

Jill Wine-Banks:

Welcome back to #SistersInLaw. I'm Jill Wine-Banks. This week, we'll be taking an in-depth look at the latest developments and investigation of the January 6th insurrection. We'll talk about DOJ's decisions to allow federal employees to testify and to not represent Mo Brooks in Swalwell's lawsuit, and what that means for former president Trump. The testimony the House Committee heard this week from the police who protected the Capitol, and then we'll look at who we think should be subpoenaed next.

Then we'll take advantage of the expertise of our two former US attorneys to explain why the nominations for that position are so important, and what it takes to get that job. And as always, we'll be answering some of your questions at the end of the show. But first, I want to ask you all about possible sexism at the Olympics, from how Simone Biles has been treated, uniforms for the beach volleyball teams and gymnast, the elimination of runners Sha'Carri for smoking illegal joint while allowing Fencer Alen Hadzic to compete despite pending allegations of sexual impropriety by three different women. So who wants to start on there? Barb, you're our sports expert. Why don't you start on that?

Barb McQuade:

Yeah. So much there to talk about, Jill. I agree with you. Let me start with the uniforms issue, because I think that is the one with the most blatant examples of sexism. Just before the Olympic games, we saw this instance where a handball team from the Netherlands opposed the rule, the international rule that says they have to compete in bikini bottoms by having the audacity to wear shorts to compete.

And they were told that they were in violation of the rule that says you have to, and they have great detailed description about what the bikini bottom needs to look like. Same is true with the women who play beach volleyball about the cut of the tank top they have to wear, with the deep arm holes and bikini bottoms, and yet the men only have to wear shorts and a tank top.

That double standard, I think, is one that is coming home to roost. We see it in gymnastics where the German team came out wearing long pants, as opposed to the skimpy leotard that we typically see. And I think it's something that is ripe for conversation. One of the things that we're seeing in recent years is athletes who are speaking out and speaking up.

There was a time when people like Michael Jordan said even Republicans buy sneakers. And so he was very cautious about what he said for fear of making political waves. But I think women who are athletes are calling out these double standards. They don't want to be seen as sexualized objects. They want to compete athletically on the field. And so I think it's great that we're having these conversations and surprising how slowly the decision makers move. But I suppose the decision makers tend to be older, established, mostly white male officials. And so getting them to move off some of these traditional positions sometimes takes a little bit of effort.

Joyce Vance:

The Me Too Movement seems to have really shaken something loose in our society, something that was long overdue to be shaken loose. And women are increasingly not waiting for someone else to rectify old injustices. They're speaking up and taking it on. Kim, I know you wrote about Simone Biles. I was so impressed by what she did this week. That cannot have been an easy decision for her to make at the Olympics, to stand up for her mental health and also to stand up for her team.

And in addition to the sort of sexualization of sports that I think we see far too frequently, in her situation and also with Sha'Carri, I think it's hard to avoid the blatant overtones of racial animus here. This notion that Simone Biles somehow owed us something, like she was supposed to perform without regard for her personal health. What were your thoughts about that?

Kimberly Atkins Stohr:

Yeah, I cannot imagine how difficult it must have been. And I am so in awe of the amount of bravery it took for her to recognize that she needed to say no in that moment. I mean, she went into the Olympics, probably the most anticipated in athletes for all of the US sports. And she realized that if she pushed forward and chose to put everyone else's expectations before her own wellbeing, she would have let not only herself down and her team down, but she would have endangered herself.

And so, yeah, there was a lot of talking, particularly in the beginning, that she was being selfish, she was letting her teammates down, that she was letting her country down, that she was an entitled athlete who just was taking her role and going home. To me, it really resonated, because I am certainly not an Olympic athlete and I've certainly not been on any stage, international stage of that level.

But just as a journalist, particularly as a black woman in the last year and a half with everything that's been going on with the racial reckoning and in politics, I experienced severe, severe anxiety disorder. And I felt like I could not fail my jobs. I kept pushing through, denying it, stuffing it down and putting the work first because I thought the work was too important.

I thought what I did when I speak to you all on this podcast, when I show up on MSNBC or when I write in The Globe, that it was too important for me to do that at this moment. And I was neglecting myself and I realized that, that almost broke me. And I needed to put myself first sometimes, I needed to engage in self-care, get some help. I have a wonderful therapist. I do a lot of work and meditation.

And I have said no a whole lot more than I used to before, and I recognize that in what Simone Biles did. And I hope that this serves as a lesson, particularly to black women, because there's too little research in mental health in black women, but what does exist it shows that black women are far more likely to suffer mental health stresses, in part because there is an expectation for us and a pride in us that we are strong, we are resilient, right? We're supposed to hold it down.

But they're less likely, half as likely to seek help, and I would love to change that. I hope that's what the lesson for so many people walking away from this is. I got some mail after my comments saying, "Well, why does it have to be about black people? Everybody was suffering." Yes, everybody was suffering, but both things can be true at the same time. It can be a particular crisis for a certain community. I do hope that this serves as a lesson for that moving forward. That would be a very good thing.

Joyce Vance:

Kim, I love you so much for saying all of that, and I'm so sorry that you struggled, but I do think it's true. We impose so much pressure on black women. That's not to say other people have not suffered. But I hope all of us can learn something from this. And I thank you for your thoughtful writing. It will be in our show notes for everyone to read, if you haven't seen it already.

I was so excited to get sort of a bra top and a pair of shorts from Girlfriend Collective. I'd been looking at the brand and it was so exciting to start using it. I really like them, but now I'm down to the shorts because my daughter stole the bra. Have you had a chance to wear yours, Kim?

Kimberly Atkins Stohr:

I have. At this point, I hardly ever do yoga without it. I have a drawer full of yoga clothes, but the Girlfriend Collective yoga top and leggings that I wear are just so comfortable, and I've been trying to be mindful and do that every day. And so I'm going to wear them out. I'm going to need to get a few more pair. How about you, Jill?

Jill Wine-Banks:

I love it, but I'm especially fond of the skort. And it was one of the first things I packed for my trip to Memphis, because I saw the temperatures were in the nineties, and I thought, "I could be stylishly dressed and still cool and comfortable with my Girlfriend Collective skort." I highly recommend it. It was perfect. And it folds up into nothing, of course, because it's a great fabric. And I know Barb with all of your sports activities you must be enjoying it.

Barb McQuade:

Yeah, I do like the skort, Jill, but to me, the best feature of the Girlfriend Collective products, the leggings and the skort, are the pockets. Thank you for putting pockets on a garment. I could go for hours on the virtue of the pocket. I can't live without pockets. And the fact that pockets come with a skort and the leggings, to me, is a real selling point.

Kimberly Atkins Stohr:

Yes. Yes, I agree. And I agree with Jill too, that they travel great. You can just roll them up and put them in there, and they look great as soon as you take them out. So Girlfriend Collective is sustainable, ethically made active wear. With their inclusive sizing from XXS to XXXXXXL, they're incredible bras, leggings, shorts, tank, tees, and skorts and swimsuits are the perfect choice for everyone.

Jill Wine-Banks:

Whether you're working out, running errands or doing nothing at all, Girlfriend Collective has functional fabrics, colors and styles for any activity. And all their clothing and packaging are 100% recyclable.

Barb McQuade:

Well, as I said, they're bestselling leggings come with pockets and have different levels of support. You can find the perfect fit for you. But my favorite thing about Girlfriend Collective is their garment take back program. They call it ReGirlfriend. When you change styles, you can return pieces for upcycling into new Girlfriend gear.

Joyce Vance:

So join us and join the collective today. Girlfriend Collective is offering #SistersInLaw listeners who are first time customers \$25 off purchases of \$100 or more. Go to Girlfriend.com/sisters. That's \$25 off 100 or more when you go to Girlfriend.com/sisters. Again, Girlfriend.com/sisters, or look for the link in our show notes.

Jill Wine-Banks:

Let's move to our first topic, which is an update on January 6th. And Barb. Would you take over for here?

Barb McQuade:

Yeah, I'd love to. I do want to note for the record, Jill, that I am today wearing my Megan Rapinoe USA Women's soccer jersey in honor of the USA Olympic team. So as we talk about Olympic uniforms, I am suited up and ready to go. But this-

Jill Wine-Banks:

Are you wearing bikini bottoms?

Barb McQuade:

... Yeah. No comment on the bikini bottoms. You can't see me from the waist down, and that's probably best. But back to January 6th, this week, we got some new information surrounding Donald Trump's efforts to subvert the election results. Even beyond the events of January 6th, the New York times has reported that in December, President Trump pressured acting attorney general Jeffrey Rosen to investigate election fraud with daily phone calls, at one point telling Rosen, "Just say the election was corrupt and leave the rest to me." So that is certainly going to get the attention, I think, of the select committee on the January 6th attack, which held its first hearing this week.

The witnesses at that hearing were four police officers who were on duty at the Capitol on January 6th. I thought their testimony was incredibly compelling as they described what one officer compared to hand to hand combat on a medieval battlefield. So Kim, let me start with you. And let me ask you first about the makeup of that select committee. Speaker Nancy Pelosi invited two Republicans to join the committee, Liz Cheney and Adam Kinzinger, and she refused to seat two others, Jim Banks and Jim Jordan. How do you think that decision played out?

Kimberly Atkins Stohr:

I think it ended up playing out by really elevating Liz Cheney at a time that she had really lost all, just about all of her stature in that conference at the hands of Republican leadership. Initially, Nancy Pelosi invited Republicans to add six members to the committee. And as you said, two of them, Jim Banks and Jim Jordan were rejected by Nancy Pelosi, not just because they voted against certifying the results of the election, but also because of the big lie, frankly, that they had been perpetuating about election fraud and the other things that they had said, not only about the election, but about January 6th itself.

So as a result, Kevin McCarthy pulled all the members from the committee, and Nancy Pelosi invited Liz Cheney, Congresswoman Cheney and Congressman Kinzinger on board. What that does is give them all of the time that the other six lawmakers would have had. And Liz Cheney really took that opportunity to really lay out clearly that she intends to work on this committee, to let the facts lead them to their conclusions and to doggedly investigate those facts.

Now, keep in mind, Liz Cheney and Adam Kinzinger too, they are no friends of Democrats. They disagree with Democrats on everything on policy. They are very conservative. But on this, they agree that this was a serious attack on democracy and they are trying to get to the bottom of it. I think what happened by this move, by McCarthy may have backfired. If his goal is to try to minimize Liz Cheney by pulling these other members, it really elevated her stature on that committee, her stature.

Barb McQuade:

Yeah, and now I want to turn to the substance. The first witnesses, the committee called for police officers to testify. Why do you think the committee started there, and what stood out for you during their testimony?

Kimberly Atkins Stohr:

Yes, I think that it was a really important place to start because these are members of law enforcement, folks who have, certainly have the support, or Republicans have claimed to support, at all this time, and they were at ground zero. They were at the frontline of this attack. And hearing from Sergeant Aquilino

Gonell and officers Daniel Hodges, Michael Fanone and Harry Dunn, if our listeners have not yet listened to their testimony, please listen to it. If at the very least, just listen to their opening statements.

It is so shocking, gut-wrenching and horrifying and really, really important. And so what I took away from it are really three key points when we're talking about this committee, what they're trying to get to the three. I'm going to take a word from our last episode probative. The three probative points that I think are really important is that it dispelled this idea that former President Trump and other Republicans have said that this was nothing but a group of tourists or people were being loving at this event.

These officers described being threatened to be killed with their own gun. They described being crushed against a metal door and screaming in pain. They described being kicked, being assaulted and being insulted at the same time and called traitors. This was a violent, violent attack, and their testimony gets right to it. The other part of it is that they talked about the white nationalist element, which I really hope this committee gets to the bottom of, because it will not only explain what happened on January 6th, it will help enlighten Americans about the threat, ongoing threat, that white national extremism poses right here domestically.

Two of the officers, Officers Dunn and Gonell described the racial slurs that were hurled at them in the midst of this. That they were called words that I will not repeat here, and just how racially vicious this attack was. And even Officer Hodges had at one point, they tried to recruit him saying, "Hey, you should be on our side. Aren't you on our side?"

Barb McQuade:

Are you our brother? Something like that.

Kimberly Atkins Stohr:

Are you our brother? And an attempt to recruit. So there was clearly not just in the motivation in organizing this, but in the actual event itself, a white nationalist element. And it also talked about the fact that people were self-proclaimed Trump supporters saying that Trump sent them, which is a very salient part to this investigation. What role did Donald Trump play? At least in their eyes, they thought they were sent there by the former president, which is a huge piece of this investigation. I think this testimony was just really, really crucial.

Jill Wine-Banks:

I agree with you, Kim. I was deeply moved by hearing the testimony. And for me, one of the most outstanding facts or visuals was seeing Officer Hodges in his uniform, calmly describing, and then seeing adjacent to that the picture of him being squeezed in the door and screaming in pain. It's an image that no one can watch and not be affected by. So I agree with you. I hope that everyone has seen it. But the most shocking thing to me was how Fox News covered this testimony, claiming that these were crocodile tears and made-up stories. I just, I have no words to describe how horrible I felt listening to how they distorted what we had seen.

Joyce Vance:

I think that's worth pointing out. And if you flip the shoes here, and if Democrats had taken this sort of approach against law enforcement, I think you would have seen outrage from across the country from law enforcement leaders directed at that treatment. But there were really crickets in this instance,

nobody standing up for law enforcement outside of the Democrats in Congress, and that sort of feeds into something that I noticed here with some relish.

Barb, you and I had this experience of testifying in Congress, I think we touched on this last week. And there were some Members of Congress when we testified about the Mueller report who weren't very interested in looking at the substantive matter ahead of them, instead what they wanted to do was just score political points, just sort of create some sort of a clip that could run on Fox. We didn't have any of that with this hearing. I thought that there was an admirable absence of political grand standing. What this was, was a simple exercise in taking testimony from these four officers. It was really effective. I hope the Democrats will think about shifting to prime time for the next hearing.

Barb McQuade:

Yeah. And something that stood out to me, I thought the chairman, Bennie Thompson, did a really terrific job, one, in setting the tone that this would be a very sober task. But the way he ended it is so appropriate. He asked each of the four officers, "What do you think our goal ought to be in our investigation?" And one of the officers, Officer Harry Dunn said something I thought was amazing, he said, "The analogy that comes to mind is the analogy of a hitman. when you have a hitman involved, you go after hitman, but you don't stop there, you also go after the person who hired the hitman. I would like you to get to the bottom of that." And I thought that was extremely important.

The other thing that impressed me was when Officer Hodges, the one who'd been pinned in that door repeatedly referred to these attackers as terrorists, not the mob, not the attackers, not the riders, not the protestors, but the terrorists again and again. And when he was asked about it, he said, "I don't use that word lightly." And he shared the legal definition of domestic terrorism, which is essentially acts of violence that are illegal, dangerous to human life for the purpose of intimidating or coercing a civilian population or influencing government policy. And that's exactly what happened that day. So I thought they were all so impressive and prepared and told very compelling stories. Well, let's shift gears a little-

Joyce Vance:

Hey, Barb, before we move on, can I just share a really wise woman had what I thought was a great tweet on this last point that you made. Barb McQuade tweeted this, and I thought she was dead on the money, referencing one of the old Trump tweets where he had talked about the big lie, and she says, "Jan 6th committee needs to confront the spark that ignited the attack. Trump has radicalized domestic terrorists the way ISIS leaders radicalize violent extremists. I'm in total agreement with that, and I hope the January 6th committee fully investigates it."

Barb McQuade:

... Yeah, so it'll be interesting to watch as this unfolds. We don't have a date yet for their next hearing, but I think there is hope that they will meet again before the August recess. But let me shift gears a little bit and, Jill, ask you about ... There was another significant development this week that aligns with this story, this came from DOJ, that could really open the flood gates for the January 6 committee, especially in light of that new reporting from the New York Times about Trump's repeated daily calls to acting attorney general, Jeffrey Rosen.

DOJ issued a letter to former Trump administration officials pertaining to congressional investigations into claims of election fraud and the January 6th attack. Can you tell us about that letter and what it might portend for the January 6 committee's work?

Jill Wine-Banks:

Absolutely, because it's really important. And there was a second letter that just has been revealed now, which also says that Donald Trump's tax returns must be turned over by the Department of Treasury to Congress because the law says if Congress asks, Congress shall receive. But to your point, there's a series of letters that went out to administration officials, including the former Jeffrey Rosen attorney general and his deputy Patrick, I'm sorry, Richard Donoghue, as well some other officials in the Department of Justice, which basically says this is an extraordinary case.

And so even though professional lawyers within the department and department officials have to keep things confidential, there is an exception when there's a real need for it. And in this case, we're waving and saying that all former officials can testify. And that links very well with what you just said, which is the revelation of the notes of Richard Donoghue saying that Donald Trump repeatedly called and pressed them to just say, "You are investigating this fraud and leave the rest to me," which of course-

Barb McQuade:

That sounds a lot like what he said to the Ukrainian president, doesn't it?

Jill Wine-Banks:

... Exactly. That's exactly what I was just going to point out, was it is, "Just say you're investigating and don't worry about whether you really are or not." That is exactly one of the things that was brought up in the second impeachment. And does show a pattern or practice of behavior from Donald Trump that's worth noting for sure. But what's important is that we may be able to get to some of the information and facts about not just who was trying to interfere with the election results and to overturn the election, but may also be grounds for investigating further what role he played in fomenting the insurrection that led to the police officers testifying in the dramatic way they did.

So it went to a number of officials, each got a separate letter saying, "You can testify." And I think that anybody else that Congress wants to hear will now be able to fully share their experience. And it is looking like it's leading to key evidence against the person that we're saying needs to be investigated, the person who sparked the fire. And this is all good.

Barb McQuade:

Yeah. After some early decisions that seemed to me going out of his way to favor the Trump administration, Merrick Garland at DOJ is suddenly making a lot of decisions that seem to be what the law and facts and transparency require. And we had another one, Joyce, this week that DOJ made a decision, made to filing a lawsuit brought by representative Eric Swalwell that has, I think, some significance for the fact-finders about the January 6th attack as well. Can you tell us about that decision?

Joyce Vance:

Yeah, I think you're right, this does have a lot of significance. And this is the civil case, we've discussed it before, filed by California representative Eric Swalwell. He alleges civil rights violations, intentional infliction of emotional distress, aiding and abetting assault and other civil charges. This is a civil case, not a criminal case against a group of defendants, among them Alabama representative, Mo Brooks, not my representative, the former president, his son, Donald Jr, and Rudy Giuliani.

One of the defendants in this case, Mo Brooks, asked the Justice Department to represent him in the lawsuit. And if this feels a little bit familiar it's because one of the decisions Barb is referring to is

an earlier decision by DOJ that it would represent Donald Trump in the lawsuit filed by E. Jean Carroll, where she alleges that he defamed her in connection with her allegations of a 20-year-old rape.

But to the Swalwell suit, Brooks essentially asks DOJ to step into his shoes. And the law actually lets the government do that for employees of the government who are acting within the scope of their official duties. It's pretty well established that Members of Congress are employees of the government for this purpose. But it's not just Mo Brooks getting a free lawyer from DOJ that's at stake here, because what happens if DOJ agrees to represent Brooks is that DOJ would actually move to step into the lawsuit as the defendant.

It would be the government who would become the defendant, and Mo Brooks would be dismissed from the lawsuit. And because the government is immune from being sued for this sort of civil torts, the case would in essence go away. In other words, Brooks is asking to get away without any responsibility for his conduct on January 6th. Fortunately, DOJ was not inclined to buy in this time, like they did in the E. Jean Carroll case.

And they made a decision that Brooks was not, although he was an employee, not acting within the scope of his duties. That might seem pretty common sense to all of us, right? Because when has sedition ever been a legitimate occupation for a Member of Congress. But DOJ slices and dices it a little bit differently saying that he's engaging in campaign activity, not in the official business of the Congress.

So while Brooks can still ask a judge to force DOJ to participate, he still has that ability, I think it's unlikely that a court overrules this. Lawsuit can go ahead against Brooks, and this portends the same treatment for Trump. Analytically, there's no reason that DOJ would step in to represent him here.

Barb McQuade:

Yeah, I think the developments that you just described, Joyce, and that Jill just described are a really big deal and they demonstrate why it matters so much that you have people of integrity at the Justice Department. I think for four years, William Barr and Jeff Sessions worked really hard to do just the opposite, to protect Donald Trump by issuing these Office of Legal Counsel opinions that said things were privileged and didn't need to be turned over and other things.

And now that we've got people of integrity at the Justice Department, I think the flood gates are going to open and we're going to see all these documents that were hidden for so many years. So we'll keep track of these January 6 hearings in the weeks to come.

Joyce Vance:

Can I just add, Barb, that, to Joyce's point, the opinion really went beyond just saying, "We aren't going to represent Mo Brooks," it said, "Because not only was he not acting within the scope of his job and ... " First of all, just going back to our point about how people dress, anybody who was dressed the way he was in basically hunting gear and a metal protector was not dressed for going to Congress. But it went beyond that, it said, "It is not the job of any federal employee to do this." So that was a warning to anyone else who might ask the department to substitute itself for them as a defendant. And I think that's an important to note as a warning to Donald Trump, that he won't get represented.

Jill Wine-Banks:

Kim, are you using your Function of Beauty products?

Kimberly Atkins Stohr:

I am. I have to admit I was a little skeptical about haircare products because they don't always work for black women. But if you go to the Function of Beauty site and take the quiz, you can describe exactly the type of hair that you have. And I described that I have very, very curly, tightly coiled hair that needs lots and lots of moisture. And I got shampoo and conditioner that my hair absolutely loves. I use it all the time. What about you, Jill?

Jill Wine-Banks:

Same thing. I took the quiz and they produced a product that met my needs and expectations. And they did it in a way that allows me to see in the shower without reading a label which bottle is the shampoo and which is the conditioner, because I selected a color for the shampoo and a clear color, just plain white for the conditioner. And so you don't have to struggle when you're in the shower trying to figure out which is which. So I love that

Kimberly Atkins Stohr:

That's really smart. Function of Beauty is the world leader in customizable beauty, offering the perfect formulas for your hair's needs. To get started, take a quiz about your hairstyle and goals. Choose your color and fragrance. Go fragrance and dye free, which is what I did, or switch them up based on how your hair looks and feels in each season.

Jill Wine-Banks:

After the quiz, Function of Beauty will send you your 100% customized formula along with a regimen card with recommendations on when and how to use your products. And Function of Beauty also just launched an amazing subscriber program, Function With Benefits. Subscribing gets you discounts on every order, a free treatment every four orders, access to exclusive fragrances and colors, early access to new products and more. That's a really exciting piece of news.

Kimberly Atkins Stohr:

It is. So turn your good hair days into a good hair life. Go to [Functionofbeauty.com/sisters](https://functionofbeauty.com/sisters) to take your quiz and save 20% on your first order. Go to [Functionofbeauty.com/sisters](https://functionofbeauty.com/sisters) to let them know you heard about it from our show, and to get 20% off your order. [Functionofbeauty.com/sisters](https://functionofbeauty.com/sisters), or look for the link in our show notes.

Jill Wine-Banks:

And it's not just shampoo. I just ordered a special product for facial cleansing and it's fabulous.

Kimberly Atkins Stohr:

Ooh! I'm going to try that next.

Jill Wine-Banks:

And again, same thing, customized. I highly recommend it. Before we leave the topic of January 6th, let's all say who besides the former guy we want subpoenaed. And Kim, why don't you start that conversation?

Kimberly Atkins Stohr:

Yes. I get to be Oprah in this part of the conversation and say, you get a subpoena, and you get a subpoena and you get a subpoena. The committee that we-

Barb McQuade:

You do that pretty well, Kim.

Kimberly Atkins Stohr:

... I want to be Oprah so badly, so I've been practicing. The committee, of course, has some, the January 6 committee has subpoena power to bring in people to testify as to what they know and other information that they can provide about January 6 and the events leading up to that. And so I want each of us to say who we think ought to be on that list. This will not be exhaustive, but just some folks. I will start. I think one of the people who should be subpoenaed is Mark Meadows, who was a former Member of Congress, and of course was serving as Donald Trump's chief of staff on and before January 6.

And I think the reason is, especially given the new news we mentioned today about Donald Trump pressing the Justice Department, and who knows who else honestly, to try to aid him in the attempt to try to hold on to power by denigrating the election results and claiming that they were fraudulent. Nobody was close to him except maybe say his family, then Mark Meadows. Mark Meadows was right there. He was his chief of staff. He was a close confidant.

By then, his circle of trust was pretty small. And I think that the commission really would like to know what he knew. I also think that Mark Meadows, at least of all the people that are close to him has, has had at least little snippets of honesty. If you recall, for example, when Donald Trump was hospitalized, when he contracted COVID-19, Mark Meadows was standing out in front of the podium saying that the president was fine, strong and control, but at the same time was going off the record to reporters telling them that the situation was actually pretty serious, and having some glimpses of honesty there.

So perhaps he could be convinced to do that again, perhaps these are his former colleagues in Congress that will be talking to him, and they can get some really probative information from him in a way that I think other people close to him may be prone to just lie. Jill, who would you like to see get a subpoena?

Jill Wine-Banks:

It's so hard to pick just one. And I'm actually changing who I picked originally. I said it should be the acting secretary of defense, Christopher Miller, who did not dispatch troops promptly to protect the Capitol. But I think given the news today about Richard Donoghue's notes, I think that he knows a lot and would be a very interesting person for Congress to be able to ask about the conversations, pressing the Department of Justice to do something that it clearly would have been improper for it to do. I'd like to see him subpoenaed, of course along with Rosen who was the target of this pressure.

Kimberly Atkins Stohr:

Yeah. Yeah, I think Rosen is almost a given. That's a good one. How about you Barb?

Barb McQuade:

Well, I think that it's probably an obvious choice to subpoena Christopher Ray, FBI director, to find out why there was this intelligence failure when I think most of us who follow the news even casually could

have seen this coming a mile away. I want to know more about that. But I think if I got just one subpoena, and it was guaranteed to be effective, I would subpoena Ivanka Trump.

Kimberly Atkins Stohr:

Ooh.

Barb McQuade:

There is reporting that she was with Donald Trump all day, and that she was trying really hard to persuade him to make a public statement to the protesters, to the mob, to the terrorists to leave the Capitol that day, and he refused for hours. I'd like to hear that conversation. I think she is someone who might be in a position to talk about what his motive was when he gave that speech at the Ellipse, whether he intended to incite the crowd when he told them that they had to March down Pennsylvania Avenue to the Capitol.

And what was happening as those events were unfolding while he was apparently watching on television. What was he saying? What was he doing? Were they discussing calling out the National Guard? I think all of that is really relevant to his role in inciting and failing to step in and stop the insurrection.

Kimberly Atkins Stohr:

Yeah, I think that's a good one. I mean, recall on that day she also initially tweeted calling the insurrectionists patriots. But since leaving the White House, she and Jared has both reportedly tried to distance themselves from Donald Trump, so I think that would make for a very interesting witness. Last but not least, Joyce, who would you give us a subpoena to?

Joyce Vance:

Oh, golly, Kim, who wouldn't I give a subpoena to at this point, right? I mean, they all need them. But I'll tell you, mine is just from a place of personal curiosity. There are so many good candidates if you only get one subpoena. My pick is Roger Stone. You all will remember Roger Stone has been so instrumental in the president's the former president, thank God, in his misconduct from early on, right?

He was allegedly, and this became part of the criminal prosecution against him, the conduit for communications between the campaign and the president personally. And through the folks that were dropping emails from Hillary Clinton and other members of the Democratic Party, he's always seemed to be a pipeline. And isn't it amazing that Roger Stone shows up in Washington, DC with Proud Boys or something along those lines as a parent security guards around the events of the 5th and the 6th. But he actually makes a point of staying in his hotel on the 6th.

He doesn't go even to the rally, doesn't proceed to the Capitol. Almost like could it be that Roger Stone knew that something was up, and after his narrow escape with justice, he decided that he needed to stay away? Look, I'd like to get him under oath in a forum where he has to testify truthfully, knowing that Donald Trump no longer can exercise a pardon power that can save him.

Do I think we'd get the truth out of him? I'm not sure, but I'd like to hear him asked questions about what he knew about what was planned, what was going on, and particularly whether he had conversations with Trump or Trump associates, like Rudy Giuliani or members of the Proud Boys and the Oath Keepers, about whether or not there had been any planning to disrupt Congress as it was getting ready to certify the election. I think that's the one that interests me the most.

Kimberly Atkins Stohr:

These are all really, really good. And we will certainly be looking with bated breath as to who the committee does subpoena. We will have much more to talk about that in episodes ahead.

Barb McQuade:

Hey Joyce, will you tell me the one about the Fast Growing Trees?

Joyce Vance:

The one about Fast Growing Trees is one of my favorite ones. I'm a long-time customer for the last several years. And in fact, we have a kumquat tree that's full of kumquats on our back deck, and a Meyer lemon tree that's loaded with blooms on our front porch because the products are really great. I mean, I'm going to just have to rave for a minute here. I love their plants because they show up in great shape, they grow really well, and surprisingly quickly. They fill out. And for us, having these summer fruits is really pretty amazing.

Barb McQuade:

Yeah, it sounds terrific. And I just like saying the word kumquat, it's not a word I get to say very often.

Joyce Vance:

Well, they're delicious. They're one of my favorites and they're hard to find in the stores. And that's true of many of their plants. They're plants that you won't find in your local nursery. So no matter what your gardening goals are, there's a better way to plant your garden. You can skip the big box stores and head to Fastgrowingtrees.com, the world's largest online nursery.

And think about it, no waiting in line, no messy cars, no lackluster selection. Just go to Fastgrowingtrees.com and choose from thousands of varieties of trees, shrubs and plants, expertly curated to thrive in your area and delivered to your door in one or two days.

Barb McQuade:

Shade, privacy, fruit trees or added color in your yard, every plant is shipped with a well-developed root system, ready to explode and grow. And planting season is here, so join over 1 million satisfied gardeners at fastgrowingtrees.com. The best part, the 30 day alive and thrive guarantee means your plants will arrive happy, healthy and ready for planting.

Joyce Vance:

If you've ever ordered plants online, you know how much that guarantee means. So from now through August 31st, go to Fastgrowingtrees.com/sisters for 15% off. That's 15% off at Fastgrowingtrees.com/sisters. Again, Fastgrowingtrees.com/sisters, or look for the link in our show notes.

Jill Wine-Banks:

Before going to our listener questions, I'd love to have Joyce and Barbara talk about their nomination process for US attorney, how they were selected to serve as US attorneys under President Obama, and why these appointments are scorned, and what the current status of nominations are.

Joyce Vance:

Let's start by talking a little bit about the role that US attorneys play, because last week President Biden nominated his first eight United States attorneys in some districts that you might expect, some of the big ones like the District of Columbia and Massachusetts, but also in the Indiana districts and in Maryland. There are 93 US attorneys nationwide, one for each of the 94 federal districts.

And actually, if you'll notice that numerical discrepancy, 93 US attorneys and 94 districts, this is your jeopardy trivia question for this week on #SistersInLaw. The reason that there is one fewer, as my husband would say, one fewer US attorney than there are districts is because Guam and the Mariana islands share a US attorney. But back to the subject matter at hand, it used to be that US attorney that was a pretty obscure job. And then during the Bush administration, US attorneys were fired for political reasons.

That's, I think, the first event that put US attorneys on the public radar screen. And of course over the last four and a half years, people have become familiar, not with just the job, but with some of the more influential US attorneys in the country. It's logical for us to discuss what the job involves and how you become one. And Barb, that seems like the perfect question for you to start us off with.

Barb McQuade:

Oh, Joyce. I know you share this view that I loved serving as US attorney. I think it's the greatest job a lawyer can have, and I was so honored to do it every single day. The US attorney leads a local US attorney's office, and those are the local branch office of the Justice Department all over the country, out in the field, we sometimes call it. And the offices vary in size. Some are very large, larger urban areas. Some are smaller and more rural.

But the US attorney is charged with enforcing criminal and civil law in their district. And so if there is a federal crime that occurs, like public corruption or white collar crime or a terrorist attack, it is the US attorney's office that investigates and prosecutes that crime. The US attorney is also charged with handling civil matters. Some of those are affirmative civil cases.

We did affirmative civil rights cases, affirmative fraud cases when the government was the victim. And we also defended the government in court when the defendant was sued as a defendant. And so the work is incredibly rich and rewarding and satisfying. The prosecutors have a great deal of discretion, and that's part of what makes it so satisfying. But it's also a really important job. Former Supreme Court justice, Robert Jackson, gave a speech that many US attorneys and assistant US attorneys refer to.

And in that speech, he said that the prosecutor has more control over life, liberty and reputation than any other person in America. His discretion is tremendous. And he goes on to talk about all the good things that a prosecutor can do, and also all the bad things that a prosecutor can do if they do not approach the job with integrity. But it's a tremendous job, and I think a tremendous opportunity for a president to install people to advance his policy agenda in the field. And so when you see delays in the appointment, I think it's a real missed opportunity.

Joyce Vance:

Yeah. The Justice Jackson's speech, which I think virtually every federal prosecutor uses as a touchstone, reminds me of something I haven't thought about in a long time, but Barb, like you, I'm sure you have this experience. I had to go up to Washington for the interview to determine whether or not I would be the US attorney. They were considering me. And I had a really wonderful meeting with a lot of folks in the leadership.

And the last person I spoke with was then attorney general, Eric Holder, who was really one of the best bosses I've ever had. And he said something to me that really encapsulates my experience and my goals and what I felt obligated to do as a US attorney. At the end, I said, "Well, what do you want me to do? Now that you guys looks like you're going to nominate me and put me in place, what are my marching orders?"

And he looked at me and he smiled and he said, "Just do the right thing." And so in my office, every morning as I walked in, there was a wall that had photographs of all of my predecessors in office. And one of those predecessors is someone who's probably obscure if you don't live inside of Alabama. But in Alabama and on the 11th circuit, he's a legendary civil rights judge, Frank Johnson, who imposed in so many of the civil rights cases, in first the fifth circuit and then the 11th circuit when he shifted over, these groundbreaking civil rights decisions, integrating the Alabama state troopers, and supporting voting rights and rights for people who were in mental health facilities.

And every morning I looked at his picture, and I thought back to what general holder had said and thought, "My job is just to do the right thing." And what a really great set of marching orders. Jill, Barb and I have this one view, right, from the inside. We did the job, we really venerate the job. And we have our view of what US attorneys do. You've had other roles both in government and outside of government, and I'm interested in your assessment of the role US attorneys play and the value that they bring to our communities.

Jill Wine-Banks:

Before I answer your question, I have to point out that in Justice Jackson's speech, the US attorney is a he. Every reference is his discretion, he can have. And so at the time that I served in the Department of Justice, that was 100% true, and I am so proud that it is no longer true, and that you and Barb represent the face of US attorneys around the country now.

In terms of my role, I served in main justice and tried cases around the country. And so in doing that, I of course encountered and worked with US attorneys around the country, and came to respect their role and their job. But the most thing is that they, as you said, were doing the right thing. That was the same advice that we got at main justice. It doesn't matter whether you win or lose, you have to do justice. You have to pursue the facts where they go, and you have to be pursuing basically justice.

My view of them is pretty much the same as yours. I would also stress, because being at main justice, I saw not just criminal prosecutions, but the civil side, which people so often, and even in Justice Jackson's, I think every reference he makes is to the criminal prosecution side, as opposed to looking at things like civil rights, the environment, antitrust. Those are all areas of civil enforcement that US attorneys have, and it's very important.

But I think the basic fundamental thing is that it's the same. Whether you're a justice lawyer or whether you're a civil, you're in private practice, ethics and fairness and justice is what is really important. It's not just that you're representing the United States of America, it's that you're trying to pursue the department's goal of justice. And that's why what we've seen so recently from President Trump and the pressure that he was putting on the Department of Justice is so awful, because it has always been treated as something separate and apart where there is some independence, and that's really important to me.

Joyce Vance:

Jill, I'm really glad that you emphasize the work that's done on the civil side of US Attorney's offices. Civil divisions will tell you that they sometimes feel like the redheaded stepchild and the criminal division

gets all of the attention. But some of the work that my office did that I was the most proud of them for doing was on the civil side of the office. I was even accused by some folks who didn't like what we were doing of running a plaintiff civil rights law firm on the second floor of my office, where the civil division lived.

But they successfully challenged Alabama's somewhat racist immigration bill, HB 56, did a lot of pro voting rights work, and generally really tried to make sure that while the criminal division was keeping the community safe, they were making people's lives better. I thought one of the honors of being a US attorney was getting to engage in the work on that side of the office.

Kim, we know that president Biden has explicitly valued diversity in his judicial nominations, and he has openly expressed his desire to expand the kind of people that take the federal bench, civil rights lawyers, public defenders, people from small firms. What do you read into these first eight nominations for US attorneys? Do you think he has similar objectives here?

Kimberly Atkins Stohr:

I think he absolutely does. First, I will say, as somebody who in private practice was a member of the plaintiff's bar, civil justice is incredibly important. We should have that as a topic on a future episode.

Joyce Vance:

We should. That's a great idea.

Kimberly Atkins Stohr:

But yes, in the nominations for US attorney that we have had so far, President Biden said he made his choices for each based on their "devotion to enforcing the law, their experience and credentials, and their dedication to pursuing equal justice for all." But in looking at some of these nominees, there are so many firsts. And we have to take a minute to say that we are in 2021, so in a way, the fact that we're just getting some of these firsts now shows how much ground that needs to be made up. But for all the reasons that you mentioned, to have US attorney's offices that represent and understand the communities that they cover is so crucially important.

And there are a lot of firsts. For example, Zachary Myers would be the first black US attorney in the Southern District of Indiana if confirmed, as would Clifford Johnson will be the first black lawyer to lead the Northern District of Indiana over. In Massachusetts, where I spend a lot of time, Rachel Rollins would be the first black woman to be the US attorney for Massachusetts.

In the Boston office, Vanessa Waldorf would be the first woman to run the US attorney's office in the Eastern District of Washington. And Nicholas Brown would be the first black lawyer to run the Western District of Washington. Yes, in just these eight nominations, we see a very diverse field of women, people of color. And we have learned, look, in the last year, we have seen the importance of the decisions that are made in prosecutor's offices and the consequences that they could have.

Very often prosecutors are very closely tied to law enforcement in a way that has caused a lot of problems with respect to civil rights. So seeing a broader array of folks who are nominated to these positions is really refreshing. Now, some of them I'm sure will face some opposition in confirmation for a number of reasons, but I think certainly the president has laid down a marker here.

Joyce Vance:

Inside of the US attorney's community, the US attorneys sort of self-governed through a committee system that advises the attorney general. And something that you said, Kim, I want to underscore.

Because when you have a committee, for instance, I co-chaired the Criminal Practice Sub-Committee, Barb chaired the National Security Committee. When you're sitting around that table with 10 or 11 other US attorneys, trying to figure out how you're going to advise the attorney general or what policies you want to implement, and you have people with broadly different experience, it really impacts the outcome.

And I'll just give one example. My subcommittee included, for instance, Sally Yates, who like me was a career federal prosecutor. We had very similar goals and ways of assessing situations. But it also included Jenny Durkan, who was the US attorney in Seattle, and she had spent most of her career in defense work. She had never been a federal prosecutor before. And her perspective radically altered the way we viewed things for the better on multiple occasions.

I think this diversity is really fabulous and it portends, as Barb said, in our opening topic, that this DOJ is headed on the right track. And by the right track, I mean not what it's going to do, not outcome-oriented, but that it's just straight up the middle on the facts and the law. Barb, last question here to you, and I welcome Jill and Kim to chime in. Barb, I was in office in April of 2009 as the acting US attorney and confirmed by mid August. Obviously, the Biden nominees are on a much slower track. Do you have any sense of why these nominations are coming so late and whether that matters? You started to talk about it earlier, but let's expand on that.

Barb McQuade:

Yeah, I really don't. I don't know why it's taking so long. Although, I will say you were among the first choice. In fact, what I remember about starting is you know you have to fill out that really detailed questionnaire about everything you've ever done in your life, of-

Joyce Vance:

Oh, it's awful.

Barb McQuade:

... where you've ever lived and worked and everything? Yours was already public because you had already gone through the process. It was on the internet. And so I used yours as a template for mine. So it was very useful to see how you answered certain questions, like to the best of my knowledge and just using certain language. So I knew all about you, Joyce-

Joyce Vance:

Here to help, girlfriend.

Barb McQuade:

... well before you knew me. I had a dossier on you. You were among the first, and I will say this is a little slower because I think the first batch of nominees was like in May or something like that. And as you said, you were confirmed by mid-August we had a batch. And then I didn't get nominated until November. I had that visit with Eric Holder, I think, in September. And I got confirmed on Christmas Eve. And I remember getting the call and-

Joyce Vance:

We all remember when you got confirmed, why is that?

Barb McQuade:

... Yeah. Well, for one, I remember getting the call that I was confirmed on Christmas Eve. You may remember that the Senate stayed in session till Christmas Eve to approve the Affordable Care Act, which was kind of interesting. And then the woman at DOJ who was serving as legislative liaison, and I don't remember her name, I'm sorry to say, called me-

Joyce Vance:

Margaret Richardson.

Barb McQuade:

... She was White House. This was for legislature. Called me to say, "Hey, good news. You've just been confirmed." And I kept her on the phone, because I was telling her how happy I was, and she finally just said, "Look, I've got about 200 people I have to call to tell them they've got confirmed. So it's lovely talking to you and all, but I got to go." "Oh, sure. I understand. Thank you." And I was so happy, I thought, "It's Christmas Eve, I can just sit back and enjoy the holidays. This is the greatest thing. I'm on easy street now."

And the very next day was Christmas Day, and that was the day that as I was putting the ham in the oven, got a notice on my Blackberry, the devices we used at the time, that an Al-Qaeda operative had tried to blow up a plane over Detroit on its approach. And so we had a bonafide Al-Qaeda terrorists, he had concealed the bomb in his underwear, thus becoming known as the Underwear Bomber. And that was the first case that, of great significance, that I worked on after becoming US attorney. I didn't become your attorney, Joyce, then until-

Joyce Vance:

Barb, I just have to interrupt and say, this is the value of having experienced qualified people at DOJ, because what Barb doesn't know, and since she used my OGE form, I'm just going to go ahead and tell her what the scuttlebutt about her was. We all knew that she had been confirmed Christmas Eve. We hadn't met her yet. And the general thinking was, "Well, thank God Barb McQuade had just been confirmed in Detroit, because she was actually an anti-terrorism specialist." That was her ... I think I'm correct, right? Your last role was that you were the ATAC before you became the US attorney. There is enormous confidence in her, and she always bore that out. Sorry to interrupt.

Barb McQuade:

... That's very nice of you to say, Joyce. But the point I was going to make is, the whole batch of us probably didn't get on until well into that next year, 2010, by the time they got all 93 in place. I am hopeful that this first batch means that they're going to start rolling them out now, because it is very important that the president have his picks in place. And it's certainly the case that the people who are acting US attorneys right now, I would believe are acting with great integrity, and they are moving cases and making sure that the trains are moving on time. But I see the role as caretakers.

Let's not forget that these first, or the former first assistants were handpicked by the Trump nominees, the Trump US attorneys. And so they may just have a worldview that tends to reflect the Trump worldview as opposed to the Biden worldview. And that's not to say they're going to make different decisions about justice, but what I remember Eric Holder telling me, Joyce, when I was there for that initial interview is, first what I remember is when he walked in the room, he shook my hand and said, "Hi, I'm Eric," which I thought was great.

It wasn't, attorney general this or his majesty that, it was Eric. And then one of the things he said to me, and he said to us repeatedly, I'm sure you remember these words were, "I want you to be community problem solvers, not just case processors. It would be very easy to sit at your desk and just process all the things that come across that agents bring to you. And that is fine, and that's part of what you do, but it's also part of the job to set the priorities of the district. And this is what we're going to work on."

In the Eastern District of Michigan, we had something like 115 lawyers, which gave us the resources to do about a thousand cases a year. Now, give or take depending on the size of the cases, but about a thousand cases a year. When they're that scarce, you have to be very selective and judicious about what you're going to choose to go after. Is it wise to use your scarce resources to go after a bunch of marijuana cases when marijuana is now legal under Michigan law, or is it better to use your scarce resources to go after opioids, which are killing people with overdose deaths?

So being very targeted in what you're going to use those resources are is an important part of it. And you'll remember in the Obama administration, for example, some of our priorities were doing civil rights cases, and doing police pattern and practice cases, which we did in Detroit. I imagine that going forward we will see Biden US attorneys doing some of those kinds of cases, voting rights cases, cases that matter to this president.

Being very selective and judicious in seeking mandatory minimum sentences, being judicious in seeking the death penalty. And so I think it matters who those US attorneys are, and that's why I would like to see them push to get Biden's nominees in place so that they can begin leading their offices in that direction. Hey, Kim, how is Noom working out for you?

Kimberly Atkins Stohr:

I have been using it every day, logging my meals, which I find is interesting. You always don't think about what kind of food you're eating or something that may seem healthy. You may realize maybe you should be moderating that or you should be eating more of something else. And Noom has been very helpful in guiding me through that. Jill, what do you think about Noom?

Jill Wine-Banks:

Well, I'm loving it. Although, I am of course not competitive, but I am jealous of the results that some of you others have had, which exceed mine. But I have to say, even in Memphis with fabulous food, and including barbecue, which I'm sure Noom didn't like, it's the first time I didn't record my food while I was there. But I was cognizant of what you're saying, which is paying attention to red, yellow and green foods. And I didn't gain any weight in Memphis, despite all the wonderful things I ate. So that was really good news. And as the winner, I think, of the most loss, Joyce, what do you have to say for yourself?

Joyce Vance:

I think Barb and I are neck and neck on this one. But Noom has been really great, not just for me, but for my whole family. My husband and our two grandsons were all on it. We all gained a little bit too much COVID weight, and now we've taken it off. But like you, Jill, when Barb and I were on vacation in Maine, in Portland, Maine where the food is tempting and gorgeous and wonderful, we too managed to behave and not to gain any weight on our trip. I'm viewing this as really sort of resetting my relationship with food. I feel a lot better, I have a lot more energy, and I give Noom huge credit for giving me on that path.

Kimberly Atkins Stohr:

It's not about what you eat, it's about how you eat and understanding why you make the choices you make. The Noom app is easy to use and is a really powerful tool that shows you how to understand your cravings and build new habits to reach your goals.

Joyce Vance:

Noom shows you how to pursue the goals you set for yourself and make sure you reach them. Focusing on motivation and improvement, not on diet drinks or airbrushed expectations. No food is off limits, it's just about finding your personal balance.

Jill Wine-Banks:

Yeah, and if you're like us, competitive and busy, you're going to love the fact that you only have to spend 10 minutes a day reading anything from Noom. Over 80% of Noomers end up finishing the program, and more than 60% of users lose 5% or more of body weight, and 60% keep the weight off for a year or more. It does change your relationship to food.

Joyce Vance:

Jill, I'm competitive too, and I can do it in eight minutes a day. So start building better habits for healthier long-term results. Sign up for your trial at Noom.com/Sistersinlaw. That's N-O-O-M.com/Sistersinlaw to sign up for your Noom trial. You can also look for the link in our show notes.

Jill Wine-Banks:

As always, we've received some great listener questions this week. If you have a question for us, please email us at sistersinlaw@politicon.com or tweet using #SistersInLaw. If we don't get to your questions during the show, keep an eye on our Twitter feeds throughout the week because we'll answer them there. Today, let's start with a question from Nancy in Virginia.

She said, "Recently, I discovered how the disabled are hampered in their voting rights. In addition, I am particularly angry that the elderly have difficulty voting absentee since they can't give their ballot to another person to drop off their ballot. How on earth do the Republicans think the elderly and the disabled living in assisted living, adult family homes or nursing homes can deliver their ballots to a drop box or polling center?" Who'd like to answer that?

Joyce Vance:

Well, I'll take a stab at it, and I think the answer to your important question, Nancy, is that they know that it becomes virtually impossible for these folks to participate in voting. This is the animus that's behind so many innocent sounding laws. For instance, the requirement that you have certain types of state officially issued identification in order to be able to vote.

That might seem pretty innocuous if you've got to use your driver's license to get on board of an airplane, but we've discussed in the past how difficult it can be for people who are older to have driver's licenses once they've stopped driving or passports when they're not people of means. Many of these restrictions make it really tough on people who are elderly or are members of the disability community to vote. For instance, drive-up voting and mail-in voting are really designed to make it easier.

And here's the crux of your question. It would be legitimate to impose limitations if there was some reason to believe that allowing people to vote these ways contributed to fraud, but they don't. There's no evidence of widespread systematic fraud that influences the outcome of elections. And

frankly, there's very little evidence of even incidental fraud involved in voting. There are plenty of circumstantial guarantees of the trustworthiness of these ballots.

Some people would say too many hoops that folks have to jump through as is, and really no reason to see these moves, increasingly by majority Republican legislators, to make it more difficult for folks in the disability community to vote.

Jill Wine-Banks:

I add to that, that when I was deputy attorney general with Illinois, we had a very active disability rights group. And one of the things they discovered was how many impediments there are. Tables that are too high or too low, buildings that don't have access even in the days of ADA when all buildings are supposed to have access. Elevators that are blocked. There are so many things. Machines that are used specifically for people who may have, for example, for blind people, that no one in the voting area can use.

And they say, "Well, you just can't vote because we don't know how to use these machines. They intimidate us." There are so many impediments. We must take this very seriously. Our next question comes from Jane. "If Members of Congress or the executive branch are subpoenaed to appear before the January 6th hearings, are they required to attend? If Jim Jordan is subpoenaed, is he required to attend? And can he refuse to provide any information?"

Kimberly Atkins Stohr:

Yeah, I'll take a stab at that. The answer is yes. The January 6th commission has full congressional subpoena power, which means they can ask people to appear. If they decline to, they can issue subpoenas calling them to appear. And if they ignore that, they can refer it to the Justice Department to prosecute for obstruction of Congress. And in the past, what we saw, especially when the executive branch was in the opposite party, this just wasn't enforced. But now it seems that this Justice Department is very likely to grant the request by Members of Congress to enforce these subpoenas. So yes, they have to just because you're a Member of Congress or a former member of the executive. You do not have special immunity to that.

Jill Wine-Banks:

So you answered that question and also one from @L-A-G-B-I-L, who wants to know about people being jailed. And now that there's the Department of Justice that will enforce those rules, they could be. Our last question for today comes from @J-D-U-B047. "Is it true that executive privilege doesn't really exist? Can Congress or prosecutors refuse to accept that excuse now or in the future?" Barb, you want to take a stab?

Barb McQuade:

Yeah, I'll take a stab, but I want to hear your thoughts on this too, Jill. Your Watergate experience, I think makes you the queen of executive privilege. I don't know if it's JDub047, you're right that it doesn't exist in that it is not spelled out or written in the constitution, and there is not a statute on this. It is a judge created doctrine, but it is one that is strongly suggested by the concept of separation of powers that the two branches have to accommodate each other.

And so we saw in the Nixon case during Watergate with regard to the tapes, that the courts did recognize this concept of executive privilege. The idea that people working for the president should have the ability to make decisions without worrying about someone looking over their shoulder to give

candid advice. But it was not absolute that it had to yield under certain circumstances, under kind of a balancing test.

And in the Watergate case, of course, it was a criminal investigation where they said that the privilege had to yield because a grand jury was seeking this information, and the grand jury is entitled to every "man's evidence." And in this instance, most recently DOJ has said that the January 6th insurrection was an extraordinary circumstance that caused the privilege to yield. But Jill, I'm sure you have insights about that from your own experience in Watergate.

Jill Wine-Banks:

Well, you have very, very astutely summarized exactly the state of the law, which is that it is a system that allows people to have to respond that no man is above the law, no woman is above the law either. And that the president can be required to produce evidence when there is no alternative source for that information. And that was the basis for the US v. Nixon decision that allowed my office to get the tape recordings of the president.

It is interesting because people forget that there were two plaintiffs originally, and that was Congress wanted it as well. And they didn't get it. They got the information because we turned it over to them after our grand jury acquired it. But the court said in a criminal case, there is a higher priority that has to be given to allow the disclosure of even confidential information.

It is a very valuable privilege, the executive privilege, and it is true that presidents rely on confidential information. But it's sort of like the attorney client privilege, where there is a crime fraud exception. If you're committing a crime, you can't then claim that it's executive privilege and that you don't have to turn it over.

And when we selected the tapes to subpoena, we were very careful in selecting tapes where we could make a very credible argument to the court, that the conversations were in furtherance of a crime, that they weren't political in nature, that they weren't policy-related. And so people need to keep that in mind. Executive privilege does apply when it's policy and politics, it doesn't apply when you're committing crimes or planning an insurrection. Thank you for listening to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, Barb McQuade, and me, Jill Wine-Banks.

Don't forget to send in your questions by email to Sistersinlaw@politicon.com or tweet them for next week's show using #SistersInLaw. This week sponsors are Girlfriend Collective, Function of Beauty, Fast Growing Trees and Noom. You can find their links in the show notes. Please support them as they really help make this show happen. To keep up with us every week, follow #SistersInLaw on Apple Podcasts or wherever you listen. And please give us a five star review, we love to read your comments. See you next week with another episode #SistersInLaw.

Kimberly Atkins Stohr:

[crosstalk 01:15:50] He's such a nice man whenever I did not work him.

Joyce Vance:

He used to confuse Barb and me though. He couldn't keep us straight.

Barb McQuade:

Yeah, well, welcome to the club, right?

Jill Wine-Banks:

That's great.

Kimberly Atkins Stohr:

Some of our early listeners were not alone.

Barb McQuade:

Oh, all the time.

Joyce Vance:

Oh, we get it all the time.

Barb McQuade:

I was in an airport with my husband once when a woman approached me, she was like, "Oh, Miss McQuade, I'm such a huge." And Bob is like, "Dude, what is going on?" I-

Joyce Vance:

I got it in a Michigan football game in Ann Arbor, like, "Joyce Vance, we love you."

Kimberly Atkins Stohr:

What? Joyce Vance.

Barb McQuade:

... You just cannot imagine.

Joyce Vance:

I just take it [inaudible 01:16:25]

Barb McQuade:

I had it during physical therapy in Birmingham after my shoulder surgery, where a woman who was there with her football player kid who was getting rehabbed came over and said, "Oh, Barb, I just want you to know I'm a huge fan." I was like, "I'm in Birmingham. Come on."

Joyce Vance:

That's great.