

Jill: Welcome back to #SistersInLaw with Barb McQuade, Joyce Vance, and me, Jill Wine-Banks. Kim will be back next week, and of course we miss her right now, but we're looking forward to her return. The new Resistance Mini Tote is ready for pre-order, I should say that resistance because it is the sisters resisting. If you go to politicon.com/merch, you can get yours now. They have been on back order, but they're ready for you now. Let's get on with the show because today we have a lot of good topics and one that's sort of positive.

The first, not so much, was an argument at the Supreme Court about the establishment clause and whether St. Isidore Catholic Charter School could be a public school in Oklahoma. We're going to talk about a lot that's rotten at the Department of Justice. And also ending on a more positive note, a Texas federal judge appointed by Trump who ruled against Trump's use of the Alien Enemies Act. Before we get onto those topics though, I wanted to ask you all about how you have celebrated special occasions, whether it's anniversaries or birthdays, and whether your parents, when you were children, did special things to make those occasions really stand out. I've been working on a children's book and so it caused me to be thinking about my childhood and my parents did so much on birthdays, they would decorate our apartment with crepe paper. Does that even something that still exists? Is there crepe paper anymore?

Joyce: I don't know if it still exists. My mom used to do that too though.

Jill: She would twist it and pin it up to the ceiling with I guess scotch tape and put garlands of that and then put blown up balloons that she would somehow get staticky so they would float and stick to the ceiling. And then I once had a birthday cake that had a dowel in the center of it that I could keep afterwards.

Joyce: Me too. My mom had this Wilton Cake Decorating cookbook and she spent a whole day making the cake and it was a thing of wonder and beauty, even as a little kid, like I knew I was a lucky girl.

Jill: Wow. It was so special. And one year they hired a clown to come and entertain, so birthdays were really special then, and I try to carry on that now with my friends and my husband to do either a surprise party or to just do something really weird and special. What about you guys?

Barb: Well, I'm feeling a little left out. I did not have crepe paper or balloons on the ceiling as a child. My family always made me feel-

Joyce: We're going to come for your birthday this year.

Barb: Yeah, no, there's nothing to feel sorry for. Oh, I had a wonderful childhood of wonderful parents and a wonderful birthday. In fact, I have a birthday that's near Christmas, and so as a result there is a risk of having one's birthday overlooked. And not only did my family not overlook my birthday, many will say they overcompensated. And so I had wonderful birthdays and I'm very, very fortunate.

Jill: What about your anniversary, Barb? Your wedding anniversary? Do you do something special for that?

Barb: It depends. Some years, life has been crazy with schedules and kids and other things, but other years we've taken some really special trips. Remember, for our first wedding anniversary, my husband surprised me. He said we were going to drive home to visit his parents in Western New York because they wanted to take us out to dinner at this very stodgy place. And I dutifully packed up to go and brought my stuff and instead he secretly drove us to Toronto where we had a wonderful evening and we saw a show, a musical and had some dinner and stayed at a fabulous hotel and had a great weekend. So that was great. Not of course to the in-laws, not because I didn't have to be with you, but because I got to have this very special celebration.

Joyce: It's funny, I grew up in a family that celebrated everything. We even celebrated holidays from other religions, Holi, which is part of the Indian tradition. It's the holiday that is based on colors was always really big in our house and birthdays were a huge to-do. I was reminded my youngest cousin had on her Substack this weekend, she made the strawberry angel food cake that my grandmother made for every birthday we had growing up. And it's a wonderful cake. I'm going to actually make one this weekend, but my husband's family wasn't like that. Not big on celebrations, but my mother-in-law was in really good sport. And one year for our oldest kid's birthday, there was a local pet shop here, Ed's Pet Shop, and they would bring a bunch of animals to a kid's party that the kids could touch.

And one of them was this incredibly long, I mean like we're talking eight-foot-long yellow boa constrictor. And my mother-in-law was legendarily afraid of snakes and she nonetheless let Ed and his son, Seth, and I mean we're talking big diameter, and she wrapped that snake around her neck and put her grandson, tucked him under her arm with the snake around both of them. It was our Christmas card picture that year. That just epitomizes to me a commitment to making holidays special because our oldest son has never forgotten that moment with his granny.

Jill: I would do a lot of crazy things, but I have to say I don't think I would do that one. That was-

Joyce: She was amazing, that woman.

Jill: Wow.

Joyce: This episode #SistersInLaw is brought to you by Wildgrain. If you're not already familiar with Wildgrain, it's the first baked from frozen subscription box for artisanal breads, pastries and pastas. Wildgrain's boxes are fully customizable to your tastes and dietary restrictions. And there's some exciting news. In addition to their classic variety box, they recently launched a new gluten-free box and a 100% vegan plant-based box. Best of all, Wildgrain takes the hassle out of baking since all the items bake from frozen in 25 minutes or less, they smell great. There's no mess and no cleanup.

Jill: Yeah, it sounds hard to believe, doesn't it, Joyce? But it's true.

Joyce: It's so good.

Jill: And I love not just how fast Wildgrain goes from the box to our table, but I love the taste and I love how my husband and I enjoy all their breads, their pastas and their pastries, and so do my guests who are always impressed and often end up subscribing for Wildgrain delivery themselves because they loved it so much. It's perfect for delicious meals or snacks now or when it finally warms up for outdoor parties. It's great to watch the colors and flavor come alive when you put the sourdough rolls in the oven. The aroma is amazing. And have you tried the new rhubarb strawberry turnovers? They are so really good.

Joyce: I need those right now.

Jill: You do. They are just, it's a little size, so it's enough to have just a couple bites and be really, really happy. I never have to call anyone to the table anymore because as soon as they smell the bread, they are running to the table and everything is delicious. Super high quality and easy to make. I can guarantee in addition to that pastry I was just talking about, they have raspberry lemon biscuits and new chocolate croissants as great as their croissants are. Oh my God, the chocolate croissants are unbelievable. It's a big hit. It's one of our faves now. And their French butter is really terrific, which is an extra thing you can order and tonnarelli is my favorite pasta from them.

Barb: Oh man, that butter is so good. I'm not a big butter eater.

Joyce: Love the butter.

Barb: But that French butter, I don't know, it's like it's salted or something.

Jill: It's great.

Joyce: Are there herbs in it? I can't figure out what makes it so good. It's amazing.

Barb: I could sit here with a spoon and just eat it like I just [inaudible 00:08:26]. We had a houseful for Easter and we made a feast for Easter, and we heated up a couple of loaves of the sourdough bread and the cookies, the chocolate chip cookies and the snickerdoodle cookies. Oh, man, did our house smell good. And every last bit of all of that was eaten and it was so easy. Folks, listen to this. You heat it from frozen, so you literally take it out of your freezer, you put it in the oven and it tastes delicious. So if you are ready to bring all your favorite carbs right to your doorstep, be sure to check out Wildgrain so you can begin building your own box of artisanal breads, pastas, and pastries.

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Joyce: Every time we do this ad, I end up hungry for the rest of the podcast.

Jill: Oklahoma was big in the news this week, a botched federal raid and then a First Amendment SCOTUS argument where for over two hours the court and multiple parties

debated whether the St. Isidore Catholic Virtual Online Charter School can be funded by the state as a public school. The Oklahoma Supreme Court ruled that under state law and federal law, a public school must be nonsectarian. Certainly a concept we all grew up with and that charter schools are public schools and they denied St. Isidore a spot in Oklahoma's public school system. If SCOTUS rules the other way, this would allow overtly religious schools, Catholic, Jewish, madrasas, Mormon, all to be fully funded by the taxpayers and could impact charters in not just Oklahoma, but in 47 states. So there's a lot at stake. So Joyce, tell us what St. Isidore and the board, because they had separate arguments, argued and were any persuasive to you.

Joyce: So this is really a fascinating case. I mean, this is sort of the world we live in, right? Where some people's religious rights seemed to trump other people's First Amendment rights and here we are. The case starts when Oklahoma's charter school board approved an application by the Archdiocese of Oklahoma City and the Diocese of Tulsa to establish St. Isidore of Seville. It's a virtual Catholic charter school, so there's a lot going on, right? It's virtual, it's a charter school, and charter schools are in essence public schools under state law, although the law governing them says they have to avoid religion "in their programs, admissions policies and other operations." But somehow or another, despite that St. Isidore, the board's contract with them provides that the school can freely exercise its religious beliefs. So I think the best explanation we got in this just fascinating oral argument for the position that was being staked out actually comes from the justices when they're asking questions.

And this was Justice Kavanaugh's comment during oral argument. He says, "All the religious school is saying is don't exclude us on account of our religion. All we're saying is don't exclude us because we're a religious school." Look, it's not very persuasive. In Oklahoma, it's actually in some instances kids get assigned to these charter schools. They're not private schools, they're part of the public system and kids can be assigned to them. And that's a lurking problem here. I think Justice Sotomayor explained it really well. She said, "Really what you're saying is the free exercise clause trumps the essence of the establishment clause and those rights are butting heads and traditionally the courts have resolved them to avoid establishing any religion." That's what at stake this case and what St. Isidore and the board are arguing for.

And that's obviously, I think why I think these arguments aren't persuasive. I fear that they will succeed. I know we'll talk about that, Jill. But the basic argument here is, "It's okay, we're just religious. You can't put us aside because of that." And historically in this country the answer would be yeah, yeah, you can do whatever you want to do on your own nickel, but not as a public institution.

Jill: Although I will add, they did argue that no one has to attend the school and I'm not sure because I know what the rules are in Illinois. But if you can be assigned to the school that would be forcing you to go there. If you were free to choose a different school, and this is just an additional option because it's online, it seems to me it might not be that you're forced to attend, which doesn't counter the arguments that the state made. The state attorney general sued after the state board granted the charter and argued the opposite that it would violate the First Amendment. And so Barb, talk about what his arguments were and how does the First Amendment balance free expression of religion and the prohibition on government establishment of religion?

Barb: Yeah, I think this is a really important point and the one that Joyce was driving at. So it isn't that any individual student is being forced to attend because as you say, this is an online charter school and kids can certainly go to other schools and they have choices, but it is about using public funds. So taxpayer money to fund this private school. That is where the establishment clause violation comes into play. And so imagine a world where all kinds of schools, as Joyce just said, religious schools are taking state money to set up schools and what is that going to do to the public schools and the funds set aside for public schools? It is why we do not allow the state to establish an official religion. It also gives sort of the imprimatur of state approval to certain kinds of religions over others.

And so here we've got this Catholic school, we're not seeing a Muslim school, we're not seeing a Jewish school being set up by the state of Oklahoma. Now, I suppose if they had equal opportunities for all religions, that might be a different story. But to date, this is an absolute violation of that concept of a separation of church and state. And I'm very concerned that comment by Justice Gorsuch about they just don't want to be discriminated against, I mean have you read the First Amendment? It prohibits the state from establishing any religion. And so consistently the court has said that means you can't fund these religious causes, religious schools, religious institutions. If people want to do that privately on their own, they're free to do that. That's the free exercise clause. You can go practice your own religion on your own time if you want to, but what you can't do is take state money and now spend it on religious institutions.

Joyce: And did you catch the part of the argument where Justice Alito was talking about anti-Catholic discrimination, which is-

Barb: Oh my gosh.

Joyce: It's a terrible part of our nation's history, right?

Barb: Oh my gosh.

Joyce: But it's long ago and we have fortunately largely moved beyond it, but he wanted to dredge that up and seemed to ignore more modern issues with other religions. I thought it was a fascinatingly tone-deaf argument.

Jill: It also seemed to me that whatever that argument was, and I agree with you about it's long ago and not the issue, this is the first, but if it's approved, then under the very reasoning that they might approve it by, they would have to approve funding Jewish schools, Mormon schools, agnostic schools, atheist schools. You would not be able to discriminate.

Joyce: [inaudible 00:16:49] schools, right? Druid schools, I mean they won't, they'll find reasons not to, but theoretically they would have to.

Barb: Against the history and tradition of the United States, Joyce, to fund Jewish schools.

Joyce: Exactly. They always find a reason. I mean, this is the most results-oriented court we have ever lived through, a constant annoyance when they argue cases.

Jill: Well, yeah, let's get to that issue. I want both of you to participate with me in a conversation about a couple things. One is reporting of this argument has consistently pretty much said, "Oh, it seems like SCOTUS is ready to say yes. And so that raises the question of how did they get to that conclusion? I mean, listening to the arguments and listening to the questions that justices asked, do you think that there's a way of predicting from that what the justices are going to actually do and then we can move on to what's the proper outcome?"

What do you think it's going to be? What do you think it should be? But let's start with the predictive thing because I think that's interesting to... I'm not sure how predictive the questions were. When I listened, I was like, "Well, it certainly seems like at least..." And by the way, we should note that Amy Coney Barrett did not participate in this case, possibly because she had defended or represented St. Isidore when she was a law professor. So it's going to be an eight-person decision, and if it's tied, that means that the lower court decision stands, that is the Oklahoma Supreme Court decision stands, and it's really at this point, therefore critical how Justice Roberts-

Barb: Which ruled against the school, right?

Jill: Yes, they ruled that they could not get funding, which seems to me the right outcome. But anyway, so let's talk about what the predictions are based on hearing the justice's questions.

Joyce: Well, I try to never count on the chief justice to do the right thing in a close case, right? I mean, I've gotten burned too many times hoping that the chief justice cares about the legacy of the court that bears his name. Here's looking at you United States versus Trump and immunity from criminal prosecution for the president. This is a case that shouldn't be tough to decide. This is an easy case. There might be more difficult, more nuanced cases in this area. I don't think this needs to be one of them and less the chief justice wants to take it on.

And because as you point out, Jill, at best, the result in this case is four-four, which means that the Oklahoma Supreme Court's ruling in favor of the First Amendment and against the establishment of religion would stand. I'm not sure anybody goes out on a limb here. The more interesting question to me is what happens when they take the next case where Justice Barrett is not recused and there is the potential for a five-four or even a six-three majority? I don't think this issue dies with this case regardless of what the outcome is.

Jill: Barb?

Barb: I'll answer your question maybe a little bit differently. I think that you talked about the headlines versus the reality. I find one thing, headlines today very rarely represent the story. And one thing that's really important, and I'm sure most of our listeners know this, the author of the article does not write the headlines. Some copy editor writes the headlines and headlines are designed to be sensational, I think, because they want to attract clicks. And very often the headline bears very little resemblance to the article itself. So sometimes the headlines are like court signals adopting religious schools or something like that where the headlines, and I also thought the articles were a little bit doomsday scenario like, "Oh, well you know how this is going because they've got the

four votes, so therefore that's the end of public schools as we know it. This was going to be transformational."

I agree that if the decision goes that way, it will be transformational of the way we think about and fund our public schools. But I'm not sure Justice Roberts is going to go there. And I know, Joyce, shame on me for thinking the best of Justice Roberts I suppose, but I don't know that he is in the bag for Trump. He is certainly extremely conservative on certain views. He certainly has an expansive view of executive power. Where he'd have his druthers, maybe this is what he would view, but I thought he asked some hard questions and I thought he was a little harder to detect.

And so I think it's going to come down to him based on what we heard from the others, the questions like we quoted Justice Gorsuch, who clearly is along the lines of seeing this is discriminating against religion. We also heard from Justice Kagan who asked some pointed questions that you just pointed out about, we're going to have to go down this road where every religion gets this break and are we really talking about public schools anymore? So I think we know where she comes out, but I think Roberts might be surprise us. And as you said, if he decides with the three liberal justices, then the rule stands as it is and the school loses. So I think there's a very realistic possibility that we end up there. How should it come out? I think I've made it clear that I think the establishment clause makes it clear that the court should not be in the business of funding religious schools, but I've been wrong before about how the court comes out.

Joyce: So you're hoping that we get Affordable Care Act John Roberts, not Loper Bright John Roberts or Trump versus United States Roberts, which I think is a fair point. I always love to be optimistic. I wish I was more optimistic on this one. Where is Kim when I need her? She should be out on the ledge with me here.

Jill: Well, I'm going to pull you back in because I agree with Barb and in listening to the argument, which we'll put in our show notes, it's over two hours, but it's really, for me, it was a fascinating dialogue between all the different parties and it's worth listening to. I think that Roberts was very restrained and it's clear the three liberal justices are going to vote against this, I would say, from listening. And it's not clear what Roberts is going to do and he is, in this case, the decisive vote. It will either be four-four or it'll be five-three. So it depends on him.

And I just thought from his questions that he sees the risk of this and where this could go. And listen, as someone who won't even say in the Pledge of Allegiance, what was added after I had already learned the Pledge because it was when I was in grade school, middle school probably that they added under God. I just don't think there's any place in our world for the government to be sponsoring a belief in God or a particular religion. And I'm not saying that they shouldn't fund this particular school. I'm saying they should never fund a school that teaches religion or a belief in God or a particular God as a matter of truth, that's just not a place for it to happen. So I don't think it should get federal funding. I think it should exist, but it should be funded outside of the government.

Joyce: Now that the sun is coming out, it's the perfect time to make sure we're on top of our self-care routines with the help of Flamingo. They're shaving hair removal and body care products were designed with you in mind. So they focus on what's truly important, high-quality, simple grooming solutions that allow you to sit back, relax, and enjoy a day out

in the summer sun. Flamingo's line of essential body and hair care tools bring in eye-catching and innovative design to your bathroom counter and their high performance and affordable prices make Flamingo a must for any shower experience. Apparently the shaving cream really does. I have not been able to use mine because Bob stole the shaving cream. I told him it was for women and he didn't care.

Barb: TMI. I'm not going to talk about my shower routine or anything in it, but I will instead talk about the stylish colors in which the handle is available. I always pretend that I'm going to think about all the different colors, but of course in the end I choose blue because blue is beautiful, but there are many other great options. It's a weighted handle, so it gives the razor perfect balance so that it handles smoothly. Plus, when you need new blades, you can pay as little as \$2 per refill. That's half of what the other big brands charge, and they make sure that there is no pink tax by charging more to women than they would charge to men.

Jill: I love that aspect because every time I go to the cleaners, I am really angered by the price differences. But millions of women trust Flamingo to provide a premium body hair and care experience, including all of us. They have so much to offer. In addition to razors, they have amazingly effective body wax and hair removal creams, pre and post-shave essentials to keep your skin sleek and hydrated and much more. So keep smooth and refreshed with Flamingo, hair removal products made with your body and mind. Get started with an exclusive offer for our listeners, only 25% off your first order at shopflamingo.com/sisters. And when you use code, sisters, you'll get that discount. That's shopflamingo.com/sisters, code sisters. And of course, as always, the link is in our show notes.

Joyce: Well, this was a big week at DOJ with a lot going on, but it was not a particularly good week. There were disturbing developments that continue to underline just how off the rails this Justice Department is front and center for me were the whispers and reports that the Civil Rights Division is being forced to abandon its historic mission of protecting people's rights and it's becoming a shop for investigating the sorts of things that I would not view as civil rights violations in many cases, using anti-Semitism as an excuse to engage in going after, for instance, students exercising their first Amendment rights. So it has been a tough week I think for people who love the Justice Department and we'll start right there. Jill, can you explain what people mean when they talk about the demise of the Civil Rights Division? What's going on and why does it matter? I mean that headline is being bandied about, but what's the content behind it?

Jill: There is unfortunately real content behind it. When they talk about the demise, there's part of the reference is that people are leaving in droves. It's being gutted. There are less than half the lawyers left that there were before. And the reason is that they're leaving because the Trump administration that is Attorney General Bondi has made it clear that they're going to weaponize justice against political enemies and they aren't going to keep on doing the mission of various agencies including the Civil Rights Division, which was once the lauded and wonderful division that protected civil rights in America. But the head of that division now is a Trump MAGA supporter who was one of the election deniers and has put in place that we're going to drop voting right cases. And some of this is normal. I just want to say that when there's a change in administration, sometimes cases that are before courts are withdrawn, but not usually on the kind of basis and in the volume that's happening now, but they've dropped voting right cases.

They've backed away from pay discrimination lawsuits, they've terminated environmental justice cases, they don't care about police misconduct and consent decrees. There's just a lot going on that is in the normal ordinary course of the Civil Rights Division. And so now we're in the hundreds of lawyers leaving, not dozens, but hundreds, and the head of the division is saying, "Good, they should be gone. If they aren't willing to carry out the priorities of this administration, we don't want them anyway."

And this raises a bigger question, which is the advice of people who are in the government. If you leave, you're going to be replaced by MAGA people who will be loyal and do whatever they're told to do. And so if you can stay, you should stay. On the other hand, when you are not allowed to do what you think is your job, then maybe you do have to publicly protest by leaving and making public why you're leaving and the horrible things that you're being asked to do. It's not just that you're not being allowed to continue cases you had, but you're instead going on to bring cases against students. And I think that they're in a tough position and that I don't blame these lawyers for leaving. I really don't.

Joyce: Yeah, I mean it's such a tough position, Barb's, and my boss, Eric Holder, and this is not original to Eric, I think it precedes him, but he used to refer to the Civil Rights Division as the crown jewel of the Justice Department because so much good work goes on there just extending the fundamental promises that the Constitution makes to an increasing number of people. And so many of the Civil Rights Division employees, they've been assigned actually to units where they're doing very mundane routine tasks. And we're talking about experienced folks, the kind of folks for instance in the special projects unit who do prison reform cases where so many of our nation's prisons violate the constitutional prohibition against cruel and unusual punishment. And those cases are being gutted, fair housing cases are being gutted. It's really appalling and it's difficult with the fire hose of stories we see from this administration to stay on top of everything.

But what's going on inside of the Civil Rights Division seems to me to be very important because of the long-lasting impact that it's going to have. Unfortunately, that's not the only story that came out of the Justice Department. And Barb, you flagged one for all of us last week that I think is also going to have legs. This is Pam Bondi's new guidance to prosecutors that makes it easier for them when investigating leaks to the news media, to subpoena records, to get testimony from journalists, horror First Amendment kind of stuff. Historically, it's been a very hands-off policy when it comes to journalists and attorneys general have been criticized for anything that remotely smacks of invading the First Amendment. What's going on here?

Barb: Yeah, we saw Pam Bondi rescind a prior memo that was issued in the last administration that prohibited prosecutors from using compulsory legal process. That means subpoenas, grand jury subpoenas, search warrants, court orders to get phone records against reporters on the theory that it interferes with the news-gathering process and could have a chilling effect on the free press, which is certainly of course guaranteed by our first amendment. And so the rescission of that causes me some concern. I think certainly members of the press don't have any special rights or immunities from being compelled to testify, but the policy had always said if they're being investigated for committing some crime, of course you can look into it. It even had an exception for national security kinds of cases. But the idea was that in a leak investigation, you should and you may investigate sources of a leak.

So for example, if you've got somebody who's working at the FBI or the CIA or wherever it is, Department of Defense, who has leaked something that gets out into the press, certainly may investigate those individuals and prosecute them. The law permits the prosecution of reporters, but it has always been treated with a lot of caution. Going back to the Pentagon Papers case, some of our listeners may be familiar with that case, pretty famous case where the New York Times and then the Washington Post printed something called nicknamed the Pentagon Papers, which was a classified report from the Department of Defense that revealed that the US had been involved in Vietnam as early as the '50s and had lied publicly, like four presidents had lied about our involvement in that. And the court ruled in favor of those newspapers saying that the Justice Department could not issue a prior restraint to stop them from reporting.

Now, that's a little different from saying you can't use compulsory process to investigate them. There's no law that says you can't do that. But the policy is a reflection of the important role the press plays in society because not only say if I'm investigating a reporter from The New York Times wrote about a leak, and what I really want to find out is who a source was. So I put that reporter in the grand jury and I say, "Tell me who your source was," or I use a search warrant to get his phone and I look up their Signal chats. That would not only expose this leak source, whoever it was they're talking to, but all the other sources that that reporter might be talking to if I'm looking at all his Signal chats and the worry is that it will have a chilling effect on reporters and on sources who might otherwise reach out and talk to reporters. So I worry that this is a prelude to a very aggressive use of the Justice Department to go after reporters who write things that are unfavorable to this administration.

Joyce: I like the way you frame it because I think people might say, "Well, so what if it's a reporter talking to a source?" Prosecutors are entitled to know, but this notion of broad exposure and chilling the First Amendment, which in some ways is what this administration is all about, which is what pops this into focus for me. So that's main justice. There are 94 US attorneys offices nationwide. Fun fact, there are only 93 US attorneys because Guam and the Mariana Islands share a US attorney. So if that comes up while you're watching Jeopardy!, now you'll know the answer. But those offices are also outposts of the Justice Department and Ed Martin is Trump's nominee to be the US attorney in the District of Columbia. He continues to engage in behavior that can only be described as erratic and biased. It's conduct that would've cost any US attorney, let alone the US attorney and the District of Columbia, their job in any prior administration.

They would've been asked to submit their resignation. I am 105% certain if they engaged in the sort of stuff that Martin did, engaging in public prayer on Twitter. I mean, it sounds crazy, right? But every morning just about he gets up and promotes his specific religion of choice on Twitter, which is really a problem because he has to decide cases that involve Muslims and Jews and Hindus and people of other faiths. And you don't engage in that kind of conduct because it really diminishes public confidence in the fairness and the objectivity of the Justice Department. But beyond that, there is his commentary in specific cases. Why don't we start, Jill, by talking about what he's done in regard to a few specific cases in the past week?

Jill: Okay, so he's the only part of your description I would quibble with is you said his behavior is erratic. And actually I think it's pretty consistent. He's been consistently awful, consistently doing the wrong thing. I mean, aside from this prayer, remember he

wrote to Georgetown, he said, "We will not hire any of your students as long as you continue to have your policies." To which the president of Georgetown wrote a brilliant letter back, but the latest allegations against him are that he spoke out in very blatant terms about particular indictments. He said, I'm going to read specifically his language, "The allegations in this case are not only disturbing, they're also every parent's nightmare. The number of victims allegedly exploited by these defendants and the depths of depravity are staggering. Justice demands that our response be swift in order to ensure public safety, hold the wrongdoers accountable and bring the victim some sense of closure so they can heal."

That is not permitted. It isn't uncommon for the US attorney to announce a particularly important indictment and to say, "Today we have indicted so-and-so on these charges," basically reading from the indictment but not commenting on the guilt, which is what this is saying these people are guilty and they need to be held accountable. We don't prejudge in America. Everybody is presumed innocent until a jury has listened to the evidence and reached a verdict. This is prejudicial in ways that really hinder the administration of justice. And I'm hoping that the combination of things, if not just this alone, will cause the Senate to pause and decide that they will not confirm him for the permanent position of US attorney.

Joyce: I would even say that he has violated very specific dictates that govern what prosecutors may or may not say when a case is charged. I mean just clear violations of the rules. So Barb, can you talk about what he's done and your sense of whether it's wrong or not?

Barb: Yeah, so it's a long list. First is the ethical rules about conflicts of interest. You may recall that he represented some of the January 6th attackers and then as interim US attorney moved to dismiss their cases. So when you're a lawyer, you can't be on both sides of the V. That's a pretty basic conflict of interest rule, and I know there have been ethics complaints about him for that. So that's one. But with regard to some of these communications, there are a couple of things that are wrong with it.

So the one that Jill just mentioned about talking about how awful this defendant is, there are federal regulations that provide guidance for prosecutors policy about what you can and cannot say. And typically prosecutors are required to speak within what's called the four corners of the charging document. So if you have an indictment or a complaint and it has specific facts in it, you may recite that, you may recite, "The indictment alleges that on or about X date the defendant did X, Y, and Z," or "This defendant is charged in a wire fraud scheme. Allegedly this happened. Of course, all defendants are presumed innocent and we look forward to proving our case in court."

There are also something referred to as the principles of federal prosecution, which says that prosecutors may never base a charging decision or a case initiation decision on partisan politics. You must look to facts and law. There are a number of factors that may be considered including priorities, a substantial federal interest, the likely outcome, the impact on the safety of a community, but you may never consider partisan politics. And all of those things I think have been completely disregarded by Ed Martin and some of the things that we're talking about here. And just look at his social media posts. I haven't looked at it lately, but for a long time while he was interim US attorney was using the title Eagle Ed Martin, and that I think is a relic from the time when he was a leader in the Phyllis Schlafly Eagle Organization.

Joyce: Yes.

Barb: So again, demonstrating this affiliation with a political organization I think is just so far afield. Joyce, imagine if you and I had had social media accounts with these kinds of things. I mean, we used it to post an indictment, "Today we indicted this case," or "Today a judge sentence defendant so-and-so to X years," in hopes of advancing that deterrence role of federal prosecution, not to use it to stoke the culture wars in society.

Jill: So I just want everyone to know, because, Barb, you mentioned the Eagle Forum and Phyllis Schlafly, and that was very much a reason why the Equal Rights Amendment had so much trouble getting ratified in the beginning. And so it's important to understand what the Eagle Forum stood for and how conservative it is and what a power it was. And so showing your affiliation with that, as you said, is just the wrong thing for a US attorney to do.

Joyce: Yeah, I mean 100% right. It would be as if I had said, "Hey, I'm 100% lefty liberal Democrat," and had tweeted that every morning while I was a US attorney. So look, you all, in a normal world, the Office of Professional Responsibility at the Justice Department, which is the office that takes care of misbehavior by prosecutors who engage in misconduct, they would be investigating these folks and issuing some sort of disciplinary action. But that's not happening. They're not even investigating. This is on Pam Bondi's watch. We're a hundred days in. I know she hasn't been around for all hundred, but close enough. What kind of grade are we giving Bondi at the end of Trump's first 100 days? How's she doing, Barb?

Barb: Well, if you view her through the lens, I saw in an article today as running a law firm for Donald Trump, she gets high marks, but in terms of the way I assess the appropriate role of the attorney general, which is supporting and defending the Constitution on behalf of the people of the United States, the bottom of the barrel, she gets an F. It's been an embarrassment. Well, she signed like 14 memos when she first came in. One of the memos that came shortly after that was her decision to eliminate paper straws from the Department of Justice and only plastic straws would be used heretofore or hereafter. It's more important to own the libs than to do my job. And that's really-

Joyce: I spent many a happy afternoon in that cafeteria at Main Justice chewing on my paper straw when I had finished my drink, I mean.

Barb: Forming this weaponization task force, I'm still very worried about that. I don't think we've seen that come to full fruition yet, but advancing the false narrative that the last administration engaged in weaponization and therefore needs to be held accountable in some way. I really worry about that. Reporting recently that there was an effort by DOJ to criminally prosecute protesters at Columbia University and only because the judges wouldn't sign their search warrants because they found no probable cause. I just worry about hopefully we've got good career prosecutors within the Justice Department who will stand tall and we will have judges who push back when there are efforts to do things that are truly lawless. But you can really make someone's life miserable just by investigating them. And I'm really worried about what happens to our Justice department and the enduring damage that she could do to it. So, F.

Jill: I agree with Barbara completely. She is an A plus in being a Trump loyalist, and that's all that matters to Donald Trump. She is absolutely pursuing every single thing he does in terms of the proper role of the attorney general, sorry, of the attorney general, I would say she is an F minus. It's a total failure for her.

Joyce: Ooh, Jill, don't hold back, girl.

Jill: Well, it's true. I mean, she has done everything in her power to carry out his weaponization of the Department of Justice, whether it is when she says, "I want you to go after Miles Taylor and Chris Krebs." "Okay, sir, I'll do that." When it is her saying things like, "He has saved 75% of Americans from horror," which is something she said, or when she goes after the Tesla protesters, which is a clear First Amendment right of assembly and speech and she's prosecuting them. Those are things that are just unheard of. So it totally bothers me that that would be something, as I say, that's a total failure for her to support the Constitution, and I think that we need to worry about what she's doing and how she's doing it.

Joyce: The attorney general is supposed to be the people's lawyer, not the president's lawyer. And if that's your criteria, I agree with you all. Pam Bondi is flunking at this job.

One of the best parts of Mother's Day is reflecting on the amazing memories you've made with your family and getting excited about how many more there are to come. Mother's Day is coming up pretty quick, so we want to make sure our listeners are getting their moms something nice. Kids, I hope you're listening. I'm a mom too. One of the things we wanted to mention is Aura Frames. They make unique and stylish digital picture frames that make displaying and sharing your favorite memories easy and fun, something moms really love to do. I adore my Aura Frame.

Barb: I know what you mean, Joyce. Aura Frames are the best. I have one in my house. I've given them as gifts to family members. And my father-in-law is so delighted with his that he takes it with him when he travels because-

Joyce: That's so sweet.

Barb: -he doesn't want to be without it, and he loves. We've loaded hundreds of pictures on there of him, mostly with the grandkids, and it's so delightful to see them. So most gifts get a big fuss when they're opened and are never looked at again. But that is not the case when you give someone an Aura Frame, like getting one for your mom for Mother's Day, for example. With an Aura Frame, you're creating an amazing way to stay connected to the important people in your life and remember great times you've shared. With my children off to college and beyond, and Aura Frame has been a perfect way to enjoy the memories we shared when they were growing up.

Plus, you can always add more photos because there's always more good times to share. In fact, what I do is I go back, you're on your phone, you can search by lots of different things. I search by month, and so I make a little album like from the month of April. Dang, I got to do May now, but I'll find pictures from our kids as youngsters from the month of May and I'll load them up. So I change them out every month and it's so much fun. I can see my husband will stop and just start cracking up about some picture he finds

of one of our kids doing something silly when they were five years old from many, many Mays ago.

Joyce: It really is great. Our youngest is getting ready to graduate from college, and he's a little bit mouthy as 22-year-old young men have the habit of being and it's so much fun to go back and see the really cute pictures of him as a stroller baby or at Disney World with makeup all over his face. It sort of reminds you of those good times and also reassures you that there are more good times to come. Aura Frames was named the best digital photo by Wirecutter. I always go to Wirecutter for recommendations, so that means a lot to me. And they were featured in 495 gift guides last year for a reason. The reason is they're really great. Next time you need to call your mom. You can also send her a new picture of you from the trip you're telling her all about right from your phone. No matter what role someone has in your life, everyone loves an Aura Frame. Don't let your favorite shared moments get forgotten. Every time the photos in the frame catch your eye, it's a warm and wonderful moment.

Jill: And you know the best part is that it comes with unlimited storage. All you need is the free Aura app and a Wi-Fi connection, and then you can upload as many photos and videos as you want. And right now, Aura has a great deal for Mother's Day. For a limited time, listeners can save on the perfect gift by visiting auraframes.com. You can get a \$35 off plus free shipping on their bestselling carver mat frame. That's auraframes.com. Use the promo code, sisters, for that discount and also show your support for the show by mentioning us a check-out terms and conditions apply. The link is in the show notes.

Barb: This week a judge ruled against the Trump administration's use of the Alien Enemies Act to deport alleged Venezuelan gang members. Regardless of your view of immigration enforcement, whether you favor aggressive enforcement or you disfavor aggressive enforcement, I see this moment as a great victory for the rule of law. Jill, can you first just give us a little background on the Alien Enemies Act to remind our listener what that statute is and is not? By the way, I've been obsessed with the idea that it's really called the Alien Enemy Act, singular, what the statute says, and that's how the Supreme Court has used it, and that's how legal scholar Steve Vladeck uses it, who I think is very smart on these issues. Nonetheless, again and again, we see judges and the media using it. So I guess I need to cave in and admit that we're going to use in popular culture, the Alien Enemies Act. So can you just explain to us what that statute is and is not?

Jill: Sure. It's actually the AEA, so then you avoid having to decide what it is.

Barb: Well done, well done.

Jill: I have fallen into calling it the Alien Enemies Act, even though you're right that it should be enemy and it should be in time of war. What it is is a law that was passed in the 1790s. Okay, everybody get your mind back to that. And it was intended to be used in time of declared war or a kind of invasion, and it allowed the president unfettered ability to round up people who were citizens of the invading nation, of the nation at which we were at war. And it has been used three times in the past, all in what anyone would decide and conclude was an actual war. The war of 1812, the First World War and the Second World War. It has not been used-

Barb: The world war is a little bit of a clue in there, right?

Jill: A little bit of a clue.

Barb: [inaudible 00:53:52] is doing some work there.

Jill: Yes, some work. And it's certainly not peacetime. We are clearly in peacetime right now, and I know we'll get into more about what exactly the courts have said about this. So I don't want to go too far, but just to say that the AEA is a law that allows an absence of due process. And so of course in the years of planning that this administration did through Project 2025, even though he says he had nothing to do with it's a total lie. And that's the truth. They have seized on this as a way that they could deport people. And in this case, for example, Venezuelans who are members of a gang without any due process. So we don't know that they're even Venezuelans, let alone that they are members of a gang. And without due process, without a hearing for them to say, "Wait a minute, I'm not Venezuelan," or "I am Venezuelan, but I fled because of risk to my life from gangs. I'm not a member of a gang. We are in very bad trouble."

And there are other ways to deport people that do give due process where you get a hearing and a conclusion. So we're not against, I mean, no one that I know is against deporting criminals. No one is against deporting people who are violating our laws in any way, but we want to know that they have before we randomly deport people who have come here and are seeking asylum or for example, are at their citizenship interview. They've gotten that far along here and now they're picked up by ICE agents in using this act. So that's what the act is and why it shouldn't be used here.

Barb: Yeah, great. Great analysis of the AEA. I like to say it's not about the substance, right? It's about the process. And so often we keep hearing about, "But they're such bad guys." That's irrelevant. The devil himself gets due process, right? And you can't send people-

Jill: Wait, was that a religious reference?

Barb: Yeah, I don't know. I didn't attend religious school. And Joyce, can you remind us of the history of this case? This is the case that was first filed in Washington D.C. in front of Judge James Boasberg, right? And then taken to the Supreme Court. Remind of that history and how we ended up here in Texas.

Joyce: It's so funny. It feels like for days and days all we talked about was this case, and now it feels like it was ancient history because so much has happened, right? This is the case that the ACLU filed in the District of Columbia challenging the use of the Alien Enemies Act, and they sought a temporary restraining order. And you will recall these dramatic circumstances, there were planes up in the air and they went to the judge overnight and he told the government, if you've got planes up in the air, turn them around and bring them back. And of course they didn't. Marco Rubio retweeted the president of El Salvador Bukele's Oopsie tweet. And there's been suggestion that the government flagrantly ignored the court's order. That's sort of still on the table, but on a different track right now. The case goes up to the Supreme Court and they make a technical legal ruling.

They say, "You can only raise these claims ACLU under a legal theory called habeas," which is sort of a device for bringing people who are in custody in front of a court. And they say, "And you can only bring those cases in the federal districts where those people

are being held." So that's how we've ended up with federal habeas cases all over the country, Southern and Northern District of Texas, there's one in Colorado, there's one in the southern district of New York. I'm probably missing one or two, but this is how we end up in Texas with a judge in the Southern District of Texas, a Trump appointee, deciding this issue for the first time.

Barb: Yeah, thanks. That was a very succinct summary because a lot has happened, and of course, Judge Boasberg back in DC is still looking into whether the government lawyers acted in contempt of his order by refusing to comply with it. But nonetheless, you lose, you got to go to Texas, you got to do habeas. Good luck with your class action. And here we are, a Trump appointed judge in Texas who rules on this. So Jill, what did this judge in Texas decide about the alien enemies, the AEA?

Jill: So before I answer that exact question, I want to say that the Supreme Court sending it out and saying you have to file individual habeas actions where you are incarcerated, not here in Washington, really has been, I think, a burden on due process for the people who are being detained. So I think that's a problem. But this judge to maybe the surprise because I'm sure one of the reasons for sending it out was, well, the places where they're being held, it's going to be much harder, and individual habeas is much harder than a class action. But here you have a judge who I'm positive about his result, although there's a lot there that supports or does not support the broadest definition that I would like.

His final conclusion is that the president can't use the AEA by simply issuing a proclamation that these are enemy aliens and they're, I think aliens is the proper word. And that he said it exceeded the scope of the statute contrary to its plain, ordinary meaning, the language and going back to how the conservatives interpret statutes. And he concluded that as a matter of law, the executive branch can't use AEA to detain the named petitioners and the certified class. So now we have a class of Venezuelans who are in the Southern District of Texas who are subject to his ruling that they can't be held as enemy aliens under the AEA because the president said so.

Barb: Yeah, and I think there's also some very good analysis about, and you're right, it is narrow, and the judge says, "I don't have to decide this, so I won't decide that. So I won't," which is what judges are supposed to do, decide the case on the narrowest grounds possible, but did say under the Alien Enemies Act, you have to be at war. And we're not at war. It says war, invasion, incursion, predatory incursion. None of those things are going on here. And only Congress can declare a war. So you know what? If we're at war, you get a lot of deference. Mr. president, but we're not at war.

Jill: But he also went out of his way to say, "I can tell you what the words of it mean, but I can't look at whether the facts actually support that or not." And I'm worried about that language in there. I can't say whether when the government says we're at war, that I can look at whether we are or not. So it was a little mushy there for me. That was what bothered me in the opinion. And again, we should post the opinion in our show notes and let people read it and see what they think.

Barb: Yeah, I think this is a good opinion. I think it is strong on the AEA and certainly strong on the president's exceeding his authority here. But Joyce, I want to ask you about the procedural posture of this case, because it came up as a motion for preliminary injunction, but the judge decided it as summary judgment in favor of the plaintiffs. Can

you just explain what is summary judgment and what that means for the case going forward?

Joyce: Yeah, so this is a great sort of law school 101 concept for us to take up. Sometimes cases go to trial and juries resolve disputed factual issues and decide the case. But very frequently before the trial one party, sometimes both of them, will file a motion for summary judgment saying, "There are no disputed issues of fact in this case. The facts are all on our side," and they have to argue that and back it up, right? Because a judge is going to decide this motion and the federal rules of civil procedure provide that courts shall, that's the word that's used in quotes, "shall grant summary judgment if a party asking for it shows that there is no genuine dispute as to any material fact and they are entitled to judgment as a matter of law." And that's what happened here. The judge references, as Barb explained, the plain language of the statute, the history of its usage and says there's no factual issue left here.

The parties agree on the factual stuff that a jury would have to decide. There is no work here for a jury to do. And so he issues his opinion and of course the government will now appeal to the Fifth Circuit saying, "Oh no, no, there shouldn't have summary judgment. There was a factual dispute." Presumably then it'll go on to the Supreme Court. But this is sort of a standard thing that happens frequently and courts will often weigh in on whether they believe there are legitimate factual disputes for the courts or rather for a jury to decide or whether that's been foreclosed.

Barb: Yeah. Well, thanks. That really is like first day of law school civil procedure.

Joyce: It is, right?

Barb: Summary judgment, yeah.

Joyce: It's fun to go back.

Barb: Well, I just want to ask you maybe big picture. So often we're talking about things that feel so negative. To me, this is maybe a bright spot. This is a Trump appointed judge in Texas. The plaintiffs initially filed their case in Washington. The Supreme Court said, nah, you got to go to Texas, which I think some saw as a victory of sorts for the administration. Certainly Stephen Miller claimed it as victory for the administration on the theory that Texas would be a friendlier forum for the Trump administration. And yet we get this summary judgment in favor of the plaintiffs. Do you have any thoughts about what this decision might tell us about the role of the judiciary in this moment?

Jill: Yeah, I think you've got it right, that this is the judicial system doing what it's supposed to do, which is to fairly decide what the law is and how the facts apply to the law and to fairly evaluate the facts. And it was definitely a surprise because there is this part where it's not just, this will be a Texas decision, but there'll be one in Louisiana, there'll be one in Florida, wherever the people rounded up are being held. And those detention centers are all in places that are more favorable to the government's position than they were in Washington DC. So this is a bright spot where a Trump judge in a very conservative area, Southern Texas, said, "No, you're wrong. You can't do this. We are going to go by what the law is." And so I think it is hopeful and I think we have to keep counting on it, but we

also have to recognize that we shouldn't rely entirely on the courts to defend our democracy. We need to be involved too.

Joyce: Could not agree with that more. And if what you care about is the ultimate outcome of the substantive issue, the government's ability to deport people, well, this judge is probably still going to break your heart. Right? He made the explicit point, I think, Jill, you sort of were referencing this, that the government can't use the Alien Enemies Act, but it has other immigration authorities like Section 8 orders that it could use perhaps to deport some of the named plaintiffs in this case. That's one bucket we may not like the substantive outcome.

If however you like like the three of us are worried about the fate of the rule of law in this country, this opinion is important because this is a Trump-appointed judge who said, "Look, the rule of law matters. This is the way I would interpret the law. In any other case, I would start with the plain language of the statute. That's when I'm going to do here. And bingo, the Trump administration, the president who appointed me, he loses this case." And I think that's what so many of us are hoping for is not to win every case, but to have a restoration of a principled approach to judging. We need the judiciary to hold the line. That's the line we need them to hold and we need them to do it desperately. I hope the Supreme Court was paying attention and that they took note.

Barb: Yeah, that really I think is what matters most. Because remember when Judge Boasberg made the same ruling on the TRO, the temporary restraining order on the same type of analysis, he was denounced as some leftist radical, remember, this is Brett Kavanaugh's college roommate, Justice James Boasberg, leftist radical, and people were calling for his impeachment. And so I think it's really important that we see a judge from the other side of the political spectrum who says, "No, that's right. This law is about when we're at war, a due process matters." So I think seeing consistent legal rulings from judges appointed by presidents of both parties helps to confirm public support for the rule of law. So I thought this decision was a great victory for the rule of law this week.

Jill: Did you know Fast Growing Trees is the biggest online nursery in the US? With thousands of different plants and over 2 million happy customers, they have all the plants your yard needs, whether it's fruit trees, privacy trees, flowering trees, shrubs, anything you want, they have. For me, hosta and green velvet boxwood are my faves, but whatever plants you're interested in, Fast Growing Trees has you covered, find the perfect fit for your climate and space and sun conditions. That's why I'm into the hosta and green velvet boxwood because I don't have a lot of sun. 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.

Barb: Well, I have kind of a black thumb because I'm lazy and I tend not to do a whole lot of maintenance on plants, but I did just plant two lilac shrubs from Fast Growing Trees and they look great. They are healthy so far, knock on wood, I had to dig a couple big holes to put them in and I've been watering them twice a week as-

Jill: Oh, good girl.

Barb: -as indicated. And so far they really do look like they're doing great. But luckily for me, Fast Growing Trees has an alive and thrive guarantee that ensures my plants arrive happy

and healthy. And I get support from trained plant experts on call to help me to take care of them. They can also help me plan landscaping or even choose the right plant. So I'm going to try with these two. I already said to my husband, "Hey, these are great. I think I should order some more." He said, "Why don't we see how we do with these?" We meaning will we kill them off or will they live? But so far I'm really pleased with them. So I'm thinking about getting some more.

Joyce: Just this morning I took my six-year-old Meyer lemon tree outside. I usually bring it inside for part of the winter this year. It just sort of looked really good next to our fireplace and I never bothered to take it back out. But it is gorgeous. I've started fertilizing it. I expect to have Meyer lemons all summer and into the fall. And that's what I love so much about my plants. From Fast Growing Trees, I can look all around our yard and go, "Oh, that's the lilac bush I got four years ago. Here's the lilac tree I just got this year. I guess it's lilac year for #SistersInLaw." But the plants are fabulous and Fast Growing Trees offer 6,000 plants to provide the perfect choice for you.

Everything from indoor plants to fruit trees, full-sized privacy trees and more. You follow their 14 point quality checklist and Fast Growing Trees helps you care for each plant individually. Like Barb said, it's everything from watering routines to maintaining the correct sunlight exposure and it all becomes really easy with their help. It means you'll be giving your plants the care they deserve the moment they ship to your home. And we were excited to learn, we've mentioned it before, it never gets old, you can grow a vanilla bean plant indoors. They also have coffee plants. So maybe there's vanilla coffee in your future with Fast Growing Trees, but with so many different plants, the choice is yours.

Barb: I have a question. Can you eat the lemons?

Joyce: Yeah. I make lemon meringue pie, but I also really like squeezing them for juice too, to go to mix in with other citrus.

Barb: Wow. And one more question, if you're bringing it in, I know I worry about whether we could grow it in our climate. If you're bringing it in the winter, can I have a lemon tree in my house and eat the lemons?

Joyce: So you can if you have a sunny exposure. I've never had fruit inside the house, but there's no reason you couldn't. We usually just leave it outside longer.

Barb: Yeah, when I start ad-libbing it, when it comes to either gardening or cooking, it usually ends up badly. But maybe I'll try growing lemon trees indoors. Well, you can talk to a plant expert about your soil type, landscape design, how to take care of your plants and everything else you need. No green thumb required, thank goodness. 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. This offer is valid for a limited time terms and conditions may apply. The link is in our show notes.

Jill: Well, I hope you've all enjoyed being with us today. Now we're getting to the part of the show that we enjoy the most, which is answering your questions. We love the questions you send us. They make us think. And 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 questions during the show, keep an eye on our feeds throughout the week because we try to answer additional questions there. And today we have some really great questions. So our first question comes from Terry, and it's for you Joyce, "How far do you think the articles of impeachment will go from Congressman Shri Thanedar?"

Joyce: Well, Terry, I'm sorry to say, I think that they're headed nowhere, of course, because the votes don't exist in the house to vote for impeachment because Republicans continue to support Donald Trump. Shame on them in a normal world. I always think about the stories Jill tells from Watergate about how what was different during Watergate was that there was still a functional Republican Party. And even though it took them a while, they did the right thing and they stood up, they went to Nixon, they forced him to behave within constitutional restrictions. That hasn't happened here. There's frankly no indication that we're close to that. And it would take a vote in the House to pass articles of impeachment set up a trial in the Senate. We are not going to see that anytime soon.

Jill: And our next question maybe has a better answer, more hopeful answer from Annie. Barb, I'm going to ask you Annie's question, "What prevents Trump from adding more justices to SCOTUS?"

Barb: Oh, this is hopeful. The president can't do it. Sometimes presidents have advocated for that. You may remember FDR had a court packing program where he wanted to add justices to the Supreme Court in hopes that he could get some better responses to his new deal proposals during the Great Depression. But he was not successful. And so President Trump cannot, under our Constitution, add justices to the Supreme Court. He can appoint them, but he can't add the number.

Jill: And our last question comes from Parkin in South Carolina. And I'm going to answer her question or his question. I'm not sure, Parkin. "I understand that individuals cannot sue a sitting president. So how come the president can sue others?" Well, actually, of course the president can be sued in civil court. The president can't be sued for his official conduct, but for personal conduct, the president can be sued. And in fact, when Bill Clinton was president, he was sued in civil court and it went on the court in saying yes, he can be sued said, "We should take due deference to his role as president so that we schedule any hearings in a way that won't interfere with his responsibilities as president." But the Paula Jones case went ahead. There was a case earlier with Nixon and the court said, "Well, this is actually in his official responsibilities. And so he can't be held civilly liable for this conduct."

But other than the official conduct, personal acts are suable and even by a sitting president. So if there's any cases out there that need to be brought by private citizens, sitting presidents are not immune.

Thank you for listening to #SistersInLaw with Barb McQuade, Joyce Vance and me, Jill Wine-Banks. Kimberly will be back with us next week. Follow #SistersInLaw wherever you listen, and please give us a five-star review because that's how we will get new listeners. That's how they will find our show. And please show some love to this week's

sponsors, Wildgrain, Flamingo, Aura Frames, and Fast Growing Trees. The links are in the show notes. Please support them because they make the podcast possible. See you next week with another episode, #SistersInLaw.

Joyce: So you all, you'll never guess who I'm having dinner with tonight. I'm so excited. Maya Wiley is flying to town for something. One of our original #SistersInLaw, right? Pre-podcast and then Maya went off-

Barb: In Birmingham?

Joyce: -and ran. Yeah, she's coming down to Birmingham. I'm going to grab her after we finish taping and we're going to go out to dinner.

Jill: That's fantastic. I love it.

Barb: Well, tell her hello.

Joyce: I will. I'll give her everyone's love.

Jill: We all miss her. We all wish you were with us.