

Barb: Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Jill Wine Banks, and me, Barb McQuade. Joyce will be back next week and we already miss her. Let's get on with the show where today we'll be discussing the Supreme Court, which says, "Wait till Monday," amid its otherwise busy week, and we will talk about some of the big decisions it issued this week. Plus we'll discuss the guilty plea of Julian Assange. But first, July 4th is coming up, sisters. Wondering if this is a holiday you enjoy celebrating and what you might be doing to mark the independence of the US of A.

Jill: Well, I love the 4th of July, although one of our dogs hates it. He needs the thunder coat because he was so afraid. This is not Frisbee. This is one of his predecessors. But he really was terrified by the noise. I love the fireworks and I love being with friends and picnicking, barbecuing. It's really fun for me.

Kim: Yeah, I like the 4th of July too. I think it is a real... I don't like the way that patriotism and happiness about being an American and celebrating our nation is something that conservatives think they have a monopoly on.

Barb: Yes.

Kim: I'm a very proud American.

Barb: Yes.

Kim: My family has been on this soil for in excess of 11 generations. I'm as American as you can get, and nobody has a monopoly on that. Plus, I love a good hot dog. I love throwing some franks on a grill. We talked to ad nauseam about hot dogs on this podcast.

Jill: Yeah.

Kim: And we know that. But Jill, yeah, speaking of dogs, Snickers is the first dog I've ever had. Well, she's the second dog I've ever had, period, but the first dog who doesn't like fireworks. And she's so sensitive to them that even if there are fireworks several towns away and I can't hear them or Greg can't hear them, she will hear them and she runs in the basement or she just gets really jittery as she paces and is really uncomfortable. So clothing in the summertime is really not her jam, but our vet gave her some nice drugs for it, so I will make sure that she will be...

Jill: We tried those, Kim, but the thunder coat really worked better than tranquilizers.

Kim: Really?

Jill: Yeah. It did.

Kim: No. Yeah. Snickers has some good meds.

Jill: You got to try it.

Kim: She's chill now.

Jill: Good.

Barb: Does the thunder coat come in women's sizes.

Jill: And it doesn't have pockets, Barb?

Kim: Oh, no. Forget it.

Barb: Yeah, I have lost interest. I love the 4th of July. In fact, three of our four kids are going to be home, so I'm excited about that. We'll do some backyard grilling and all that. And in my preparation for July 4th, I have already put up the holiday bunting, the patriotic red, white, and blue bunting that goes underneath each of our windows.

Kim: Nice.

Barb: I love bunting because not only do I find it patriotic for the 4th of July, but it also reminds me of baseball because they put out bunting only for the big occasions, opening day, All-Star Game, World Series. So I love the bunting. Love even saying bunting. Bunting.

Kim: What's more patriotic than baseball?

Barb: That's right.

I'm very excited because most of my kids will be home next week. And so I want to take a meal to the next level. And I'm thinking Wildgrain is the perfect thing. The Artisanal Bavarian Pretzels are the perfect way to start any meal, especially on a holiday. Their pasta and pastries are amazing too. There's so much to choose from. I love watching the color and flavor come alive when the blueberry pie bites are heating up in the oven. And now I never have to call for everyone when the food's ready. As soon as the smell reaches them, they come running. Wildgrain items are delicious and so easy to make. It's the perfect combination. There's something for everyone and you'll want to try it all.

Jill: You're so right Barb. The fragrance coming from the oven is amazing and Wildgrain is the first ever bake-from-frozen subscription box for sourdough bread, fresh pasta, which I really love, and artisanal pastries. We had the rhubarb desserts last night and it really was wonderful. Every item bakes from frozen in 25 minutes or less. No thawing required. Plus, you can now fully customize your Wildgrain box. So you can choose any combination of bread, pasta, and pastries. You can even build a box of only bread, only pasta or only pastries if you'd like. We know you'll love everything they have to offer.

Kim: And for a limited time, you can get \$30 off the first box, plus free croissants in every box. Vee-vee, I said free croissants when you go to wildgrain.com/sisters to start your subscription. You heard me. Free croissants in every box and \$30 off your first box when you go to wildgrain.com/sisters. That's wild grain.com/sisters. Or you can use the code Sisters at checkout. And you can look for the link in our show notes.

Jill: Well, this week was a big week at the Supreme Court, even though, as Barb has already pointed out, they said wait until Monday for the biggest one of all. But let's talk about some that have been decided, and then we'll get to the immunity question. Barb, one of

those decision was a case known as Fischer, which said that January 6th prosecutions of rioters could not be brought under the statute that involved obstruction of an official proceeding and which carried the heaviest penalty for many of those charged. And so it was first reported as a total disaster for January 6th prosecutions. But was it really a disaster? It seems to me that there are a lot of statistics that show it won't impact many people and might not even impact Donald Trump's prosecution upcoming.

Barb: Yeah, that's right. So the statute is part of the obstruction of justice statute, one of several. And in fact, this is one that I certainly used as a prosecutor. This particular section says, "Whoever corruptly alters, destroys, mutilates, or conceals a record document or other objects with intent to impair the object's integrity or availability for use in an official proceeding is a crime." And then it says, "Or otherwise, obstructs, influences, or impedes any official proceeding, or attempts to do so." So it was that second section that Mr. Fischer was charged under. He's a former Pennsylvania police officer who was charged with disrupting the count, the certification on January 6th by causing chaos at the Capitol. And so he was convicted of otherwise obstructing an official proceeding.

But the argument he made was, well, because it follows this language about alters, destroys, mutilates, et cetera, it can only relate to documents. That struck me as nonsensical. But the court, in all of its nonsensical glory, agreed with Mr. Fischer and said, "You're right. This statute only criminalizes conduct that involves documents or records." But they did, Jill, include some really important language. And I have to think it may have been with this case in mind, the Trump case in mind. Because one of the things they said is, "Our decision today does not exempt from coverage of the statute someone who falsely creates a document for the purpose of acting corruptly and influencing an official proceeding."

So in Trump's case, of course, the charge is based on these false slates of electors that were designed to obstruct the official proceedings. So I think the Trump case is okay. And even I know the Justice Department put out a statement that said, of the something like 1200 defendants who have been convicted to date, only 52 have this particular charge as the only charge in their case. So it's a small percentage of defendants. So I don't think it's a disaster. But I do think it's a big deal for all cases across the country, because this is a statute that gets used in a number of different contexts. And I always thought of it as a catchall. And it was useful to have a catchall because you can't always envision every scenario where someone tries to obstruct an official proceeding. And that was the value of this particular provision.

But now, the court has narrowed it to say it has to relate only to documents.

Jill: Yeah. I agree with all of that and I'm glad that it isn't a bigger problem for January 6th prosecutions, especially the one that is still pending in D.C. So let me turn to you, Kim, because Barb has set it up very nicely, this was really a case about statutory interpretation. And both in the majority and the dissent, they talk about the language that Barb highlighted, which says, for example, it is possible to violate this particular section by creating false evidence rather than altering incriminating evidence.

And so certainly in Trump's case, that would be definitely applicable. So it won't stop the imposition of the harsher penalty if he's found guilty. But can you talk more about how they parsed the interpretation and how this dissent went? That's ridiculous.

Kim: Yeah. I mean, I got to be honest with you, we are talking a couple hours after this and a bunch of other decisions came out. So I cannot say that I read this opinion with great detail. I gave it a good scan because I do have four of the black jobs that the former President talked about in the debate this week. But essentially what they are saying is that, because this statute came out... that came out of the Enron decision, the Enron scandal rather, where there were loopholes in the law that allowed people who did things like shred documents, to not be able to be prosecuted because there wasn't a statute under which to prosecute them. So they passed this as part of Sarbanes-Oxley.

So you can't take a statute like that, according to the majority, and stretch it beyond its original meaning to mean obstruction of any official proceeding. If you do that, then there's really no limits to the law. That's more or less the gist of it that this was really meant to be about things like documents. But I think the language that Barb pointed out came directly from Amy Coney Barrett who during oral arguments, really as a matter, of course, said to the attorneys for the January 6th defendants. It's like, "You know what?"

And this case is not about making a slate of phony electors, for example. I'm paraphrasing only slightly. That's not what's at issue in this case. Right? So we can set that aside. I knew at that point that it's like, oh, okay, at least Justice Amy Coney Barrett is not interested in trying to say that this gets these charges dismissed as to Donald Trump. And I also think that's perhaps why this case came out before the immunity case, because if that is an issue that could tie up the Trump's prosecution, it would be weird to have this come out afterwards. So I think that that gave us a pretty solid idea. But as for the dissenters.

And I get this. The court talks about all the time, "Well, we're just reading the text. We just go by what the text says in our statutory interpretation. If text says it, we do it. If the text doesn't say it, we don't do it." Well, in this case, the text says. It says obstructing an official proceeding. So how are you going to come and say like, "No, that's not what they really meant." And that this, including another ruling we'll talk about later, is an example of the court substituting itself as lawmakers, and that's not what they're supposed to be doing here.

But I think, at the end of the day, for most of the January 6th defendants, it'll make a difference for some, it won't make a difference for most because those who were convicted or entered a guilty plea did so on multiple counts. But it's just another way that the Supreme Court, I think, is giving itself more and more power with every opinion that it issues.

Jill: So I'm really curious. There were two Latin phrases used talking about statutory interpretation methodologies. And I love speaking Latin. But I can't say either of them. So if, Barb, you could say it, I'd love to hear it.

Barb: Well, I don't know how to pronounce it, but I do have something to say about this methodology. There's this idea sometimes in the law that it is all scientific precision. And so there are these canons of judicial interpretation and they cite a couple of them. One is, I'm sure I'll botch the pronunciation, but it's *noscitur a sociis*, which teaches that a word is given more precise content by the neighboring words with which it is associated. So in other words, look at the words around these words to see if they can give you any context to help you understand what it means. And then they talk about another canon, which is

ejusdem generis, which means a general or collective term at the end of a list of specific items is typically controlled and defined by reference to the specific items that preceded.

But what makes me crazy is these canons of interpretation, there are tons of them, and many of them conflict with each other. And so, instead of saying, "We're looking at all the clues here to use our common sense and reach the best conclusion," they suggest that, "Well, we look at these two rules. And ergo, it means it only applies to documents." And then as Justice Barrett points out in the dissent, "Nonsense. Look at the plain language. It says otherwise. Otherwise means, in some fashion, different from the other one. That's all you need to look at. What are you doing with all of this other nonsense?"

And so I think that when interpreting statutes, it's useful to look at all of those indicia of what Congress intended to do. But at the end of the day, if you can't figure it out based on the language, that's when you look at congressional intent. This is the court that's all about textualism. So I find a real strain for the court to reach the result they do in this case.

Jill: Yeah, they're only interested in textualism when it reaches the conclusion they wanted to reach. So much for textualism. It's horrible what happened. But let's move to what's going to happen on Monday. And Kim, I heard you saying you think that the opinion might be something different than the worst that could happen. But before we get to that, Monday is the last day for opinions, unless there's a Friday night surprise announcement. So let's talk about what's left. Is there anything besides immunity, Kim?

Kim: Yes, there is. There is also... One case that I'm looking out for are the social media cases. We've talked about them. Remember?

Jill: Yeah.

Kim: There are laws out of Texas and Florida that seek to try to stop Facebook and other social media companies from a content moderation that they deem is anti-conservative. But there is certainly a problem, right, with states trying to regulate social media. That's really not what they're meant to do. So that case is still outstanding and that's still a pretty big one. But of course, there is the Trump immunity case, which I think is going to blot out the sun when it finally comes down.

Barb: Hey, Jill, you just asked whether there might be any surprise announcements on Friday.

Jill: Yeah.

Barb: This just in, 35 seconds ago, the Supreme Court of the United States in the application for release pending appeal by one Stephen K. Bannon has been denied.

Jill: Yo.

Barb: Go to jail. Go directly to jail. Do not collect \$200, Stephen Bannon.

Jill: Oh, thank you, Barb. I am so excited to hear that live. I'm sure our listeners will know it by the time they hear us, but it's good to know that things happen while we're on. So back

to Monday. Based on this week's decisions, do either of you have a prediction on immunity? Was I right in interpreting you the way I did, Kim?

Kim: Well, so this is what I think is going to happen. And I will caveat this by saying nobody knows anything. I don't know anything. I don't have any insider information. Just because my-

Jill: Oh, you do from your husband.

Kim: I was going to say it. Just because my husband had a scoop doesn't mean I know anything because I literally do not. I do not work for Bloomberg. They keep their secrets tight. But what it feels like to me is going to happen from the fact that it's taken this long from the oral argument and everything that I can glean, I think that the court, in an opinion, probably written by the chief justice, is going to rule that there is some level of presidential immunity. I don't think he's going to find absolute immunity. And it is only absolute immunity that could end this prosecution of Donald Trump right now. I think there might be some limits to it, and then the case will be remanded to the trial court to determine how those limits apply to the case at hand.

Now, I would think that this was a terrible blow to this case, but I am of the opinion that this case was not going to trial before the election anyway. We are already at the end of June. And it's going to be very difficult to do that even if the court found that, totally throughout the arguments that Donald Trump made and the trial started to proceed as normal, I think it would be very difficult to do. I think it's even more difficult to do now after this January 6th ruling, which includes charges that Donald Trump are facing.

And though we said, and I think we're right, that it does not apply to him, there still has to be a motion. He's going to bring it up. He's going to try to challenge it on that basis. And that's just going to take that much longer to have arguments and everything. I think, practically, the fact that the court granted cert on the immunity claim guaranteed that it wouldn't go to trial. But this is the outcome that I'm expecting some partial immunity of some sort, not full immunity, and then it goes back down. But in the end, unless Joe Biden wins the election again, I don't know that Donald Trump will ever get prosecuted.

Jill: So we have to just look forward to before the election, the hearing that might happen in Judge Chutkan's courtroom that will bring out some of the evidence that would've otherwise been presented at a trial, but...

Kim: Both on the issue of whatever the extent of the immunity that the court finds and also the extent to which the Fischer decision applies to Donald Trump. So that's a lot of delay.

Jill: It is. Although it is also up to Smith whether he wants to just drop that count-

Kim: That's true.

Jill: ... so that he can go to trial on the others.

Kim: That's true.

Jill: So that's sort of... I don't know. Barb, do you have any different opinion on this? And also, would you go on beyond this to talk about the civil suit against Trump for damages incurred by many during the January 6th insurrection? And one of our listeners, Karen in Colorado, wants to know if that case is on hold awaiting the immunity decision.

Barb: Well first, what I think we should say is that, what the scoop was that Greg Stohr broke because that was a big story. He was the one who got a copy of this erroneously released decision in the EMTALA case, right?

Jill: Yeah.

Barb: Out of a favorable sort of decision that said that the federal Emergency Medical...

Jill: Labor and...

Barb: What's the T? Treatment.

Jill: Treatment. Treatment.

Barb: Emergency Medical Treatment and Labor Act, Trump's Idaho law, including its abortion ban. So that was good. But Greg Stohr noticed that the court put it up on its website, got a copy of it, reported it, and then suddenly they took it down and said, "We shouldn't have issued that. That was a mistake. Nevermind. Nothing to see here, folks." But he got it. And that really was quite a scoop. Any inside stories on how he got that scoop, Kim.

Kim: None. I got none for you.

Barb: All right.

Jill: So you just mentioned something, Barb, that is one of the rare disagreements among us, and that is whether the timing of the release of opinions in general, and that one in particular, is politically motivated as much as the substance of the decisions. I think we all agree the substance of decisions is politically motivated. But I personally believe that the timing is also something that is of political consequences. And I think that you don't agree with me, both of you, so I'd like to have you elaborate.

Kim: Yeah, listen. I went into pretty great detail in last week's episode if anybody wants to check that out. But look, I've covered the court for 20 years. I think from what we've seen that, one constant is that the more divided cases, the cases that have more dissents and concurrences, and certainly the cases that raise the temperature of the dissenters enough to do bench announcements of their dissents like we've seen this week, those tend to come at the end of the term. Those take longer to get done because they take longer to circulate all those opinions and they take longer to write. So it stands to reason. But to me, as soon as they granted cert on the immunity case, I thought it would be one of, if not the last cases issued this term and that is coming to bear.

And that's fine. People can disagree with me. That's fine. One thing I haven't loved this week is, since last week, I've had people come to me in my mentions, in my inbox and all this stuff saying that I'm gaslighting them because clearly this court is doing everything

for political reasons and clearly this is politically motivated and this, that and the other. I say, one, as somebody who's covered the court for 20 years, I don't know that. And so I don't know how anybody else can know that for certain. The only people who know that are the nine justices on the court.

And secondly, I don't love that people, particularly those who want to see justice done, who stand on the same side of wanting justice and wanting to protect our democracy, go after each other and call them names or say that they're gaslighting just because they don't agree exactly with the worldview of someone else. That is what people on the extremes do. That is what people on the extremes demand. And I think we will do much better, whether it's this, or... and I'm going to make a political point here, on this debate about what the President should do after having a bad debate. I think we should take a minute, take a breath and listen to each other, especially when the each other we're talking about refers to people who want to see this nation do better, who want to see justice done, who want to see equality, who want to see our democracy protected.

And we need to stop coming for each other, you all. You can have a different opinion, you can believe all you want, that this court has calculated everything right down to the minute that this opinion is released. And that's okay. But let's stop arguing with each other over this and let's start listening to each other and working together to try to fix what is broken in our nation.

Barb: Yeah. I write about this concept in my book, cognitive dissonance. And that is, we want people that we like and respect and affiliate with to share our views. And if they don't share our views, we either have to change our view or our opinion of the person who spoke. And that creates this discomfort in people. And as you just said, we have to learn that we can get along with people we disagree with, right? We don't have to agree on everything. And in fact, it's healthy to question and be skeptical of people's views, and debate and discuss, and you can still be friends afterwards.

Some of the best traditions of prosecutors and defense attorneys is, you beat up on each other in court and then you go have a beer afterwards. That's the tradition. And it seems like we've lost that in this idea that it's war and it's us versus them, and if you don't say something that's not perfectly in alignment with my view, then you must be on the other team. So I couldn't agree with you more.

Jill: So you know, Kim, that of course, I agree with all of that about we remain friends and I hope our discussion has been civil. We've even had some of this offline. But it's just so interesting that this is one of the few areas where we really do have different views. And I just see what the court has done as obviously the political substance seems clear because they change what textualism and originalism means depending on the outcome they want. So substantively, that's what's happening. And I see all of these things as being... Obviously the opinion was ready yesterday, why didn't they release it yesterday? Well, okay, they don't want to burden us with too many. Well, then why did they wait so long?

Kim: Wait, what opinion was ready yesterday? We don't know that the immunity decision was ready yesterday.

Jill: I'm talking about the one that your husband got a copy of.

Kim: It wasn't formatted.

Jill: It wasn't formatted, but it was [inaudible 00:26:18].

Kim: So you got to format it to get... I mean, that's my point. It goes through several things happen. There are cases in line in the queue and they require certain steps including formatting to get it ready to be released in the format that it's in. That's why it was so hard to read in the version that Bloomberg had is because somebody posted it before it was properly formatted. It was probably a mistake. But that doesn't mean that there is a nefarious... You can believe that there is, but that's not conclusive proof.

And here's my thing. There's so many things that we know this court is doing badly. There are so many problems that we have conclusive proof of. Let's do that and not get ourselves tangled up in knots until we have the conclusive proof that something else is afoot. Our plates are full as it is y'all. Let's focus on what we have to fight right in front of us.

Jill: And I think we're about to do that, talking about Chevron.

Kim: You know ladies, I've been feeling very active. I don't know how to play pickleball, but I feel like I should learn. And it's all because I have the perfect outfit from Rhone. When you lead an active goal-driven lifestyle, like my goal is to learn how to play pickleball, or at least be more comfortable when I do my regular yoga, your outfit should be the easiest part of your day. But unfortunately, most closets are filled with ill-fitting, fussy, uncomfortable items that nobody likes. So Rhone has stepped up to the challenge. The new Rhone women's Course to Court collection is the most comfortable, breathable, and versatile set of dynamic active wear on the market.

With tennis, pickleball, and golf enthusiasts in mind, and us yogis too, the Course to Court collection was designed to keep you focused on your best moves with premium dresses, quarter zips, polos, skirts and more.

Jill: And it's much more than that because the comfort level is amazing. The fabric feels, I don't know better, than silk, better than velvet. It's amazing inside and out. Rhone puts a premium on fit and functionality for optimal performance by using luxe fabrics like cosmic and celestial knit to support breathability and freedom of movement. Innovation is woven into every stitch, incorporating shape free seams, hidden liners with drop in pockets. Barb, there are pockets.

Barb: Love those pockets.

Jill: They are great. Subtle back openings and double layer waistbands to stay in place and never feel binding. Their pieces even come treated with gold fusion, anti odor technology. Of course, none of us needs that. So you get all day freshness and more wear from fewer washes. The Course to Court quarter zip is my favorite teammate when I want to cover errands, gardening, and a business brunch without a change. I love the style and it's so comfortable. Normally, you need an excuse to wear something. With Rhone, there's never an excuse not to.

Barb: Yeah, I love the Rhone fabrics and outfits. You know, Kim, the only thing I don't like about pickleball? Turns out there are no pickles involved.

Kim: Oh, that's false advertising.

Barb: Yeah, I enjoy a good pickle. But Rhone, on the other hand, is not false advertising at all because the new Rhone women's Course to Court collection features unparalleled softness and performance in sleek layers that are flattering and functional for your entire day. In fact, yesterday, I played both tennis and golf, though not in that order, so that I didn't go course to court, I went court to course. And the collection can get you through any workday and straight into whatever comes next. Head to rhone.com/sisters and use promo code sisters to save 20% off your entire orders. That's 20% off your entire order when you head to rhone.com/sisters and use code sisters. Rhone, for every day, every you, forever and forward. Look for the link in the show notes.

Kim: All right. So just as Jill teed up just hours before we recorded this pod, the Supreme Court overturned a precedent of four decades called Chevron. For those of you who are not admin nerds like me, what that means essentially is there was a rule that when the experts at federal agencies who are tasked with doing the work in those federal agencies to keep us safe, to keep our air and water clean, to keep banks from ripping us off and such, when those experts interpret a rule, when the law may be a little ambiguous in terms of how Congress wrote it, that judges should give them some deference. They should give them the benefit of the doubt as to how that rule ought to be interpreted. The Supreme Court overturned that. Now, it was expected, but it's still important and pretty awful, Barb. Can you explain to us why?

Barb: Yeah. So as you say, the court overturned an opinion decision from 1984, the Chevron case, which set out this rule that the administrative agencies get the first crack at interpreting language of statutes. So Congress passes statutes and then agencies administer them. But of course, in the statute, they don't think about every possibility and every nuance. And so it's up to the agencies to interpret them and decide how they're going to interpret certain language. And what Chevron said is, as long as the agency's interpretation is reasonable, then courts ought to defer to those interpretations. Now, it still means that courts have the power to overturn the interpretation if it's not reasonable. But the reason for having the Chevron deference in the first place is, number one, it means that experts are making these decisions. People who are scientists, people who are doctors, people who are engineers for NASA, professional people are the ones making these decisions.

And the other is, it gives people fair notice about what the law is. And so instead, if it's all just a blank slate, then we're going to see a lot of chaos. As Justice Kagan says in her dissenting opinion, she says, "This is going to inject legal chaos into our government." But I thought the thing that is most problematic about this really is, it says courts know better than experts. And I think that is a dangerous place to be in. David Korn posted a really interesting thing online. He is with Mother Jones. And he says, "Supreme Court Justice John Roberts said in the Chevron decision, 'Perhaps most fundamentally, Chevron's presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do.'"

And then he follows it with the headline from yesterday that says, "Supreme Court corrects EPA opinion after Gorsuch confuses laughing gas with air pollutants." In yesterday's EPA decision, he talked about nitrous oxide or whatever it was. He meant to say whatever this air pollutant was, but he repeatedly referred to it as nitrous oxide, which is laughing gas that you might use at the dentist's office. So I think that perfectly encapsulates what's wrong with this decision.

Jill: Thank you for sharing that, Barb. I love it.

Kim: So Jill, Justice Elena Kagan, who has assumed the role as dissenter in chief since the passing of the late Justice Ruth Bader Ginsburg. She reads this majority for filth. I mean, not just in its decision to boost its own power, but in the fact that it doesn't let precedent stand in the way of it doing what it wants. Tell us more about what she had to say.

Jill: So I would say we need to keep in mind that it was boosting the court's power, not just this court, but any court, because then it's going to resound or return to courts to make interpretations of things they clearly are not qualified to do, as Barb has just pointed out. But this is one more example of them overturning precedent. They have done it consis-... Well, I mean obviously, Roe was a longstanding decision. But this was as well. And everybody has relied on it. The administrative agencies have relied on it. The Administrative Procedures Act was interpreted in accordance with that. And the SEC is another one where precedent has been overturned.

We're not going to have time for that discussion, but basically, the administrative law judges that have made decisions and kept things proceeding are now going to be thrown back to the federal courts, which are already overburdened and don't have enough judges to handle all the cases they already have. So it is that part of her decision that also talks about overturning precedent and that stare decisis is now sort of dead. And we have always relied on the fact that precedent governs. That's how we can make predictions about how we can and cannot interpret things and whether something is legal or not legal. And this throws it all up into the air. Well, maybe it's okay, so I'll just try it and then I'll go to the court and say, "Precedent doesn't matter." That's why it's important.

Kim: Yeah. And Barb, what are you most concerned about in a post Chevron world? Because I think it's hard to understate the impact that this can happen. Federal agencies do work and make interpretations that affect just about every aspect of our lives. I mean, we're talking about drug approval, like mifepristone. We're talking about environmental regulations like Jill was talking about, or banking regulations. What are you most concerned about after this opinion?

Barb: Well, I think the concern I have is that, in this 6-3 majority, we are now going to see challenges for everything that is considered the administrative state. We have got billionaires in business who do not like to be regulated. And why don't they like to be regulated? That's because the business of business is business, and they want to make money. And so anything that stands in their way, like environmental regulations, workplace safety, tax laws, all the kinds of things that get interpreted by administrative agencies, I think we're going to see challenge.

And instead of these agencies now using their expertise to interpret what these rules means, they're going to go to this court. And the 6-3 is going to, I fear, by and large, rule

in favor of deregulation. And so they're going to be able to dismantle the kinds of protections that are there for the good of the public. Things like clean air, clean water, workplace safety, food and drug, other kinds of things that get in the way of big businesses making money, but are there to protect the people.

Kim: Yeah. What about you, Jill? What do you worry about most?

Jill: So I'm worried about every aspect that you mentioned and OSHA and every other federal agency. But it's even worse than that because before it gets to the court, what the court is actually saying is Congress has to make these regulations. And Congress right now is dysfunctional. But even in an era when civil rights legislation passed and when Congress was bipartisan and got things done, they don't have the bandwidth to do regulations and to fill all the gaps in in a statute. And so first of all, they would have to bring all the administrative agency staff onto Congressional staff to help them do that. So what have you accomplished? Really nothing.

I'm worried about this idea that Congress has to do anything. Think of how many cases this year have said, "Well, really, if they wanted it, Congress could do it. Let them do it." And so that is a bigger worry to me than any of the specific regulations, although all of them are of concern.

Kim: And so I want to also underscore the fact that this is just the latest in longstanding precedents that the Supreme Court has just overturned because the majority wanted to, basically. And as Barb says, stare decisis is... Or as Jill said, stare decisis is a thing of the past. What are you worried about in terms of that? I mean, just think we had Clarence Thomas calling for Obergefell to be reviewed. And what might be up next, Jill? What are you worried? What precedent is going to fall next, Jill?

Jill: We've had all the hints we can get from them, and that would include voting rights, it would include contraception, IVF. It could be things like, oh, the wall between church and state. We now have several states that have passed laws mandating not just the 10 Commandments, but a specific wording of the 10 Commandments that doesn't even agree with all religions who believe in the 10 Commandments, let alone those who don't believe in the 10 Commandments. We've had a mandate that prayer be in school. I mean, these are things that terrify me. So I would say that I would like to know that the rights that we have already had will not be taken away, and that statutes that have been passed in accordance with the Constitution will not now be overturned by a rogue supreme court.

Kim: Yeah. And I think just because we don't see them falling like dominoes immediately, I don't think anybody should be lulled into a false sense of security. I mean, one of the things that I just thought was too cute by half by the chief justice in writing this opinion overturning Chevron was, one of the things you have to consider before overturning precedent is how much the nation has relied on that precedent. And he is just like, "Well, it's been so hinky so far. People haven't been relying on Chevron anyway, because the court keeps coming to different conclusions on it." I'm like, "Oh." So all you have to do is erode down your precedent until it's almost nothing. And then you can say, "Well, it's not really precedent. No one's relying on it, so just get rid of it."

It's like, great. That's what they did to affirmative action. That's what they've done to a lot of things. That's really clever. That's really clever, John. Well done there. What about you, Barb? What do you think?

Barb: I think anything that relies on substantive due process is what they're coming for next. Because remember in Dobbs, the majority said, "Oh, this is really narrow. It's just about abortion. Don't worry about anything else." And Clarence Thomas, he's like, "Oh, no. Oh, this is... Folks, I'm concurrent. Because I want to tell you, this is all about... There's no such thing as substantive due process." So anything that relies on substantive due process is gone. And so just for our listeners to know what substantive due process is, there are some things considered to be such fundamental rights that even though they are not specifically enunciated in the Constitution, they're still protected because of that fundamental necessity and right to them.

And so they are things like this penumbra of privacy. And it is from that concept that we get things like the right to an abortion, the right to consensual sexual conduct between people of the same sex. It is why we get the right to contraception. It is the reason we get a right to same sex marriage. I'm sorry. Same sex marriage. Yes. And even interracial marriage.

Kim: Interracial marriage. Yes.

Jill: Yes.

Barb: So I do fear that one by one, those are in trouble if we are not going to rely on precedent, and instead we look at them through what Clarence Thomas says should be the correct lens, which is, if they were egregiously wrong, we should simply overturn them.

Kim: Oh, man. We have to leave it to this majority to decide what is egregiously wrong. So listen, this has been a crazy week, so we didn't even get to things that we could have spent an entire episode on, like the SEC opinion that Barb mentioned and EMTALA that we mentioned. Briefly, the non-decision in that case, or the fact that the Supreme Court okayed the criminalization of homelessness and throughout the Purdue Pharma OxyContin agreement. I mean, so much happened, but we're limited by time. But we will come back to those as we can. But buckle up, the biggest cases are still ahead.

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Well, in other news this week, the mysterious Julian Assange entered a guilty plea, ending 12 years of exile and imprisonment. Julian Assange always reminds me of something out of a Batman movie or something. You'd see him. First, he was hiding out in the Ecuadorian Embassy in Great Britain, he's Australian, because he was charged with some sex crime. It ultimately got dismissed. But after seven years in exile there, then he spent five years fighting extradition from the United States when he was charged under the Espionage Act. Julian Assange, of course, is the WikiLeaks founder who was charged in an indictment with conspiring with Chelsea Manning to violate the Espionage Act by stealing thousands of secret Defense Department documents and posting them on WikiLeaks for the world to see.

Manning was court-martialed and sentenced to 35 years in prison, but had her sentence commuted to seven years by President Obama. And finally this week, Julian Assange traveled to the Northern Mariana Islands, the farthest West out there in the Pacific US jurisdiction there is and entered a guilty plea. Kim, what I wanted to ask you about is some have argued that this case against Julian Assange is an assault on the free press. What's your take there?

Kim: Absolutely not. Don't get it twisted.

Barb: [Inaudible 00:47:19].

Kim: Not in any way. Look, the closest analogy, I think, that could be made is like the Pentagon Papers, right?

Barb: Yeah. Yeah.

Kim: You had these papers that were certainly of news import that journalists got ahold of, and then there had to have been... I'm sure there were many discussions internally, do we release these? Do we not? An editorial decision by journalists was made that it was in the interest of public knowledge to release this. It went all the way up to the Supreme Court, which wrangled with that, right? You have the interest in protecting national security against the interest in a free and fair press. And in that case, the balance tilted in favor of a free and fair press. Julian Assange wasn't a journalist. Okay? Chelsea Manning was not a journalist.

Stealing secrets from the Defense Department is not journalism. This is something different. That is all in violation of the Espionage Act. Whether you're a journalist or whether you are a former President, you cannot have classified information or disseminate classified information against in violation of the Espionage Act. Because if you do, you are not above the law. Right? This is why Donald Trump is on trial. So those lines may be blurred to some, but it seems pretty clear to me. Excuse me. Excuse me. I'm misspeaking. Clearly I'm not qualified to be President. But it is a clear distinction to me in this case.

And listen, I know people think that Julian Assange is a hero and that Chelsea Manning is a hero. And again, you're free to think that. But I think in this case, the law and how it is distinguished from a case like the Pentagon Papers is pretty clear.

Barb: Yeah. And of course, the Pentagon Papers involved a prior restraint.

Kim: Right.

Barb: That was a big part of that case. And there was, as you say, this exercise of editorial discretion. I saw The Post. Remember that movie where they-

Kim: Yeah.

Barb: ... they show him like reading all the papers in Katherine Graham's house?

Kim: Yes. Yeah.

Barb: So it wasn't like, we're just going to put it up, but we just put up anything, which is what WikiLeaks advertises that it does. I thought there was another important factor in this case in that there are allegations that Julian Assange really worked to cajole Chelsea Manning to hack into computer systems that she was not authorized to access.

Kim: Right.

Barb: And so it was more than just receiving the information over the transom and then printing it. This was active efforts-

Kim: 100%.

Barb: ... to obtain the documents. But I don't know. Jill, do you have a different take? Because there are certainly those who are saying this is a blow to free press and we ought to be worried about it.

Jill: I mean, this is a problem in terms of national security, one of your areas of expertise. And of course, because I was around very much so during the Pentagon Papers case and had become friends before his passing with Daniel Ellsberg. I know how-

Barb: Wait a minute. Wait a minute. Did we know this? You were friends with Daniel Ellsberg?

Jill: I thought you knew that.

Barb: Daniel Ellsberg, of course, was the person who gave the Pentagon Papers to the reporters.

Jill: Right. And who was willing to go to jail for it and stood trial. And that trial, by the way, involved... We aren't going to be talking about this today, or are we, about whether a reward and a gratuity and a bribe are the same thing. Because the judge in Daniel Ellsberg case, Judge Byrne, was offered the head of the FBI by Nixon during the pendency of this. And he refused to accept it and went away from it. But he had the conversation. And that was clearly intended as a bribe to make sure that Ellsberg got convicted. But okay. If you didn't, I'll have to post a picture of the two of us together fairly recently.

But yes, I didn't know him at the time. I've only met him more recently through, Common Cause had a panel where I first met him. And then he spoke to the Better Government Association where I'm on the board, and I was able to spend a lot of time with him then. So anyway. It seems to me that it's very different than a case where a person with access... He was a, I think RAND consultant and had access to these and thought that this was in the national interest to let people know what was happening in the war and wanted to reveal this and went to the New York Times and the Washington Post. And the movie does capture, do we release it or don't we release it, by a legitimate obvious journalistic enterprise?

And so the question of whether WikiLeaks was ever in that category or whether it was just out to do damage is something that distinguishes it. I mean, Julian Assange is hardly the person that you want to support. He had the sexual assault that he evaded by not being at home. And then he had this. And he's been hiding out for a long time.

Barb: Allegedly.

Jill: Allegedly.

Barb: Allegedly.

Jill: Yes. Allegedly. Thank you.

Barb: I'm the legal department for SistersInLaw.

Jill: Thank you very much.

Barb: Allegedly. So the plea deal that Julian Assange agreed to and that the government offered was time served, 62 months, so just about five years. And there was some criticism that it was either too low from some people or that it was too high. I think Mike Pence was one who said this is way too low for someone who exposed sensitive national secrets. Others thought he's this journalistic hero and shouldn't get any. Do you think that that number affects how we ought to think about the Espionage Act in a case like this or in a case against Donald Trump? Does it set any benchmark for what Donald Trump might face in light of his own conduct? What do you think?

Jill: That's a tough question, Barbara. I really am... When I think of Donald Trump, the former President doing anything like this, and we don't have any evidence that he did give out information in the kind of capacity that Julian Assange did, it seems worse to me than Julian Assange doing it. But I do think it is at least a clue as to a conviction should include, at the very least, the five years if Donald Trump were to be convicted of the Espionage Act. And then again, I think, well, maybe it should be more for Donald Trump. I'm just not sure I have a firm opinion on this. And I've read on both sides of the issue. So I'm wondering what Kim and you think.

Kim: Yeah. I mean, they're not factually analogous, right?

Jill: Yeah. Right.

Kim: Donald Trump had classified documents. The biggest transgression he committed was refusing to turn them over when it became clear that he had them. He wasn't supposed to have them. The government asked for them back. He was giving all kinds of excuses that they were his. And it was more the obstruction of this.

Jill: Yes.

Kim: Whereas this was a purposeful act orchestrated by Julian Assange to steal sensitive documents for the purpose of disclosing them publicly. I mean, I just think they're so different that it's very difficult to compare the two.

Barb: Yeah. And Donald Trump is also charged in the Mar-a-Lago case with obstruction of justice, but not the one that was decided today, not the particular section of the statute that was decided today in the Fischer case. So that decision won't have any impact on this. Yeah. In some ways, I think the obstruction makes Trump's case worse. I think the failure to disclose them to others makes it better. But I also think-

Kim: Well, that we know of. We don't know.

Barb: Well, that's true. That we know of.

Jill: I'm not willing to admit that. But I-

Barb: Well, as charged in the indictment.

Jill: Yes.

Barb: But I also think one thing that's worse is that he was the person who breached trust because he was the person who had access to this thing.

Jill: Right.

Barb: And as President of the United States, abuse of a position of trust. So some factors to think about there.

Jill: I just want to add, I want to make it clear that my answer to your question was only about the sentence for Espionage Act. I, of course, have a strong opinion about obstruction of justice and how it could totally disrupt our system of accountability if he could get away with the kind of obstruction he did here where we know for sure he moved documents around, he had a deliberate actions to make sure that the government did not get these documents back. Whatever his reason for retaining them, it doesn't matter. When you try to delete camera footage, when you have things move just before the FBI comes in, that deserves severe punishment under the obstruction charges.

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Barb: Well, now comes the part of the show that is our absolute 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](https://www.threads.net/@sistersinlaw).podcast on Threads, or tweet using [#sistersinlaw](https://twitter.com/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 Eric, who asks, "Can a President issue executive orders to alter the composition of the Supreme Court, such as imposing term limits or

compelling justices appointed during a non-popular vote winning presidency to resign?"
Kim, how about it?

Kim: Oh, boy. Yeah, that's a great question. The answer is no. This is a separation of powers issue. And the power to issue rules that govern the Supreme Court, everything from the number of justices on the court, to when their term starts, or anything certainly involving term limits can only be done by Congress. A President cannot take that kind of control over the US Supreme Court. And I will say, even if Congress passes a statute that imposes term limits, like we've seen a lot of when we talked about some of the proposals to do that, I bet you there will be a constitutional challenge to that anyway, just to figure out how far the limits of Congress's power to impose such rules. But it definitely does not rest in any way with the executive. No, no. They cannot do that. No matter what Donald Trump may try to tell you.

Barb: We also have a question from Rosalie, who asks, "If Jack Smith's case is dismissed, would the federal attorney for Southern Florida be able to file it?" Oh, that's an interesting question, Rosalie. Of course, Rosalie is talking about special counsel Jack Smith, who has brought a case among others against Donald Trump for unlawfully retaining national defense documents. And one of the motions that has been filed in that case is a motion to dismiss, on the grounds, that the special counsel was illegally appointed, that the special counsel statute is unconstitutional, and other reasons. And so it's a really interesting idea.

I think the answer, Rosalie, is yes. So long as the statute of limitations has not run, and it won't run until five years after 2020, so that puts us in 2025, then the case could be brought by the US attorney for the Southern District of Florida. So I think that would be fine. And certainly there'd be nothing to stop Jack Smith from sharing all of the information obtained in the case with that office. And so that absolutely could happen. I don't think we're going to see that the case dismissed on that basis. But even if it were, it would just mean starting over. So more delay, which may be the name of the game here.

All right. And our final question comes to us from @jdub047, who asks, "Who is behind Project 2025 and what is its goal?" Jill, what are your thoughts on that one?

Jill: Well, I will answer it in a way that is less than I would like to call them because I have worse names. But there are over a hundred partners in this project. Heritage Foundation and a number of other conservative... I hate to say think, but it would've to be think in quote marks. "Think" tanks. And the reason for this is to change our democracy, to change our government, to completely undo our entire history.

So it is a danger, and it's something that I hope that the SistersInLaw will get to talk about at some point so that we can lay out some of its most dangerous provisions. But it is a huge group of conservative thinkers.

Barb: Thank you for listening to #SistersInLaw with Kimberly Atkins Stohr, Jill Wine Banks, and me, Barb McQuade. Please show some love to this week's sponsors Wildgrain, Rhone, Honeylove, and Helix. Their links are in the show notes. Please support them because they make this podcast possible. 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.

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Jill: I have to go get something. I'll be right back.

Barb: Okay. Is it the bunting?