

Barb: HelloFresh helps you savor the taste of summer with recipes like blackened chicken penne, or my recent favorite, street cart style chicken, which was a recent hit with my family. We all loved it. Right now you can get one free kids' meal per box for two months while your subscription is active at [hellofresh.com/sisterskids](https://hellofresh.com/sisterskids). You can also find the link in the show notes.

Joyce: Welcome back to #SistersInLaw with Jill Wine-Banks, Barb McQuade, and me, Joyce Vance. Kim is out this week, but she'll be back soon. But today, before we get started and including Kim, I've got a couple of announcements because in Kim's absence from our podcast, she started her own new one. She'll still be here with us at #SistersInLaw every week. But boy are we excited about what she's doing and we hope you've checked out her new podcast, Justice By Design, where she introduces you to people who are dealing with the most challenging issues facing our country. Barb was on the last episode with Kim. It was a great one. You can find Justice By Design wherever you get your podcasts or watch it on the Politicon YouTube channel. Check it out. In other podcast news, #SistersInLaw will be live at the 92nd Street Y in New York City on September 20.

You can get tickets at [politicon.com/tour](https://politicon.com/tour). If you are in New York City, we hope we will get to see you live. We hope it will be the second time. We had a great group at our first live podcast in New York last year, and we can't wait to get back. And speaking of live shows, our good friends at MSNBC are also getting ready to do their first this is such a unique thing. It's their first ever live event. On Saturday, September 7, MSNBC hosts and some experts like our brother in law, Andrew Weissmann, will be holding MSNBC Live: Democracy 2024 in New York City. You can get tickets at [msnbc.com/democracy2024](https://msnbc.com/democracy2024). We'll put a link in our show notes. It's going to be great fun. Are you all looking forward to it?

Jill: I really am. I'm really excited. It is going to be a really great show. 13 of your favorite MSNBC hosts will be together all in person in Brooklyn. Catch Maddow, Psaki, Chris Hayes, Stephanie Ruhle, Ari Melber, Joy Reid, Lawrence O'Donnell, Symone Sanders, Alex Wagner, and more all in conversation.

Barb: Yeah, the event takes place over the course of one day. There's an afternoon session and an evening session all talking about the state of the '24 race, but there's also going to be Rachel Maddow's first ever film called From Russia with Lev that will premiere at the day-long festival. So should be highly entertaining as well as fascinating.

Jill: Yeah.

Joyce: That's a touch tone to Lev Parnas, one of those figures who surfaced during the Mueller investigation and leave it to Maddow to make history interesting and to dig up all the good details. This is really exciting. I think it's going to be a lot of fun, but one thing that we know with all of this heightened political talk, it means we're getting closer to the election. That means it's almost fall. And for me that means I'm going back to teaching next week. So before we get-

Barb: Oh, next week. So soon.

Joyce: Next week.

Barb: I got a few more weeks.

Joyce: Before we get started, I need your advice. Ever since the pandemic, I have never been able to figure out what one wears in public. I mean, can I really not wear my yoga pants with a blazer over them like I do at home when I'm doing TV? What do I wear to teach them?

Jill: So don't ask me because I'm celebrating the 50th anniversary of Richard Nixon's resignation, and I was already a lawyer at the time, obviously, and I couldn't wear pants even anywhere because it just was frowned upon.

Barb: Were you just nude then?

Jill: I had to wear skirt suits. No, pants.

Joyce: Barb, come on now.

Jill: So no, I mean-

Joyce: This is PG rated.

Jill: I would have to say yoga pants are a no. Trousers are okay. Jeans depends on your school. I think I wouldn't do it when I was teaching at Columbia because that's sort of like a city thing. But hey, you're in Birmingham, so you have to decide what's okay for your students.

Barb: Yeah, I think one of the things that's most important, Joyce, is that you be comfortable. You got to look... I think, yeah, that's fine. I think you have to look professional, but in my view, you throw a blazer on over everything and you're good to go. So I think you got a blazer on top of those yoga pants, I bet you look A-OK.

Joyce: I'm going to tell my dean, "Barb McQuade said this is okay," if there are any questions. Well, okay, we have a lot to discuss this week. Let's go on to the show.

Barb: I'm feeling pretty calm. I know it can feel like your plans or worries and to-do lists are never ending, but luckily, when your brain is constantly racing on overdrive, Calm can give your mind a break from the noise. Calm is the number one app for sleep and meditation and gives you the power to calm your mind and change your life. Calm recognizes that everyone faces unique challenges in their daily lives, that mental health needs differ from person to person and that time from meditation may vary. Since self-practices are so deeply personal, Calm strives to provide content that caters to your preferences and needs. I love to use the guided walks sometimes in nature, sometimes just down my street that get me just thinking in the moment and forgetting about my troubles.

Jill: You are so right. Although right now, I am feeling energetic and happy and I want to keep that going. And their meditations range to fit your needs each day from anxiety and stress, relaxation and focus to building habits and taking care of your physical well-being and to keep you happy. There are also sleep stories with hundreds of titles to choose

from, including sleep meditations and calming music that will have you drifting off to dreamland very quickly and naturally. They even have expert-led talks on topics like tips for overcoming stress and anxiety, handling grief, improving self-esteem, caring for relationships, and keeping yourself happy.

Joyce: I sleep so much better now that I incorporate Calm sleep stories into my routine. Daily practice makes a huge difference when stress starts building up. Calm can help you dedicate a few minutes each day to reduce stress so you don't take so much time that it makes you feel more stressed out that you're taking the time. You can improve your focus and increase your overall well-being. The Calm app puts the tools you need to feel better in your back pocket. If you go to [calm.com/sisters](https://calm.com/sisters), you'll get a special offer of 40% off a Calm Premium subscription with new content added every week. Stress less, sleep more, and live better with Calm. For listeners of our show, Calm is offering an exclusive offer of 40% off a Calm Premium subscription at [calm.com/sisters](https://calm.com/sisters). Go to [C-A-L-M.com/sisters](https://C-A-L-M.com/sisters) for 40% off unlimited access to Calm's entire library. That's [calm.com/sisters](https://calm.com/sisters). Look for the link in our show notes.

Barb: This week, a federal judge in the District of Columbia found that Google has violated antitrust laws by stifling competition in internet search engines. The judge will determine later what the remedies are, but this is a real blockbuster case. So first, Joyce, can you just tell us about the case? It was brought by DOJ and state attorneys general. What's the gist of the court's finding that Google violated the law?

Joyce: Yeah, so this case is about whether Google has a monopoly in internet search and has abused the power of its monopoly. And Judge Amit Mehta in the District of Columbia found Google violated antitrust law by stifling rivals in internet search to protect its monopoly. That means they tried to keep the competition from honing in on their business. The key allegation in this case is that Google illegally insured its dominance in part by paying other companies, like Apple and Samsung, billions of dollars a year to have Google automatically handle search queries on their smartphones and web browsers. This is a really huge ruling in the world of antitrust. I mean, if this was an earthquake, it would be a seven or an eight.

Barb: Yeah, I think so. Jill, I can't help but be reminded of this big Microsoft case that happened, it's now 24 years ago in 2000, when DOJ brought an antitrust case about the Windows operating system. Every computer that you bought had Windows on it. Can you remind us what that case was about and more importantly maybe how it changed the market? Because I think that is an interesting bellwether for what we're seeing today.

Jill: It is really amazing to me that it was actually 24 years ago. It seems like there wasn't even computers back 24 years ago, let alone a monopoly. But that's what the court found and they forced a breakup and they claimed that Microsoft was bullying PC makers and preventing them from using other operating systems. And that's what they broke up. And it definitely changed the availability to consumers of alternatives. Before that, Microsoft Word was like the only thing available. And now we have think of all the different things we have, and it's the same now as to what would we have if Google didn't control as much as it controls. And I think we'll get to talk about that a little bit more later.

Barb: So that brings us back to Google. I don't know about you, but I kind of like Google. I use Google all the time. Google has become so successful that it's become a verb, right? Let

me google that. Google itself in their defense said, "We're only big because we're great because everybody uses us. Is that so bad? Don't hate me because you ain't me," essentially. On the other hand, their business practices are pretty heavy-handed. As Joy said, they were paying off Apple and Samsung and all these companies to the tune of billions to force on everybody their search engines.

And I even noticed this morning when I was working on my research for today, when I wanted to open a link using Gmail, it automatically nudged me to open on Chrome. There was a pop-up that said, "Chrome is the preferred browser. Open in Chrome." And Chrome of course is a Google product. So it was an interesting reminder of just how in your face all of that is. So let me ask you, Jill, you hinted at this. I'm interested in what both of you think that is this a good decision for consumers or is it bad for consumers? I like Google, are they going to wreck Google? Or is this a good thing that will benefit consumers? I'm a consumer, that's what I care about.

Joyce: Yeah, I mean, look, competition is always good. It gets us innovation. It can get us lower pricing. If we still had Ma Bell, our world would probably look very different than does, we wouldn't have as many options. And I am old enough, sad to say, to remember when they broke up Ma Bell and people were worried it would ruin telephone service and look where we are. We're in a much better world. So maybe we'll look back on this decision in much the same way one day. But Google is essential to a lot of us. I mean, it feels very important and I love it and I hope this won't damage it in any way. So if that makes me a monopolist, I guess I am one.

Jill: So here's another news for you. It was my law firm, Jenner & Block, that sued AT&T. So we were involved in that case. Not only am I old enough to remember it, but I was involved in it.

Barb: Jill, again from the pages of history, there she was.

Jill: I know it's just really weird.

Joyce: Our very own Forrest Gump.

Barb: Essentially, Jill is responsible for the cell phone, I have to think.

Jill: Well, that's because I worked with Motorola that I'm responsible for that.

Barb: You might even say she invented the cellphone.

Jill: Sorry, you can't get me there. But let me answer your question, which is, and I had a very interesting discussion with three of my best friends last night about the fact that I love Google and I don't even use Chrome, I still use Google, the actual Google. And I think it's-

Joyce: What does that mean?

Jill: I don't know. There's a different icon for it, but obviously it's Google-owned, but it has a different symbol. It's just a G with multi-colors as opposed to the circular colored thing that's Chrome.

Joyce: Oh, I see what you're saying. Yeah.

Jill: So Google has a better microphone so that I can ask questions of it better than Chrome. So that's just my preference, but it's still Google and I think it's a monopoly because it is by far the best search engine. I really, really like it. But my friends pointed out, how do I know that there wouldn't be something better if it wasn't a monopoly, that someone who's been suppressed in developing some startup might have something better? And we know that when you have a monopoly, there are fewer competitors, there are fewer people who can enter the market. So we have as consumers fewer choices. We don't know that it wouldn't be cheaper to use something else because the increased price for what is being paid to people to make them use the Google means that we're not getting the same choices. So I guess I am in favor of this lawsuit and all the other ones that are coming from the Department of Justice.

Barb: Yeah. One other thing I would add about why I think it's a good thing to bust up monopolies. This goes back to the days of Theodore Roosevelt and Standard Oil, who was a Republican by the way, but he understood that these big companies were not good for consumers. They could gouge people with prices because there was no competition and there was no incentive for innovation or creativity because they were fat and happy. But one other thing that's new, I think, from that era is data privacy. And when there's one big search engine like Google, I worry that they're compiling all of our data. They are pushing ads at us. They are able to microtarget us by building portfolios on us so that they know what we like. Now, in some ways it's useful. They're constantly pushing me on things like, "Wouldn't you like to buy this Detroit Tigers baseball cap?"

Well, yes I would. They know me, they know me so well. But it's also dangerous because it allows targeted ads in ways that can really push your buttons. And I think as part of that whole echo chamber of living in bubbles, that leads to polarization in society. So I think that that's another reason that it might be beneficial to break up something as big as Google when it's collecting our personal data. But you mentioned, Jill, that there's some other cases going on, and I wanted to zoom out a little bit because this case seems to be part of a trend in tech. There are pending cases against Amazon and Apple, we talked about that a few months ago, and Meta, in addition to Google, whether it's from DOJ or the Federal Trade Commission, and wondering whether the enforcement is affecting politics. Do you think this is one of the reasons that some of the big tech bros are favoring Republicans? Because democratic administrations are going after these big monopolies and unfair trade practices? What do you guys think?

Jill: Barb, to answer your question, I don't think it's really politically motivated because this case started under Attorney General Barr in the Trump administration. So if it is being viewed as favoring Republicans to be against this, then I think the Republicans should be aware that it started under a Republican administration.

Barb: What do you think, Joyce? Why is it that Elon Musk and all these tech bros want to invest in back Trump's campaign?

Joyce: Yeah, I mean, I think Elon Musk is a whole different story. But around July, it was clear a lot of the tech bros were sort of pivoting and supporting Trump. I think part of it is that democratic administrations typically do engage in more of this kind of work. The antitrust division always gets beefed up during a democratic administration, but there's probably more to that and I think we're actually starting to see it get right-sized. I saw an interesting tidbit that Joe Rogan has abandoned Trump. He ranted and raved in his Thursday afternoon news conference and it was disturbing to many people. So it's good to know that there is some line that folks won't cross when it comes to voting for a president.

Barb: Does it turn out he's a cat lady?

Joyce: He might be. I'm still waiting to see, and maybe we need to do this for our podcast, each of us in full glam mode with a cat draped around our neck. Really, you all, we need to do that for our next little SistersInLaw photo montage.

Barb: Well, very good. I was once an intern at the Antitrust Division at the Department of Justice. You'd think I'd know more about-

Jill: Really?

Joyce: I did not know that.

Barb: That exhausts my knowledge on antitrust law. Antitrust trust no one. That's my-

Jill: Well, I remember my antitrust professor, Handler, who used to say, "Let's adumbrate the exegesis of the situation." And I will never forget that line. But I have to say, preparing for this segment, trying to remember what market share was and how you define it, whether it's too vague or too broad, really brought back memories of more than 60 years ago. So that was pretty interesting.

Joyce: Get out your snug summer dresses. Honeylove has your back with targeted compression to enhance your curves with the comfort of a gentle hug. Their shapewear never rolls down no matter how active you are, featuring amazing design details you'll want to show off. No matter what exciting plans your summer has in store for you, Honeylove's breathable fabric will keep you cool and confident no matter how hot it gets. And for a limited time only, you can get Honeylove on sale. Get 20% off your entire order with our exclusive link, [honeylove.com/sisters](https://honeylove.com/sisters). Support our show and check them out. We absolutely love Honeylove. [Honeylove.com/sisters](https://honeylove.com/sisters).

Jill: Embrace the summer of yes with Honeylove's best-selling SuperPower short for a flawless silhouette under any outfit. It's the go-to thanks to targeted compression technology and a signature X-band that works with your body for maximum style, fit, and comfort. Flexible supports hidden in the side seams ensure your outfit stays sculpted and smooth across its coverage. And the Boost Bands provide fantastic lift plus there's cotton reinforcement where it matters the most and it gives you the perfect amount of compression in all the right places. Honeylove has more than just sculpture wear. They have super comfortable bras, tanks, and leggings for everyday support. Their leggings are the best on days with lots of exercise or on that rare day when you have a decadent day at

home with friends and family. They're seriously so comfortable. No matter what life has in store for you, Honeylove is for you. Don't be stuck in your shapewear, look and feel your best with Honeylove.

Barb: Wow, you make it sound so great. Shapewear should not be difficult. Treat yourself to the best shapewear on the market and save 20% off at [honeylove.com/sisters](https://honeylove.com/sisters). Use our exclusive link to get 20% off, [honeylove.com/sisters](https://honeylove.com/sisters). After you purchase, they'll ask you where you heard about them. Please support our show and tell them we sent you. Say yes to every adventure with Honeylove. Look for the link in the show notes.

Jill: This week, it was especially hard to select just three topics. This has been a big issue oriented week, but we wanted to talk about one of the big ones, which was Jenna Ellis pleaded guilty to the Arizona fake electors indictment. The grand jury was discovered wanted to indict Donald Trump, but prosecutors said no. And I want to throw in sort of a very brief question about what would actually be a forced topic, but it fits in with this one, and it's one of our topics from last week, which was the plea deal with two of the 9/11 plotters who have been at Guantanamo for over 20 years.

They agreed with military prosecutors to plead guilty in exchange for taking the death penalty off the table. No sooner had we recorded our episode last week, then I had to add a little extra thing after we had finished recording because the situation had changed. So Barb, let me start with you. This is a case where we can benefit from your national security expertise. So what happened after we finished recording and where are we now and does any of it make sense or seem fair to you?

Barb: Yeah, it's so interesting, right? We had just finished recording. We got the news that Secretary of Defense Lloyd Austin had put the kibosh on the deal and said, "There's this plea deal where Khalid Sheikh Mohammed and some of his co-defendants planners of the 9/11 attacks had agreed to plead guilty in exchange for not having to be exposed to the death penalty but instead to life sentences." So it struck me as really bizarre and it is strange and I imagine it will invite some legal challenges from these defendants. In the civilian court system, it's completely different. In the military system, and Jill, we talked about this a little bit last week, there's courts martial, but this is the military commissions created by Congress to deal with the people responsible for the 9/11 attacks. And so it was specific legislation and it's had a lot of problems.

There have been all kinds of legal challenges. And so I think in part to avoid those legal challenges and the certainty of conviction, there was also litigation about the fact that their confessions had been obtained by torture and then some of the subsequent evidence was tainted by those confessions obtained by torture that this seemed to me like a pretty good deal. And now the alternative is they must go to trial and that's got some risk. And now there's also this thing called illegal command influence where the person who has been delegated the responsibility is supposed to handle the responsibility and a superior officer is not supposed to use politics to influence the outcome of the decision. I think they've opened themselves up to that argument now. And so it wouldn't surprise me frankly to see us go all the way back to where we were before at some point, but it was really a head-scratcher that they did not have internal communications such that Secretary Austin had already signed off on this. I mean, that was baffling to me.

Jill: So yeah, you've already mentioned one of the strangest things of this, which is that it's in a military court instead of in a court. I mean when we think of trials, we think of the Department of Justice. We don't think of the SecDef having anything to do with squashing a plea deal. And it does look a little odd, and so we'll have to wait and see what happens whether it ends up back on the plea deal being agreed to.

But let's move on to Arizona, the fake elector case there. It was filed in state court less than four months ago, so it's pretty fast when we say that something has happened, which includes a plea by one of the fake electors, Republican Lorraine Pellegrino, and by Jenna Ellis, who along with Rudy Giuliani and Mark Meadows was indicted for her role in the fake elector scheme, although Trump was not indicted in this case, but he was named as an unindicted co-conspirator number one.

So let's look at what's going on there in terms of the Georgia case involves the same charges about fake electors and Jenna Ellis pled guilty in that case and her law license was suspended for three years as a result, and it will be reinstated only if she proves by clear and convincing evidence that she has been rehabilitated, has complied with all disciplinary orders and rules, and is fit to practice law again. Now she has pleaded guilty in the Arizona case and two days later, Pellegrino did the same.

There's a lot of news about this. Joyce, I want to ask you, you've been involved in reviewing disciplinary charges against attorneys in Alabama. What do you think about the punishment that she got in the Georgia case that Jenna Ellis got in the Georgia case and what do you make of the Arizona case in general and Ellis's plea there, which includes a cooperation agreement?

Joyce: Yeah, so I sat on a bar grievance committee in Alabama, and typically these committees are very permissive for lawyers on a first offense. But I'm going to go out on a limb here and say that a three-year suspension of her Colorado bar license is simply insufficient for Ellis. I mean, it's not like she made an inadvertent error. It's not like she mishandled client funds. It's not like she missed a couple of deadlines. She was trying to undo democracy. She was trying to help a president steal an election, and I appreciate her tearful guilty plea in Georgia where she has pled guilty and received a sentence of five years of probation where she said that if she had to do it over, she wouldn't do it the same way.

That's great. She should never have the opportunity to do it again. We don't need her in the practice of law. So I know some people may think that's a little bit harsh, but I think bar associations have really failed by not taking that strong stance for every lawyer who was involved in the insurrection. They've taken too long, they haven't been firm enough, and what that sets up is the possibility that it will happen again.

Barb: I completely agree with you, Joyce.

Joyce: Thank you. I appreciate that. I was afraid I was going to be the mean mommy here. It does look to me like there's real progress going on in Arizona. This is an attorney general who knows what she's about. She took this case on almost immediately after she took office, investigated it hot and heavy, went ahead and got an indictment. Jenna Ellis has a full cooperation agreement. That means that she only gets this very favorable treatment dismissal of all charges if she cooperates truthfully, and there is some language in her cooperation agreement, it requires her to cooperate in all state and federal cases if she's



called to. Now, look, that is boilerplate language. I got to say I put that in every cooperation deal I ever made a defendant sign-off on. So it could just be that. It could just be boilerplate that's always there.

But there's a possibility that she can provide some assistance to Jack Smith. And in case you haven't noticed, Jack Smith is struggling right now to realign his case after the Supreme Court tried to cut him out at the knees. So does Jenna Ellis have anything of value that she can offer? Could she help him have an additional theory? Could she give him some direct evidence that he can use because it involves personal acts, not official ones so the Supreme Court's immunity opinion doesn't interact with it? There are possibilities here, right? She was around for a lot of this. She may have something to say not just about Donald Trump, but about other witnesses that Jack Smith or the Arizona Attorney General would like to convince to cooperate. She could be really valuable and sort of a game changer in this regard. But lots of ifs, we don't know for certain.

Jill: And certainly she could be valuable against Rudy Giuliani and Mark Meadows who are co-defendants or were co-defendants. They are still defendants. She is not. And I just want to also add to what you said. We talked last week about Jeffrey Clark getting a very light suspension that I think we all disapproved of thinking that the recommended suspension was insufficient. But there's another interesting development in the Arizona case, and that is there's been reporting based on some documents filed that the Arizona grand jury wanted to indict Donald Trump, but the prosecutors said no, although they did, as I said, name him unindicted co-conspirator. Also, that they didn't want to indict Ellis who just pled guilty. If they didn't want to indict her or her fellow lawyer, Christina Bobb, but the grand jury did and they did so. Why would they talk the jury out of indicting Trump and what was going on with Ellis and Bobb?

Barb: Yeah, this is super interesting. So first, let me talk about Trump because I think the story is being reported as somehow the attorney general in Arizona chickened out or didn't want to indict Donald Trump and was too cowardly or something like that. I don't think that's the case at all. Prosecutors have discretion and they make strategic decisions about whether to indict, who to indict, I guess that's a whom to indict. And with the pending federal cases, it could really complicate things to add state charges while that Trump case is pending because now there may be discovery obligations that the lawyers in both jurisdictions have that could really mess up the case against the other disclosures, cooperation, things going on in parallel. And so sometimes people get charged in more than one venue and it can work, but usually there's great coordination between prosecutors at the state and federal level to say, "Would it hurt your case if I charged mine?"

And sometimes people say, "Yes, it would stand down. We don't need to charge this person in both venues." And so the fact that they didn't want to charge Trump strikes me as kind of wise, it says that they brief the jurors on what's known as the petite policy, which talks about usually allowing states to go first and fed step in only if there is some unresolved federal interest. But I suppose this is a reverse petite situation where the feds have already charged Donald Trump and they just don't want to muck it up. So I really don't have a problem with that decision to refrain from charging Donald Trump in Arizona, at least not yet. The more interesting thing though is the prosecution did not want to indict Ellis or Bobb and the grand jury did it anyway. In the federal system, that just can't happen because the prosecution has to sign off on the indictment as well, right?

I mean, if I'm a prosecutor and my grand jury is saying, "I want to indict Jill Wine-Banks," and I can say, "No." I'll try to persuade them it's a bad reason, I'll tell them why, but I'm just not signing it, right? It has to be signed by the grand jury foreperson and by the prosecutor with sometimes several levels of approval depending on the case. So it's stunning to me that this is even possible, but I suppose they just felt strongly about the evidence. But just because you can charge someone, doesn't mean you should. There are discretionary reasons and strategic reasons as we just discussed with regard to Trump that it might be a better choice to refrain from charging somebody. So it is surprising to me that a grand jury was even able to charge these two defendants without the agreement of the Arizona Attorney General's Office.

Jill: And this was so reminiscent to me of what happened in Watergate where the grand jury wanted to indict then President Nixon, and so did we, actually most of the trial team, but Leon Jaworski, who was then the special prosecutor, was adamant that impeachment was the right way to go and not indictment. And so we said, "Well, then you're going to have to come in and convince the grand jury that they shouldn't do this." So this goes to your you can, but you shouldn't. And although we thought we should, we did negotiate with Leon. He came in, he convinced them, but we convinced him that we could name Nixon an unindicted co-conspirator, which is sort of what happened here. And his name, by the way, was kept in a safe in Judge Sirica's chambers until the indictment required us to reveal that he was an unindicted co-conspirator. He was just listed as unindicted co-conspirator one. So Joyce, how common is it for a prosecutor to refuse to indict?

Joyce: Yeah, so look, I think that there probably aren't statistics that are kept on this for one thing, but you don't need to see the numbers to know that it's really rare. There are different laws that grand juries operate under in different jurisdictions, which also muddies it up a little bit. But typically we leave these decisions up to grand juries about whether to indict up to a certain point, right? I mean, grand juries might think that they had enough, and the prosecutor might just say, "I can't take this case to court. There's a legal problem. There could be evidence that's inadmissible." Or as Barb says, sometimes even if you technically can indict, there are good reasons that you should not. In the federal system, prosecutors, for instance, have to only indict when there's a national interest when there's a good reason to indict, even if you can and you believe that you can get a jury verdict and sustain it on appeal.

So these can be complicated cases. In reality though, what happens if there's a dispute is this process that you're talking about Jill, there's a conversation where the prosecutors talk with grand jurors, you work as a team, and ultimately prosecutors can lay this on the table for grand juries. And I think it's very rare that there's disagreement at the end of the day. In fact, it sounds like in Arizona, they did agree ultimately with the prosecutor's decision. We don't know if it was prudential reasons, if it was strategic reasons or evidentiary reasons that she did not want to indict Donald Trump, it could have been a timing issue. They could, for instance, have been waiting on Jenna Ellis. It's very interesting that they didn't want her indicted, and now here she is cooperating. So I think to be continued, but this could end up being the most interesting of the state case.

Jill: Yeah, I think they also might just wanted to get to trial faster than if Donald Trump is a defendant. That would complicate it. And if you want to get to trial in a reasonable time, omitting him may be the best course of action.

Joyce: After spending a long day out in the sultry Southern heat cleaning out my chicken coop, I am so glad I have OneSkin's OS-01 FACE SPF Protect and Repair to fight back against sun damage, especially during the travel and vacation season and the chicken coop cleaning out season, I feel great knowing my skin will be ready for anything the elements throw at me. OneSkin's regimen works fast, and the formulas feel amazing when you apply them. I don't go anywhere without OneSkin. I'm actually wearing it right now, even though I'm inside because I love the sunscreen, but I like it as a moisturizer too. Wear it everywhere. We know you'll love it too.

Jill: So you had me at chicken coop cleanup, something that I will never ever do.

Joyce: Oh, you come on down. Come on down.

Jill: Okay, you promised me I get to feed a chicken. Can I hold one too?

Joyce: Only if you're wearing your sunscreen.

Jill: Okay, well, I wear a lot of this product, so I will. And did you know your body starts accumulating senescent cells as early as your 20s? I hardly remember that, but I do know it's happening. Also called zombie cells, these cells stop producing collagen and hyaluronic acid like they're used to, and they secrete an inflammatory substance instead that makes nearby cells dysfunctional. Luckily, there's a solution for zombie cells, and it comes from our friends at OneSkin.

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 peptides. OS-01 is scientifically proven to decrease lines and wrinkles, boost hydration, and help with a thinning skin that often comes with age. I know for sure it does. I recently ran into a fan of our podcast and she asked a political question followed by a more important one. She wanted to know if I really loved OneSkin as much as I've said on this podcast. I told her absolutely, but don't just take my word for it. OneSkin has over 4,000 five-star reviews for their full line of face, body, sun, and travel sized products.

Barb: Well, I don't know much about peptides and zombie cells, but I do know that for a limited time, you can try OneSkin for 15% off using the code, sisters, when you check out at oneskin.co. With OneSkin, your skin can stay healthy, strong, and hydrated at every age. OneSkin is the world's first skin longevity company. By focusing on the cellular aspects of aging, OneSkin keeps your skin looking and acting younger for longer. Get started today with 15% off using code, sisters, at oneskin.co. That's 15% off, oneskin.co, with code, sisters. After you purchase, they'll ask you where you heard about them. Please support our show and tell them we sent you. You can also find the link in our show notes.

Joyce: So on Thursday, Donald Trump held an entirely fact-free press conference where he said things that weren't true, like no one was killed on January 6th, and the Democratic Party nomination was unconstitutionally taken away from Joe Biden. Both not true, and there was lots more along that same vein. Unfortunately, he was not fact-checked in real time, but here we are today, #SistersInLaw. I thought we might do a little bit of fact-checking on a situation that's become really complicated. And the subject of lots of speculation and

rumor, we're here today with the facts and that's Project 2025. Trump has publicly disavowed it. We talked about that a little bit last week, more has happened that we'll go into, and there's a lot of confusion about what's in Project 2025 and what isn't. So today we turn to a claim that we've seen a lot about in the media that Project 2025 would do away with no-fault divorce.

Interestingly enough, the word divorce only appears one time in Project 2025, and it's in a sentence where it's used to describe the separation of policies from the resources that are used to implement them. In other words, in a way that has absolutely nothing to do with the end of a marriage, but marriage, that word appears in project 2025 46 times. It's worth pointing out where it falls. The first time, page four, in a section titled Promise #1: Restore the Family as the Centerpiece of American Life and Protect Our Children, and marriage is described as one of the essential building blocks of a healthy society. Then there's Promise #4: Secure our God-given Individual Right to "Enjoy the Blessings of Liberty." In that section, we are told that our Constitution grants each of us the liberty to do not what we want, but what we ought.

This pursuit of the good life is found primarily in family, marriage, children, Thanksgiving dinners and the like. You all, I'm not making it up. That is the language on the Project 2025 website. Ends up marriage, divorce. Here's the background for no-fault divorce. In 1969, then Governor Ronald Reagan of California, who was himself divorced, signed the nation's first no-fault divorce law and it allowed people to end their marriages without having to go into court and prove that the other party had wronged them. So Barb, here's our state of play. Is it true that project 2025 calls for an end to no-fault divorce? TikTok is full of videos saying Project 2025 will eliminate it. You're our disinformation expert. True or false?

Barb: Well, it is false that it calls for an end to no-fault divorce, but it does talk about restoring family, as you said, as the centerpiece for American life. And many members of the far-right faction of the Republican Party have publicly supported ending no-fault divorce, including J.D. Vance, Mike Johnson, and Ben Carson. There are proposals pending in Oklahoma and Texas to end no-fault divorce. And I think sometimes we think that's just a bridge too far. I mean, that's just not going to happen. But if you think it can't happen, think about overturning Roe v. Wade or hostility to in vitro fertilization. It's really amazing how we're backtracking on all of these things.

And what's so remarkable about this idea of ending no-fault divorce, let's just use the language they use in Project 2025 where they don't say we're going to end no-fault divorce, but they do say that this pursuit of the good life is found in family, marriage, children Thanksgiving dinners and the like. They couldn't come up with any more, so they had to say, "And the like." But they say our constitution grants us the liberty to do not what we want, but what we ought. I thought freedom, right? What about freedom? Here we are in America.

Joyce: That's Kamala Harris who's calling for freedom, not these guys.

Barb: I mean, I know many times Republicans have talked about the freedom to pursue liberty or the pursuit of happiness, whatever it is. This idea that there's only one way to conform with a duty is our responsibility under the law in the Constitution. Whoa. I mean that is some pretty radical stuff that is the antithesis of freedom. I mean, I'm married, I'm

happily married and I have a happy family. And I think family units can be helpful to society, but the idea that people don't get to choose that that is the course of their life is just so contrary to the notion of fundamental freedom.

Joyce: Yeah, I mean I think that's important. And so I think it's good for us to say that Project 2025 does not come out and have a sentence in it that says, "We will end no-fault divorce." Right? That's not in it. But Jill, context really matters. And Barb touched on this a little bit. Can you talk about where the so-called conservatives in the Republican Party, folks who I think are better at this point designated as Trumpists or MAGA Republicans? Where are they on these issues?

Jill: So before I answer that question, I just want to add to Barb's comments. I don't know if either of you remember or ever watched Married... with Children. One of the stars was Katey Sagal, who was a backup singer for Bette Midler, my all-time fave. And one of the things that is clear here is that J.D. Vance, for example, says, "If you're married with children, you should have more of a vote than childless people because you have more invested in the country and the future," which is total nonsense.

So sort of leads to an answer to that question as well, because it does in fact show that where they are on this is is family and children and old-fashioned Christian values and when they want to put up the Ten Commandments, it's a specific Ten Commandments. It's not a generic one. So I think the answer to your question about that is that they are really depriving us of our freedom. Thank you Kamala Harris for getting it back for us. So the bottom line is Trump's party and his likely conduct in office will be supportive, although you have to say on no-fault divorce, given his history that he might not approve of having to have taken proof of fault in his divorces. So maybe on this particular issue of no-fault divorce, he would veto any kind of legislation that tried to abolish no-fault divorce.

Joyce: Oh, come on, you know Trump. He's got his divorces. He doesn't care about other people once he's had his way.

Barb: I don't know, Melania might want a word.

Joyce: That's true. But the landscape here is pretty interesting. There's an Oklahoma state senator, Dusty Deever, introduced a bill in January that would ban that state's version of no-fault divorce Republican Party in Texas in its 2022 platform in a plank that still will be in for 2024. They've called for an end. As you pointed out, J.D. Vance doesn't love no-fault divorce. I think he wants to make sure that his wife stays in the fold. And others like House Speaker Mike Johnson, Ben Carson, the former secretary of Housing and Urban Development, they've all spoken out in favor of tightening these divorce laws. I think this is part of this same trend that we're seeing post-Dobbs. Everybody is saying, "Oh, well, abortion, we've lost abortion. We have to work on that." And they're not thinking that there are other horrors behind it like the loss of birth control or the loss of no-fault divorce. So Barb, let's just underscore the point. Why is it important to have no-fault divorce available as an option for people?

Barb: Yeah. Well, starting with this idea of freedom that we should be able to choose our own destinies in American life, I think is the biggest picture. But think about the situations that people are in marriages, you could be in an abusive situation where one spouse wants

to end the marriage and the other doesn't. It takes longer to get out of it and it requires a trial because there has to be proof that one party is at fault through abuse or adultery or some other reason. And so the spouse who wants out would have to prove at trial that the other spouse was at fault.

And so an abusive partner who wants to preserve a marriage could oppose it. In addition, having a trial could be very hard on children. Imagine instead of just saying, "We've agreed to go our separate ways," you actually have to go to a trial and put on evidence and point to one spouse as having engaged in some sort of fault. It's just difficult for families. If you don't want to be in a marriage anymore, the idea that you have to be is just really so fundamentally at odds with freedom in this country. I mean, we can't have indentured servants. How can it be we can have indentured spouses?

Jill: Do either of you remember when it used to be the law that you would have a setup where one of the partners would be in bed in a hotel room and a photographer would come in and take a picture of them. It was a total setup, but it was a way of proving that there was fault, and you are so right. Think how horrible that would be to the children of that marriage and how horrible it is to the reputation of the person accused of fault when it's totally unnecessary.

Joyce: Yeah, I just think about all of the women who are being victimized in abusive domestic situations for whom it's a practical impossibility to get a divorce by virtue of fault, and no-fault divorce really changed that landscape. It meant that the abusive spouse knew that that partner could go to court and get a divorce without having to prove their abuse of conduct. If we take that away, it's just part of this slide of women back in the second class citizenship. And I suppose it could work the other way too. It's not necessarily a gendered sort of a situation, but clear that no-fault divorce does amplify freedom for all of us. So Jill, I want to end where we started with Trump distancing himself from Project 2025. He did it again this week, but there's new evidence that suggests that he is far closer to Project 2025 than we previously knew. He had this little plane flight with the president of the Heritage Foundation and he made a little speech afterwards. What do you make of all of this?

Jill: Well, it just emphasizes how ridiculous the claims are that, "I don't know any of those people. I don't know what's in it. No, no, I don't know." Well, he picked a VP who wrote a foreword to the Heritage Foundation president's new book, which has, I will note, been delayed in release until after the election because that would've been really sort of embarrassing. As you said, there's photographs of Donald Trump on the plane going to a Heritage Foundation meeting at which he spoke. And he also can't distance himself because if you look at the authors of each of the chapters, most of them were in his administration and will be in his administration if he should be re-elected. So those are the policies that those people will want to implement when they're back in power. So he can't do it. I make it out to be one of the big lies.

And as you started this saying, there was this fact-free press conference. You could not keep up with fact-checking on that. And I think Lawrence O'Donnell last night had one of the best shows on Thursday night where he talked about this issue and suggested a way to do fact-checking. I actually think the only way you could keep up with this steady stream of lies is to delay release of it. You can have it live, but delay it for an hour and then put it on if you want. But that would give time for every sentence to be fact-checked and so that

you could have him saying something with a big overlay that says, "False. Here's the fact." Because I think people can easily get misled when he keeps saying the same things over and over again. And you pointed to some of his things, but almost every single sentence was a lie. There was almost not one thing that was true.

Joyce: Yeah, I mean it's overwhelming. And this thing about Project 2025 is direct on target. We didn't know about this private plane flight Trump took with the president of the Heritage Foundation until this week when a lovely photograph of them in the white leather swivel seat surfaced. And what happens? Trump gets off the plane, he speaks to the Heritage Foundation group and he says, "These are the people who are going to be coming up with our plans for the next few years." Wow.

Jill: Hey, guys. I love one of the products that we always talk about. You know that feeling when you first step out on the beach with the sun shining and palm trees swaying in the breeze? Well, Chicago's Lakefront doesn't have palm trees, but when I put on any OSEA Malibu product, I feel like I'm enjoying palm trees complete with coconuts because OSEA has captured that fragrance and feel in their all-natural Undaria Algae Body Oil. It's uplifting notes of mango, mandarin, grapefruit, lime, and cypress smell just like summer. It's so much more than a scent. The body oil is clinically proven to instantly improve skin elasticity and deeply moisturize, leaving skin silky and soft for that coveted post-vacation glow.

Joyce: I think you'll love the indulgent rich, never greasy texture of as much as I do. It's their best-selling product, and it's for a reason. The creamy goodness is next level. And after putting it on, my skin always feels soft and silky. Sort of like being surrounded by this unbelievable glow that lights up the room. If you're like me, when it arrives, you won't be able to wait to put it on. Not only does it visibly firm your skin for a perfect sculpted tone, but it's also clinically proven to improve skin elasticity instantly. My skin looks and feels the softest it ever has.

Jill: Right now, you could be transported to the tropics with 10% off your first order with our code, sisters, at [oseamalibu.com](https://oseamalibu.com).

Joyce: OSEA is Women-founded and lead, and we love that OSEA has been making clinically proven seaweed-infused products that are safe for your skin and the planet for over 28 years. Everything is clean, vegan, cruelty-free, and climate-neutral certified. With OSEA, you never have to choose between your values and your skin.

Barb: You will feel like you have escaped the tropics as soon as you put it on. So get healthy glowing skin for summer with clean, vegan skin and body care from OSEA. Get 10% off your first order site-wide with code, sisters, at [oseamalibu.com](https://oseamalibu.com). You'll get free samples with every order and free shipping on orders over \$60. Head to [O-S-E-A malibu.com](https://O-S-E-A-malibu.com) and use code, sisters, for 10% off. Look for the link in our show notes.

Joyce: Well, now we've gotten to our favorite part of the show where we get to answer our listener questions. If you've got listener questions for us, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com). Tag us on social media using the #SistersInLaw. If we don't get to your questions during the show, keep an eye on our feeds throughout the week. We try to answer as many of your questions as we can. This week, we've got some really great ones. Jill, I'm going to start with one for you on one of our perennial favorite topics,

Supreme Court reform. And this question is just very succinct and to the point. It's from Katie. She says, "How many justices would the sisters like?"

Jill: Of course, I love my sisters and I cannot speak for them though. I will speak for myself and if they have a different opinion, let them speak up. I think there should be 13, maybe 14, but I know it's bad to have an even number. But the reason I think 13 is because when nine was selected, there were nine circuit courts of appeal and each justice was assigned to oversee one of those circuits. Well, the country's grown and so has the court of appeals. There are now 13 plus the District of Columbia. So that's really 14. And I think that it makes a lot of sense to have the number match the circuits. It would also possibly get us out of this horrible situation where we had three justices thrust upon us and a prevention of two being confirmed because it was too close to the election. And so I'm for expansion.

Joyce: Barb, do you want to weigh in?

Barb: Yeah, I don't know where I stand on that. I think 13 makes absolute sense. We've had different numbers throughout our nation's history. We've had five, we've had seven, now we're at nine, and I think 13 does make some sense. I worry that expanding the court leads to this arms race of every few years we keep adding. And so we finally have a court of like 99 justices and it becomes so cumbersome as to be unworkable. I think you need a small enough cohort of people to be able to work together, know each other, pass drafts back and forth. And I worry that with a court of 13, that it'll take even longer for them to exchange these opinions. So I think Jill's view makes a lot of sense, but I'm a little nervous about adding any more bodies to the bench.

Joyce: I'm the same way. I'm real hesitant on this for the reasons that you discuss. I mean, I think they're already at critical mass, but what I do think this argument about expanding the court points to is the need for Supreme Court reform that will restore the court's legitimacy so that this is not seen as this is sort of the last gasp, right? Expand the court because it's not behaving the way we expect the court to. And so I think it does provide some impetus. But the one thing that I'll say that maybe suggests that my view is not informed enough. I've got a good friend who is a very staunch Republican, and his comment was that if the Democrats don't do it, the Republicans certainly will the next opportunity they get. So there's some interesting food for thought there. That was really-

Jill: Can I just say I agree with both of you and with your friend as well, Joyce. And I think there are probably better ways than expanding the court, like term limits, and some way of timing the terms so that every president gets to appoint someone. But that also bothers me because this should not be a political issue. We are appointing people to look at precedent and statutory language and to make fair and unbiased opinions based on that. So if we say that we need to have different political points of view represented on the court, that's saying they aren't making judicial decisions, they're making political decisions. So that bothers me a little bit too. But I do think we have to restore some semblance of respect for the court and one of those plus of course an enforceable code of conduct would be definitely mandated.

Joyce: Yeah, I mean you make the ultimate point here that the court is not supposed to be political, and maybe that speaks to the caliber of the individuals. And we've sort of lost this notion of putting the finest, brightest legal minds on the court and letting them



resolve these issues. So yeah, it's a mess. Second question today. I'll take this one. It's from @220calls and they ask, "Why is voter registration necessary? It seems like a big impediment to voting and the democratic process." And it's a great question. Registration rules are different in different states. In some states like mine, you've got a register early, there's a cutoff date. In other states, there's all sorts of really difficult requirements for registering. And then in other states, it's easy. You walk in the day of, you can register and vote, but the bottom is we have registration to provide some sort of a minimum level of cohesiveness in organizing the polls, not just anyone who lives in the US can vote.

You have to be a qualified citizen. And we do have these decentralized elections that take place in, not really even in states, but rather most of them are countywide elections. So this is a process that really permits the states to ensure and the counties to ensure that the voter rules are accurate and updated. And it's a fine tune balance between doing enough without unnecessarily impairing the ability of people to vote. So there's this baseline notion that registration is okay, but what you can't do or what you shouldn't do, although some states do it, is require, for instance, onerous levels of identification or make it difficult to get to a polling place or have impossible certification requirements on absentee ballots.

There's this whole continuum about how do you guarantee access without permitting fraud to creep into the process. And we know because statistics are really good on this, that the problem in this country is not voter fraud. The problem is voter suppression. So I would say registration is this necessary floor for ensuring that we have fair elections, but it shouldn't be done in a way that prevents people from voting. Our last question today comes for Barb. It's from Robert. And Robert is a Canadian. He has this question for you, Barb. "Do you expect a pardon of Donald Trump if Kamala wins? Would it be positive or negative for democracy?" That's a big question.

Barb: Oh, this is such an interesting question, especially here we are on the anniversary of the resignation of Richard Nixon and the swearing-in of Gerald Ford, which of course was quickly followed by the pardon of Richard Nixon. I find this really intriguing. My first gut is like, "No way. Of course she wouldn't do it." But my feelings on the Ford pardon have really evolved over time. When it first happened, of course I was a child, so what did I know? But I remember Gerald Ford giving the talk about our long national nightmare is over and we should move on from all of this. And thinking that that was first an outrage like, "What? Was this deal cooked up?" And then thinking maybe it was best for the country that we could move on so we could get on with our lives. But in retrospect, I think the pardon of Richard Nixon is what gave us Donald Trump.

And unless there is accountability for bad behavior, there will be more bad behavior. And so in the same way, even if Kamala Harris is in any way inclined to pardon Donald Trump, I'd be surprised if she were. But even if she were, I think it would be bad for democracy because I think that when people engage in such profoundly wrong behavior as Donald Trump did, I think the public needs to see that there are consequences. And I think the next people out there, politicians, are watching and see you can get away with this kind of stuff. And when people are held accountable, it has a deterrent effect on others. So I think to the extent, Kamala, if you're listening, President Harris, no pardon for Donald Trump.

Jill: Thank you, Barbara, because I was outraged at the time because I was not just old enough, I was involved. And I remain to this day outraged and share your view that but for this pardon. And I don't think that President Ford acted in bad faith. I think he really believed what he said. I think at the time and in hindsight, it was the wrong thing. And you are right, it led to Donald Trump. If he had been warned that this could lead to criminal, I'm not sure he would have controlled himself because he seems incapable of that. But maybe, maybe he would have. And we certainly need to hold people accountable for crimes, whether committed in office or before holding office.

Joyce: Well, that's all we've got time for today. Thank you for listening to #SistersInLaw with Jill Wine-Banks, Barb McQuade, and me Joyce Vance. Remember to mark your calendars. #SistersInLaw are live in New York at the 92nd Street Y on September 20th. You can get tickets at [politicon.com/tour](https://politicon.com/tour) and we look forward to seeing you there. And please show some love to this week's sponsors HelloFresh, Calm, Honeylove, OneSkin, and OSEA Malibu. Their links are all 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 does help others find the show. See you next week with a new episode, #SistersInLaw.

Jill: Hey, Simon. What about our dog food supplement? Brisbee, I told him it was coming.

Barb: Are you hungry? What about our chomp meat sticks? When are those coming? I'm getting hungry.