimberly Atkins Stohr, and me, Barb McQuade. Joyce will be back next week and we already miss her. Check out our brand new t-shirts that celebrate the ReSIStance. We are enjoying the shirts. I've been wearing mine getting a lot of compliments on it. You can go to politicon.com/merch to get your own ReSIStance t-shirt. Now, we'll get on with the show. This week, we'll be discussing Trump's attack on the First Amendment, lawyers in the crosshairs in the days of Doge.

First, I want to ask you guys, it seems to me that when somebody asks me how am I doing, or I ask them how they're doing, whether it's a neighbor, a friend, a colleague at the law school, it's not easy to answer that question anymore. I used to say, "Great," or "Just fine," or something along those lines, and now it seems like you got to say, "Considering all of the trauma, et cetera, et cetera." How are you guys handling either asking that question or responding to that question these days?

Kim: That's such a great, great point because I found that, too, over the last month or two saying... You don't even think about it. It's just like a greeting like, "How are you?"

Barb: Right.

Kim: It does elicit very particular responses, especially here in D.C. where I live, so I have made a conscious effort when I see people to say, "It's so good to see you."

Barb: Oh, that's a good idea.

Kim: "It's so good-

Barb: ... idea.

Kim: ... "to see you, you look well, I hope you're well," and things like that because it's still a greeting and it's still genuine, and it also underscores the need for us to be in community and be in fellowship with people that you care about. I've been trying to lead with that.

Barb: Oh, that's a good idea.

Kim: Yeah [inaudible 00:02:00].

Barb: [inaudible 00:02:00].

Jill: That is a great idea, and I think I'm going to adopt it because right now I am answering honestly in words I won't say on our show, but which conveyed-

Barb: That Jill's got a salty tongue, she does.

Jill: ... [inaudible 00:02:15]. Hey, you don't get to be a federal prosecutor without adopting some salty language, sorry.

Barb: I speak for the '70s yourself.

Jill: Yeah, we learned some bad words, but no, I mean, seriously, it's sort of I feel like, "Well, other than that, Mrs. Lincoln, how was the show?"

Kim: Yeah.

Barb: Exactly.

Jill: Yeah, yeah, yeah, right. It's sort of how I feel, but let me just say, today I talked to a friend who called to say, "Did you hear Senator Kennedy?" I think that there's a shift in the Republican... This is Senator Kennedy, Republican of Louisiana, who said, "Don't ever say you won't obey a court order."

Barb: Yeah.

Jill: I think that and the despicable display that we saw telecast from the White House is going to be a change. I think we're going to see the end of the beginning and-

Barb: You mean Vance and Trump-

Jill: ... Vance and Trump-

Barb: ... demanding that does-

Jill: ... oh my God.

Barb: ... Zelenskyy say thank you?

Jill: Yeah.

Barb: And not [inaudible 00:03:14]-

Kim: Does it seem like a dog? Like, "Don't eat the snack until I tell you," right?

Jill: It was so shameful, and the fact, did you see him not walked out?

Barb: Yeah,

Jill: He was basically thrown out. There was no goodbye at... The cameras filming his departure in his vehicle. Some woman walked him out. I don't know who it was. It was certainly no one that I recognized, which means it wasn't someone of the importance that should be showing and saying goodbye to the President of an ally. I do think that these things are combining and the town halls where Republicans are being yelled at by their constituents in red districts, I think maybe we can start talking in response saying, "Well, I'm hopeful that things are changing," and I think we need to focus on that a little bit, but I do like... Kim, I love your way of avoiding having to say you feel horrible.

Barb: Yeah. I think these are both good lessons. One is it's good to see you, but the other, Jill, is to help lift people up. I'm going to start saying things like, "Determined to protect democracy," when someone asks how I'm feeling-

Jill: Yeah.

Barb: ... so-

Kim: Yeah, that's a good one.

Barb: ... stay strong, sisters.

Kim: Yeah.

Jill: Yeah, I do. I say that, "Doing everything I can to protect democracy and justice," and that's what this show is all about.

Barb: With HelloFresh, get farm fresh, pre-portioned 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.

Jill: I really do have fun taking a break from the stress of the news to chop and combine ingredients to create a delicious and appealing meal. I also love HelloFresh's new ready-made meals. They go from the fridge to your fork in just three minutes. It's the same high-quality ingredients and restaurant-worthy flavor you expect from HelloFresh without the work, so you can spend more time fighting and resisting. Plus, HelloFresh has a lineup of prep and bake meals that come together with minimal mess and only a few minutes of prep, so your oven does most of the work, not you. It's so easy and so delicious, and Michael and I have enjoyed them on Thursday nights when I'm too busy prepping for this show to do the cooking.

Kim: Yeah, you know Jill, I, probably like you, have felt really exhausted lately given just the flurry of news about the encroachment on people's rights and hearing about massive layoffs of our federal workforce and really awful things. The last thing I want to do then is go to the grocery store, but luckily, HelloFresh works with my schedule and allows me to be flexible so I can do my work as a journalist, holding up a light against the injustices we see, but still come home and make sure that I and my family have a nice healthy meal. It makes it just a few clicks that ensure that we get there.

Right now, they have a great deal. You can get up to 10 meals and a free high-protein item for life at hellofresh.com/hellofreshpodcast. One item per box with an active subscription. Free meals are applied as a discount on the first box for new subscribers only and varied by plan. That's up to 10 free HelloFresh meals. Just go to hellofresh.com/hellofreshpodcast. You can also look for the link to HelloFresh, America's #1 Meal Kit, in our show notes.

Well, the Trump Administration is trying to take a sledgehammer to the First Amendment, targeting and punishing news organizations that do not show sufficient

fealty to the President and his actions. Just to be clear, that is not our job, speaking as a member of the media, myself, that's not our job to do that. We're supposed to report on what is happening and why it matters. We are not the President's PR arm. We are nobody's PR arm. We are the fourth estate, and the only industry that has expressed protection in the Bill of Rights.

Let's take a look at some recent actions out of the White House and other agencies and discuss the constitutional and democratic implications. Jill, let's start with the White House and other news agencies changing the way the press corps works, specifically who gets to be in it and who gets literally let in the building to cover people. Why should we be concerned about who has access to the White House and the Pentagon and other federal agencies?

Jill: Let's set the factual predicate for this conversation, which is that the AP said that it was going to continue to call the Gulf of Mexico the Gulf of Mexico, and the White House said, "Then, you can't be in the Oval Office, you can't be on Air Force One," et cetera. That was what started it.

Kim: Can I just say, aside from that this is a very serious topic and about the free press, but can we just say that's the stupidest bone to pick, like really, over what to call a body of water because you don't want to call it the Gulf of Mexico? It's so dumb.

Barb: The fact that it's so petty, doesn't that really suggest that it's all about obedience and not about-

Kim: Yes.

Jill: Oh, certainly.

Barb: ... the body of water?

Jill: It's the [inaudible 00:09:13].

Kim: Absolutely. It's dangerous as all get-out, but it's not something that the AP printed. They didn't write a story that the White House did not. It's really over the dumbest thing ever that has nothing to do with how these reporters do their work, right?

Jill: Exact, and two other things, aside from the fact that they have an enormous reach and that the AP Stylebook is what guides how other news media report information, and they have in their Stylebook said, "We're calling it the Gulf of Mexico, but we are acknowledging that the President is calling it the Gulf of America." It's not like they totally ignored him, so it is petty and stupid and wrongheaded, but it's also a violation of the First Amendment. Clearly its viewpoint discrimination. It is cutting off the words that a reporter is going to use or that a newspaper or news media is going to use. It's intended to intimidate all other media sources. It's intended to deprive Americans of a free and independent press. It's a very serious thing, and it's beyond AP. They also have said, "We're kicking out legacy media from the White House," where they are provided with offices, "and from the Pentagon," where they are provided with offices.

That means that there isn't the immediate access when something happens because you don't have an office in the building. You can't get to an emergency press conference or check out something that you've heard somewhere else with the people who are in the building. It is, again, a violation of the First Amendment, and I think that the White House correspondents and other news organizations have to band together and figure out a way around this. I worked in the Pentagon. There's a ginormous parking lot. There's no reason why the press can't set up a press set of buses or tents or something and have a shuttle bus that will get them into the building right away.

They're not being denied access to the building, just to offices in the building. They have to be able to get to the building fast, and they have to have a place nearby that they can within minutes get into the building. I think there's a lot of things that the press has to do, and it's been suggested they stop covering these events, period, and just rely on reporting from outside. I'd love to hear your views on that, Kim, as to whether that accomplishes anything or whether it just means that the only news sources is Fox News.

Kim: Yeah, I think that that would be a terrible precedent to send these reporters. Look, there is a lot more to journalism than the press corps that is stationed within the White House or the Pentagon and elsewhere, but having access to the decision-makers at the top of these institutions is crucially important. I believe that Donald Trump and everyone there knows that and they're trying to punish them, and also creates a situation like if anybody has ever been, I have been to Cuba, I've been to China, I've been to places where journalists cannot speak freely, and there is a state news line that can't be strayed from, and it's horrifying.

Being a journalist in both of those places made me feel deeply uncomfortable. As lovely as I thought the Cuban people were, the feeling that people could not communicate or see things that the government didn't believe in was really awful. It was just chilling, and I think that's what the end goal would be here if allowed to stand. Barb, the FCC, the Federal Communications Commission, is also targeting some news organizations. Is that the purpose of this agency, to sort of do Trump's bidding in this way?

Barb: Oh my gosh, no. I mean, the Federal Communications Commission was designed in the 1930s to help regulate the communications industry at a time when the broadcast spectrum had limited bandwidth, and so you had to get a license to broadcast, whether it was television or radio, and they were there to regulate the regulation of those licenses. In exchange for a license, you had to comply with certain rules. Well, they've now extended those rules to complying with President Trump's edicts about diversity, equity, and inclusion, and they have opened investigations into National Public Radio, PBS, and NBC. The FCC, led by Brendan Carr, sent a letter saying that he's concerned that Comcast and NBCUniversal may be promoting invidious forms of DEI in a manner that does not comply with FCC regulations. The threat is we will defund you unless you comply with these rules, and it is all part of Project 2025.

Brendan Carr wrote the chapter on the FCC in Project 2025 in an effort to change the nature of the communications industry. One thing that's super interesting, The Guardian had a really great piece on this, and one of the things they said is Fox News also has a commitment to DEI. They have a black employees group, they have an LGBTQ employees group. Who knew, but they are not under investigation by the FCC for their DEI programs, so what does that say? Well, it really comes to we are going to bully the

news organizations who don't toe the party line, and others like Fox News who report favorably on the President's administration, we are going to leave alone. That is incredibly dangerous in a nation that values the free press the way that we do, and I worry that unless you tout the party line, you, too, will find yourself under investigation or defunded or have your license removed by the FCC.

Kim: Yeah, I worry. I worry about that, too. I mean, they've sent threats to NPR and other news organizations already saying that they are going to be scrutinizing them as to me and intimidation tactic, so I think we won't see... This is not the end of that. Jill, news organizations are fighting back. For example, the Associated Press is suing the administration over this action. What's their claim and do you think they have a chance to win this?

Jill: First, let me say, some are fighting back-

Kim: Yes.

Jill: ... others are capitulating, and so-

Kim: That's absolutely true.

Jill: ... let's not forget that part of it, and paying settlements to Donald Trump is capitulation, especially on fraudulent grounds that they are settling. Yes, the AP is fighting back and they're bringing a lawsuit based on both the First and Fifth Amendment, and they're on solid ground in terms of what they are saying. Hopefully the courts live up to what is expected of them in arbitrating between parties to be fair in their analysis of the law and the Constitution, and they should win. They have not been ordered back. They wanted to have a TRO. We seem to be having a lot of TROs lately, and for everyone listening, you've heard us discuss this at length-

Barb: Teachable moment.

Jill: ... many, many times. A TRO being a very temporary short-term thing to hold the status quo until there can be a fair hearing on the issues heating from both sides. It can even be granted without both sides the opponent even knowing that the TRO is granted.

They were denied that on the grounds they hadn't showed that they were already harmed by it, although I frankly think that they are, and that the American people are also, not just the American people, the world because AP covers the world. They are distributed throughout the world, not just here. They didn't get that, but there is a hearing coming up very quickly, and that will be one where both sides will get to make their arguments. I think the argument of the government is extremely weak, that they're saying... Well, first of all, this is a privilege to get to be in these spaces. You don't have a right to be in these spaces and that we don't have to obey norms. This goes back to norms where it's always been the White House Correspondence Association who has fairly distributed the space in, for example, the Oval Office.

You can't have 150 reporters come into that space. It's too small a room, but the people who come in are a pool that has pledged to share their reporting and they're filming with

all the other media outlets. That's how we all have been getting the news, and it's sort of like my argument for cameras in the courtroom is I don't want to have a reporter tell me what was said or done in the courtroom. I want to see the body language. I want to hear the tone of voice. I want to see it myself, and so maybe the way to handle this all is cameras are in there and there's commentary, no questions. It's just then everybody analyzes it afterwards. I don't know what the answer is, but I think their lawsuit is a strong one and I'm hoping that they will prevail.

Kim: I am, too, Jill, and you are absolutely right that a lot of other news organizations have capitulated, either in advance or in response, to these threats coming out of the federal government. Of course, we had ABC settling over claims about Donald Trump's lawsuit that he lost against E. Jean Carroll because the word that they used did not comport exactly to New York statutes, which the average ABC viewer would have no idea. I mean, I just don't. When we talked about that on a previous episode, and then there's also CBS turning over their raw interview data of an interview with Kamala Harris, which who cares? Dude, you won. Why are you even asking for this?

Or the owner of The Washington Post doing any number of awful things, including handcuffing members of the paper's own editorial board in an action at me being a member of an editorial board, the editorial board of The Boston Globe. I can't imagine how demoralizing such a move would have been, and I'm proud to work for a news organization whose owners would not do that. Barb, there are also members of the press crying foul in a public way, some of them, so do you think there's enough understanding among members of the public about how dangerous all of this is? Or do you think that there needs to be more people who are standing up and really blowing the alarm about this?

Barb: I'd really like to see more. We did see some great pieces this week by Symone Sanders Townsend at MSNBC who wrote a piece about laying it all out, and also from Margaret Sullivan at The Guardian.

Jill: Yes.

Barb: One of the things she wrote that I found was fascinating was she proposed a NATO for the media. In other words, we all agree that an attack on any of us is an attack on all of us, and we will band together and stand up to this attack on the First Amendment. Now, good luck getting Fox News or the, what is it, the One-

Jill: OAN.

Kim: OAN.

Barb: ... America Network-

Kim: OAN and-

Barb: ... yeah, Breitbart and some of these others, but it would be nice to see other members of the media stand up. I think one of the challenges is when you stand alone, it is very risky

because you are asking for a retribution by Donald Trump, and it is dangerous to stick your neck out.

When a group comes together, that's why I like seeing these group letters and other kinds of things, it brings power of the group, and people can't just say, "Well, that's just one, somebody with an ax to grind. That's one individual." If it's a thousand people who are journalists or a thousand law professors or a thousand former prosecutors, that means something, and I would like to see... This idea of a NATO for journalists, I think, is a fascinating idea. I think this is the kind of thing that perhaps ordinary members of the public do not appreciate, though they should.

I mean, we should all learn about the value of the free press in our early civics classes, but of course, we know civics classes are being cut in public schools. One wonders what students learn these days about the importance of a free press, but one of them, I think it was Margaret Sullivan, raises how this really has a lot of echoes of Viktor Orbán's Hungary and how he was able to dismantle a liberal democracy and move it toward a more authoritarian state. It was by cowering the free press, by retaliating against them, by intimidating them so that his would-be critics are silenced so that all we ever hear now is what a great job he's doing. I would hate to see that happen in the United States.

Jill: I just want to add one thing, though. The Washington Post did do a horrible thing, Bezos, in terms of the opinion place, but so far the news reporting has not been impacted, and so when people ask me or say they're canceling, I am not. I think their news is still valid, accurate, and I intend to not pay attention to their opinion pieces anymore. I intend not to submit any opinion pieces to them because they wouldn't publish things that I would say or that any of us would say, but I think we need reliable reporting of facts. Facts still matter and we have to get it from somewhere, and so I wouldn't suggest canceling the subscriptions.

Kim: Yeah, I think that's an important point, Jill. I mean, even Margaret Sullivan, who was formerly a columnist for The Washington Post, and she was the Public Editor at The New York Times, and I respect her a great deal, said she was not going to cancel her subscription to The Post because of the good work that the news organizations are doing. I think people have to make their own choices and everybody has the right to spend their money according to their conscience, but these things are fraud, and I think that that is important.

We will put the pieces that Margaret and Symone wrote in the show notes because I think both perspectives are really important. Symone, of course, is somebody who worked on both sides. She's working at MSNBC now, but she used to be Vice President Kamala Harris' spokesperson and worked in the White House communications shop, so she understands this better than anyone in how dangerous what the White House and other organizations are doing. We hope that you take a look at those and be more aware about these actions against the press.

Jill: Kim, you mentioned about spending your money, and for 99 cents, not today because no one should be spending money today. Oh, well-

Barb: Well, this goes out tomorrow-

Jill: ... when I say today-

Barb: ... Jill.

Jill: ... today is Friday, so hopefully you didn't spend anything, but today you can. Today, you can, for 99 cents, get a copy of 1984 by George Orwell or Animal Farm by him. I think it was written 75 years ago and it is what we are now living through, so it might be worth reading and thinking about, "Is that the world that you want to live in? Or do you want to take action to resist this?"

Music: I'm putting on my Bombas. Do-do-do-do.

I'm putting on my Bombas on my feet.

Kim: You know, I love shoes, but shoes can't be their best if you don't have the proper foundational garments, and Bombas has you covered. I've been buying Bomba socks for as long as I can remember. They come in all different styles, everything from my hiking socks, which I have, to running socks, which I have, to dress socks, which I have. They really have you covered no matter what you are doing, and they provide the perfect comfort that you need.

The secret is in their fabrics. We're talking about the good stuff like Merino wool, no slacking when it comes to your feet. You have to take good care of them, and the Merino wool socks feel so cozy at the ski lodge after a long day on the slopes. They can handle anything, so if you want to brave the cold on a snowy run or even a trip to the grocery store, in places where it's still cold out, Bombas has athletic socks built to fit you.

Jill: You know, Kim, unlike you, I had heard about Bombas at least a million times on ads, but I only just recently tried them, and I'm sorry I waited so long. They're designed to be the most comfortable that you have ever had, and to brave any of the elements that you might encounter. Bombas knows that little things make a big difference. It's crucial when you have to face the bitter cold every day in a city like Chicago, although global warming has made it a lot more tolerable. Every time I put on my Bombas gear, I feel really cozy and comfortable. One of the reasons that I feel that way is how they removed all the itchy tags, fixed that annoying toe seam, and perfected the fit of everything, leaving us with socks that don't slip down, t-shirts with a fabulous feel, and undergarments that never ride up.

Barb: You know, I love the socks and I have research Merino wool because I said, "What is it that makes these socks so great?" You probably know this, but I didn't. Merino wool is a specific kind of sheep that grows in Spain. I guess they don't grow, they live in Spain, and they are raised for their wool because it is the softest and smoothest wool out there. Those socks are a game changer for a day out or relaxing in the evening in front of the fire, but can I tell you guys, not only are the socks great, have you tried the slippers?

The slippers take things to the next level. If you've got cold feet like mine, warm heart, cold feet they say, you'll love the warm, fluffy Sherpa lining and the marshmallow-like cushioning. More importantly, Bombas is a company with a mission. One of the reasons we're so glad to have them as a sponsor is that every Bombas item gives back. With every

purchase. Bombas will donate another item to someone facing homelessness, really. They've donated more than 150 million items thanks to purchases like yours.

Kim: Now that you're talking about those marshmallow-like slippers, I think I know what I'm going to ask Greg for my birthday, but seriously, Bombas are the perfect complement to any wardrobe, but if for some reason you're not a fan of what you get, not to worry. They have a 100% happiness guarantee that covers free exchanges and returns, too, and they're really convenient about it. Once I think I was in my exuberance, I clicked two of the pairs of socks that I was getting, so instead of four socks, I got eight.

It was no problem to return the other four, although I probably should have just kept them because I'd wear them all, but it's good to know that they have good customer service. Don't wait. Try Bombas now. Head over to bombas.com/sisters and use the code Sisters for 20% off your first purchase. That's a great deal. That's B-O-M-B-A-S.com/sisters, or use code Sisters at the checkout, and you can find the link are in our show notes.

Music: So get your Bombas, do-do-do-do.

Go and get your Bombas.

Barb: Well, it was not a great week for journalists in the free press, but it was also not a great week for lawyers. First, we saw Donald Trump retaliate against lawyers at a Washington, D.C., law firm who are representing Special Counsel Jack Smith. Jill, what was that all about?

Jill: Oh, it is so unbelievable. I'm glad you're asking. I'm hoping that lawyers and the American Bar Association, which has been speaking up lately in support of our rights, will also take action on this. What happened is several things, Covington & Burling, one of the oldest, and for lawyers, you all know the phrase, a white shoe law firm, which means a very prestigious, powerful firm. I don't know where the phrase "white shoe" came from. Do either of you know?

Barb: No, I've also heard silk-

Kim: I don't.

Barb: ... stocking

Kim: ... [inaudible 00:30:57].

Jill: Silk stocking, yeah. I mean, it's a fancy dancy firm.

Kim: That's weird, too, like...

Barb: Yeah.

Jill: Yeah. Anyway, this very prestigious, good law firm, reputable, reliable, did some work for Jack Smith, and it was discovered because in his departure he reported how much he had paid them for advice. I think maybe now representing Jack Smith in the threats to his

person by the Justice Department and the Congress, et cetera, and so they have been punished. Their security clearance of all the people there has been revoked. Now, I'm not sure how many of them had it, but at least one did, and it threatens his ability to continue to represent Jack Smith. It's not just a, "Gee, it would be nice to know this information that is classified." This is, "I need to know this to represent my client."

Taking it away is definitely a violation of the rights of legal representation that Jack Smith has, so it's a serious thing. They will, of course, reSISt this, I love this word, reSISt, S-I-S for the SistersInLaw, will reSISt this happening. I will also say if they can get away with this against Covington, no one else is safe, no other law firm, and anybody who represents an unpopular point of view will be punished. That is not how our legal system works. It is definitely a violation of the rights of defense, which is one of the 10 Bill of Rights, so I'm seriously worried about what's happening.

Kim: You're absolutely right, Jill, and then while you were talking, I actually looked up what white shoe [inaudible 00:32:55].

Barb: Oh yeah. I did, too.

Jill: Thank you [inaudible 00:32:56].

Kim: It's something bad. It means prestigious law firm, but it also informally means denoting a company, especially a law firm, owned and run by members of the WASP elite, generally-

Jill: Ooh.

Kim: ... regarded as cautious and conservative.

Jill: Ooh.

Kim: I knew it came from something bad.

Barb: The origin is from the Ivy League. Graduates of the Ivy League colleges would wear white buckskin derby shoes-

Kim: Yes, with those-

Jill: Yeah [inaudible 00:33:23]-

Barb: ... those pink bottoms.

Kim: ... I know [inaudible 00:33:23].

Barb: ... you know what I'm talking about.

Kim: Wow.

Jill: Oh my God.

Kim: The pink bottom white derby shoes. We know exactly-

Barb: Yeah-

Kim: ... the dudes who wore-

Barb: ... so that was-

Kim: ... those [inaudible 00:33:29].

Jill: Oh my. I just looked up the meaning of Ivy League because I mentioned it in my draft of a children's book, and I thought, "You know, kids won't know what Ivy League is," and then The Seven Sisters, very interesting, but if it's in any way a negative, that is not intended. Covington is an excellent firm that has long been responsible for really good outcomes in a variety of fields, and the particular lawyer who has been representing Trump has an unbelievably appropriate background from the public integrity section and is someone deserves to have his credentials reinstated for a security clearance.

Barb: Well, one point you make there, Jill, I think is such an important one, and that is this isn't the last law firm that's going to be in Trump's crosshairs. This is a shot across the bow. This goes back to his strategy that he described in Art of the Deal. When anybody crosses me, I punch back times 10, and so the idea here of yanking security clearances, they also said we're going to terminate any contracts they have with-

Jill: Yes.

Barb: ... the government. I don't think-

Jill: Yes,

Barb: ... they have any. The idea-

Jill: That's why I didn't mention it.

Barb: ... the idea here, I think, is to say anyone else that Jack Smith retains is going to get the same treatment. If that's the case, then law firms are going to stand down and Jack Smith's not going to be able to find a lawyer to represent him because the right to counsel includes the right to effective assistance of counsel, which, Jill, as you point out, would require reading classified documents and the right to counsel of one's choice. Not only is he being already denied counsel of his choice, but I think he's going to be denied any counsel because any lawyer who decides to represent him is going to get another one of these executive orders-

Jill: Or it's going to be someone-

Kim: Oh, that's such a good point.

Jill: ... who doesn't have the resources that Covington & Burling have, and you need a firm with those resources to stand up to the resources of the federal government, and that is a serious problem.

Barb: Well, speaking of federal government, Kim, did you see that Ed Martin, the D.C. U.S. attorney, he's the interim and the nominee, joined in on the fun and he posted something on social media about, "Hey, Jack Smith and Covington & Burling, save your receipts." Now, what's your take on that?

Kim: Yeah, I mean, considering that he is the prosecutor in D.C., the Federal Prosecutor in D.C., head of that office, I take it's some veiled threat at potential criminal liability for representing... I mean, I don't fully understand it because what possible criminality could be found there, but these are the times that we're living in. He certainly wants to chime in being that Covington & Burlington, the office that was representing Jack Smith, is in D.C. and sort of give some bluster on that, too.

It's important to remember that Ed Martin is somebody who is a member of Trump's circle, represented the January 6th... In fact, even after he assumed the interim position at the U.S. Attorney's Office in D.C. after that, he was still filing notices of withdrawal as counsel to January 6th defendants, and he supports Trump's efforts to pardon them. I think he is dancing with the one who brought him.

Barb: Yeah, and so inappropriate for a prosecutor, number one, to suggest that they're investigating someone when they may not be, or whatever it is. A prosecutor just-

Jill: Even if they are--

Barb: ... they [inaudible 00:37:16]-

Jill: ... they can't say it.

Barb: ... right, to neither confirm or deny the existence of an investigation, so to send this-

Kim: Right-

Barb: ... out is just-

Kim: ... but to use-

Barb: ... awful.

Kim: ... it as a threat. I mean-

Barb: He also earlier this week said that he was proud to be serving as President Trump's lawyer.

Jill: Yes.

Barb: U.S. attorneys are not the lawyers for the President. They are lawyers-

Jill: They're not.

Barb: ... for the United States. You know, Elie Honig, who I don't always agree with, he has been critical of Jack Smith's prosecutions, but he said this wee that, "Ed Martin being a prosecutor is like a six-year-old with a chainsaw running around with no idea how to use it and incredibly reckless and incredibly dangerous." That seems to be a very apt metaphor.

Jill: Don't you think this is grounds for not confirming him?

Barb: Yes.

Jill: All of the things you just mentioned are things that in a normal world, no one would vote to confirm this person.

Barb: Yeah, it'll be really interesting to see whether any Republicans have the courage to stand up for this because to become the full-time U.S. Attorney and lose his interim title, he needs to be confirmed. His interim job, I think, is only good for something like 210 days or something like that-

Kim: Yeah, I think that's right.

Barb: ... so to stay on in the post, he's going to have to get confirmed. I don't know if he's confirmable, but I think that's going to be... Jill, it's a great point. It's going to be an interesting test. Well, speaking of bad weeks for lawyers, we also saw a purge at the Department of Defense with the firing of the Chairman of the Joint Chiefs of Staff and others, high-level officials, including the top uniformed lawyers known as the JAG lawyers. What are they, judge-

Jill: It's the-

Barb: ... [inaudible 00:38:56]-

Jill: ... JAG-

Barb: ... General?

Jill: ... Judge Advocate General, but the general in charge of the Judge Advocate General Corps is the TJAG.

Barb: Hmm. Okay. Well-

Jill: The Judge Advocate-

Barb: ... Jill, you were-

Jill: ... he is the Judge Advocate General.

Barb: ... well, Jill, you know a lot about this. You were once the General Counsel of the Army. What's your view of this change, especially the removal of the lawyers, the uniformed lawyers, and what might be the consequences of changes like this?

Jill: Of course, everything has a trickle-down effect except in the economy, but it does have a trickle-down in this case where if you get rid of the top guy, because you say you don't want them to be an impediment to the Trump agenda, as we were talking about with the U.S attorney, that's not their job to represent the President or his agenda. Their job is to be loyal to the Constitution and to give independent advice. The advice goes from the Secretary of the Army, who gets advice from the TJAG, to the lowest level soldier or sailor or airman or Marine or Guardsman. They get advice, and so does civilians who are employed at the Pentagon get advice on what's legal and what isn't legal. If they are afraid to speak up and say, "That is an illegal order," and the Nuremberg Defense doesn't work, so if you follow it, you're in trouble, if they can't say that because they face the end of their career, that is a serious danger to America's national security and we can't let that happen.

There was no reason for him to fire the Chairman of the Joint Chiefs and to appoint someone who does not have any of the qualifications mandated for the Chairman, which is to either have been a chief one of the services, the Chairman of the Army, Navy, et cetera, or to have been a Deputy Chairman of the Joint Chiefs and not to be a retired officer and to be a four-star, which he is not. He's a three-star, the newly appointed one whose nickname is Razin' Caine, General Caine. This is a serious risk to our security and to the integrity of the military. It is something that should have never happened, and yet it has. The TJAG for the Army reported to me as general counsel. They are independent advisors on military justice issues, contract issues, a lot of issues, not just is this a legal order or not, but that is one of them. You want them to be able to give independent advice free of the pressure of knowing that they will be fired if they speak the truth.

Barb: Yeah, it's really disturbing considering the power of the military. We've got military members now down on our Southwest border. I worry about whether the military will get involved in other civilian activities or even elections, and we had lawyers there previously to tell them, "No, you can't do these things."

Jill: Right.

Barb: Now, without them, I'm really worried about abuse-

Jill: It's-

Barb: ... of the military.

Jill: ... you know, could I add one thing that maybe should have been my first point? Which is if the President has a compliant army, that is really a step close to dictatorship, authoritarian control, and to being able to implement a total coup. Right now, the coup is happening one thing at a time by dismantling USAID, the Department of Education, et cetera, firing Department of Justice lawyers, I mean, all the things we've talked about for the last four or five weeks, but getting your own army, that is the end of democracy.

Barb: Yeah. Well, while we're on the military topic, let me divert for just a second here, Kim, and ask you, did you see this order from the Pentagon about removing transgender members from the military? I've read that it can be as many as 14,000 people. Do you think that's lawful? I know that New York Attorney General Letitia James has filed a lawsuit to stop it. Is this the kind of thing that you think President Trump can do in just sort of the name of, "I'm the Commander-in-Chief and I can do what I want?" Or is this unlawful discrimination against people who have served valiantly?

Kim: Yeah, well, I think it's awful. Let's start from there before we get to whether it's lawful. If you ask serious military readiness experts, they would say that this sort of disruption that would pull service members who have volunteered and sworn oath to protect our country is a threat to military readiness. This is something that used to be something that people of all political stripes cared about, and it seems to be less so lately. Yes, this order is actually that would ban transgender people from the military is being challenged by a member of the military. Letitia James and a number of other state attorneys general, as they've been really busy these last few weeks, have filed an amicus brief in that case essentially saying that not only does it compromise military readiness, but that it unfairly and irreparably harms people in their state who have been serving, who have been making a living like this in the military and volunteering their services, and that it is fundamentally unfair as well as unconstitutional.

Will this lawsuit, even with the support of these attorneys general win? Well, I don't know because if you recall back in 2019 when a similar ban, a transgender ban from President Trump, made it's way to the Supreme Court, the Supreme Court didn't out and out say that it was constitutional, but they let it go into effect. That bodes badly, to me, about what the future of the end game of any litigation over this issue might be, but I really hope that there are more people that can speak out eloquently about this. Last week, I had the honor at an event to meet Ray Mabus, who if you don't who that is, he's a former governor of Mississippi, and he's actually also a former secretary of the Navy. He has been a vocal defender of people in the military, including LGBTQ people.

It was refreshing to seem some... This is a white dude from Mississippi, a veteran, former head of the Navy, and saying that it's outrageous to do something like this. I hope that more people like that speak out and make clear that this isn't... If you really believe in protecting America and making sure that we are the best that we can be, this is not the way to do it.

Barb: Yeah. I have a hard time believing that removing 14,000 members of the military merely because of their transgender status is really going to help our military readiness. I mean, at his confirmation hearing, Pete Hegseth kept saying things about, "We have standards," and he would sort of lift his hand to a certain level and say, "We have standards." He was asked questions about his views on women in the military that were very discriminatory and the LGBTQ community. He said, "As long as they can comply with our standards," and he would lift his hand horizontally. If these people are currently serving, I have no reason to believe they're not meeting standards.

Kim: That's right.

Barb: The phrase that I keep seeing him using over and over again is war fighters. "We're going to be war fighters, war fighters," and so removing people strikes me as harming the

military readiness of our military, and it reminds me of a time... Do you guys remember back in the ;90s when Bill Clinton was pushing Don't Ask, Don't tell?

Jill: Yes.

Barb: I remember having a conversation with a colleague I will not name, and talking with this colleague who was opposed to having LGBTQ members in the military. Every argument he made, I would respond and say... You know, he was all worried about sexual assault in the showers and all kinds of goofy stuff. I'd say, "You can prohibit conduct." I mean, of course you can't allow that, but what's to say that's going to happen? You have standards and if people violate those standards, of course they can't serve, but to blanketly say you can't have gay people in the military is just ridiculous. Finally, he conceded that when we got to the end of every argument and he had no response, it was it is just one more way that society is legitimizing their lifestyle, and-

Jill: Yep.

Barb: ... that was what it was really all about, and-

Kim: That's it. I mean-

Barb: ... we don't want to lift these people up and say that this is part of the normal American fabric. That's what it's all about.

Kim: That's why they frame it in those terms like, "Oh, we have to be ready for war." In that statement, implicit in that statement is every negative false stereotype-

Barb: Yep.

Kim: ... about people who are LGBTQ. The same way that all of this attack on DEI to make things run better and more efficient, in that is an assumption that Black and brown people and women and disabled people are somewhat naturally inferior, and you really need the white dudes to step in and clear stuff up. They're saying it not quite out loud, but at least you finally came out and said it out loud, Barb.

Jill: Let me just add two things from my experience in the Pentagon.

Barb: Mm-hmm.

Jill: One is that the argument was always, and we were in the process of integrating women at the time, and then I have an experience with integrating LGBTQ, which comes from during the Obama Administration as opposed to the Carter Administration, but unit cohesion will be hurt because people just can't get along. Then, you ask the soldiers, the service members, and they say, "I don't have any problem with this." None of them has a problem with this. This is a ridiculous from top viewpoint, and I will give you a specific example, which was when we were integrating women, I took a very active role in this. I was observing some of the tests that were being done to see if unit cohesion was hurt.

The first thing I found out was that they were only testing up to 30% fill of a unit because they were sure if there was more than that, the unit could not achieve its mission. Of course, they did not find that to be true, and what they found was because women at the time had to have a high school diploma and men did not, the women were smarter.

Barb: Wow.

Jill: I mean, this is true. That was to enlist. You had to have a high school diploma if you were female, and what they found, and here's one example, a field exercise of putting up this huge maintenance tent, and when I say huge, I'm talking about it would hold airplanes, it would hold tons of tank, required a metal substructure, like a jungle gym. Then, you put this gigantic canvas over it, a camouflage thing. The men were spending a long time accomplishing the task because they were getting up and climbing over the jungle gym and pulling this heavy, heavy canvas behind them.

The women looked at it and said, "You see those grommets, those little holes at the end? We'll put a rope through it. We'll throw it to you on the other side. You can pull it up. Now, remember, this is supposed to be a test for a war function for a war zone, and the men who were climbing up were clear targets. The women were wearing camouflage on the ground, threw it over. It's now standard operating procedure for how you put up a-

Barb: How hilarious.

Jill: ... so-

Barb: I love it.

Jill: ... I mean-

Barb: I love it-

Jill: ... this just doesn't-

Barb: ... just so much.

Jill: ... it just doesn't work.

This is the Watergate Girl, Jill Wine-Banks, and I'm also the host of Just the Facts on the Politicon YouTube Channel. I hope you'll join me there every week where we talk about, what are the facts? How do we communicate them properly? It's my dream as a journalist to be able to get the facts out, so please join me every week.

Music: Is Dojo there is?

Jill: Yeah. I'm worried that that may be true, Kim, because this week we have seen Elon Musk dominate a cabinet meeting dressed in a T-shirt and a MAGA hat, and to cause more lawsuits than we can analyze in one episode. In fact, there are so many Doge cases, SCOTUS may not have time to take on any other cases. Kim, the TRO that was set to expire on February 26th, at which time the District Court Judge Amy Berman Jackson

was expected to rule on whether to grant a preliminary injunction, but she didn't. She extended the TRO until March 1st, and so first of all, why did she do that? Let's start there. Why did she do that?

Kim: Yes, so she essentially said she needed more time in the time that, as we talked about last week, for a temporary restraining order hearing. Those things moved pretty quickly, and so she had that in place and she said she wanted a little extra time to think about and draft an opinion that correctly took on these complex constitutional issues, and that's an important thing for a trial-level court to do, to take a beat, to ride a decision that they believe is strong enough to stand up to appellate scrutiny. This isn't unusual. I know sometimes we criticize judges for not moving quickly, but speed is not always your friend and we're talking about this. This isn't like the several months that the Supreme Court justices take to write an opinion. This is a matter of days. She's just asking for a couple more days-

Barb: Three days.

Kim: ... just to make-

Jill: Three.

Kim: ... just to get this right, and so I think that that was a perfectly reasonable thing and not a terribly surprising thing for her to do.

Jill: Right, so it was only three days and you might say, "Oh, big deal. What does three days mean?"

Kim: Yeah.

Jill: It gave the government a reason to go back to SCOTUS again and to say, "You have to intervene, you have to stop this, you have to allow us to proceed because you're interfering with the authority of the executive, the President of the United States. They said, "Three days is just too much, too much," so what harm are they alleging and why did the court do what it did?

Kim: Well, so allegedly they're saying that "No, that this prevents the President from me being able to carry out orders in accordance to the way he sees fit." I can get, as I'll get into in a minute, I'm not saying that that is a losing argument or that it will lose once it gets up to the Supreme Court. Perhaps that's what the government thought, too, which is why they asked the Supreme Court to intervene in this temporary restraining order, which as we talked about last year, even if the court-

Jill: Last week.

Kim: ... regard... last week, it felt like a year.

Jill: It does.

Kim: It felt like a year.

Jill: It does. I can't believe that we're talking about things that have happened in only one week-

Kim: Oh my God.

Jill: ... and that we had-

Kim: I can't [inaudible 00:55:32].

Jill: ... like 13 other things that we could have talked about and had trouble selecting down to some that-

Kim: It's true.

Jill: ... we could actually elucidate on.

Kim: Lifting the veil a little bit about how we make the sausage here at #SistersInLaw, we usually go kick around five or six things. We have double-digit numbers of-

Barb: Yeah.

Kim: ... of topics-

Barb: Yeah, we had 11-

Kim: ... every-

Barb: ... I think [inaudible 00:55:54].

Kim: ... week.

Jill: 13.

Kim: It's like-

Jill: I counted-

Kim: ... crazy.

Jill: ... 13.

Kim: It takes so long just to figure out what to pick, so if you're saying, "Oh, I wish y'all talked about X," trust me, if we talked about everything, this podcast would be eight hours long. Yes, last week, we talked about temporary restraining orders and the fact that they're not appealable, so regardless of how the Supreme Court may have issued any ruling intervening in that TRO, the fact along that they did, it really would have upended a civil procedure in a really impactful way. I think maybe one reason why they punted and didn't

step in at this point is because they recognized that, or maybe they just listened to #SistersInLaw and they heeded our warnings about doing such a thing. I don't know.

Jill: Barb, let's expand on that. Do you expect SCOTU to intervene now before Sunday? This is the second time they've been asked to intervene in a TRO, which as we've talked about a million times, is not appealable. In any case, whenever they rule, whether it's before Sunday or after Sunday, when the opinion below is issued, do you think that the government is going to win or is Hampton going to keep his job?

Barb: Yeah-

Jill: Hampton Dellinger.

Barb: ... yeah, I don't know about what they're going to do in terms of the temporary restraining order. As you say, typically they're not appealable and extending by a couple more days. I don't really know, but the big picture here is actually really important because it really goes to whether Congress can decide that the leaders of these independent agencies can only be fired for just cause. That goes back to an old case called Humphrey's Executor. This is one of these law school-

Jill: I love that.

Barb: ... yeah, these law school cases. It's from the 1930s or something, and it's when FDR tried to fire a guy named Humphrey who was the head of the FTC, Federal Trade Commission, because he thought he wasn't fully on board with FDR's vision for what the agencies ought to be doing. Then, he gets fired and then Humphrey sues and he dies in the meantime, and so his estate sues for back pay.

That's why it's called Humphrey's Executor, but in that case, the Supreme Court said, "No, the President, despite all of your fancy executive power, all of your Article II, your vested power, your take care clause power, all of that stuff, if Congress creates an executive or independent agency and has reasons that the person can only be fired for cause, that is enforceable. Really important case, but interestingly, in the last couple of years, we have seen the Supreme Court chip away at this a little bit. They've distinguished a case like Humphrey's Executor from other case like the Consumer Financial Protection Bureau, and I think the other one was the National Labor Relations Board, and they found ways to distinguish them in holding off and saying if it has multi-heads versus a single head, it's a different kind of thing. It really seems to be one of those distinctions without a difference.

I think there's a worry here that this court, which does have an expansive view of executive power, is going to overturn Humphrey's Executor. In fact, Trump's Solicitor General has said she believes it's unconstitutional and is not going to defend it. I think the ace in the hole people seem to think is the Federal Reserve Board, which is a board of governors, and their insulation from the political whims of a President from hiring or firing them, is what has really stabilized the American economy since the Great Depression. I think that is the thing that people are really worried about, the ability to replace all of those people. If the court caves on Hampton Dellinger, does that not pave the way to cave on the Federal Reserve Board? There's a lot of moving parts here, and it

will be interesting see how they rule in the Dellinger case just to see what a precedential value that might have for the Federal Reserve Board down the road.

Jill: You are completely correct, and it's also worth noting that Hampton Dellinger's appointment is to an independent board, that he has can only be fired basically for cause, and there is no even accusation that would support his being inefficient or having failed in his job, and so there's no legitimate-

Barb: Yeah-

Jill: ... reason.

Barb: ... he's only one year in in a five-year term.

Jill: Exactly.

Barb: The terms are all five years so that they purposely span Presidential terms, so-

Jill: Exactly.

Barb: ... so-

Jill: To be independent.

Barb: Independence is the game, but Donald Trump and Elon Musk don't seem to be big fans of independence these days. We have time for a second Doge case, so Kim, let's talk about that, or at least the second Doge case that's made it to the Supreme Court. At least as of now at this moment, which is about 3:30 on Friday, briefs have been filed, I presume, because they were ordered to be filed by 12:00 Eastern Time, and it is now 4:30 Eastern Time, but I haven't seen a ruling. There's another case got to the Supreme Court, actually, two cases, the Department of State v. The AIDS Vaccine Advocacy Coalition and Global Health Council v. Trump. They involve over \$2 billion worth of USAID funds that were appropriated and committed and then frozen. If Joyce were here, she loves explaining all the appellate details, but I'm going to just summarize it in like a sentence that, again-

Kim: She would call herself a nerd, which is sort of a humblebrag.

Jill: You know what? I was going to use the word "nerd" in referring-

Kim: Yeah, yeah.

Jill: ... to her-

Kim: She deserves it.

Jill: ... but I just thought it's okay for her to say, "I love this nerdy stuff." Different than me saying, "She loves it," but Joyce does love the nerdy stuff.

Kim: I'll call her nerd. She's a nerd.

Barb: If you've seen her in her-

Jill: [inaudible 01:02:02].

Barb: ... glasses, she's a nerd.

Barb: She... It's different to say she's a nerd than that she loves nerdy details of appellate process.

Kim: Nerd.

Barb: Anyway, it ended with a district court ruling for the plaintiffs and ordering the government to release the funds to the plaintiffs by midnight on Wednesday the 27th. They were ordered to do that. There was a motion for them to be held in contempt. Kim, what happened just hours before they were supposed to release the funds?

Kim: Well, Chief Justice John Roberts entered the chat, that's what happened, and he issued on behalf of the court something called an administrative stay to the lower court's orders. While the government has a chance to respond to the Supreme Court and explain why they should not just allow this lower court order to go through and why they should not have to be forced to release these funds. This was done in an order, so it didn't come with a lot of explanation or an opinion to parse, but so I'm not entirely sure why they did this, but it's important to say that this was not a temporary restraining order, so it did not have the same sort of precedential value that we were talking about in the previous case.

Yeah, it was a surprising move. It was a devastating move to the foreign aid organizations that were counting on that money and thought that they got it. They found a way to get it to keep providing crucial care to fight things like Ebola, and to ensure that smallpox does not make a resurgence in the world, and to fight against measles disease that we didn't used to not have to worry about in the United States until we did and all kinds of other things. It's really a devastating human toll being taken by this, and I think that's something that we should remember, but yeah, as of recording, I'm still on hold because of Chief Justice Roberts' order.

Jill: It's all those things, and protecting against AIDS, protecting-

Kim: Yep-

Jill: ... against starvation, and it's really hurting

Kim: ... [inaudible 01:04:23].

Jill: ... people. If I understand it correctly, and anybody who wants to know more should read Steve Vladeck's piece that details all the complex appellate history of this. If I understand it correctly, this money was not only appropriated by Congress-

Kim: Yes.

Jill: ... the people with the power of the purse, but the money has already been committed, and so people have spent the money and done the services that they were to be paid for. It's really horrible, but Barb, there are at least two interpretations of the ruling. Could you tell us what those two are and what you expect to happen after the filing deadline has now expired?

Barb: Yeah, I think the media reaction to this is sometimes this happens sometimes. People take it as a signal that, "Oh, you know, Roberts is in the bag. He agreed to pause the repayment of these funds, the loosening of these funds, so that means he is going to side with Trump." I don't think that's right. That's one view, and as you mentioned, Steve Vladeck, and we'll give him a shout-out, he has an excellent Substack called One First that's about the Supreme Court, and he gives a lot of detail on this. I think it is a fair bet that it does not necessarily mean how they will ultimately rule either on the TRO or on the ultimate case. It's pretty rare that TROs get stayed. I think that they'll preserve the status quo, which means paying, releasing the funds while they work out the larger picture of whether the President has the ability to stop these funds.

Frankly, a judge found a substantial likelihood of success on the merits and irreparable harm in stopping these funds. Congress has already appropriated these funds. They've already been essentially spent. They just need to be released, and so the President doesn't really have that power to withhold those funds. We often say Congress has the power of the purse. It's the President's job to take care that the laws be faithfully executed. That means it's your job to write the checks, make the disbursements. Hit send on the wire transfer, but you don't get to decide we're withholding that. It's kind of like remember when military relief was offered to Ukraine way back and Trump, I think this is what began his feud with Zelenskyy when he said, "I want you to do me a favor, though, before you get that military aid that Congress has already authorized, I want you to do me a favor and announce that you're investigating Joe Biden and Hunter Biden."

That's where they got sideways, and it's the job of Congress to pay, so I think ultimately, despite what John Roberts did earlier this week, I think it's likely that the Trump Administration is going to fail on this one. I think a lot of the things he's trying to do to the federal workforce, he probably has the power to do, but I think when it comes to spending, that is so clearly within the province of Congress that I think ultimately the Supreme Court is going to rule against him on this one.

Jill: One can only hope that that is true because the power of the purse is Article 1, power of Congress, and if you disrupt that balance of power, you're doing serious damage to how our democracy is set up. Kim, that raises the question, if Barbara's right and the government is going to lose on this and the money's going to be ordered to be dispersed, and the government refuses to obey the court order, which is something that we're seeing a lot of people from the President and the Vice President on down, although today we did see Senator Kennedy say, "You can never say disobey court order. You can disagree with it, they can't disobey it." What's going to happen if they disobey? Does it matter? What if they're held in contempt? The court doesn't have an army. What happens?

Kim: Well, so first of all, they can, and if they choose not to do that, they can and should be held in contempt, and that in itself is important. That is important in doing justice and in the rule of law. You know, it was a completely unrelated case, but there was a moment during oral arguments this week at the Supreme Court when Justice Brett Kavanaugh said

something to the effect, the case was about standing, okay, standing again, unrelated. He said something, he was trying to say that a court has standing and standing is not taken from them if they say they're not going to... if the recalcitrant litigant, I think is his term, announces that he will ignore the court order.

Kavanaugh was like, "No, no, no. I mean, if Richard Nixon had been like, "No, I'm not going to give you the tapes," would that have robbed us of jurisdiction from that case? Of course not, and I just thought it was really interesting that Kavanaugh used Nixon as an example of a recalcitrant litigant, and-

Jill: Who wasn't being-

Kim: ... I think [inaudible 01:09:41]-

Jill: ... because he believed in the rule of law and he-

Kim: ... he wasn't-

Jill: ... obeyed.

Kim: ... yes-

Jill: Yeah.

Kim: ... and you're saying even if he was, so I'm wondering, I made this point in my newsletter, was he sending a little message to the one who brought him, to the President that appointed him? I hope so, I hope so. I hope, and it's worth nothing that so far with every loss or apparent loss, the Trump Administration has been brushed back by the courts. When the courts have ruled or it looks like it's not going their way, they have either dropped it or backed off some.

They know they are showing by their own actions that the court has power, so I'm not... I think that they understand what a bad move that is, but again, I don't predict what they do. I think things like Justice Kavanaugh's comments and certainly actions from a court holding them in contempt are important and they matter. I hope more people, including the senator from Louisiana, who I agree with almost nothing on, but I agree with him on this, if they keep up that pressure, that's really important.

Jill: Yeah, it is important to remind ourselves that if the President and Vance are saying, "We don't have to obey, I am a king and I won't obey," and if other nominees to the Department of Justice are saying that, and we've seen that in hearings this week, that we are going to be in trouble if they disobey because, how are they going to be compelled? Barb, any ideas on that?

Barb: Well, we need Congress to step up. I mean, that's the only thing, and if they don't, then they are really abrogating their responsibilities. Congress has a lot of powers. I mean, impeachment is one, but it's not the only power. They can use their confirmation power. They can withhold confirmation from some of Trump's nominees. He still has hundreds of people who have to get confirmed, and he can... All the U.S. attorneys, for example,

they can use their confirmation power, the power of the purse. They're trying to balance a budget. They can withhold funding from Trump for certain pet projects if they want to. That's another one. They can hold oversight in hearings. Bring him in. They probably won't bring in the President, but bring in members of his administration and expose to the public what's going on so they can do all of those things.

They can do all of those things, and then ultimately they have the power of impeachment if he is violating... I mean, that is a high crime or misdemeanor to refuse to comply with a court order. I'm glad to see at least Senator Kennedy of Louisiana, a Republican, standing up for the rule of law and saying, "We're not going to tolerate anyone who disobeys a court order." I think Trump is really going to test the waters and see how much he can get away with, but ultimately, I think that if people stand up to him, he will back down because, ultimately, like all bullies, he's a coward.

Jill: So good a way to end. I spoke to a dear friend who is a freelance journalist today who was saying she thinks that the breaking point has been reached. When you hear Kennedy say you can't ignore an order of the court and when you see the treatment that Zelenskyy got, so I hope you're right, Barb.

Kim: Hey there, I'm Kimberly Atkins Stohr. With the new administration, a lot will be changing and it's a lot for us to learn about. If you want to learn about the 14th Amendment and what that means for things like birthright citizenship, please listen to my podcast, Justice By Design. The link is in the show notes, and this week and every week, we are breaking down solutions and answering questions that you may have about how the world works in 2025 and beyond. You can find it wherever you get your podcasts, and it's linked in the show notes.

Barb: Now comes the part of the show we really enjoy the most. It's the part where we answer 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 your 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 Pat who says, "Our X and Truth Social legitimate forms of government communication?" Kim, what do you think about that?

Kim: Oh, this is such a good question, so the answer is no. Now, nothing prohibits public officials from making statements on X or other social media platforms. We see them do it all the time, but what I think Pat's getting at is the idea of Donald Trump announcing his intent to do something on Truth Social or Elon Musk telling federal workers that they have until X amount of time to send him an email of a cat video or they will be terminated... you know, whatever edict is coming down.

Barb: "Send me a cat video, or you'll be terminated."

Kim: Whatever edict is coming down-

Barb: Oh, yeah. [inaudible 01:14:58].

Kim: ... being posted on X, and no, when it comes to official records, official records of the President, we've talked about the Presidential Records Act, there is a procedure by which any executive order or anything else comes down. When it comes to federal employees, they have to adhere to notifications as delivered by the Office of Personnel Management. The Office of Personnel Management is the agency that serves as like HR for the federal government. That is where communications about anything, certainly a condition of employment, should go through.

Just the fact that Elon Musk, who again, is not Senate confirmed or elected or anything, and who is ostensibly running, but claiming not to run a federal agency that exists based on no authorization from Congress, I just can't say this enough, he's not a government official in any way that has been previously recognized by law or the Constitution, so-

Barb: Yeah.

Kim: ... those challenges are ongoing, but when he says something on X about what federal workers can and cannot do, that in itself does not carry any force at all. It would have to come through the Office of Personnel Management.

Jill: Can I add just a little tweak to that? Which is that-

Kim: Yeah.

Jill: ... a President who speaks on social media is not able to bar people from reading it because it then becomes-

Kim: Correct.

Jill: ... a... Okay, so a friend of mine-

Kim: It's like he's making [inaudible 01:16:31]-

Jill: ... who's a judge [inaudible 01:16:32]-

Kim: ... the rule, but he can't stop people from hearing him make a speech, you know, keep people out when he's making a public speech. Social media is like that, but in terms of he can't go on X and declare something and then defend it in court, that doesn't work.

Jill: Right.

Barb: All right, well, we've got another question that comes to us from Paula who asks the question I hear all the time, so I'm going to direct this to you, Jill, so that I-

Jill: Oh.

Barb: ... want to hear your wisdom on the best way to... Paula asked, "What are the most effective ways to protest the current policies of Trump and Musk?"

Jill: Great question, Paula, and there are a lot of websites that are now addressing actions that people can take. A lot of the Substack newsletters talk about this, and I think you should follow some of them to figure out what are the things you can most effectively do. Obviously, being informed and being involved are two of the things that everyone has to do because that's the basis for protesting. I just interviewed on Just the Facts, my YouTube show, Richard Haas, who wrote a book called The 10 Obligations of Citizens, and that was his first two obligations is to be informed and involved. Now, informed is tricky because there's a lot of misinformation, disinformation, propaganda, lies out there, so you have to make sure you have the truth, the real facts, but that will inform you to be active in voting against the people who are taking away our rights and to protest.

In the meantime, I think it is effective to, for example, protest with signs outside of a Tesla dealership. I think it's effective to protest any of the companies who are abolishing their DEI in compliance with a totally illegal order from the President. I think it is okay to do the economic boycott that happened as we are recording this. Friday is the day we record, and today is the day to spend nothing, to make sure that the corporations know that we are the ultimate power because we control the economy. There are other economic boycotts planned, and unfortunately, I think that you would need much more than one day to make the point because I fear that anybody who knew they weren't going to buy today bought it yesterday or will buy it tomorrow, and so the week's income for these companies will be the same.

It just will be differently distributed, but even that will show that at some point we're going to switch our business from the bad companies to the good ones and stay with the ones that are protecting our rights and who aren't obeying in advance, who aren't doing... Barb, what's your definition in your book about the pre-obeyance to authoritarian rule? That's what we don't want to happen. Ultimately, though, in less than two years now, you get to vote again. Make sure that you vote to oust the people who have allowed this to happen, the people who voted to confirm unqualified people for the cabinet, et cetera.

Barb: All right, I knew she'd have some good advice. All right, and our final question comes to us from Donna in Idaho who asks, "What is the difference between U.S. attorneys and federal prosecutors? Who is appointed and can therefore be fired?" Great question, Donna. We use these terms all the time. We had another one about, what's a line prosecutor? I'll throw that one in here, too. I think line prosecutor just means somebody who brings the cases. They're in the courts, they're in the trenches, they're bringing the cases. U.S. attorneys are part of a larger category of federal prosecutors, so anyone who prosecutes a case on behalf of the United States is a federal prosecutor. T

There are also civil lawyers in U.S. attorney's offices and at the Department of Justice who sometimes gets grouped and called federal prosecutors. They probably are more appropriately called federal lawyers or lawyers for the government, but you are right to note that there are people who work for U.S. Attorneys offices out in the field, as they call it, which is all of America, versus the lawyers who work for the Department of Justice in Washington.

Some of them are called trial attorneys. Not all of them are in trials, so I guess they're just DOJ lawyers, but all of them are federal lawyers, and federal prosecutors might be DOJ trial lawyers who work at the Department of Justice, and they travel out around the country to practice in a specified field. They might be civil rights lawyers, they might be

public corruption lawyers. Then, U.S. attorneys and assistant U.S. attorneys are also federal prosecutors, but located around the country.

Now, to your question, who can be fired? That's just the appointees, the political appointees, which is a very, very small subset of all of the federal prosecutors. Every U.S. attorney, there are 93 of them, who lead the U.S. attorney's offices are appointed by the President and can be fired. The rest of their assistants, in Detroit, we've got something like 115 assistant U.S. attorneys, are all career people. Cannot be fired by the President unless they're on probation because they're a first- or second-year lawyer, they get civil service protections. All of the other lawyers at the Department of Justice also get those civil service protections, except for those appointed by the President, and there are a handful. There's the Attorney General, the Deputy Attorney General, the Associate Attorney General, who's the number three.

Then, the Assistant Attorneys General over every component like the Environmental and Natural Resources Division, like the Civil Rights Division, the National Security Division. There's, I don't know, maybe a dozen or so of those. Of all the people who can be fired by the President, what did we get, probably fewer than 20 at DOJ, and then 93 in the field. Then, the other, I don't know how many, many thousands of lawyers, ten of thousands of lawyers maybe are career people.

Well, that does it for this episode. Thanks for listening to #SistersInLaw with Jill Wine-Banks, Kimberly Atkins Stohr, and me, Barb McQuade. Follow #SistersInLaw wherever you listen, and please give us a five-star review. It really helps others find the show, and remember, when someone asks how you're doing, you will say, "I'm standing strong for democracy."

Kim: Yes.

Barb: Please show some love... please show some love to this week's sponsors, HelloFresh and Bombas. The links are in the show notes. Please support them because they make this podcast possible. See you next week with another episode, #SistersInLaw.

Kim: Do you think Joyce has FOMO when she's not with us?

Barb: Oh, I bet she does have FOMO.

Kim: I think she does, too, right?

Barb: Yeah. Don't you? I kind of do. You'll notice how rarely I miss because I have a lot of FOMO.

Kim: Really? You're always here.

Barb: I know.

Kim: That's true.

Barb: I know, I don't want to miss out. It's such a good conversation. Every once in a while, family duty calls or something, and I can't be with you, but I definitely have FOMO. What about you, Jill? You FOMO?

Jill: Of course I do, but I also... It's not just that, it's that I really miss the dialogue and the camaraderie and the things I learned from talking with you. I know I can't wait for Joyce to be back and be the nerd that we need, but she's doing something-

Kim: The nerd that we need.

Jill: ... really great today. She is doing something great.

Barb: I think that should be her new nickname. She's not just the nerd.

Kim: I like the nerd.

Barb: She's the nerd that we need.

Jill: The nerd that we need. Okay.

Barb: Next feature.

Jill: Yeah.