

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 and we do have some big news. The new Resistance Mini Tote is ready to order at politicon.com/merch. Go there to get yours now. They look great. We've seen people with them out in the wild. Get yours while you can. It is a hot item, even our fashionista, Kim, says it is the item of the fashion season, so get your Resistance SistersInLaw Mini Tote right away.

Today we will be discussing a number of important topics, Donald Trump's new plane, the Supreme Court's arguments in the Birthright citizenship case, and some new roles at the Department of Justice for Eagle Ed Martin. Well, before we get started, I did want to ask each of you a very important question. I am wondering what is the sound tone that you use on your alarm clock to wake you up every morning? Now I realize for Jill, that probably assumes facts not in evidence because Jill wakes up at about noon every day, so she probably just pops right out of bed at that time. But I've been using the same one for a long time. It's the one called By the Seaside. Do you know this one?

Jill: I do. I used to use that one.

Barb: So I really like it because it's a little bit goofy sounding, so it always makes me chuckle, which is a good way to get up in the morning, right? Because my son has one that's like the blare. But I do find that if I use the same one for a long time, I start to tire of it and then I hear it and I dread it. For a long time, my husband used a song by 10,000 Maniacs that I used to love and now I hate because I think of it as the wake-up song. So I'm looking for a new sound. What do you guys use?

Jill: Barb, I have changed mine several times, but my current one is called Strum, and it sounds like this. I love banjo and I used to use the sound from Deliverance, which used to upset so many people that I had to get rid of that. But I also have used blues and a piano one that I love a lot. I do change them, because otherwise you do get bored with them. But I have also discovered something, which is that I am now starting to wake up 15 to 30 minutes before the alarm goes off, so I don't hear it.

Barb: Look at you, morning glory.

Jill: Morning is a relative definition. You to morning is 6:00 A.M. To me, it's 11, but honestly, for some reason, I don't know how this is happening. I up before the alarm goes off, so I'm not hearing it as much because I'm waking up. I don't know why. And if I don't set the alarm, I do sleep through completely for as long as I want.

Barb: You're becoming a morning person, Jill.

Kim: So with me, the ringtone was an early test of my marriage because my husband used to use that awful blaring alarm that reminded me of the contamination warning in Silkwood before they had to hose down-

Barb: Yeah, I know that one. I hate that.

Kim: -Meryl Streep and I would wake up, I would jump out of bed.

Jill: I see the radiation symbols coming up.

Kim: Yes, I would jump out of bed. I would share needing to jump into action. So he doesn't use that tone anymore. He uses something a little less Traumatic, and I'm on the opposite end. I not only have a gentle ringtone, but I programmed it to start off very softly and gradually increase in volume until I am gently awakened. It's called Early Rise. It sounds like this.

See how gentle?

Jill: I like that.

Kim: That's how I need to start my day.

Barb: I might have a hard time waking up with it to that though.

Kim: It gets the job. That's how I want to enter each day With stress-free. It's almost like you expect the birds to start chirping. That's how I need to start my day. I am not a morning person. And so loud noises in the morning-

Barb: That's lovely.

Kim: -are not what I-

Barb: I can picture the birds even dressing you and doing your hair like in Cinderella.

Jill: It sounds lovely. I might have to change mine to that for a while.

Kim: Beauty regimens are so much more than just applying products and cleansing or removing makeup. Now there's a new way to do things. OSEA's Ocean Wave Cleanser is a lightweight by face cleansing oil that effortlessly dissolves makeup, impurities, and excess oil without Stripping your skin. There's no oily after-feel and no tightness, just a soft hydrated experience. So your skin will feel as good as it looks. It's simple. Take it off at night and start fresh every day. I have been a fan of cleansing oils for a while. It seems counterintuitive that an oil would cleanse your skin, but especially someone like me who I have to wear a lot of makeup when I go on television and do things, and it's hard to get that makeup off and I sometimes feel like I'm scrubbing my skin to irritation trying to get it all off. But if you use a oil-based cleanser, it just dissolves that makeup so much easier and it keeps your skin from feeling like sandpaper afterwards.

We all know that cleansing is the essential first step to great skin. And luckily, Ocean Wave Cleanser's bi-phase formula effectively removes makeup and excess sebum without disrupting your skin's moisture barrier. Whether you're double cleansing or just need a one step refresh, this cleanser fits into any routine, morning or night, and supports all skin types from dry to breakout prone. Then if you're like me and you love to double cleanse, I like clean skin is really true. The answer is simple. Just follow the Ocean Wave Cleanser with your favorite OSEA Cleanser picked from options like Ocean Cleanser, Cleansing Milk or Cleansing Mud, your skin will feel incredible, and they're the perfect skin prep thanks to OSEA's phenomenal ingredients.

Jill: Kim, I really am one of those people who no matter how tired I am, how late it is, I cannot go to bed with makeup on. I have to take it off.

Kim: That's a good practice, Jill.

Jill: And I'm like you. I thought when I saw that OSEA had come out with this oil thing, I went, "Oh, oil, awful, terrible." But it isn't, and it really works. It just, I was like, "How could oil clean your skin?" And you have to shake it because there's two ingredients that separate. So you shake it up and then you put it on a cotton pad and rub it in, and it's quite amazing. And so I started incorporating OSEA's Ocean Wave Cleanser into my routine, and it does make your skin feel fresh and bright with a natural glow afterwards. You wake up and notice that your skin is softer, smoother, and tighter. I can't believe that it took me this long to find out about it. Its lightweight oil melts effortlessly onto the skin and lightly emulsifies as you rinse. The scent is the subtlest blend of lime, jasmine, and bergamot. So it refreshes your senses every time you use it. It's not your average cleansing oil. This unique bi-phase formula dissolves makeup impurities and removes excess oil without stripping or leaving behind an oily after feel.

Barb: Experience clean, soft, balanced skin with OSEA's clean ingredients formulated with, are you ready for this? Undaria seaweed, camelina oil, and bisabolol. The choice is simple. Get ready for a new way to wash away today with OSEA's new Ocean Wave Cleanser. And right now we have a special offer just for our listeners. Get 10% off your first order site wide with code, sisters, at oseamalibu.com. The link is in our show notes.

Jill: Well, I'm sure you all know that Donald Trump has been offered a \$400 million plane that's actually a flying palace. It's decorated to his taste, not to anybody else's, lots of gold, but it's reportedly 13 years old and was offered to someone else who didn't take it. It's in need of approximately a billion dollars. Get that guy's a billion dollars worth of renovation, which will take one to two years to retrofit it, which first of all, it has to be taken down to the studs, down to every little bolt to be checked for safety and security. Are there any little bugging devices that have been inserted by a foreign government offering this to him?

And then it has to also have added all the stuff that a president needs in Air Force One. All of the security measures, all of the comms measures. And so in fact, it's not free because the taxpayers are going to pay that billion dollars and in addition, it's going to take one to two years, which means that he's not going to get to use it as president because he'll be out of office by the time it's ready. So I just am wondering about whether the American taxpayer wants to bear the cost, especially because Boeing is building an American two planes for him under a \$3 billion contract, and so we're going to pay the 3 billion that he's already contracted for and the billion to retrofit this plane. Kim, what's the deal? Is this a loan? Is this a gift to the US government or is it to Trump personally? And tell us what the deal is.

Kim: Well, it is a gift that has been proffered by a Qatar. It's for, as you said, a luxury palace in the sky, which if you've seen, I'm sure much of many of our listeners have already seen, it's this lavish plane with wood and gold on the inside. It has multiple bedrooms, lounges, an office. It's really quite wild. And as you mentioned, Jill, it was offered to the Pentagon, but then it is to be donated to the Trump Presidential Library. So this is not a gift to the

US government, which in itself would pose emolument problems and security problems as you noted.

But it sounds like it's a gift to Trump and he is really excited about it. He thinks that it's going to be fantastic. And in the meantime, there are some reports that that Boeing deal that was cut by Trump in the past, well, that might be in a bit of peril, maybe because of this, I don't know. But there are questions as to whether that contract will even be fulfilled after all the hoopla over that. I don't know. But the flying emolument, yeah, it's quite something. And it looks like it's probably a bit nefarious legally, but we'll get to that.

Jill: I can't wait to get to the legal issues. So Barb, what about the safety and security issues and the costs to make it secure for communications and Air Force One safety and security, the communications that it needs and the anti-drone stuff it needs to repel missile attacks, all the military equipment that has to be added?

Barb: Yeah, I think there are two really big issues here. One is just sort of the government ethics issue of accepting this thing and all of the things that we've talked about there, what impression it leaves. But the second is the national security aspect of it. I mean, it's like saying, "Oh, I wonder who left this great horse force outside the gates? How cool is this? Let's bring it in. What could possibly go wrong, right?" I mean, isn't this a modern day Trojan horse? Remember when there was a US embassy built in the '80s in Moscow, and we discovered it was filled with all kinds of listening devices and they had to tear it down.

Kim: It was bugged to the hilt. Of course it was.

Barb: What Air Force One has to do is to enable the president to conduct the country's business from the air, and so that means secure communications, he is perhaps talking to people about national security matters, about matters of defense or foreign policy. You can't have any of that stuff intercepted. And so as you said, Jill, it's going to have to be torn down to the studs, and that's going to ruin probably all the things that Donald Trump likes about it, right? He likes all the gold plating and all the bells and whistles. Well, they're going to take all that stuff off and examine it to make sure that there are no listening devices.

And frankly, it's what makes me think that this has got to be just a non-starter, the idea that something could be embedded in there beyond detection. So I don't know how they can 100% guarantee that there's not some sort of listening device in there, but then there's also these other things that have to be enabled to protect it from attack, as you said, Jill, like anti-drone capabilities and other kinds of things to harden it and to secure it. So all of those things make this such a bad idea. I don't know why any president who really cared about the national security mission of the United States would give this even a second thought.

Kim: Exactly. It makes me wonder too. Donald Trump has to understand this. I know, he used his personal phone throughout the presidency and maybe he doesn't care about security issues, but listen, when I'm in a hotel, I don't even plug my USB directly into the lamp. I plug my charger into a physical electric outlet because I don't know what's in that USB port, right? It's so easy for people to put things in there and take data. When I went to

China and I was there and I was given gifts of, what do you call it, free, what do you call the things that you stick in your phone for storage? The free thumb drives. It's just like, "What is this?" And I was traveling with somebody and they were like, "Oh." I'm like, "Do not use that."

Barb: Portable charger. Here you go. Here's a portable charger for you.

Kim: Don't stick anything that you get in China into your phone. How did that not occur to them? That maybe every seat, every glass could have something on there that is some sort of bug. Do they think? I mean, really nobody in the whole administration has brought this up.

Jill: Even in the planes built in America, people who work on it have to have special security clearance. It's not just anybody who can do it. And given what you said, Kim, about the timing of this and how long it's going to take, Barbara, as you said, to get it retrofitted, if he can't use it as president, why would we spend a billion dollars for it to go to him after he's president for his own personal use? It would not be kept by the government. If he wants to take that plane, just don't let him use it while he's president. And then if it's bugged afterwards, who cares?

He doesn't get the security that he needs because he doesn't want it and he's not the president. But while he's president, he can't use that plane and we shouldn't spend a billion dollars to retrofit it. But let's get to some of the legal issues. And so Barb, this pass through deal where it's temporarily going to be used by the defense department as Air Force One, then it's going to go to him for his personal use as a gift to his library. And I have to say library in air quotes, because man, this man doesn't read books. I don't know that he's going to have a library. But anyway, it supposedly goes to his library. And to me that screams that this is a blatant open violation of Title 18 USC 201 prohibiting bribing public officials. What do you think, Barb?

Barb: Yeah, I don't know. I mean, to violate that statute, the federal bribery statute, you have to have what's called a quid pro quo. That is you receive a thing of value and this plane certainly is a thing of value, but you also have to show that it was in exchange for committing some official act. So if they wanted the president to lift a tariff or recognize diplomatic ties or do something that would be an official act of the president in exchange for this plane, that would be a violation of the bribery statutes. But I don't think we've seen anything. One of the things that's problematic about this from an ethics perspective is that it creates this vulnerability when you receive gifts.

It's why we have ethics rules that prohibit gifts because once you receive a gift, there is this position of apparent compromise. And so the public worries that what if he decides it is a good idea to grant some sort of diplomatic privilege to officials in Qatar? It might be seen as quid pro quo even when it isn't. And so it just taints the process. Or does Trump somehow feel beholden to the government of Qatar for giving him this plane? So I don't think at the moment there is any criminal violation. I think it's more of an ethical issue. But that's the reason we have these ethics rules in the first place.

Jill: Right. We're going to get to that. But there's another complication aside from the difficulty of proving quid pro quo, which is not impossible. I mean, there have been public officials convicted of bribery because the quid pro quo was shown, but in this

case, the Supreme Court gave him immunity. So it doesn't matter even if he does commit a violation of the criminal code, if accepting a gift is within his constitutional powers and duties, then he can't get prosecuted. And even if he could get prosecuted, Kim, who is going to prosecute him?

Kim: As you said, this would be a federal offense and that would be a fall within immunity. But the one thing that I am finding in some solace from in all of this is that it doesn't seem to be going over well in Congress, including by some of Trump's most ardent supporters. People like Josh Hawley have been sort of raising the alarm over this, and it's up to Congress to give teeth to what this is clearly a violation of, which is the emoluments clause. The only reason that the emoluments clause has not been used against Donald Trump is because it requires Congress to do something to give it enforcement power. So maybe they'll do it. I don't know. We'll see.

Jill: Barb, what do you think about that in terms of the emoluments clause, which I want to point out is in Article I, which is the powers of Congress, and the clause specifically says you can't take a gift at all ever without the consent of Congress. So what do you think?

Barb: Yeah, so what's interesting about that is what Article I is, it prohibits the president from accepting gifts, titles or emoluments, which just means a of value, from foreign governments or monarchs. The goal there prevent undue influence from foreign countries. I wonder, I mean on its face, it seems to me that there's a violation here because Congress has not consented to accepting this gift. I mean, I guess he hasn't actually accepted it yet, but it seems that the president cannot accept it and it doesn't make any distinction between whether it's in his personal or official capacity because it says the president, it doesn't say the person serving as president receiving it personally, it's the president and there's a reason for that. I suppose the administration's argument is going to be, but this isn't a gift for the president. This is a gift for the country because while he's in office, he's going to use this as his official plane.

But what's interesting about it is it's not going to pass on to his successor to use as Air Force One. It's going to his presidential library. And presidential libraries are interesting. They're usually funded independently. They're not funded by the government. The National Archives might run the records portion of it, but the buildings and all that stuff is raised by private funds. So this idea that it's going to-

Kim: By foreign stuff?

Barb: No, no. The idea that this is going to go to his library suggests to me that this is not for the country. This is for Donald Trump, even if it's currently in his capacity as president, the fact that it's not going to stay with his successor, it's going to go to his library. A privately funded entity suggests to me that this is in violation of the emoluments clause. Now what happens when you violate a constitutional provision? Well, it's not a crime. It is something that can only be addressed through impeachment, what the Constitution refers to as high crimes or misdemeanors, which is a violation of a constitutional provision that would require Congress to impeach. And I just don't think this Congress is going to do that.

Jill: I think we would all agree on that. The question then is, Kim, I'll ask you what you think, should the emoluments clause in some way be modified either in the Constitution or by

legislation to provide a penalty? Because right now it says you can't do it, but there's no consequence. So is that something that could be fixed by Congress, by rules? The rules now say you can only accept a gift up to \$480. This kind of exceeds that 480, but so what do you think? Could this be changed and fixed so that there was a penalty?

Kim: All it would take would be a piece of legislation setting the penalties for... It's one of the easiest layouts. Folks have been calling for this since the first Trump administration. If the people in Congress are that upset about it, there is an easy solution, but I'm not going to hold my breath because they always complain and say, "Oh, I don't like that." And at the end of the day, they always fall behind the president when Congress is in control of the president's party.

Jill: And there's another really big issue I think, which is the attorney general approved this and said, "Yes, he could accept this gift." And we have to point out that the attorney general, it's gift from Qatar, and she was a lobbyist for Qatar who was earning almost a million dollars a year working for them. Is that a conflict of interest when we're talking about ethics? Is this a conflict of interest that raises an ethics problem or is it bad lawyering or does it just smell bad? Barb, what do you think?

Barb: Well, I'll tell you my view on this is that she should have recused herself from this decision rather than approving this herself because of her prior work as a lobbyist for Qatar, she should have said, "I'm going to step out and I'm going to let my deputy attorney general decide this." And the standard for recusal is when your impartiality could reasonably be questioned. I think her impartiality can reasonably be questioned when she was making a million dollars a year as a lobbyist for Qatar and she, "Oh yeah, sure, no problem. You can take this plane." It looks terrible. I think her impartiality absolutely can reasonably be questioned. So it's not a big deal. It's just you recuse yourself. I mean, we've seen attorneys general do it in the past. Jeff Sessions recused himself in the decision to appoint a special counsel because he had participated in the Trump presidential campaign and gave that duty instead to Rod Rosenstein when he was the deputy attorney general. So this is definitely a bad move by Pam Bondi would've been easily remedied. So I don't know if she doesn't know better, she just doesn't care.

Jill: So Kim, and Barb, if you want to comment too, will he or won't he? Is he going to accept this gift and will he get away with it either legally or politically? Is there enough political pushback to this?

Kim: Of course he's going to accept it. That's why he's been touting it all this time. And listen, he's a lame duck. He thinks he can get away with it. Yes, absolutely thinks he can get away with it either because he lives in reality and realizes he's a lame duck and he no longer has to appeal to his constituents. He no longer has to appeal to voters. The whole quaint idea that he cares about the midterms and all that, he doesn't. He cares about himself. So of course he's going to try to get away with it because he thinks he has because he's never been held accountable, of course. And of course, for all the reasons that we've all been saying, he shouldn't get away with this, this should be a no-brainer. So forgive my frustration because I feel I find it hard to give traditional, normal legal analysis to this stuff that's going on. This is crazy. This is insane. I can't even use the word that I want to use because Barb is here.

This is not how any of this is supposed to work. And I don't want to normalize any of this. None of this should be happening. And all the people who we have mentioned heretofore are involved, all of them are wrong, and they know it and they don't care. That should outrage every single American. And it's not. That's the problem. That's the problem is that we live in a society that no longer sees this kind of stuff. Yeah, yes, people are shocked by this, but it's just one of so many things that just seems so crazy and wrong. And this almost seems so silly too, but it's not. It's taking a sledgehammer to our constitution and we should not stand for it. But because so many parts of our constitutional order have been destroyed here for, it's something that he probably will get away with unless somebody in Congress stands up and says no.

Joyce: So you all know we have a new puppy, Elsa, our second German Shepherd. She currently spends her time doing two things, tormenting her big sister, Bella, and also picking up everything she can off of the floor. She even likes to lick the floor, especially the wood floors, which is sort of gross and it really worries me about the cleaning products that I use. But one thing I feel great about is using Blueland because even when it's difficult to keep track of everything that goes in their mouths, Blueland is safe. My kids, my human kids, are grown. But I know for those of you who have little ones, just like for me with Elsa, having safe, trusted cleaning products from Blueland is critical.

Barb: Their products are made to meet the highest environmental standards so that their products are not just clean, they're mom clean if you know what I mean. Maybe your dog eats off the floor, Joyce, but after using Blueland, maybe even our children would be willing to eat off the floor. Blueland products are a hundred percent plastic free and made with certified clean ingredients that are safe to use around the family members in your home who are most likely to inspect, taste and spray anything you have lying around, whether you have toddlers, kitties, pups, or spouses. Remember that you don't have to choose between the safe option and what actually gets your house clean. Just choose Blueland.

Jill: Blueland is on a mission to make it easy for everyone to make sustainable choices. We believe that hard-working clean products can be the norm, not the exception, so that you can do better for your family and the planet at the same time. From cleaning sprays to hand soap, toilet bowl cleaner and laundry tablets, all Blueland products are made with certified clean ingredients, safer for you, your family, pets, and the environment. They're EPA Safer Choice Certified, EWG Verified, Leaping Bunny, USDA biobased, and B Corp certified, and more.

Barb: That's a mouthful. Blueland's powerful and effective 100% plastic-free products are independently tested to perform alongside major brands and are free from dyes, bleach, and harsh chemicals. That's why Blueland is trusted by more than 1 million homes, including ours. The fragrances add such a pleasant vibe to your home and the subscription is truly a lifesaver when you're running out of cleaning products. I always go for the Alpine scent and I love it in Blueland as well. It feels great incorporating sustainable practices into essential everyday activities. And you'll feel it too. Blueland has a special offer for listeners right now. Get 15% off your first order by going to blueland.com/sisters. You won't want to miss this. [Blueland.com/sisters](https://blueland.com/sisters) for 15% off. That's blueland.com/sisters to get 15% off. The link is in our show notes.

Kim: Thursday, the Supreme Court heard arguments in the birthright citizenship case, which as we've been telling you isn't really about birthright citizenship, but rather about nationwide injunctions. But a funny thing happened during arguments, it did very much become about birthright citizenship and for good reason. It seemed pretty clear from my listening of this more than two-hour argument that a majority of justices seem to be aware that Donald Trump's executive order purporting to strip birthright citizenship from people whose parents do not have legal status at the time that the child is born is on constitutional quicksand. It goes against Supreme Court precedent. It goes against the very words of the 14th Amendment itself.

And so it'll be really hard and silly actually for the justices to think about, to argue about whether a nationwide injunction was proper in this case when it's such an clearly unlawful order. So Jill, the justices, and I'm talking justices from Sotomayor and Kagan to Gorsuch and Kavanaugh, spend at least some of the time expressing some skepticism about the merits as I pointed out. What did you think of that and did it surprise you? I thought we would have to be really like carefully looking for tea leaves about what they might think about the constitutional question. No, they were spilling the tea, girl. They were spilling it.

Jill: You are absolutely correct. But I also want to note, I only was able to listen to a part of the argument and I had to read the transcript for the rest. And it really is better to listen to it. I mean, obviously you can read it faster, but I think it's so much better to listen. Of course, it would be even better if there were cameras in the courtroom and you could watch it, but that's a subject for another day. It was interesting how intertwined the merits of the case, the illegality, the unconstitutionality of the order became as part of arguing about the remedy. And it started out the only question that was basically sent to the court, the appeal was simply limited to whether there could be a nationwide injunction issued. And then it got into a very interesting discussion where I think there was pretty much almost unanimous agreement, certainly a majority agreement that the executive order is fundamentally flawed and would be held on the merits to not be enforceable.

And so then the question was, well, should we have a class action or should we have of an injunction that covers the whole country or does the injunction only cover the named parties to this? And it seemed apparent to me that the government in bringing this case in this form was saying, "We know we're going to lose and so we want to avoid getting there. And so what we're going to do is we're going to make every single person who might be covered by this, millions of people, they're going to each have to bring an individual case. They're going to have to get their own lawyer, they're going to have to file their own lawsuit." That is a way of saying no one is going to be able to succeed. So maybe a thousand people can do it, but not every person who is here.

And it's so clear that the 14th Amendment says that any person born here is a citizen unless they are here on a diplomatic assignment, which means they aren't loyal to our country, they're loyal to their home country or unless they're part of an invading army, an occupying army. Those are the only two exceptions. Everyone else born here clearly was intended to be part of this. So the argument against that, no, it's only that people who were born from slaves, the children of slaves get citizenship. No, that is not what the language says or what the intent was. And I think the real issue was how fast can the Supreme Court get to the merits?

That was what they kept pushing on is so how can we get to this? You're never going to appeal because you keep losing at the district court level. So you're saying everybody's going to have to go to the district court and they're going to lose. And so it's going to take years and years and years for everyone, and what's going to happen to all the kids who are born during the time that this is pending and you're never going to appeal because we're going to go against you. So it was a pretty interesting argument. I would say it's worth everyone listening or reading. We can post the transcript as part of the show notes. You can probably get it by going to the Supreme Court. There's got to be a record.

Kim: Yeah, it's right on the front page of the Supreme Court website. So, Barb, I mean, I think that's exactly right, what Jill said. Nationwide injunctions, whether a single judge has the ability to stop a policy from coast to coast is absolutely an issue that I think there need to be more rules of the road. I think there are some cases like with the mifepristone case that we talked about, that one judge in Amarillo should not be in charge of FDA approval of drugs. That seems pretty clear. But on the other hand, as Jill pointed out, we also can't have a policy where a child born in one state is being treated differently in terms of citizenship than a child born in another state based on what district courts have held. And then the child denied citizenship would have to somehow join a class action or something. That doesn't seem to make sense either. So there needs to be a solution to this problem, but how do you do it when the underlying constitutional issue is such trash, right?

Barb: Yeah. I may be in the minority here, but I don't have a problem with nationwide injunctions, especially when it's an executive order that is going to have profound consequences on everybody in the country. And I think if we're going to change it has to come through the legislature. Congress just has to do it. And there've been some proposals. Steve Vladeck, who's a constitutional law professor, has proposed that maybe you have a three-judge panel instead of a single judge, or maybe it only applies to certain circumstances where there's an executive order that has a nationwide impact.

You have certain cases, maybe it's a higher standard instead of preponderance of the evidence, you have to show substantial likelihood of success on the merits by clearing convincing evidence. But all of that is going to be for, I think, congress to decide. But I think that some of the justices yesterday made the point you are making, Kim, which is why I think it is so important to either listen or read the transcript and not rely on the media to tell you because to read headlines would be to say, "Oh, the court is really split over this issue." I don't think so.

Kim: They really were not.

Barb: Not at all.

Kim: They were confused as to what to do, but they were not split.

Barb: Yeah, I mean some that maybe perhaps were predictable. Justice Ketanji Brown Jackson said if there's no such thing as a nationwide injunction and everybody has to file a lawsuit, you're basically, her quote was, "You'll turn our justice system into a catch-me-if-you-can kind of regime," which I thought was, but Justice Kagan said, assume on the merits, you are dead wrong. Does that mean somebody's going to have to wait three or four years for relief? And then what happens to all the kids who were born stateless in the

meantime? Justice Sotomayor said the same thing. So thousands of children are going to be born and what are we going to do at that point? And those people are going to be in limbo in the meantime.

But even Justice Kavanaugh said, "If this only applies to the individual litigants, we're going to be flooded with thousands and thousands and thousands of cases because that's what's going to take, every single person is going to have to file their own lawsuit." And even Justice Gorsuch said, "We're going to have to decide these cases really quickly if it only applies to the individual litigants." So I think that we are going to see a rejection of the government's position on this. It might even be unanimous. Well, I would say that under normal times, but as we know, Alito and Thomas have never met a-

Jill: Unanimous not.

Barb: Yeah, never met a policy they didn't like.

Kim: And I'm not even sure that Roberts was on, Roberts was like, "What do you mean? You just go through the regular order." I don't know.

Barb: He was-

Kim: He was not on board with it either.

Barb: I just don't think they have the votes. I think we've got...

Jill: I think it's going to be a win for the litigants, not for the government. And I think one of the things that really got to maybe even the most conservative justices was would they obey even a circuit decision? And it was sort of like generally we would, but General Sauer would not agree that they would always comply with a court order, even the Supreme Court one. And so I think that the court is probably-

Kim: Well, he [inaudible 00:40:06] the Supreme Court. He did say that he would adhere to the Supreme Court, and that's why Kagan drilled down and said, "Well, wait a minute, if you keep losing, it won't come back here because it's not like you're going to file a cert petition. You're doing it this way on the..." And I love this comment from her, "You're doing it this way and putting the question to us on the injunction issue so that you can buy time and try to attempt to allow this to go into effect for some people." So that gives the administration a win. They can say they put this executive order into effect, but then you're never going to come back to us on the merits because you're going to lose. So this is a shell game. I love that she broke down-

Jill: Whack-a-mole as somebody said.

Kim: Whack-a-mole.

Jill: I love that image.

Kim: I love that she broke it down right to his face like, "I know what you're doing. Don't be cute." So any other takeaways from this? I mean, I have to say honestly, after listening to

argument, and even though I don't know, and I don't think the justices know exactly what to do with the injunction question, I at least came away feeling better that the court seemed to see clearly at least what this case was. And I don't think we're going to see a situation where this executive order is widely adopted.

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Jill: So I think you might be a little like me, Kim, in that you love playing with colors.

Kim: I do.

Jill: And it's so much fun because now my favorite mascara comes in colors. It's not just black and brown. There's this sort of purpley bronzy color that's really cool. And aside from their mascara, the Brilliant Eye Brighteners are now in so many colors that the choices every morning are really hard to decide. The Eye Brightener is a luxurious eyeshadow highlighter stick that brightens and opens your eyes to give you an instant eye lift and some depth. There's nothing better for a fresh, vibrant look. Thrive's foolproof formula makes it extremely easy to apply and blend any of 31 shades. Yeah, 31 shades.

And I'm trying them all. You can use as little or as much as you'd like to create the look you want. I apply a light shade to my lid and under the brow and a darker one in the crease. Sometimes I use another dark color as a liner as well. And they also now have a turquoise and a green color that you can use as a liner. It's fabulous. The eyeshadow is perfect for daytime glow. I recommend the Stella, but you can also use any of the metallic shades all over your eyelid and blend it with your finger for an easy smoky eye that pops.

Barb: Smoky eye that pops, that sounds almost painful, but you'll find nothing painful about Thrive Causemetics. We love that cause is in the name for a reason. Thrive not only defines luxury beauty with clean skin-loving ingredients and uncompromising standards, but they give back too. Every purchase supports organizations helping communities thrive across eight major causes, including the fight against cancer and domestic abuse, veteran and education organizations, and more. Try your new trusty favorites, whether it's color or my favorite color, dark brown, with an exclusive set for our listeners. New customers can get the Liquid Lash Extensions Mascara and a mini-size Brilliant Eye Brightener at a special set price with free shipping available at thrivecausemetics.com/sisters. Or save more 20% off your first order at thrivecausemetics.com/sisters. That's Thrive Causemetics, C-A-U-S-E-M-E-T-I-C-S, .com/sisters for 20 off your first order. The link is in our show notes.

Well, Eagle Ed Martin was in the news again this week. You may recall that Martin has been the interim US attorney in the District of Columbia, which is the largest US attorney's office in the country. President Trump had nominated him to be the permanent U.S attorney there, but this week it became apparent that he would not be able to garner sufficient votes in the Senate for confirmation. I'll give credit, maybe just half credit. I've

been grading these days. Can you tell? I'll give half credit to Thom Tillis, the Republican senator from North Carolina. He said he would not vote to confirm Ed Martin as US attorney in D.C. in light of his role in the January 6th, Stop the Steal movement. So good for him.

But then, and this happens sometimes, students say something really brilliant and then they say something like not so brilliant. You have to take away at least half the point because he also said if Martin had been nominated in any other district, he would've confirmed him. So you give and you take. But President Trump and Martin are undeterred. And so instead he's moving elsewhere in the Justice Department where he doesn't need Senate confirmation. So first, Kim, I want to know if you wouldn't mind breaking down for us and explaining how the interim appointment process works, right? Why can't Martin just continue in his role as interim US? Attorney Trump has famously said, I love acting, presumably because acting officials or interim officials don't need Senate confirmation. Why can't Martin continue?

Kim: Yeah, that's right. Remember, there was a point in the first administration where most of the cabinet members were acting. He really does like acting. But the problem that the president faces is under federal law, new presidents have the ability to appoint interim people in roles like US attorney for 120 days. And that makes total sense. That gives the Senate time to set up and do hearings and vet these candidates, but it also allows these offices to operate with some sort of leadership in the meantime. And the interim person can either be the anticipated nominee or it could be somebody else while there is another nominee and that goes forward for 120 days. When that 120 days is up, however, the law is very unclear about the president's authority to appoint somebody else as an acting that can get into a violation of another law that really is meant to stop presidents from just appointing acting after acting after acting and sort of roadblocking the Senate confirmation process.

We know the Constitution says that the Senate has the responsibility to advise and consent to these certain positions like US attorney, you, Barb, are familiar with that process. And so I have questions that explains why Martin had to go somewhere else, but that gives me a big question as to whether the current interim US Attorney Jeanine Pirro is actually properly after that 120 days is up in that job. And that could make a big difference if she brings charges, initiates investigations or other things in that role role, and somebody who was the subject of those charges or investigations later challenges them on the basis that she was not constitutionally installed as an interim US attorney that could upend all of that, everything that she does could later be thrown out in court. So that is something if I were the president, I would be worried about, but this is where we are right now. So there's a lot of legal uncertainty looming over that.

Barb: And traditionally after the 120 days, it is the court that fills that vacancy.

Kim: Right. That's correct.

Barb: They'll pick somebody who's normal. They'll pick somebody who's like a career prosecutor, someone who's respected, who's been in the office for decades, that sort of thing. And remember, this is what we saw Judge Aileen Cannon do. When she found that Jack Smith was improperly appointed under the special counsel regulation, she dismissed the case.

Kim: That's right.

Barb: And so it's not at all far-fetched to think that some indictment might get filed or some civil complaint might get filed, and some litigate might challenge it on this basis. And I think there's at least a 50 50 shot that they prevail.

Kim: It's possible. Yeah.

Barb: So it's really risky to do what they're doing there. Well, let's move on, shall we? Because one of Martin's new titles now that he is not going to be confirmed is Pardon Attorney, which is a position did not require Senate confirmation. Jill, let me ask you about this a little bit about pardons in presidential history. What does the pardon attorney do and how do you see Ed Martin fulfilling that role?

Jill: So Barb, a pardon attorney obviously has to do with pardons and is an adviser to the president on whether a pardon is appropriate or not. And they look at a variety of facts, although one would have to question whether Ed Martin will look at facts, but the only reason that that job is vacant is because the pardon attorney did look at facts and refused to agree to allow President Trump to pardon Mel Gibson. And the reason that he wanted a pardon that is Mel Gibson wanted a pardon was because he wanted to own firearms and he couldn't as a convicted felon. And the pardon attorney said no. And so Trump fired her. So that's why the office is vacant. But I want to say that this is such a bad place for him to be. I just want to read you some of the things he has said.

He said, "I think that as pardon attorney, no one with a standard sort of reasonableness thinks that what Joe Biden did at the end of his term was particularly reasonable. I do think that the Biden pardons need some scrutiny." Good God. Okay. I'm sorry. That was my own commentary. Skip that part. Sorry, he didn't say that. Sorry, I'm just getting so upset reading this.

Kim: You were reacting to yourself.

Jill: Sorry. Can't read this without getting angry. He said, "I have to take a hard look at how they went and what they did and if they're..." I don't know, null and void, I'm not sure how that operates. The pardon attorney is saying that pardons could be null and void. Well, one thing we know is a pardon is a pardon is a pardon. And it can't be undone or taken away. And you can't prosecute somebody who gets pardoned. It's just no matter how good or bad it's done. Sorry, Ed Martin, it's not null and void.

Kim: God. It's like I knew before I went to law school that a presidential pardon is irrevocable.

Jill: Right. Well, if you pardoned Richard Nixon before he was even indicted, and that was, believe me, we tried to research whether he could be indicted after he left office. And the answer is a pardon is forever.

Barb: Yeah. Traditionally, the pardon attorney had some principles and they would look at factors like ordinarily a pardon is not granted until five years or more after the person has completed their sentence. It requires a responsibility they look to. And now all of that is out the window. And so with Ed Martin in charge, I think we're only going to see further

partisan politics in there. That's my speculation at the very least. Well, it doesn't end there because in the spirit of Marco Rubio, Ed Martin has another title. He has also been named as the head of the Weaponization Working Group. Kim, can you tell us a little bit about the DOJ Weaponization Working Group?

Kim: Yeah. It seems really interesting how some folks in the Trump administration keep getting more and more jobs. It's like remember that In Living Color skit, Hey Mon, where people are like, "I have 37 jobs." I feel like that's happening here. So yes, he would be in charge of the Weaponization Group, which Attorney General Bondi declaring her intention to restore integrity and credibility to the DOJ. So basically, this is a group that is in charge of, from what I can see, investigating not just the investigators, the people who ever were involved with any investigation into Trump or his allies.

But just kind of, dare I say, witch hunting within even critics just sort of investigating them. And the reason why I think it goes way beyond actual wrongdoing, which what he'll be looking for is from Martin's own quote himself, who he says, even if there is no criminality, he said, "If they can't be charged, we will name them. And in a culture that respects shame, they should be people who are ashamed. And that's a fact. That's the way things work." And so that's how I believe the job operates as both of you and anyone who has worked in the DOJ knows that actually the naming and shaming part goes against the DOJ's own ethical policy that when there is an investigation, you are not supposed to say anything about it, let alone naming and publicly saying anything about it.

That is why, for example, FBI director, Kash Patel had to delete tweets that he put out about criminal investigations and charges because you literally are not supposed to say things like that. But you certainly are not supposed to say things about people who have not been charged and who will not be charged. So I hope that Mr. Martin has some time to go through the DOJ rulebook and policies and brush up on that before he gets rolling in his new position.

Barb: Yeah, I was just going to say, it's just an astonishing breach of DOJ policy and tradition. It is why so many people were so appalled when Jim Comey blasted Hillary Clinton over her email server, even though he was recommending the charges not be filed. But yeah, go ahead, Jill.

Kim: That's right.

Jill: No, that's part of what I was going to say. The other part is that in addition to all these other horrible things that he did while he was interim and that he is promising to do in his new non-Senate approved role, he issued a huge complaint, I think today or yesterday about his being investigated and notified that he was being investigated for disbarment proceedings by the special organization within the D.C. Bar, which happens to be led by a former Watergate colleague of mine, Hamilton Phil Fox. And he's complaining he was notified and he didn't answer the first notification. So another notification was sent to his alternative email or mail address, and that happened to be at the US attorney's office. And so then he announces it and talks about it and complains that it's confidential, and he's the one who's revealing it. It's so ridiculous. It's so awful. I mean, he is so unqualified to be in our government.

Barb: Jill, Trump has named Martin's replacement as US attorney in D.C., and that replacement is Jeanine Pirro. What do we know about her and what is your opinion of this appointment?

Jill: Last week, Kim and I were alone and we were free to use whatever words we wanted, but we controlled ourselves, Barb, in honor of you, and I will today too.

Barb: Yeah, listen, I was appreciative.

Jill: Thank you. Well, since you're here, I have to watch my mouth. But I have to say that she is a former prosecutor and a former judge. So there are some things that fit the qualifications to be the US attorney. On the other hand, she's really a Fox News host, and that's what really qualifies her. She is also a loyal Trumper who has been named in the Dominion lawsuit against Fox for the lies they told about the stolen election. And so she is not someone that anyone would trust to be in that position in the same way that Martin as a January 6th participant wasn't trusted to be in that position. And I think Kim has already raised the issue about her being legally even nominated as the acting because of this 120 day limit, which expires on I think May 20th. So just days from now, the interim period of 120 days expires.

At which point, as Barb, you pointed out, the court would normally appoint a replacement and you would have to wait for a Senate confirmed person to take over. And she is not previously Senate confirmed. So you could put someone in there who was confirmed by the Senate and who could then take that job until a real person is put in. So I think it's really, her background is really as a Trump supporter, and she has no credibility, in my view, to be the US attorney. And I think that people in the office are going to be appalled at having to report to her and take advice from her. And I think there is this very tricky legal question as to whether anything she does can be overturned after she has found to not have been legally appointed.

Barb: Well, why don't we leave it there? And if you haven't seen it, the SNL cold open last weekend was a good introduction to Jeanine Pirro.

Jill: Well, it's finally spring in Chicago, and I am so excited about seeing all of my new plants. I made a big order from Fast Growing Trees, which is the biggest online nursery in the US with thousands of different plants and over 2 million happy customers, including me. And I think all of you too. They have all the plant your yard needs, fruit trees, privacy trees, flowering trees, shrubs, and so much more. For me, hosta and green velvet boxwood are perfect because I have a heavy shade garden and they have you covered no matter what your lighting situation is, you can find the perfect fit for your climate and space. Fast Growing Trees makes it easy to get your dream yard. Order online and get your plants delivered directly to your door in just a few days without ever leaving home.

Kim: You know what I really love, Jill? I got from Fast Growing Trees, some citronella and some lavender plants, and I potted them and they're on the porch where I drink my coffee in the morning and oh my God, it smells so good.

Jill: Oh, wow. That's fabulous.

Kim: Oh, nice. I love it so much. And yes, they have everything from bushes and shrubs to plants that you can put in planters to things that you can put in your home. And their alive and thrive guarantee ensures that your plant arrives healthy and happy. Plus you get support from trained plant experts on call to help you plan your landscape, choose the right plants, and learn how to care for them. I learned through Fast Growing Trees what zones are, and now I know my zone and I know how to pick the right plants. And it's really, really cool. Fast Growing Trees offers 6,000 plants to provide the perfect choice for you.

They have everything from indoor plants to fruit trees, full-size privacy trees, and more. Just follow their 14 point quality checklist and Fast Growing Trees will help you care for each plant individually. Everything from watering routines to maintaining the correct sunlight and exposure becomes really easy. And that means you'll be giving your plants the care that they deserve the moment they ship to your home. We were excited to learn you can grow a vanilla bean plant indoors. All you homemade ice cream makers, this is for you, but with so many different plants, the choice is yours.

Barb: Yeah, I'm very pleased with my purchases from Fast Growing Trees. I bought and have planted two lilac plants and I ordinarily have a brown thumb, but so far so good with my Fast Growing Trees because one of the great things is that you get to talk to a plant expert about your soil type landscape design, how to take care of your plants and everything else you need. So no green thumb is required. So don't wait, this spring, they have the best deals for your yard with up to half off on select plants and other deals. Listeners to our show get 15% off their first purchase when using the code, sisters, at checkout. That's an additional 15% off at fastgrowingtrees.com using the code, sisters, at checkout. Again, that's fastgrowingtrees.com, code sisters. Now's the perfect time to plant use sisters to save today. The offer is valid for a limited time terms and conditions may apply. The link is in our show notes.

Well, now comes the part of the show that really is our favorite, the part where we answer your questions. If you have a question for us, please email us at sistersinlawatpoliticon.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. We'll answer as many of your questions as we can. So our first question comes to us from Lisa in Newark, Delaware, who asks, "I've been hearing habeas corpus in the news this week. Can you explain this to someone who has not studied law or Latin?" Jill, you want to take a swing at that?

Jill: I sure do, and I was glad to learn that there is a Newark in Delaware since Newark, New Jersey was more in the news this week. But habeas, I love these Latin terms. Habeas corpus just means you shall have the body. It is a fundamental right enshrined in the Constitution to ensure that individuals can challenge their detention before a court. It's what provides due process. Normally you get due process because if you're arrested and jailed, you go to have a hearing immediately. And that kind of hearing doesn't always happen if, for example, when immigrants are picked up and detained, they don't get that kind of hearing. So there is this habeas process, and that's part of what the issue is now as to whether everybody challenging their immigration detention has to bring an individual habeas, sort of like what we were talking about in terms of whether or not a nationwide injunction can hold or whether each individual has to seek release on their own.

It's a way to put the government to their proof. And it's a power of Congress, not the executive. It's also like the emoluments clause. It's in Article I, and it can only be suspended by Congress, not by Stephen Miller or Donald Trump. And under the language of the Constitution, it can only be suspended in times of rebellion or invasion. And there is none now. Courts have ruled there isn't any grounds right now under the Alien Enemy Act for an invasion, and I don't think they'll find an invasion for purposes of this either. So it's a substitute for arraignment that you would get in a criminal case. And this allows you due process to challenge your detention and makes the government prove that you should be detained.

Barb: And I noticed that you use the correct name of the statute, the Alien Enemy, singular, Act. Well done.

Jill: I did because you taught us that it's not Enemy Aliens Act and I learn.

Barb: Or AEA as Kim likes to say. Our next question comes to us from Sandy who asks, "Can the Supreme Court reverse the presidential immunity that Trump now enjoys?" Kim, what do you think about that one?

Kim: Yes, the Supreme Court can always reverse its own precedent. We have seen many instances. The biggest one that comes to mind is *Roe v. Wade* if they disagree or think that that was erroneously founded. It used to be a lot tougher to do, or at least I should say the Supreme Court used to be a lot warier of doing that under the doctrine of *stare decisis*, which means that the Supreme Court should respect past rulings. It means let the decision stand. But again, we've seen a lot of cases be overturned in recent years. Don't hold your breath though, because I think the current court has no appetite to do that. What I am hoping, what I am hoping though, is that this court gives some clarification about just what the limits of that immunity is.

For example, does that extend to other people within his office or within his administration? Are there certain circumstances where that immunity is waived based on his own actions and exactly what falls into the category of presidential responsibility? I happen to believe that if you're committing a crime, that's not your presidential responsibility, that is not your job to commit crimes. But I do hope at the very least, that the Supreme Court gives some clarification, but I don't expect that to be overturned anytime.

Barb: Yeah. Our last question comes to us from Devin in Fremont, Ohio, who asks, "Can Jim Comey be prosecuted for posting 8647?" Oh, I'll take that one. Thank you, Devin. You may have read that former FBI Director James Comey posted on social media a photo of some seashells where someone had spelled out the letters 8647, and he posted something like, "Oh, interesting arrangement of shells here today." It caused a lot of concern online where people said 86 means restaurant terminology to kill an order that 86 could mean kill, and 47 could mean the president, the 47th President of the United States, and that it therefore could be seen that he was posting a threat to commit political violence online. I'll say this, I think it was extremely poor judgment for Jim Comey to post that, for anyone to post it, frankly.

Kim: Agreed.

Barb: In his own words, the words he used about Hillary Clinton, extremely careless, but especially somebody who's been an FBI director, he should know better. And I think it does just sort of play into the culture wars and the us versus them mentality. But it's absolutely not what is known under the law as a true threat. And so reports that DOJ is considering investigating him. Boy, I sure hope not. I think it would be just ridiculous because the Supreme Court recently articulated the standard for a true threat, which means that the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular person or group. I just don't think it comes close to that. Right? I mean, it's just like, "Oh, look at this cute little thing I saw, and maybe this means something. And maybe somebody who was here earlier was thinking they don't like the president. Ha-ha-ha."

Now, certainly the Secret Service takes these threats very seriously. I know when I was US attorney, they would go knock on every door just to make sure the person didn't have an intent to commit a serious crime. Even if in many of the cases went nowhere, it was just a knock and talk. And they'd come back and say, "Yeah, it was just someone who said something goofy and they don't intend to follow through on it." So you've got to be careful when you say these things, you express these things. But the idea that this case would be prosecuted, I think is nonsensical. And I think to the extent DOJ pursues it suggests to me that it's just a gotcha moment because Jim Comey is somebody that is not in favor with this particular administration.

Kim: And can I give a suggestion? I understand that the former FBI director has his First Amendment rights like everybody else, but sometimes before I post something on social media, I ask myself, "Do I really need to do this?" And I will not, and I'll delete it or I'll just choose not to post it. Mr. Comey, you don't have to enter the chat on everything really. Really, we're good. We're good, Mr. Comey.

Barb: Thank you 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 please show some love to this week's OSEA Malibu, Blueland, Thrive Causemetics, Fast Growing Trees. The links are in the show notes. Please support them because they make this podcast possible. See you next week with another episode, #SistersInLaw.

Fast Growing Trees, you can talk to a plant.

Kim: I thought I was the one with the brown thumb.

Jill: I give the award to Barb, sorry.

Kim: Oh God.

I'm sorry. We can cut that out if it-

Barb: It's funny. I kind of like it.

Jill: I love it.

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