

Joyce: Welcome back to #SistersInLaw with Jill Wine-Banks, Barb McQuade, and me, Joyce Vance. Kim will be back next week, but we're already missing her, especially with all the news this week. Before we dive into the show, a reminder, you can still grab our ReSIStance mini totes and T-shirts online, but they're selling out fast, so don't wait. Go to [politicon.com/merch](https://politicon.com/merch). In this week's show, we'll discuss the crazy Texas gerrymandering effort being pushed by Republican Governor Abbott in Texas. We'll talk about the debacle at DOJ as Pam Bondi tries to stand by her man while he faces dissent from within his own base over the Epstein files. And finally, we'll talk about an unusual challenge to Trump's so-called Alligator Alcatraz that has succeeded at least for now. When we were talking about topics this week, Jill was bemoaning the fact that there just wasn't anything positive on the horizon, but at least here despite the context, there's a little bit of hope. Y'all, before we dive in though, can I ask y'all for some advice?

Jill: Sure.

Joyce: Is that okay?

Jill: Yeah, we'd love to.

Joyce: This maybe speaks to how sort of boring and nerdy I am, but I have finally finished my book. As of last night, I sent in the final-

Jill: Bravo. Bravo.

Joyce: That final proofread version has gone back to the publisher. I feel like I lost about 20 pounds last night. So I've been hiding up in the woods in Maine because I learned that trying to do this with my family around me demanding dinner and my dog wanting to go for a walk was sort of difficult. So I'm up here with only my daughter's cat. I was all alone-

Jill: No, I know.

Joyce: ... when I finished. Some of the kids are coming in tonight, I'm flying home tomorrow. What do I do to celebrate? I'm just so exhausted. I sort of want to go to bed for a week, but I feel like I should celebrate. Y'all both have bestsellers. What did you guys do to celebrate when you finished?

Jill: It was COVID, so I was really restricted in celebrating. Literally, I had done a few book events and then COVID shut everything down, so I celebrated just with my husband because that's the most important thing. Anyway, I dedicated my book to him. And whatever makes you happy. I'm just so sorry that you're alone except with a cat. On the other hand, when you say you lost 20 pounds, was that because you printed out everything? Did you printed out and you had a 20 pound pack of paper? Is that it? I know you. You do that. You use paper instead of the computer.

Joyce: I didn't. I did it all online using Adobe Acrobat, which was-

Jill: Good girl.

Joyce: ... a real stretch for me. I mean, it was amazing. But no, it actually has been sort of nice being alone to do it. I just want to go out and do something big and fun now, but I don't know what I want to do. What did you do, Barb?

Barb: I'll let you know when my book is done. It's one of those things where...

Joyce: Well, wait, but you've already written one. You've got a second one coming, but your first one.

Barb: I do, but one thing I've learned, Joyce, is it's never done. It's never over because there's always the paperback, for example, and then there are always book talks and podcast interviews and other things that people will want to do with it. So I have been living the book since, I don't know, 2021. But it's great and I love it, and I think you will too. So this is a milestone, so get out and enjoy that beautiful Maine nature. That's what I would probably do, and you'll see that the journey continues, but it'll all be good and I can't wait to see it. I've read an advanced copy and it's outstanding and everybody should preorder it immediately, and I'm sure Joyce is going to be on the book tour circuit, so I say enjoy that Maine nature while you can.

Joyce: Thanks. I appreciate the advice y'all.

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Jill: It's funny because when you say seaweed is their not-so-secret ingredient, seaweed is ick. When I go either snorkeling or just to the beach and I see seaweed, I avoid it. But in this product, it is fantastic and the Undaria Algae Body Oil is a favorite of mine. It's not the typical off-the-shelf body oil. It's TikTok famous, and I'm not surprised. It's rich but not greasy ever, and I can see from using it that the clinical proof is accurate. This body oil definitely improves skin elasticity instantly, and it visibly firms your skin and makes it feel more sculpted and toned as soon as you apply it. It feels amazing, and after you put it on, you'll love how it quickly absorbs to leave your skin silky soft. And unbelievably, it's glowing. You can see and feel the difference after just one use, thanks to the powers of Undaria seaweed, OSEA harnesses every bottle with all the power. It comes with vitamins A, C and E, minerals like iodine, magnesium and calcium and free radical-fighting antioxidants.

Joyce: OSEA products are sourced from some of Earth's cleanest waters and even reduce invasive species. More importantly, OSEA uses sustainable seaweed harvesting practices that are gentle on the planet, so pristine waters stay that way. Now it makes sense. The reason I can tell when my sisters have been using OSEA, they pop as soon as I see them on our recordings. I mean, they don't pop but y'all, their faces-

Jill: Ouch.

Joyce: ... just pop and glow. The best part is how you never notice a sheen. Thanks to the non-greasy goodness in all the OSEA products we've tried so far.

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Hey, Joyce, you pay close attention to voting rights. I want to ask you about this crazy situation that's going on in Texas. First, what can you tell us about the gerrymandering effort there? What is it the Republican legislature is trying to do and how is Donald Trump involved?

Joyce: I mean, this is the question for the week, right? And by the way, if you're listening to the podcast and you're thinking it's not time for redistricting to happen, you're absolutely right. It's supposed to happen after the decennial census every 10 years. There's new data about population growth, population loss, and that's when states draw new districts. The maps are drawn by state legislatures dividing up the districts that are used primarily to elect members of the House, and that's what redistricting and gerrymandering is all about. That 10-year cycle, that's why there's always a rash of redistricting cases every 10 years. Takes like a year after the census is completed, which happens 2020, 2030, 2040. Once the data is souped-up and sent out, that's when the redistricting process starts, and that's why you get this rash of cases like what we had a couple of years ago, South Carolina, Louisiana, Alabama, all one after the other, boom, boom, boom. Some of them make it up to the Supreme Court.

But then recently, like a month ago, Donald Trump announces his intention to use the process mid-cycle, no new data being incorporated to make more up-to-date representative population assessments. It's all about politics. Trump announced that he had explicit political goals. He talked about doing it because he thought he had the ability to pick up five seats in the House using redistricting in Texas as a sword. So look, I don't need to tell you how wrong this is. This is not what redistricting is about, but Governor Abbott pulled the legislature into special session in Texas and they're doing their best to toe Trump's line. It's about politics.

Barb: Well, Jill, the response of the Democrats has been kind of unusual. Can you tell us what they've done? And this is kind of a thing in Texas, right? Can you tell us more about how politics is that in Texas?

Jill: It's different than in most places, but there is a way to stop even a horrible law like this by denying the legislature a quorum. And the Democrats are such a minority that they can't stop it any other way, but they can prevent a quorum from convening by leaving the state. They have to leave the state because if they're in the state, they are subject to civil arrest warrants and can be forced back to the legislature. So they have left the state in order to represent their constituents and the constituents interest, in my view, not to abandon their jobs as is the governor's view. They have left. This is something that has been going on for over 150 years in Texas. The first time it was tried was in 1870, and unfortunately it's met with limited success. It does delay approval of whatever legislation the

Democrats are trying to prevent, but it doesn't always work, and that's partly because Democrats cave in and return and create the quorum, and so then the vote goes forward.

In this case, there have been in fact threats that the governor will keep the sessions repeating, special sessions that can only last a certain number of days, but they can immediately be called back into special session, which means Democrats, many of whom are here in Illinois and have been proudly welcomed, and our governor has very magnanimously said he will protect them and will not cooperate. So the bottom line is that the Texas Democrats are, I believe, serving their constituents by trying to prevent the passage of a completely political gerrymandering of the state that will deny their constituents of their vote. So I think they're doing the right thing. Unfortunately, they still remain subject to having to live outside of the state for a prolonged period if the governor invokes additional special sessions, it could go on forever, and that's expensive and painful for them to be away from their families and their full-time jobs.

So it may not work in the end. They may end up having to come back into the state and then there'll be a quorum, and so it won't work. There have been times when it has worked, so it's not without precedent that this could prevent the passage of a terrible law. There's very interesting cases going back, well, as I said, since 1870, where it has worked and where it hasn't worked. Right now, they are being protected in Illinois and probably elsewhere, and we're going to have to see what happens.

Barb: Illinois, what are they staying with you?

Jill: I would welcome them here if they wanted to. I mean, they're not hiding. They're in plain sight. The newspapers are showing pictures of them having press conferences. They're in a town called Warrenville. I guess honestly, even though I traveled the state as deputy attorney general, I've never been to Warrenville. I'll have to look up exactly where it is.

Barb: You should invite them all over for a dinner party. That would be very cool.

Jill: I love that idea.

Barb: Well, Joyce, of course, every move has a counter move. And so now Governor Jim Abbott has asked the Texas Supreme Court to expel Gene Wu, who is the chair of the House Democratic Caucus for abandoning his seat. Do you think that's going to fly?

Joyce: Yes. So it should not fly. It would be contrary to Texas law, but the reality is, and we need to be practical about the reality that we're living in, the Texas Supreme Court is like the United States Supreme Court, only it's a lot worse. So they may go for this. I think the only good news here is that it should take time. There will be appeals. If they were to oust Wu, there would have to be an election to replace him. But I mean, look, this is Texas. They're trying to do Trump's bidding. It's not business as usual. Anything could happen here.

Barb: Yeah, and in fact, Jill, did you see that the Attorney General of Texas, Ken Paxton, who's got a long history, he had an interesting take. It seems that he wants to be the one to oust Gene Wu from his seat. He's getting in the way of Governor Abbott. Did you see that?

Jill: I saw it.

Barb: No, let me do it.

Jill: And I loved it. I loved it.

Barb: That's great.

Jill: He actually filed a letter in the governor's lawsuit, which is a quo warranto that I personally think has no validity to it. I just don't think any of the rules apply. But aside from that, he said, really, a quo warranto can be brought by me or it could be brought by a local DA, but it can't be brought by you, Mr. Governor. And he is bringing his own separate action to try to stop what's going on. So you have the governor doing one thing, the attorney general saying, "Oh no, Mr. Governor, you can't do that." And he then files another suit that is intended to ask Illinois, which is where he has filed this suit, to arrest these people and send them back. Of course, our state has special rules and will not abide by that, and they know that. It's not like a secret. It's sort of a useless thing that he's doing.

But so we have these two conflicting lawsuits trying to get these people back to the state of Texas where they can be forced by Texas state marshals. I wonder if Texas Rangers, do they wear hats and ride horses? I don't know. But anyway, they could actually arrest them and force them to come back to the capitol to vote on this. And it's a terrible situation because there are important things like the flooding relief that is needed because of the horrible floods that the state wasn't prepared for, I would point out. So those things are being held up, but as I said, I really believe they are serving the interests of their constituents. They have not abandoned their office, which is one of the arguments that the governor's lawsuit says is they've abandoned their jobs and they should be thrown out for that. But it is going to take time. It will definitely delay the enactment of this horrible map.

Barb: Yeah. This took an interesting turn, Joyce. Did you see Senator John Cornyn has now accused these Democratic lawmakers of bribery, not quite sure how that works, and has asked the FBI to arrest the?. Is there any basis for the FBI to do that? I know you and I have talked before about UFAPs on lawful flight to avoid prosecution. I mean, number one, is there any viable theory of an underlying crime here and what's necessary to be able to use federal law enforcement to cross state lines to arrest a fugitive?

Joyce: Yeah. So on this bribery idea, there's just nothing there. I mean, it's an insane argument that as far as I can tell, giving it its best read. It's something like legislators are being paid not to show up at this session, which of course isn't what's happening. They made a deliberate decision not to go. Nobody's paying him for it. Bribery doesn't fly. And John Cornyn, by the way, he knows that, but he's up for reelection. He's facing a primary challenge. So he's taking us down this road, putting party and his personal gain above the country. What a surprise from a Republican in this area. I think that the question about whether or not the FBI can play a role here, that one is a little bit more of a sophisticated question because the FBI does things that aren't strictly part of their law enforcement role. They do have the ability to engage with state and local partners.

Barb, you mentioned UFAPs, which is an unlawful flight warrant. Frequently that's the Marshals Service, the US Marshals that will go out and execute on UFAPs. But it's an example of state and federal cooperation. So the reality is if you're looking for something to hang your hat on, if you're the FBI and you really want to do this to help out your main man, Donald Trump, then you say, "Well, we're engaging in cooperative efforts with our partners in Texas." But the cause the underlying basis for doing it is just so wrong that I think really the question we should be asking here is not whether or not the FBI can do this. It's whether or not it's the right thing for the FBI to do. And the answer to that is pretty clearly no.

Barb: Yeah. Jill, what's your take? I mean, I agree with Joyce that this bribery theory is garbage. And before you can get the FBI to utilize its fugitive apprehension or the Marshals, there has to be a filed charge on the books, and there's nothing that's been filed. But what's your take? Interesting point Joyce makes about the can they and should they question.

Jill: Can they, we've seen every evidence that they can do anything Donald Trump wants. Should they, absolutely not. In terms of the bribery, I just want to say a few more words about that so that our listeners know what this is about. The accusation is that they have been, the Democratic members of the Congress who have left the state, have been raising money to pay their expenses and mostly to pay the fine because under Texas law, recent law, they have a \$500 a day penalty for being absent from the sessions of the House.

So at \$500 a day, that mounts up pretty fast, and it's 500 a day per member. So every one of the people who is absent has to pay \$500. So they have been fundraising for that purpose. They had a private plane, a chartered plane that took them out of the state, and that was not paid for by them. So the accusation is that they're raising money, taking in money to pay them to be away and not do their job. That as I said, I think they are doing their job by being absent from the state, and they're making a great sacrifice to do that. So I think the bribery case, no one's going to go for that. It's not going to be a convictable offense, but that is the claim. I think the FBI should, well, stay out of this. It's too political and it's the wrong thing for them to do.

Joyce: Can I just underscore the point that Jill is making about doing their jobs because we are taping Friday afternoon around 4:00 Eastern, and while we are taping, Representative John Bucy III in Texas has just posted on social media that the attorney general has filed a lawsuit to vacate his seat and to remove him from office?

Jill: Oh, boy.

Joyce: And he makes this point, which I think is the key. He says, "I broke quorum to protect the voice of millions of Texans. This seat belongs to the people of Texas House District 136, not Ken Paxton."

Jill: I'm so glad someone has finally said that because no one has been saying this. And I'm like they aren't abandoning their positions. They are fulfilling their obligations to their constituents. So I think that's great, and I hope that that is the prevailing rule.



Barb: Well, in the meantime, they will be in legislative purgatory. And just in case you're listening, Texas legislators, if you need a place to stay or a good meal, Jill has invited you to her home. Come on by. Just bring a dog treat for Brisbie.

Jill: Yes, indeed, that would be perfect. And we have great food in Chicago. Again, our hot dog challenge to any other state.

Joyce: The hot dog challenge never ends.

Jill: So I got a surprising text from a very dear friend who is unbelievably fit, and she was asking about shapewear, which surprised me, but you remembered that we had advertised some shapewear and she wanted to know if I really loved it, and I told her I did. And I told her that we had a special offer with a discount this week. So I sent the info to her. It's for Honeylove and it's too hot for bulky, uncomfortable undergarments. That's why this summer I recommend going with Honeylove's cutting edge bra and shapewear collection to stay cool, comfortable, and supported all season long. Ditch pokey underwire and those fits that feel like armor, not fabric. Instead, treat yourself to Honeylove. They make the best wireless bras and have unmatched shapewear that like a second skin. They're lightweight, breathable, and perfect for hot summer days.

So whether you're rocking a T-shirt tank top or a breezy sundress, Honeylove gives you the perfect amount of lift without a squeeze. Thanks to years of testing and extensive R&D, it's the ultimate experience and the comfort is next level. You'll love that their signature support comes from smart design, not stiff wires or bulky padding. It's all the shape and hold you want without any of the stuff you don't. And once you try Honeylove, you'll never go back. So just go for it, ditch the discomfort, say goodbye to wires and treat yourself to the summer support you deserve with Honeylove. And now for a limited time, you can get Honeylove, as I told my friend, on sale. Treat yourself to 20% off your entire order by heading to [honeylove.com/sisters](https://honeylove.com/sisters). Support the show and check them out because you deserve this glow up.

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Jill: Once again, Attorney General Pam Bondi has taken an alarming action. She's further politicizing and weaponizing the Department of Justice against anyone Trump wants her to. She's destroying DOJ's longstanding rules for independence and actions only when based on facts that serve as a legitimate predicate for an investigation. This time on Monday of this week, so just a few days ago, she reportedly issued an order, which I haven't seen, and I don't have either of you because I've been looking for it. I can't find it.

Barb: No.

Jill: It hasn't been released. But she has supposedly ordered that there be a criminal grand jury investigation of Obama and his intelligence officials for treason of whatever by and has yet unidentified federal prosecutor to commence in a place that hasn't been identified. But anyway, that's her request. It's for officials in the Obama administration, including him, who allegedly purposefully manufactured an intelligence assessment that Russia interfered in our 2016 election. Now, Barb, you're our person who deals with misinformation. That's misinformation, isn't it, because, well, let me actually start with a more basic question, Barb. First, is it normal for an attorney general to order a grand jury investigation? How do investigations normally get initiated?

Barb: Yeah, not at all. The way investigations begin, at least in the post-Watergate era, is described in the FBI's Domestic Investigations Operations Guide and in the attorney general guidelines. And both of those things talk about something known as predication. That is some sort of well-grounded factual allegation that a crime has been committed or that there is a threat to the national security. And so usually it bubbles up somewhere around the country, wherever the crime took place. If this were something that actually happened, it would bubble up through either the Washington Field Office of the FBI or could begin at one of the litigating components of the Justice Department, perhaps the National Security Division. You'd have to have this well-grounded fact. And then you would see agents, investigative agents open an investigation, they would talk with prosecutors, they would get authorization to turn that into a grand jury investigation and it would bubble up from below.

This idea that it's coming from the top down is not something I've ever seen before. From time to time, maybe an attorney general appoints a special counsel to address a matter, but even then, usually the case is already bubbled up from below or they may take it and reassign it to some other US attorney to avoid some sort of conflict of interest. That's really the only situation I think that I can remember where the attorney general has been involved in ordering an investigation.

And if I may, lest I sound suspicious, it's a real red flag for me that there's this sort of leaked reporting that she's issued this order. Because remember, it has always been Trump's MO, or at least in his time as president to announce an investigation. All he ever wants is I want you to announce an investigation, leave the rest to me. He said that to DOJ leaders when there was allegation of stealing the 2020 election. He did it with Volodymyr Zelenskyy when he said, "Just announce that your investigating Joe Biden for corruption. That's all I need. Just go on CNN and say this." So the announcement alone is what he's looking for because then he can use that and point to it to claim falsely that his predecessors were corrupt.

Jill: You do not sound like a suspicious person. You sound like a well-informed person because that is exactly... That was the grounds for his first impeachment was like, "Let's make it up. I don't care if it's real or not, just let me handle it after you announce it." And so Joyce, Barb says we need an actual factual predicate. That's sort of obvious, but here, what's the reputed basis for this investigation and what possible crimes would be investigated if there was a factual predicate?



Joyce: Yeah, I mean, it's garbage stuff, right, which makes it hard to answer serious questions. But you'll recall, Jill, we talked about this. Tulsi Gabbard sort of dropped out of Trump's good graces in March. And I think that's what this is about in a lot of ways because when she testified to Congress in March, she made that comment about the US intelligence community not believing that Iran was building a nuclear weapon. And that was completely contradictory to Trump's recent public statements about the threat posed by Iran's potential nuclear program and the way he justified his strike. So Tulsi Gabbard gets sidelined, and we all know how Game of Thrones work. She needs to get back into the king's good graces. So she goes for the red meat, the Obama gambit. And the suggestion here is that Obama-era officials, Obama himself, is immune from the threat of criminal investigation because that little case the Supreme Court decided, Trump versus United States.

But of course she makes the claim about others that the administration falsely pursued the narrative that Russia tried to influence the outcome of the 2016 election, presumably in Donald Trump's favor. So that's the basis for this call for criminal investigation. And what's the crime is a really good question. There are some obvious statute of limitations problems because the statute is five years and this stuff happened back in 2016. It's a five-year statute, 2021.

So probably what they'll think about is some sort of perjury claim for various testimony that occurred later. And maybe they'll even argue that there's some sort of an ongoing conspiracy that continues to this day to try to conceal all the bad stuff-

Jill: Oh my gosh.

Joyce: ... that they did in 2016 because the statute of limitations is measured from the last clear act in a conspiracy. It's sort of craziness. But look, it's all bump, right? This is classic, and Barb made this point, I think, perfectly. This is classic Trump. This is just announce an investigation and I'll run with it. This is what happened leading to his first impeachment trying to get Volodymyr Zelenskyy in Ukraine to announce an investigation into Joe Biden. There doesn't need to be any meat to the investigation. I know what to do once you make the announcement. And the real problem is now Donald Trump doesn't have to ask other people to do that for him. He can do it himself. So beware.

Jill: So one crime you didn't mention, which I have heard mentioned, is treason, which doesn't have a statute of limitation. What do you think?

Joyce: Treason just doesn't work here. On these facts, look, I mean, the reality is Russia tries to interfere in our elections. News flash, it happens every four years. It's their favorite sport. Try to interfere in a presidential election. Even if Russia doesn't favor one candidate over the other, just sow dissent and distrust and disharmony in the United States in order to collapse us. Our intelligence community understands what the game is. It's not just Russia that does this. There are other countries and nation-state actors that do this. There's nothing shocking about this.

And something else that really annoys me about this, you can tell it sort of annoys me, I recall in the run-up to the 2016 election parts of the intelligence community, they were saying this loudly and publicly and putting Americans on notice that there were efforts online going on to manipulate their views, right, to drive wedges between Americans.

This is what we want our government to do. We want it to protect us from malign foreign actors. So the idea that some sort of crime happened here, they're just trying to go after people that they don't like. John Brennan, Jim Comey, pick your favorite target and try to distract from the Epstein mess.

Barb: And can I say one more thing about treason?

Jill: Yeah.

Barb: Jill, of course, treason has a specific definition.

Jill: Right.

Barb: And we have to be at war for treason to be an eligible crime. It is providing aid and comfort to the enemy while we are at war. We were not at war. And so it's just not an option. So the idea is-

Joyce: Barb, Barb, Barb.

Barb: ... throwing that term around.

Joyce: Legal technicalities following the actual law, I mean, come on.

Barb: It was a war on truth. I guess you're right. There has been a war raging.

Jill: No, I'm with you, Barb. That's what I was going for is I believe treason is completely off the table. And I also believe, as I'm sure you both do, that it is well established that Russia did meddle. There's no question about it. So anything looking at this, aside from the statute of limitations, aside from everything else, it's just bunk. So Barb, because of your expertise on miss and disinformation, is there anything false in the facts reported by Obama officials? And so besides statute of limitations, Supreme Court presidential immunity, would those stop any possible investigation? Does SCOTUS immunity apply to people under the President? So what's going on here? Is there anything worth the time and money that is being expended on this?

Barb: Well, I thought Joyce did a good job explaining how the statute of limitations could be sort of bootstrapped to freshen that up. And although President Obama would be immune for anything that he did within the scope of his presidency, there's still some room, I suppose, to say that he did this in his unofficial capacity, or that it wasn't Obama, but it was Brennan and it was Comey and some of these other people who did some of these things. But I think the thing that most refutes this investigation to me is the fact that it's already been investigated so many times by so many people and found to have been appropriately predicated and started. So remember that we had not only the Mueller report that concluded that Russia did assist Donald Trump in his campaign. He didn't find that there was a conspiracy, that it was coordinated, but that Russia did try to assist and that the Trump campaign welcomed the assistance. We had a Senate committee find that Russia sought to a-

Jill: Bipartisan senate committee.

Barb: ... bipartisan senate committee that said-

Jill: Led by Marco Rubio.

Barb: Yes, that said that Russia interfered with the election. We had the inspector general investigation into the origins of the Russia investigation and found that it was properly predicated and not based on politics. And then we had the John Durham investigation who went back. Remember William Barr appointed him as a special counsel and he looked into all these things. He prosecuted two people. One was an FBI agent who was appropriately convicted of making false statements, and the other was a lawyer who brought information to the FBI who was acquitted at trial. And that's it. There was never any allegation that Comey or Obama or Brennan did anything wrong. And so what only now they've discovered that there was actually evidence of a crime. I don't buy it.

Jill: Well, Joyce, anything that justifies this, or is this just one more attempt to distract from Epstein and Trump or a blatant wrongful use of the machinery of justice to go on a fishing expedition about political predecessors?

Joyce: Yeah, I mean, I think that captures it pretty perfectly, Jill. There's also this wrongful use of congressional subpoenas sent out by oversight committee chair Jim Comer and these subpoenas, they've gone, I'm sure folks have seen this on the news, former Secretary of State Hillary Clinton, former Attorney General Bill Barr, a whole host of former Attorneys General, Loretta Lynch, Eric Holder, Merrick Garland, Jeff Sessions, Alberto Gonzalez, former FBI directors Comey and Mueller, and looking for testimony about the horrific crimes perpetrated by Jeffrey Epstein. But the person who's missing from that list is Alex Acosta, who is the US attorney in the Southern district of Florida who handed out that sweet plea deal to Jeffrey Epstein.

If I wanted to ask these questions, Alex Acosta, who was of course the cabinet secretary for Donald Trump during his first administration, he's the first guy that I would go to. And the fact that he's not there tells you all that you need to know about what's going on here. Loretta Lynch and Hillary Clinton, they're just there for show. They don't know anything about the facts. Comer wants them to refuse to comply with the subpoenas so that he can then make hay about them refusing to comply with congressional process. This is just distracting from Trump's current woes.

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to help you handle grief, improve self-esteem, care for relationships and more. I was going whitewater rafting, and they didn't have one for that, but they did have one for fear of flying and I used it. And some of the same grounding exercises that works for that translated to roaring down the rapids.

Jill: That sounds so cool. Calm puts the tools you need right in your pocket so that stress and anxiety relief are always within reach. With over two million five-star reviews, Calm can help you stress less, sleep more and live better. And right now, Calm has an exclusive offer just for listeners of our show. Get 40% off a Calm premium subscription at [calm.com/sisters](https://calm.com/sisters). This is an amazing offer. It's a great value. Go to C-A-L-M dot [calm.com/sisters](https://calm.com/sisters) for 40% off unlimited access to Calm's entire library. Again, [calm.com/sisters](https://calm.com/sisters). Don't forget to tell Calm you heard about them from us and the link is in our show notes.

Joyce: So y'all, you might think that the legal challenges filed against Trump's notorious immigration detention facility in Florida, the one that's been dubbed the Alligator Alcatraz that they would be based on the reportedly inhumane conditions in that facility. And there are claims like that, but the first lawsuit that's had some success that's shutting down construction there takes an entirely different approach. And I have to confess, I'm sort of here for it. So Jill, can you talk about the basis for the lawsuit?

Jill: This is an unusual one because it's not based on the normal things you would think about. It's based on environmental concerns. And I want to make a disclosure here. First of all, I have long supported the Center for Biodiversity, and I have been a huge fan of Friends of the Everglades. And I lived in Florida for a year and visited very near the site of Alligator Alcatraz.

Barb: Of course you did. Did you live at Alligator Alcatraz?

Jill: No, but I was there at least once a month. I went to Shark Valley, which is just east of it on Tamiami Trail, and I saw one of the rare Florida panthers while I was there.

Barb: Cool.

Jill: And I took a picture of it because no one... I mean, first I didn't believe it, but I was with my best friend and my husband was laying down way away from us. He didn't see it. And she said, "You have to take a picture before you go get him because he'll never..." And so I had a camera old days, it wasn't even a cell phone, it was a camera, and it started running away and I ran after it. And so the picture's a little bit blurry because I'm jumping up and down and he's running. But I definitely-

Joyce: You ran after a panther? Girl.

Jill: I did. I did. I did. I mean, it was one of the dumber things I've done, but I did get a great picture. And my husband to this day-

Joyce: [inaudible 00:43:44] better really.

Barb: I want to see the picture.

Jill: I will look for it. I will because it was amazing.

Barb: Jill's last words are going to be, "But I got a great picture."

Joyce: Before you answered the question, we should note that there's sort of a crazy coincidence here, which is that the Friends of the Everglades were founded by Marjory Stoneman Douglas, who's a big environmental activist. And if that name sounds familiar to you, that's the Florida High School where there was the tragic mass shooting of students, which is such a weird unearthly connection here.

Jill: Oh, I had totally forgotten about that connection. She is a very famous environmentalist. She has done amazing things. She is a hero in Florida where they are very short of heroes.

Joyce: So tell me about the lawsuit. Right.

Jill: Anyway. So the lawsuit is that the runoff from this monstrosity that has been built there is going to damage the very precious animals and environment of the Everglades and it will. They have taken no precautions to do this. They have not done any of the environmental studies. They've not had any public hearings. It's a very interesting issue because this monstrosity was built by the state at the instigation of the federal government. And normally it would require a memorandum of understanding or some kind of contractual arrangement between the two to specify the obligations of both. And now they're trying to have it both ways. The federal government is subject to environmental regulations that require hearings and other things that would delay this and give time for public input on it.

The state, it would be more voluntary as to whether they'd have to. But if the state is acting as the surrogate of or in place of or as part of the federal government, then it too would have to do these things. So it's very important to determine how this is arranged. And so far, there's been no answer, no agreement has been produced between them, and I'm not sure that there is under the law that would allow cooperation that there is any particular provision in that law that would allow it. This isn't the kind of thing where it's identifying people who are in jail and telling the feds about it or working with the feds on serving a warrant. That's the kind of things that they can get cooperation on. This kind of thing requires much more of an agreement and there isn't one. They're avoiding it and they're not answering the court's request to see the agreement.

Joyce: Well, Barb talked about how the judge ruled and what the impact of this early ruling is.

Barb: So this is a temporary restraining order. The judge granted it to the plaintiffs. So these were these environmental groups and Native American tribes that filed the lawsuit. And as we've discussed before, a temporary restraining order is just an initial block to preserve the status quo while the case works its way through the court. And so the first step is a temporary restraining order that by law can last only 14 days, and that gives the parties the opportunity to have a more fulsome hearing and to provide more fulsome briefing to the court. And then in 14 days, the judge decides whether to turn that into a preliminary injunction, which would stay in place throughout the whole pendency of the case. Then ultimately, there'd be a trial and one side or the other would prevail. But while this TRO

is in effect for these 14 days, what the judge says is stop your construction work immediately.

You can continue to house the prisoners there. So we've got all these detainees house there. They can stay. You can preserve that status quo but stop building because the plaintiffs have made a showing of a substantial likelihood of success on the merits that you failed to conduct this proper impact study and a risk of irreparable harm in the form of if they put in pavement. That I learned this when my daughter was in middle school science learning about climate change. Pavement is actually a very harmful thing to the environment because it creates runoff that runs into other waters. And so it could spoil fresh waters because of the runoff that occurs with the pavement and it could endanger Jill's Florida panther. So for now, there will be this pause for 14 days. They'll continue to look at this, and then maybe this will turn into a preliminary injunction in 14 days after the court has more time to look at it.

Joyce: But I have this concern, we go through this process and the Trump administration, which really doesn't believe that decisions that go against it in court are enforceable, right? Their attitude is we'll just ignore it and hope it gets reversed on appeal and then we'll take the position that it was a bad decision. I mean, Jill, Trump doesn't care about environmental rules or the public's ability to comment, right, before new changes go into place. Do you think that these rules have any teeth? Is there anything here that could stick?

Jill: Sadly in this administration and with this Supreme Court, the answer is it doesn't matter. The rules are clear and Barb is right. Pavement is like glass. It's not absorbed. It's not like the earth that absorbs whatever the runoff is. And I just want to add to one thing she said, which is they said no more construction, but there is allegations that construction continues, that more pavement has been laid, and in addition, even continuing to house the immigrants in this environment is going to create additional damage because they are using water that's brought in and they're flushing it away. That's going to cause some problems. They're using electricity that's going to cause... Anyway, I think just the continuation of allowing them to be there, it's a good compromise from the court to allow time to get this fully resolved, but it's not without continuing harm. And so what can be done eventually, there could be fines imposed, but that's a whole nother question that I would like us to address in a future episode about what's happening to all the fines that have been imposed that haven't been paid.

Joyce: And who would pay them anyhow. We don't know if the feds-

Jill: We would, of course.

Joyce: ... are running this facility, right?

Jill: Yeah, exactly. It's citizens that are going to pay it. But I'm even thinking of like what's happened to E. Jean Carroll's money, et cetera, et cetera. We need to look at all these fines that have been imposed that Donald Trump hasn't paid yet or maybe Rudy Giuliani and maybe others. Let's look at that in the future.



Joyce: So Barb, this is not the only lawsuit that's happening against this facility, right? There's a much more traditional challenge. What do you make of that one?

Barb: Yeah, so a civil rights lawsuit, right? No surprise that when we've got detainees staying at a place called Alligator Alcatraz that there might be civil rights claims. And what we've seen here is allegations that constitutional rights are being denied. There are a number of allegations. One is that they're not being permitted to have access to counsel.

Now, officials have said that has since been remedied. There's now a room for a counsel to meet with their clients. We'll see how that shakes out. But in addition, there is a no-bond provision. Nobody's getting an opportunity to be released on bond. I don't know that people have a right in an immigration case, but ordinarily the presumption is for release unless you can show that someone is a danger to the community or a risk of flight. It's a little different when you don't have status in the country. But that is one of the allegations as well. What I have not seen in this particular lawsuit, though, I would suspect, is conditions of confinement. Because we have heard a lot of complaints that the conditions are despicable, that it's dirty, that it's flooded, that people are being crowded together in cells, that the food is not edible. So I imagine those will be some other things that will be looked at in some of these civil lawsuits.

Jill: Mosquitoes, and no showers except maybe every other day or every four days. There's a lot of horrible conditions.

Joyce: Alligators, right? I mean, the prisoners are conducting a hunger strike because they have no other meaningful way to contest their conditions of confinement. I mean, I think you're right, Barb, that the landscape is different in immigration detention than it is in other situations. But as a human being, I don't understand why the Eighth Amendment's prohibition on cruel and unusual punishment doesn't apply in this case like it should in every other case. It's appalling.

Barb: What I think they would say is this is not punishment. This is just detention-

Joyce: It's detention, not punishment.

Barb: ... which is a regulatory administrative function of the government, and we're just keeping them there while we are processing them.

Joyce: That's a hell of a dodge to use at the American Nuremberg trials, right?

Barb: Oh, yeah.

Joyce: Well, Jill, there's new reporting that suggests that Donald Trump wants to build more facilities like this. But the quote, unquote like this is really sort of a big question because as you've discussed, the judge has been trying to get basic information about who's running the facility, what's the relationship between the feds and the state? And you've done a lot of work for the federal government, including in this sort of contracting environments. Have you ever seen something like this where the relationships have been so poorly defined?

Jill: Not just poorly defined, not defined at all, at least as far as we know now, because despite requests under freedom of information and by courts, there has been no production of an agreement that actually says this is what the state is responsible for, this is what the government of the United States is paying for and expects in return. So we don't know who is doing what. And without that information, we can't proceed to determine what should be done and how it can go forward.

In normal circumstances, there would be a written agreement, a memorandum of understanding or a contract or some other written form to memorialize the relationship and the responsibilities and the costs. So at this point, the government seems to just be doing whatever it wants and so far is getting away with it. Where they would build these places, who would do it, what they benefit would be, maybe we'll start building in foreign countries instead of relying on foreign dictators to provide space for the people we're deporting. This is a very serious issue that lawyers and business people are extremely concerned about. There's a business organization in the Chicago area that is very active in trying to make this work properly. And I hope that they succeed as I hope that the Center for Biodiversity and the Friends of the Everglades succeeds in making their point to protect the Everglades.

Joyce: Yeah, me too. Barb, you were quoted earlier this week in a piece in the New York Times on the presumption of regularity that is afforded to the government in litigation. That comes into play here. Can you explain what the presumption of regularity is and how the government is eroding it in cases like this?

Barb: Yes. In fact, a judge earlier this week in a different case said that presumption is shot. She's done with it. So the presumption of regularity is this idea that the government is this vast bureaucracy and that it does its best to run efficiently and fairly. So when you go to court as a prosecutor and you make a representation, you don't have to prove up every detail of every fact. You might get an affidavit from an official from the Bureau of Prisons that just says something like defendant such and such was moved from prison X to prison Y on such a date in the regular course of prisoner security because of our security protocols and the availability of a bed, right? End of story. There's a presumption of... Like that's all true, and that's how it works. And in the Bureau of Prisons, they have to manage this huge number of inmates. And so they do things by their policies and they do it well, and they do it efficiently, and they do it to the best of their ability. Same when it comes to the deportation of immigrants.

But in light of what we have seen by the Trump administration, were up is down and down is up, and even saying things like, "We didn't obey your order, Judge, because it was only verbal and it wasn't in writing," stuff like that that the Justice Department lawyers are losing that presumption of regularity that has taken centuries to build and is being eroded in the six months that the Trump administration has been in office. And the consequence will be that lawyers for the government will no longer be able to get a declaration from that Bureau of Prisons authority. They will have to bring in a half dozen prison authorities to testify about here's how this works, and here's what we did, and here's why because there will be this loss of a presumption of regularity, and it will cause a huge problem with efficiency in the court system.

And I also worry that if judges are losing faith in the Justice Department, what is that doing to jurors? It's going to be very difficult, I think, for prosecutors to obtain

convictions or secure findings by verdicts, by juries in cases that are righteous, like bank robberies and human trafficking and kidnapping cases because the Trump administration is squandering all of the good faith that you and I and Jill and all of the lawyers who've acted in good faith for decades have built up.

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Barb: Wait, like Edward Scissorhands with those things? Joyce is mimicking Edward Scissorhands.

Joyce: It looks pretty good doing it.

Barb: Yeah, I think so. It looks like a natural fit for you, Joyce. Maybe you should take up hedge trimming. When Gordon Ramsay trusts HexClad, you know you're going to get unparalleled quality. Plus with their lifetime warranty, you're investing in trusted pieces that will survive countless summer celebrations. In fact, I have a son who's heading off to law school soon and is taking all of my HexClad pans he has announced.

Joyce: What is it with our boys?

Barb: I don't know.

Joyce: Robert, my oldest has mine.

Barb: Yeah. I might need a replacement set. So don't wait. Make hosting the summer elegant and effortless. Enjoy 10% off their HexClad order for a limited time with our exclusive link. Simply visit [hexclad.com/sisters](https://hexclad.com/sisters) and discover how HexClad's revolutionary cookware and exquisite knives can transform your summer kitchen into a haven of stylish and stress-free entertaining.

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Joyce: Well, now it's time for our favorite part of the show where we answer our listener questions. If you've got a question for us, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tag us on social media using #SistersInLaw. If we don't get to your question during the show, keep an eye on our social media feeds during the week because we'll try to answer as many more of your questions there as we possibly can. Barb, first up this week, a short and sweet question for you from Paula. She says, "What do y'all think of Citizens United?"

Barb: Paula, Paula, Paula. Citizens United I think what has ruined American politics. So of course, she's referring to the Supreme Court decision from, I think it's like 2010, in which the Supreme Court, and it was extending a line of cases that started with Buckley versus Valeo in 1970. It said it was unconstitutional to put limits on campaign expenditures by independent organizations like corporations, labor unions, and other organizations. And of course, what that did is really open up the floodgates to all of this dark money and super PACs and other things that make wealthy people have, I think, an oversized role in elections. They're not allowed to coordinate with candidates, but you know what they want to say. If you want to support Donald Trump, you talk about how bad immigrants are. If you want to support some other candidate, you find their pet cause and you ram a hole through that issue.

And it really, I think, detracts from this idea that the Supreme Court had held earlier of one person, one vote, because as they say, money is political power. Money is a proxy for speech. So it's based on First Amendment rules. And so it means that people can make unlimited expenditures on all kinds of issues. And if you're an ordinary person who donates zero to political campaigns or \$5 or \$10 or something modest to a candidate you support, you're just not getting the same kind of clout that these big political action committees are getting and these corporations are getting. And so it has really, in my view, really skewed politics, and it is what is responsible for the change in politics that we saw starting at that time. Now, how do we solve it? The Supreme Court decided it. I don't think they're going to overturn it.

So Paula, you might be wondering, what can we do about it? Well, I don't think the Supreme Court is going to overturn it, but I think Jeanne Shaheen, the senator from, where is she from, New Hampshire, Joyce?

Joyce: She is.

Barb: Jeanne Shaheen has proposed a constitutional amendment to say, let's amend the Constitution to say despite all of our other First Amendment rights, we find that there is a compelling interest in limiting campaign expenditures. It could get all of this money out of politics and limit expenditures to some rational, sane amount of money, and really free lawmakers, legislators, candidates for office from chasing dollars all the time and focus on issues. So I think that would be one way to get out from under it, Paula.

Joyce: Our second question comes from someone who didn't leave their name apparently, but the question reads, and it's a great one. "Now that the National Guard and Marines have left California, what happens to the lawsuit brought by Governor Newsom?" And the reason it's an interesting question is that my understanding is that there are still some troops that are in place, which would mean that the lawsuit will stay live. But if the Trump administration gets nervous about this case, at some point, they could make it go

away by completely withdrawing, and that would moot the issue. There would no longer be a dispute left for the court to decide. The Trump administration would file a motion to dismiss, and presumably the Trump administration would get their way and be out of court. But there's one little asterisk that I need to put on that explanation. This is something that you see crop up in cases.

It happened in the original decision in Roe versus Wade, right, where Roe was no longer pregnant by the time the suit went in front of the Supreme Court and they tried to dismiss it as moot. And her argument was this, this is something that is capable of repetition and it happens so quickly and fleetingly that the legal process is far too slow and cumbersome to get at the issue, but the issue will repeat over and over again if the court doesn't decide it. You could anticipate some sort of an argument like that being made by California. I don't really have a way of assessing how successful that would be in this kind of environment, but my suspicion is that that's what they would do if the Trump administration tried to get out from under this one by taking all of the troops off of the federal dole. Finally, we have a question for Jill from Eleanor. Jill, the question reads, "After Watergate, new norms were created that prevented the President from directing DOJ's prosecutions. Was it a mistake to create norms instead of passing laws?"

Jill: Well, Joyce, obviously the answer is it was a mistake. There was an assumption of regularity back then as Barb has talked about. There was a presumption that presidents would act within the confines of the law and that it was a sui generis situation with Richard Nixon that he was a criminal president, and we would never have another repeat of that. Clearly, that isn't the case. We have no norms that this government is willing to follow, and if these were laws with teeth, because we have things like the Emoluments Clause, but the violations of that don't have any consequences. So we need to think carefully about this.

I remember back when I was an organized crime prosecutor, I thought if the criminals that I'm prosecuting are so smart as to be able to find ways around all the laws that have been created, think how much money they could make in legitimate businesses if they would pursue their intellectual capacities in that way.

And the same thing is true here, although actually maybe not, because Donald Trump has lost a lot of money and gone bankrupt many times. So maybe he hasn't been able to be as smart in his private endeavors as he has been in politics. We clearly need to have laws. We changed the ethics rules for lawyers, and that has worked. We've seen a lot of lawyers disbarred under this administration from this and the first Trump administration, and those were passed because so many lawyers were involved in the Watergate scandal that the ABA said, "We need to pass rules that are clearer about the obligation of who is the client that the lawyer represents." And even when they're a government lawyer, they aren't representing the private person who holds the office of president.

So I think we need some better laws to make it clear, and we need to amend the Emoluments Clause to create or pass a law that somehow makes illegal anything that happens that would violate that that doesn't now have a consequence. So I'm very sorry to say to Eleanor that right now we're in a sort of bad place because we're just continuing with bad behavior that isn't illegal. And to use your favorite phrase, Joyce, it's awful but lawful.

Joyce: Yeah, I mean, I think that's so right. The reality is if people need yet another reason to gear up for the midterms and go out and put everything they've got into it, it's going to take majorities in both the House and the Senate if we're going to have any hope of reinstoring these norms. But if we do that, if we return majorities with a sizable margin, it's possible to institute new guardrails and to hold these folks accountable.

Jill: And everyone should read your book that is coming out so soon because that will tell them that they cannot give up.

Joyce: Thank you for listening to #SistersInLaw with Jill Wine-Banks, Barb McQuade and me, Joyce Vance. Follow Hashtag Sisters-in-Law wherever you listen, and please give us a five-star review. It really helps others find the show. Please show a little love to this week's sponsors, OSEA Malibu, Honeylove, Calm, and HexClad. Their links are in the show notes. Support for them really makes this podcast possible. See you next week with another episode \$SistersInLaw.

Barb: Who's doing that? Stop it.

Joyce: What?

Barb: Jill, I think you were on there. Everything turned pink and moved. Get out of the script while I'm talking.

Jill: Oh, sorry. Oh my God. I had to make it larger. I'm having trouble seeing it today.

Barb: Okay.

Jill: Sorry. Sorry, sorry.

Barb: That's okay. That's okay.

Jill: It was me.