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Barb: Welcome back to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, and me, Barb McQuade. Jill Wine-Banks will be back next week, and we already miss her.

Well, we've had a couple of great shows, live podcast shows, in Chicago and Detroit, and next up is Boston on May 30th. We'll be there and looking forward to that at the Shubert Theatre. For tickets, you can go to politicon.com/tour. This week, we'll be discussing the Trump trial as the government winds up its case. We'll also discuss the bizarre case of Justice Alito's false flag. And we'll be talking about the Supreme Court's decision on a gerrymandering case out of Louisiana. But first, for Chit Chat, I want to talk with my sisters about our visit to New York and our trip to the Webbys. That was a lot of fun to go claim our Webby Award. Kim, how about you? Did you have a good time while we were there?

Kim: I had a fantastic time. I always enjoy having an opportunity to hang out with my fellow sisters, and we also got to do it with our producers as well, which was really nice. And we saw some celebrities in the crowd too. It felt very surreal. But I have to say one moment that I'm a little embarrassed by is at one point I was walking by and I glimpsed the governor of Michigan, Gretchen Whitmer, and I squealed like a fangirl and went and dashed through the crowd to get Barb and said, "Barb, you got to introduce me to the governor of Michigan, which she did. And I was still fangirling. I don't know what I said to her. I probably sounded like an idiot, but I was so happy to get to meet her in person. I had never met her before. I hope I didn't embarrass you too much, Barb.

Barb: No, I think she was excited to meet you, Kim, and all of the sisters in law. In fact, she of course was there because she won a Webby for the best political ad campaign online, which was her Governor Barbie ad campaign, and she brought Governor Barbie and Governor Barbie's car, which was a remote control-operated car. So that was a lot of fun. Joyce, how about you? You seem to be having a good time. You were looking smashing in your sequined pantsuit.

Joyce: Yes. I was dressed a little bit out of character. In other words, not in all black, but it was a fun night. And Kim's favorite moment was mine too. I loved getting to meet Governor Whitmer. She was so incredibly personal. I thought maybe we're talking to the future of the Democratic Party. Wouldn't that be wonderful? President Barbie.

Barb: Yeah, there you go. Yeah, we are very fortunate here in Michigan to have a number of wonderful women leaders, including our governor, Gretchen Whitmer. Big Gretchen, she's affectionately known here, and she was referring to-

Joyce: And she said, "I'm called Big Gretch," which I just loved about her. She was so just authentic and normal.

Kim: I think that's what I squealed. I think I squealed, "Big Gretchen. Big Gretchen."

Barb: And I think she referred to her Governor Barbie as Li'l Gretch.

Joyce: Li'l Gretch.

Barb: L-I-L.

Joyce: But yeah, and we have to give the whole image, right? She was also wearing a bright pink Barbie core suit. She played the role perfectly with no shame.

Kim: We'll put a picture that we took with her in our show notes so that you could see it.

Barb: So it was a lot of fun, and we were proud to claim our Webby right there along with Julia Louis-Dreyfus and Kara Swisher and all of the other stars of the internet. So thank you to our listeners for voting for us. We really appreciate it.

Kim: As we head into the warmer months, nobody wants to spend lots of time in a grocery store, and that's why I love HelloFresh so much. With HelloFresh, get farm fresh pre-portioned ingredients and seasonal recipes delivered right to your door. There are no trips to the grocery store, which I love. No wasted ingredients, which I also love. And no menu planning or grocery lists. You can count on HelloFresh to make home cooking easy, fun, and affordable. That's why they're America's number one meal kit.

Barb: It's time to stop staring blankly at the fridge, wondering what to make for dinner, or in my family, the phone. Make restaurant quality meals at home without the high cost of takeout. Plus, HelloFresh's new ready-in-20 recipes are on the table in just 20 minutes. That's even quicker than delivery. You can also treat your taste buds and get summer ready with balanced, fit, and wholesome recipes full of fresh produce and under 650 calories per serving. One of my favorites is the garden spinach ricotta ravioli.

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This week at the New York criminal trial of Donald Trump, his former fixer, Michael Cohen, took the stand as the prosecution's witness, one of its key witnesses. And he was there to try to tie the crime, which is making payments to Stormy Daniels for her pre-election silence, to the cover-up, which is the falsification of business records. And I wanted to get you guys response reaction to it as former prosecutors. Joyce, how do you think Michael Cohen did in terms of helping the prosecution make its case? And did he have any credibility problems?

Joyce: Yeah, it's a good question, Kim. Some folks may disagree with me, but I think that as a practical matter, the jury has to believe Cohen's testimony that Trump approved the plan to pay Stormy Daniels in order to convict. So his testimony becomes very important in that light. There are pieces of evidence along the way that corroborate Cohen, but his testimony is central, especially since witnesses like Allen Weisselberg or what lawyers call unavailable to testify. And so it's up to Cohen to put Trump in with the group that's executing this plan. That meant his credibility was always going to be an issue. He has admittedly lied in the past. So the question was, was he lying to the jury? Could they believe that he was being truthful with them knowing that he had lied repeatedly and even under oath in the past? And he held up very well on direct. He moderated his usual boisterous personality, answered questions with a simple "yes, ma'am" or a "no, ma'am." But there was a bit, I think, of an unforced error on cross that I think you want to take up with Barb.

Kim: Yeah, Barb. So what did you think about Todd Blanche's cross of Michael Cohen? Was his questioning effective or was it not? And how do you think Cohen held up?

Barb: Yeah. Well, right out of the gate, Todd Blanche did something that I considered to be not just poor form, but really ineffective. He asked a question about himself. He said, "Isn't it true, Mr. Cohen, that you once went on... We've never met before, but you once went on TikTok and called me a crying little expletive. Isn't that right?" And Cohen said, "Yeah, it sounds like something I'd say." So immediate objection, call blank. He's got to know that's objectionable, but he does it anyway, which I just thought it was bush league. And if I'm a member of the jury, I'm like, "What are you doing? What does it have anything to do with it?" We know he's a jerk. We know he's a bad guy. And so the judge admonished Todd Blanche, and he began again. So I thought it was unprofessional and ineffective personally.

And then Blanche is not a great cross examiner. I've been reading the daily transcripts in addition to following it on the news, and he's meandering. And maybe part of his goal is just to wear down Michael Cohen by making this thing last all day, but effective cross examination, I think, is you pick a few key areas and you have a few questions designed to set that up. You get in, you get out, you sit down, and then you use in closing argument what you heard as ammunition to argue. And instead, he often would ask the one question too many by saying, "And so isn't it true then that you're a liar?" And that just gives Michael Cohen an opportunity to say, "No." So I thought that the lawyering wasn't super effective, but of course what really matters is how Michael Cohen held up and what the jury is going to think about him. There was much made about a couple of things, and in my view, I really thought Blanche was making mountains out of molehills, which I think ultimately, if the jury sees it the same way, can really backfire against him.

Now, who knows? Maybe the jury fell for it and thought these were really big deals. But one of them is that Michael Cohen has said he didn't think he should have been charged with a crime for a federal tax offense that he was charged with. And he said he felt pressured. And when the judge asked him at his plea hearing back then whether he was threatened or in any way induced to enter his guilty plea, he said, "No," in court. And then later he said he regretted it and he felt pressured to do that because prosecutors were threatening to charge his wife as well with the tax offense for signing the same tax form. And so he has since written a lot of things online, in his book, and other things, that he was pressured to enter into that guilty plea.

And so Blanche, through a long-winded series of questions, said, "So isn't it true then you lied to the judge when you said you weren't pressured?" And he said, "I don't know. It was inaccurate." And he said, "What I thought was I never questioned the facts. I agree with all the facts. I did everything they said they did. I just didn't think it amounted to something that should be charged. I didn't prosecutor should exercise their discretion to charge me when in fact I paid back the money. This is the kind of thing that ordinarily happens through a civil enforcement action. I had no prior criminal record. It seemed to me that my omission was not material and that they should have given me a pass." So that's very different from lying, I suppose. That was one that I just thought that Blanche just made way too big of a deal out of.

And then the other one was this thing where Cohen had testified that on a particular date, there was a phone call to Keith Schiller who was Trump's body man. And that at some point, Schiller handed the phone to Trump and Cohen spoke to Trump and said that he had handled the Stormy Daniels matter. And then in cross-examination, there was an exchange of text messages before that call in which Cohen was saying, "I want to talk to you, Keith Schiller, about a different matter," and that the call itself only lasted for a minute, 36 seconds. And then said, "Aha. It means you were lying. You didn't talk about that. You talked about this other thing, didn't you?" And Cohen said, "Well, I probably talked about both." So once again, you want this jury to believe that this lie. Again, one question too many. And he said, "I'm telling you the truth. This is how I remember it. We had this call."

So I think that ultimately, the prosecution is going to have an opportunity to rehabilitate Michael Cohen in redirect, and then ultimately it's up to the jury to decide whether they believe Michael Cohen or not. This was the case that prosecutors always knew was coming. They always knew that Michael Cohen had problems with lying in the past. He's a convicted criminal, a convicted felon, a convicted liar. But I also think that there's that same argument that we're going to hear from the prosecutors that, "Yeah, and this is Trump's guy. So he's your team, Donald Trump. He's not our team." So we'll see how that shakes out. But altogether, having seen a lot of cooperators get cross-examined in the past, I thought this one went just about how you'd expect it. Nothing more, nothing less.

Joyce: Barb, I agree with you generally, and I think that they will argue that Cohen is Trump's guy. I'm a little bit worried about the way he faltered on this question about the phone call on the 24th. For one thing, I fought prosecutors for not realizing that those text messages were there, which let the defense really get Cohen off guard with them on cross-examination. He clearly didn't know that this was coming. And there were text messages between he and Keith Schiller, Trump's bodyguard, about this alleged harassment by a 14-year-old person who kept calling Cohen's phone. And so Cohen was texting Schiller about that, and Schiller said, "Call me." And that was what prompted that phone call. It would've been great if the prosecution had brought that out on direct. I think that, as you say, they're going to have to clean it up in redirect examination. But if there's one holdout juror looking for an excuse not to convict, this could be it. It concerns me.

Kim: Yeah, that is I'm concerned about that as well. But I also agree with Barb, that it seemed like Todd Blanche was looking for a Perry Mason moment. Like he was trying real hard.

Joyce: A little too hard, right?

Kim: He did. "Ladies and gentlemen of the jury."

Joyce: That's it, that's it.

Kim: So here's one question I want to get your predictions. Do you think Donald Trump is going to take the stand? What about you, Joyce?

Joyce: I think Trump's lawyers desperately don't want him to take the stand. I don't think Trump himself wants to take the stand. But I guess he could theoretically, maybe he's backed himself into a corner where he feels like he has to. I'd say very, very small chance we see him actually testify.

Kim: What do you think, Barb?

Barb: I think no way. I think that there are a number of reasons he should not testify. One is if he testifies, then all of these other bad acts come in to impeach his credibility. And there's been a pretrial ruling this already about E. Jean Carroll and his attorney general fraud case and the Trump Organization tax case. All of those things will be used to cross examine him. I think he's got all kinds of prior inconsistent statements out there. In the same way Michael Cohen has now had to reap what he sowed with everything he's ever said on social media or in public statements, they'll play all those greatest hits.

I think that they will confront Donald Trump with a lot of documents and witness testimony by people other than Michael Cohen, who he will contradict. And then if he does contradict them, there's the risk that he could be charged for perjury or have his sentence enhanced if he purges himself on the stand. So I just think it's too risky. I think it's much easier for Donald Trump to let the chips fall where they may. If he's acquitted, hooray, hooray. If he's convicted, it'll all be because the system is rigged and it was a politically motivated prosecution, et cetera, et cetera. So I think there is zero chance that he testifies.

Kim: I agree with everything you said in terms of that is probably what his attorneys advised him. Right, that is their job. It would be malpractice to not tell him repeatedly everything that you just said. But Donald Trump believes he knows better than everybody. So I'm not saying that it's likely that he will, but I'm not going to rule it out because in the end, his attorneys can advise till the cows come home, but it's his right as a defendant to testify. And I think once a court does that, once a court informs him of that, which they will do in open court, Judge Merchan will, we'll see what he says.

One thing that I think he loves right now is claiming that he's being silenced in the courtroom in some way.

Barb: Yeah, that's convenient.

Kim: It's like no, you're not. No, you're not. You can take that stand under oath anytime and say whatever you like. You're not being silenced. So to give that up is going to be tough for him, but we'll see what happens. But what do you guys think in terms of calling witnesses? So the prosecution is wrapping up, which gives the defense a chance to call

witnesses, but they don't have to. Do you think, Barb, that Todd Blanche or the other defense counsel might put any witnesses on the stand?

Barb: I think I've been reading that they say they have an expert that they want to put on. I'm not sure who that expert would be or what that expert would say, but most cases I ever tried, the defense was no defense at all, that the defense didn't put on anything. They have no burden to do that. And if they do put on a defense, they take on a lot of responsibility, right? Because now they have taken responsibility for sharing a counter-narrative with the jury and proving that that counter-narrative is actually what happened. And I think it's easier, frankly, to just poke holes in the government's case, that say they haven't proved it beyond a reasonable doubt. You got to prove all these elements and we're not so sure about intent. So I think there's a good chance that they just rest and there's no defense whatsoever. But they have made remarks about an expert. Do either of you know who the expert is?

Kim: No.

Joyce: Yeah, it's actually an expert on election law because of course, that's the crime that they allege, that Trump caused the false business records to be created in order to conceal or aid the commission of these campaign finance-related crimes. But the conversations that they had at the bench with the judge suggested that the scope of any expert testimony would be very limited because it's the judge's job to instruct the jury on what the law is. You can't do that through a witness. So that means that this witness could only talk in generalities.

I'm with Barb. I think in the overwhelming number of cases that I've tried, there hasn't been a defense. But Trump is a very different kind of client, and you know he's going to want to try and tell his story. I think his lawyers will say, "We've got this rich cross-examination of Michael Cohen. Let us exploit that in closing. Let that be our case." But you never know. And I guess there's always the outside possibility that they could try to put somebody like Keith Schiller on the witness stand to contradict Michael Cohen. I'm expecting the unexpected, but I'm prepared to be underwhelmed and have them simply say, "The defense rests."

Kim: Yeah. Well, I think that's what they should do unless they have a really compelling witness. I think calling an expert on election law would be the dumbest thing ever. That's really the last taste you want to leave in the mouth of jurors before they-

Joyce: No kidding.

Kim: ... hear closing and deliberate. So we'll see, we'll see. But I think if that's all they got, I think they should just rest. And at least it makes it seem like, "They didn't make their case. We're confident. We just rest." And just as one last bit, we should see next week closing arguments and the case could go to the jury as early as next week. As prosecutors, is there a piece of advice you would give to the prosecution team with respect to their closing argument?

Barb: Outline your closing argument and then cut it in half. I think too many people just talk for way too long.

Kim: Such good advice.

Barb: The prosecution have to set out the elements. And there's been some griping in the press about, "Oh, they don't even know what he's charged with." This is where it's going to happen because we're going to see the jury instructions and then the prosecution is going to have to lay out the evidence that demonstrates that each and every element is satisfied. But I do worry sometimes that prosecutors sometimes just go on too long and they lose members of the jury. And so again, get out, be really succinct in doing that. You don't have to discuss every bit of evidence that came in, but this is their opportunity to put it all together and explain how the evidence supports the elements of the crimes.

Kim: Yeah. What do you think, Joyce?

Joyce: Yeah, 100% what Barb says. This is the opportunity that the government has to explain to the jury why they've proven every element of these crimes. There are only two elements here. One is that the false documents were created or caused to be created. The other was that it was done with the intent to commit or conceal the other crime. And then of course in every crime, there's an implicit third element, which is the identity of the defendant. Here, the government has to establish not only that the crime was committed, but that it was Trump who committed it.

And I think the key part of this is going to be talking about the intent to commit another crime, which I think has been widely misunderstood. The best analogy that I've heard is to a burglary crime. It's just trespassing if you enter somebody's property, but if you enter their property with the intent to commit another crime, doesn't matter what the crime is, it can be theft, burglary, smoking marijuana in their apartment. We'll do it in Alabama. As long as you have that intent to commit another crime, then it's burglary, not just trespassing. So this is the same sort of an idea. If you create the false business records, it's the misdemeanor. But if you do it with the intent to commit another crime, then it becomes a felony. This isn't a trial on election interference or campaign finance fraud. It's just about the intent with which the underlying business records crime was created. Prosecution will have the opportunity to explain that to the jury. The judge will reinforce that when he instructs them on the law. That's the key to conviction in this case.

Kim: Did you know your body starts accumulating senescent cells as early as your twenties? Also called zombie cells, these cells stop producing collagen and hyaluronic acid like they used to, and secrete an inflammatory substance that makes nearby cells dysfunctional. Luckily, there's a solution for zombie cells, and it comes from our friends at OneSkin.

Barb: Founded by an all-woman team of scientists, OneSkin is the first and only skin longevity company to target a key hallmark of aging called cellular senescence, using their proprietary OS-01 Peptide. OS-01 is scientifically proven to decrease lines and wrinkles, boost hydration, and help with the thinning skin that often comes with age. Don't just take our word for it. They have more than 4,000 five-star reviews for their full line of face, body, sun, and travel-sized products.

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Barb: This week brought news of a story about Supreme Court Justice Samuel Alito that dates back to January of 2021. At that time, one of the symbols of the Stop the Steal movement was an upside down American flag. Now, I didn't know that until recently, but apparently that was one of the ways you could signal your disgust with the election of Joe Biden and the belief that his election was illegitimate. And so according to a New York Times story, in January 2021, after the attack on January 6th and just days before Joe Biden was sworn in, an upside down flag was seen flying outside the home of Justice Alito, and Justice Alito confirmed that that was true. Whoa. Joyce, you wrote a Substack column about this news story. Can you tell us more about how this news story hit you? Because I thought what you wrote was really interesting.

Joyce: Yeah, I had a rare moment of blinding anger where I wrote more from the point of someone who was emotionally pissed off by the story than anything else. How is it that in 2021 with election-related cases still pending in front of the Supreme Court, this flag gets flown in Sam Alito's front yard? Well, Sam Alito tells us how that happened, right? It was because his wife was having a little feud with one of the neighbors, a little political feud, and this was her response to a political sign in the neighbor's yard.

I don't buy that for two seconds by the way. Blaming the wife for one thing is just so petty and so immature and so stupid. But the reality is, if you live in a family where one of the partners or one of the members of the family is a judge, you understand that there's stuff that you do and stuff that you don't do. You don't put political signs on your front yard. Your kids don't work on campaigns. There are just common sense restrictions that people abide by because if you are a judge, you care about the integrity of the rule of law. You want the community to have confidence in the work that you do.

For Sam Alito to let that flag fly on his front yard at that particular moment in American history, this is after January 6th but before the inauguration has taken place, it just shows such utter disregard for his role, for his oath of office that I'm still, I'm getting worked up again talking about it. It's just an outrage. And the fact that he has just made that comment in an offhand way seems to be confident that there will be no consequences, it's appalling. I hope that there will be consequences.

Barb: Yeah. I know Joyce wrote, and I think about my time in the US Attorney's office how careful we were to avoid any implication about politics and elections. But Kim, what's your view about the ethical and political implications of any judge expressing views, not just about an election in politics, but about a stolen election after there've been all these lawsuits saying it wasn't stolen?

Kim: Yeah, after all the lawsuits, after the Supreme Courts slapped down these challenges, after the Capitol was attacked by a violent mob. And just so even before we get into this point, to the previous point about even if his wife did this, I'm with you, Joyce. I think I look at that with a skeptical eye. I'm not even elected to anything and neither is my husband. Neither one of us are public officials. We're not public servants in any case. But

I wouldn't so much as put a Black Lives Matter sign on our yard because my husband is a news reporter and he has to cover things, and he can't even have even the appearance that he is giving away his political views or expressing any support or rejection of any candidate or anything. I'm the most opinionated person on Earth lately, and I can't be putting up signs or doing that on our home because it's our home. I can write whatever I want to under my byline. I can say what I want on this podcast. But when it comes to the house that we share, that's something different.

And don't tell me that Sam Alito does not understand that rule. Just common sense. It's not even... Forget the ethical rules for a moment. Common sense tells him that if a flag is flying upside down four days at his home, that he can't just be like, "Well, I didn't do that. That was Martha Anne. Give me a break." Come on. But yes, in terms of ethics, there were cases, as I said, before the Supreme Court on Donald Trump's challenges to the election results. These were things that were before him on the bench. So to express that, he may as well as put up a sign, which I don't know, I don't know if this would surprise anybody, but with Charlton Heston saying, "Out of my cold dead hands with a gun in it," in front of before they have a Second Amendment case. You just cannot do that. That is not what a Supreme Court justice is supposed to do.

I know he doesn't think that ethical rules apply to him, and he's sadly been proven right. But it's absolutely appalling, and I hope that the calls for him to recuse from the immunity case grow and get louder every day because there is a current pending case directly related to January 6th on the court's docket right now with Donald Trump's immunity challenge. And I think that it is gobsmacking given this, and I know that Senator Dick Durbin has already called for him to recuse from that. I hope others do. And if he doesn't, that's really a black eye that Alito himself is giving to the Supreme Court.

Barb: They bemoan their lack of public confidence, and then they have these constant unforced errors like, well, you know why people don't trust you, Justice Alito. It's things like this. It's just to me, really shocking and just beyond tone-deaf to think that you can just get away with this.

Now, as you just said, what can we do about it? Probably nothing as a matter of law, but I'd like to think that public pressure can come to bear such that maybe Chief Justice Roberts pushes him to recuse himself at some point. Because the way that all of our institutions maintain their legitimacy is by understanding that just because you can get away with something, doesn't mean you should, that you have an obligation to have the appearance of propriety, and this really exceeds it. And I thought something very similar happened this week. I wondered if you saw some similar parallels that I saw when Congressional Republicans, so House Speaker Mike Johnson, I think Senator JD Vance was there, and Tommy Tuberville of Alabama showed up at the Manhattan Court.

Kim: Roll Tide.

Barb: Yeah, you must be so proud. Where Donald Trump is on trial, and they were wearing identical navy blue suits with white shirts and red neckties. It was like the Trump clone army or something. And then they gave public remarks condemning the trial as illegitimate, as politically motivated, as election interference, and I guess trying to show solidarity with Trump. And I guess it is not the same thing when elected officials support a member of their party as it is for supposedly nonpartisan judges. So maybe the parallels

aren't quite the same as for Justice Alito, but man, to me, it had that same effect of undermining public confidence in our institutions. It seems to me the way you handle this is you say, "This is a case that is a matter before the courts. The jury will decide this case. We understand. We have confidence that the system works and we put our faith in the jury." But instead it was all of this stuff about political partisan, weaponizing and all those kinds of things. Joyce, what's your view on the appropriateness or the effect of the stunt?

Joyce: Much like yours, Barb, when it comes to Senator Tuberville, who still likes to be called Coach Tuberville, it's not really Roll Tide. It's actually War Eagle. He was the football coach at Auburn. Not a fan but I have great respect for their fans, and I'm sure that it was embarrassing for them particularly and for all people in Alabama to see our senator up there in New York where he did not have the people's business to conduct talking about how depressing the inside of courtrooms were and getting awfully close to if in fact Trump had instructed him to make those comments awfully close to violating the gag order on Trump's behalf.

So I think all of these folks who went up there did a real disservice to their constituents as well as to the institutions. And there was drama yesterday in Washington when the Oversight Committee couldn't hold a vote on their long desired goal of holding Attorney General Merrick Garland in contempt because too many of the clown car Republicans were at Trump's side up in New York, so they couldn't hold the vote. Not that that vote was a good thing, but come on, folks, just do your jobs. I think that this really underscores that the MAGA Republicans are not serious about governing.

Kim: Yeah, I think that that's really true. And another thing that really galls me about the fact that people like Speaker Mike Johnson showed up in front of the court. He's an attorney. As an attorney, you take an oath as an officer of the court. So for him to stand outside the court and denigrate the process that's taking place, to Barb's point, this is not being decided by Judge Merchan. It's being decided by the people of New York City. This trial is one of the purest examples of a government by the people because it is the people of New York sitting in that jury box. We're going to make that ultimate decision. And he, as an officer of the court, insulted that process and insulted them. And I think that that's really disgraceful.

Barb: Yeah. And Kim, I wanted to ask you a question too about the way that visual landed for me with the navy blue suits and the white shirts and the red ties looking like Trump's clones. It really creeped me out, but I'm trying to check my own biases because we do sometimes see women in Congress who will dress in solidarity in the suffragette white, and we'll see them maybe at the State of the Union. Is this different? It feels creepy me, but am I wrong to think that the Trump clone uniform is in some way suggesting that they're showing their loyalty to Trump over the institution of our criminal justice system?

Kim: No. So just to give you an idea, yes. Well, when I graduated law school, our stripes on our graduation robes were purple because purple is the color of justice. So we were all there with our little purple stripes on our stripes on our red.

Barb: I wore one too for graduation.

Kim: Yeah, on our red robes. That is to symbolize something. The suffragette movement, as you said, they wore the color white. And often you will see women in our Congress, elected officials wear that white as an expression of the importance of women's rights and voting rights and things like that. There is a difference between that and, say, I'm going to go all the way to the far extreme. Remember that doomsday cult who all wore Nikes and black and had... That's a cult. They are all expressing an allegiance to some sort of thing in a dramatic way right down to their dress. And I'm not going to say that the people who appeared before the courthouse were members of a cult, but it's a lot closer to that than the suffragette movement. They were not standing up for a principle. They were not espousing an important goal or moral compass. They were expressing fealty to a man who they have to bow down to for their own political lives.

And in that sense, it really was clownish. I thought it was funny the day that everybody showed up in the blue suit and the red tie, and it turns out Trump wore a gold tie that day and made them all look stupid. It's just that's how stupid this is. And that's just an image that sort of an own goal. They are themselves just admitting the fealty that they're willing to give to someone just for the sake of political power. And it's really, I just every day bring something new and more ridiculous.

Barb: Yeah, it seems so humiliating to them. Joyce and I have some friends who sent us a text of the Manson girls who held a vigil every day outside Charles Manson's 1971 trial, and they were members of his cult with shaved heads.

Kim: Yes, it's a lot closer to that.

Barb: Kind of like that, yeah. Kind of like the Manson girls.

Kim, I find you looking more and more like Jennifer Aniston every day. What is it about you?

Kim: We have something in common, and that is our hair care. We are both big fans of LolaVie. Especially in these warmer months when I tend to wear braids, I really like the leave-in conditioner. It goes right on and it keeps my hair, my actual hair, protected, but also smooths down the flyaways that can happen on top of the braids. And it's a really great product. And this episode is proudly brought to you by LolaVie, an award-winning hair care line founded by the fabulous bearer of iconic hair, Jennifer Aniston. Jen knows we all put our hair through the wringer with coloring, heat, styling, stress, and aging. She hated choosing between hair products that work and ones that are good for us. Luckily, she decided to do something about it by diving into the science and using naturally derived plant-based ingredients.

Barb: How many of us had the Rachel at one time? I don't know about you, but speaking of Jennifer Aniston, you may have heard some recent chatter about how good she smells. As we saw at the Webbys this week, the internet is a very strange place, but there's a secret behind the buzz and it's LolaVie. And for a limited time, you can get an exclusive 15% off your entire order at lolavie.com. Just use code SIL at checkout. Jen gave us the Rachel so you know it will be good.

Joyce: The LolaVie product line is inspired by Jen's favorite spas across the world. It's more than just hair care. It's a passport to tranquility for your senses. All LolaVie products feature their signature scent, a naturally derived blend of herbal citrus and woody notes. It's essentially hair care and perfume all in one. I love how quickly the glossing detangler gives me the perfect style and shine.

Barb: You too can unlock Jennifer Aniston-approved hair at lolavie.com. As our loyal listeners, you'll get an exclusive 15% off your entire order when you use code SIL at checkout. That's 15% off your order at lolavie.com with promo code SIL. Please note that you can use only one promo code per order, and discounts cannot be combined. After you purchase, they'll ask where you heard about them. Please support our show and tell them we sent you. Your hair will thank you. You can also find the link in the show notes.

Joyce: Well, it wouldn't be a week in America if we weren't talking about something with the Supreme Court at this time of year. And this week, Barb, let's focus on what the Supreme Court did on Wednesday when they issued a stay in the Louisiana gerrymandering case. It happened out of the blue. I wasn't expecting it. Can you explain what they did?

Barb: I think so, although it's not the easiest thing to understand. They issued an order and it was one of these very short unsigned orders, so that's always a little bit cryptic. And what they did is they blocked, they issued a stay of a federal court ruling that itself blocked the state of Louisiana from using a new map for redistricting. And the goal there of the challengers was to say that the new map was racist on behalf of non-African American voters.

Kim: I didn't even know that was a protected class.

Barb: I am not sure it is. But the upshot of all of it is that there will now be not one but two majority Black districts in the 2024 election. Now, it's really just a temporary thing. They issued this stay. It's called a Purcell stay under their Purcell principle that basically just says once you get too close to an election, you have to just allow the maps to go forward because there isn't enough time to write new maps and redistrict before there's an election. So they just said, "Let's go forward with these maps but you can bring a challenge later." And so it may very well be that the non-African American class still ultimately is able to challenge these. But at least for the 2024 election, the court has said these maps are going to stand.

Joyce: So Kim, talk about the interesting lineup of the justices in this case who dissented and what the deal is on their view.

Kim: Yeah, it's really interesting and it was confusing the way it came down. So first, I have to say, the people who were either dissenting or said that they would've denied the application basically gone the other way. Or Justices Sotomayor, Kagan, and Jackson. So these are not the three that you would expect to be dissenting from an opinion that allowed a more diverse map, a map that better protects the voting power of Black Louisianans to go into effect, that that seems like upside down world, right? Well, no, because although neither Sotomayor nor Kagan gave a reason why they said they would've denied the stay, Jackson did. And what she's essentially saying is, "Look, this Purcell principle that you guys keep applying, I don't agree with that. I don't think that it

is so late in the game that if it was necessary to put in place a fairer map, one that abides by the law over one that doesn't, there's plenty of time to do that."

What she's not saying is that she agrees that this is the wrong map or that this is the wrong outcome. And I think we can infer that neither Sotomayor nor Kagan think it's the wrong outcome too. They think it's the wrong way to do it. And recall, when we talked about the Alabama gerrymandering decision in Milligan, one of the problems with that ruling, although it ended up actually enforcing the Voting Rights Act and to create fairer maps, so allow a fairer map to be put into place as opposed to what we feared might happen was just a further erosion of the Voting Rights Act, it took place after the map was used in 2022. So illegally gerrymandered maps were used in 2022 based on Kavanaugh's reading of this Purcell rule. He said, "Nope, not enough time to put in new maps. Got to let this election go forward and we'll deal with it later."

And then by the time they dealt with it, they said, "Oh yeah, these maps were an illegal gerrymander," but damage had already been done to the voting power of those who voted in the 2022 election. And I think that's what Jackson is getting at. It's like, we need to stop doing that. If there's something wrong with the maps and if there's plenty of time, it's only May, election's in November, we have plenty of time to fix it and we need to stop using this as an excuse to do it. So what I think actually happened is that it was unanimous in the outcome but non-unanimous in the way they came to it.

Joyce: Yeah, I think that that's absolutely right. And Milligan with Kavanaugh's application of the Purcell principle had a real impact. It wasn't just voting power. It meant that for two years there was a representative from Alabama who should not have been there, who was there in violation of the constitutional rights of Black voters. I think that that frankly was a teachable moment for the court where they understood where happened in reality. But Kim, my question is does it go any further? Can we read a trend into this? I don't want to read this one order. Is it possible that the court has finally seen enough of gerrymandering and maybe they'll reverse course a little bit?

Kim: I don't know yet. I don't know. I don't know if this case, as you said, one case can just be particularly bad. And I think Louisiana is an example of that, that even they're looking at this and like, "Okay, guys can't. We're not going to reinstate a different pro non-African American map after we've already held that the other one was okay, that the newer map is okay, so really stop that. Don't come..." First, they came with a Voting Rights Act challenge, then they came with a constitutional challenge. You all need to stop. I think that's what this case is saying.

I also think that the facts in the Alabama case were so compelling that that really compelled them to throw out those gerrymandered maps too. But by and large, I don't know if it's just the issue of gerrymandering, but by and large voting rights cases really have a tough road to hoe in front of this US Supreme Court. We've seen them severely reduce the ability to bring civil actions in order to enforce voting rights as robustly as the Voting Rights Act envisioned. So I'm not going to say that this is some new turn for this court. I just think that these were just really badly gerrymandered maps, so much so that even Alito was like, "Come on, guys."

Joyce: Well, yeah, I take your point. But Barb, speaking of gerrymandered maps, the South Carolina gerrymandering case, which was heard in October, by the way, just like the

Louisiana case, it's now the oldest outstanding case that's still undecided on the court's docket this term. What do you think is going on? Maybe they could have decided South Carolina and Louisiana together and sought some principled consistency on these lines of cases. Is that asking for too much?

Barb: Yeah, it might be principled. I don't know. As you recall, in October, there was oral argument on this. There was a South Carolina set of maps that had been adopted in 2021 that moved two-thirds of the Black voters out of a district into another one. And their argument was, "No, this wasn't racial gerrymandering. This is just political gerrymandering. Oh yeah, we got our thumb on the scale. All right. But it's just to improve Republican outcomes. It isn't about improving white outcomes. And as you may know, the courts have said, "We can't really get involved when it's political gerrymandering." That's a political question that courts should not get involved in, which is just bizarre. I think that was the Rucho case, but can't get involved if it's racial gerrymandering.

And I think it's a little difficult, too. The phrase they kept using in the oral argument was disentangle. And so the lower court had actually blocked those maps, said those maps did violate the law, but the Supreme Court seemed a little bit skeptical about that and seemed perhaps inclined to restore that gerrymandered map. So I don't know. It seems quite likely that there is some disagreement among the justices on this. So this could be one of those decisions that doesn't come out until those last weeks of the term in June.

Joyce: Yeah, I think that's the tea leaves. Kim, what do you think? You know more about this than any of us. Do you think this is an end of term case?

Kim: Yeah. Oh, definitely. We're not going to see this. And it's crazy too because there are so many end of term cases. There's likely the immunity ruling we have. It's going to be a busy last week in June. But I do think that this won't come out at the very least, even if it's... I think early June at the earliest.

Joyce: Yeah. Well, Kim, in the meantime, there's also we always think about voting rights, especially in an election year. All the aspects of protecting voting rights are critically important. And there's been some news about efforts to interrupt voter registration drives. Is that something serious that we're about to have to turn our attention to?

Kim: Yeah, I think it's important for us to do that and not to miss it because this is a big election year, and there are a lot of shenanigans underway. And some of them have gotten started early, including many states that have not just in places in the south like Florida, but also places like Kansas and other states across the country that have implemented new restrictions on third-party voter registration. So what this does, they come in a lot of forms, but essentially they create really stiff penalties for third-party folks who register voters like organizations, community groups, even volunteers who help to register voters. If there is any error in the voter registration, so if a name is misspelled and a number is off in an address, even the tiniest mistake, if a third party helped to register that person, that third party can be held liable for 10,000, 15,000, in some cases up to \$50,000 in penalties if they do that.

These laws have already had an effect in that. It has prevented some groups. Some groups have just stopped registering voters altogether, and that's the point, right? They want to

tamper down these voter drives, these voter registration efforts, efforts to help people make it easier for people to vote. And they're doing that by targeting them and a lot of election workers. It's tough enough in this climate, you guys to get election workers. And I do encourage people if you want. We are often asked, "What can we do? What can we do to help?" And we say, "Vote." Voting is important, but also helping others vote is important. And if you want to volunteer to be an election worker, that is a great thing to do. But I also understand, just look at Shaye Moss and Ruby Freeman. It's a potentially dangerous thing to do these days, and these laws are just making it worse. It's really, really shocking.

Joyce: Hey, Barb, does DOJ have the responsibility to protect against these efforts? Is there something that can be done here?

Barb: Yeah. Joyce, it's not clear to me, but I think it's a possibility. And if I were working in the Justice Department's voting rights section right now, I think this is something I would be exploring because there are civil enforcement actions when there are efforts to interfere with voting rights. There are also criminal penalties for interfering with voting rights when people intimidate, threaten, or coerce anybody for the purpose of interfering with their voting rights. So I think that's a possibility.

So oftentimes when the Justice Department is beginning to initiate an enforcement effort, the first thing they will do is they'll send what's called a Dear Colleague letter, which is a very polite term, but it will literally begin, "Dear Colleague," and they'll send it out to officials in various states if they believe they're running a foul of federal law and say, "Dear Colleague, the law provides as follows..." And they'll recite what the law provides and they say, "Please be aware that it is part of our mission to enforce voting rights laws, and should we become aware of violations, we will come enforce them."

So I think I'd be looking through some of the statutes to see if there is an opportunity here, because it certainly is an effort to interfere with people's voting rights, right, to stop them from being registered. Who wants people to not vote? The people who are fearful that if everybody voted, they would actually lose elections, right? And in our society, in American democracy, it seems to me that we want to encourage and permit people to be able to vote. So preventing voter registration from occurring really seems like something that the Justice Department should be looking into.

And now comes the part of the show that is truly our favorite, the part where we answer your questions. If you have a question for us, please email us at sistersinlaw@politicon.com or tag us at [@sistersinlaw](#) on Threads, or tweet using [#sistersinlaw](#). If we don't get to your question during the show, keep an eye on our Threads feeds throughout the week where we'll answer as many of your questions as we can.

Our first question comes to us from Jennifer. "When the Supreme Court or any panel of judges makes a decision after a hearing a case, do they discuss the case with each other at any time, or do they each retreat to their corners to emerge with their position later?" Kim, you've covered the Supreme Court. What's your take on that question?

Kim: Yeah, that's a great question. Right after oral arguments is held in a particular case, that day the justices have something which is called a conference, which the nine of them and

only the nine of them, no clerks, no assistants, just them, go into a room and they deliberate the case and they ultimately vote their positions. And then either the chief justice, if he's in the majority, or the senior most justice in the majority assigns the decision to one of the justices. And that starts the opinion writing process. Someone may decide to write a dissent. Those opinions are circulated.

Now during the time, and this can take weeks and months for these decisions to be circulated and finalized, justices can still change their minds. They might read a dissent and say, "You know what? That's pretty persuasive. I'm going to change my mind and join that," or do something entirely different. For example, the chief justice was in a original majority on the Obamacare case about the constitutionality of Obamacare to not hold it constitutional. And he actually switched, ended up writing the opinion himself and crafting this majority which held that in place. So it's not written in stone after they take that first vote in chambers together in conference, but that's where basically the die is cast.

Barb: All right, very good. Our next question comes to us from BJM who asks, "If Trump is found guilty of the 2016 election interference, does the jury or the judge do the sentencing? Does that vary between trials?" Joyce, want to answer that one?

Joyce: Yeah. So this is such a great question. Sentencing will be left up to the judge in this case. In fact, it's left up to the judge in almost every case. One of the rare exceptions is death penalty cases where there's typically first a guilt phase of the proceedings and then a sentencing phase. And the reason that that's the case and the reason that judges impose sentence is that sentencing isn't supposed to be a proper consideration for juries. We don't want to taint juries consideration of guilt by permitting their feelings about how long that defendant might serve in custody if they were convicted, letting those feelings intrude into the process. So you don't want a jury to say, "Oh, I think he's guilty, but 20 years is too long so I'm going to vote to acquit." For that reason, guilt and sentencing are separate. Judges impose sentence at the end of proceedings, and that's what we'll see happen in this case if Trump is convicted.

Barb: Okay. Our last question comes to us from @hahahanotnow who asks, "What is your recommended attire for the law office courtroom? Something tells me Suits does not portray things accurately." I don't know. I've seen an episode or two of Suits. I don't know. It seems kind of accurate to me, but they seem to dress. In my view, I think it depends a whole lot on the kind of law office you're in or the courtroom that you're in. And I think it can vary dramatically geographically or versus whether you're in federal or state court.

Where I practiced for the first many years of my career, I wore a suit with a skirt to court every time and to work. But that really changed over the years. And toward the end of the time that I was practicing, I was more often wearing a pantsuit to court and to work. And because the work involved criminal cases, I typically wore a darker color because I wanted to reflect the seriousness and the solemnity of the courtroom in a criminal case where someone's liberty was at stake. So I probably looked like I was going to a funeral, but I wore a lot of navy blue and black and charcoal gray. Not a lot of flashy colors.

How about the two of you? Would you say anything different for courtrooms or law offices? And obviously there's a lot of casual Friday and people are a little less... If you're not in a prosecutor's office, it's probably a little more colorful than what we wore.

Kim: Yeah. I mentioned last week that when I became a lawyer, I imagined that it would be like Ally McBeal, but the one thing I didn't imagine was the dress because if you recall, Ally McBeal wore these micro mini skirts into court in Boston. And can I tell you, as someone who practiced while that show was on air in Boston, there is no way that I would be able to go in in a mini skirt, bare-legged into a courtroom with these super... Boston, you think of it as a liberal political town, but when it came to its courts and the judges, they were very conservative. And like you, I wouldn't even wear a pantsuit back then. This late '90s, early 2000s. There is no way. And certainly you have to always have pantyhose on. It was very, very conservative that Ally McBeal was not real, you all. It was not real.

But yes, as things changed, they loosened. When I first started covering the Supreme Court as a reporter in '06, there was a bit of an unwritten rule at that point that it's like, "Oh, you really need to wear a skirt and pantyhose when you go to the court. I would not go there bare legged. I would not go there..." And if you've ever been to DC in the warmer months when the Supreme Court is issuing all their opinions in June, pantyhose, no, ma'am. And so one day I said, "Look." It was 100 degrees or something, I'm going there. I'm like, "If they want to kick me out, they can, but I'm not wearing pantyhose in the court." And of course it was fine. As long as you look professional, it's okay.

Justice Rehnquist was more of a stickler. He was really a stickler about the dress code. And if somebody was wearing a tie that was too loud, he would send a note and then the press person would come up and find that reporter. And it's like, "The Chief Justice wants you to change your tie." It was really... But John Roberts seems to care a lot less, so it's a little better now.

Barb: Yeah. We had a judge who would call counsel up to the bench and tell them to adjust their tie if their tie was loosened or something like that and judges who would tell women that their blouses were cut too low. Not me. Never me. They told me mine was too high.

Joyce: All of the above. But Kim, to your point about how hot it is in DC in the summer, I started practicing law in 1985, but spent the two summers before that clerking in Washington. And as a proud member of the bar of the Commonwealth of Virginia, I sat for the bar in July in beautiful Roanoke, Virginia in a suit and a tie because that was the Virginia bar rules. I had on a suit. I had on my little tie.

Kim: What, a tie?

Joyce: To take the bar exam. And dressed like that, whether I was in court or in my office, I was a litigator at a big firm in DC, but even on days that I didn't go to court, I wore a suit to work. I wore pantyhose work. I'm so relieved that we now live in the modern era where people get to live a little bit. It's just silly to think that the clothes make the man or the woman.

Kim: The bar exam is hard enough. I can't imagine being that uncomfortable.

Joyce: Okay, but can I tell you a great story? My best friend got all of us little trolls to put on our pencils. We took it by hand with pencils. And so we all had these little trolls, and the bar examiners were walking around. There were eight of us with them. They were looking at the trolls. They were afraid that it was a secret way of cheating that they couldn't figure out. Oh, hilarious. Those trolls, man. They got me through it. Thank you, Eva.

Kim: Trolls signaling. Can I just tell you my quick bar story? I took the Massachusetts bar, and the first day I believe was the multi-state, which is that's a multiple choice. And that was so hard, and that just wiped me out, and I was so happy to get through that. So then the second day was the essays, and I felt so much more confident about the essays but I was also just so beat and so stressed out from the day before that. I'm like, "You know what? I'm going to take a little power nap." And I put my head down and I took a 10-minute nap in the middle of the bar exam to the point that the proctor came over and touched my shoulder and was like, "Are you okay? Are you ill?" And I said, "No, I just needed a 10-minute power nap." And she was like, "Okay." She thought I was crazy. She thought I was nuts. I passed. I knew what I was doing, but I took a nap in my bar exam.

Barb: That's the definition of cool.

Joyce: Sometimes a girl needs a nap.

Barb: During the bar. She's just showing off to intimidate the other students taking the exam. "Oh my gosh, she's taking a nap during the bar exam."

Kim: I sure did.

Barb: Wow. That's impressive. Thank you for listening to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, and me, Barb McQuade. We're going on tour together and it's been so much fun and it's not over yet. We still have one stop left. That's Boston on May 30th. And so everyone should go to politicon.com/tour now to get your tickets. And please show some love to this week's sponsors, HelloFresh, OneSkin, and LolaVie. Their links are in the show notes. Please support them because they make this podcast possible. Please follow #SistersInLaw on Apple Podcasts or wherever you listen, and please give us a five-star review. It really helps others find the show. See you next week with another episode, #SistersInLaw.

My friend and I were at the bar exam and we were talking nervously as we were getting ready. We were at the Breslin Center at Michigan State University. It's the basketball arena, so it's really big. And we're talking as we're walking in and we say, "You want to use the bathroom before you go?" "Yeah, let's go." And so we keep talking about the rule in Shelly's case or something ridiculous for property or something, and we walk in and then we both look up and we see a wall of men with their backs to us, and we realize they're on urinals and we're in the men's room. So we ran out of there, but it was a good icebreaker for the bar exam.

Joyce: That's great. That's so funny. That's the coda.