

Joyce: Welcome back to #SistersInLaw with Jill Wine-Banks, Kimberly Atkins Stohr, and me Joyce Vance. Barb will be back soon. We always miss her when she's gone. The gift giving season is here. Don't forget, you can check out our merch store. We have just restocked it. Everything is there in time for the holidays, so go to [politicon.com/merch](https://politicon.com/merch).

This week, we have a surprisingly full docket of topics to talk with you about for a holiday week. First up, the end of the federal criminal cases against Donald Trump. Then the challenge federal employees will face in the new administration. And finally, this really off the wall comment made by Elon Musk early this week and the unusual role he is playing at Trump's right hand so far. But before we get down to the serious stuff, y'all you know me, I've got to ask, what was the best thing that you put in your mouth on Thanksgiving Day? Kim?

Kim: Ooh, that's a good question. So I'm going to abstain from considering my own sweet potato pie, a picture of which I believe I posted online and say it is my husband, Greg's dressing recipe. Which is a take on his mom's dressing recipe, but it includes homemade skillet cornbread as the bread and a whole bunch of other yummy ingredients. And absolutely no form of nuts or fruit, which is crucial, crucial to a good dressing. So that's always what I look most forward to. What about you, Jill?

Joyce: I love a good cornbread dressing, man. That sounds so good. Okay. Jill-

Kim: It's incredible.

Joyce: ... you?

Jill: Everything was delicious. It was really, truly one of the best Thanksgivings I've ever had, both in terms of friends and in terms of the food. But my friend who was the host, Ellen, made the best Turkey. It was amazingly juicy and tasty, not dry at all. I loved it. And a friend of hers mailed, from Arizona, a berry tart that was also fantastic.

And I have to thank our listeners who tweeted about Watergate Salad and someone answered that about, "Well, my grandmother used to make a five ingredient one that's sort of similar," and I tried it and it was delicious. It was-

Kim: I love it.

Jill: ... seriously, sort of a made up thing of tidbits of pineapple, mandarin, oranges, coconut, sour cream, and I think it was a five ingredient. Now, I can't remember the fifth. Just mix them all together, a can of each. And it was... Oh marshmallows, little mini marshmallows. Oh my God, it was so good.

Joyce: Everything is better with mini marshmallows.

Kim: That just sounds like it tastes like the '70s. Like it just-

Jill: It absolutely did, much better than Watergate Salad, although, I mean, I love the idea of Watergate Salad, but Watergate Salad also has-

Joyce: Or your kitchen has to be gold if you're going to make that one, with the avocado green refrigerator.

Jill: It's not called gold. It was avocado green and harvest gold.

Kim: And linoleum.

Joyce: Harvest gold, yes, with linoleum.

Jill: Linoleum, oh my God.

Joyce: Okay. We have all dated ourselves.

Jill: Sorry.

Joyce: Well, I will just say it is Friday afternoon while we're taping. In my family, we've had three Thanksgiving dinners this year. We had cousin's dinner Wednesday night at a restaurant. We had Friendsgiving yesterday at a friend's house. We're having traditional Thanksgiving to dinner at home with just our kids, which is still dinner for six people. And I've got to say it has all been really good, but this is sort of embarrassing, my favorite thing was sweet potatoes with little bitty marshmallows on top-

Jill: Oh, I love that.

Joyce: ... which was just so soul satisfying. I guess I just crave comfort food right now.

Great sleep is critical to success and there's nothing better for sleep than a helix mattress. I first heard about them when they asked to sponsor our show, but we're very selective on hashtag sisters-in-law, and I wanted to try one out first. So I took the quiz to tailor my mattress to my sleeping style, and I got matched with the Helix Midnight Mattress, and that's what I'm still sleeping on to this day.

I must have aced that quiz because I have been getting the best sleep of my life ever since. And after trying mine, I got Helix for my whole family. They love them too, maybe even a little bit too much. Sometimes they snooze through their alarms.

Barb: It's interesting point, Joyce, you make about how we are very selective in our advertising, and that's right. All four of us, we have a rule have to agree before we accept an ad. If any one of us has a concern about a product or a company, we reject it because we do want to make sure that we're vouching for products that meet only the highest standards. And Helix is one of them.

They have many options. They combine memory foam and individually wrapped steel coils for the perfect blend of softness and support. There are even enhanced cooling features to keep you from getting too warm when the furnace is blasting or a heat wave hits. Both are frequent occurrences with climate change. So I'm definitely glad Helix has this feature.

Joyce: I'm just amazed. Helix has been a part of our sleep habits for almost two years. It's been a challenge not to sleep through. Making the switch is such an upgrade, and since we've started telling people about Helix, there have been so many stories of people seeing transformational improvements in the quality of their sleep on their wearable devices.

My husband wears an aura ring and it tells him how good he's sleeping. He calls it the one ring that rules them all. His Aura ring really likes Helix. Add that to Helix's quick and simple setup and no fuss trial policy, and it's an easy choice.

Jill: This November Helix has an incredible deal. Just for our listeners, you'll get 25% off site-wide and two free Dream Pillows with any mattress purchase. Helix is also offering a free bedding bundle containing two Dream Pillows, a sheet set and a mattress protector with any Luxe or Elite mattress order, don't wait. Go to [helixsleep.com/sisters](https://helixsleep.com/sisters). Again, that's [helixsleep.com/sisters](https://helixsleep.com/sisters).

Kim: Look for the link in our show notes.

This week. The thing I've received the most questions and comments about, and I'm sure it's the same for my sisters, is the dismissal of the federal criminal cases against Donald Trump. We may have saw it coming, but it still stung when Jack Smith submitted and the courts granted motions to dismiss both the federal election interference case and the classified documents case.

So Jill, many of the questions that I've seen is essentially, "Is this really over? Can Trump ever be held accountable? Is it even possible?" The cases were dismissed without prejudice, which means technically they can be tried again, but what does it mean realistically to you?

Jill: Technically, you're right, it can be done. And if you weren't in despair enough over the election results, I'm sure this puts you over the ledge or at least on the ledge along with Kim.

Kim: [inaudible 00:07:40].

Jill: Literally. But I think realistically, 2029 is a long, long way away. So it's hard to predict, but here's what it would require if it was to happen. First, you need a Democrat in the White House willing to let DOJ go or to appoint a special counsel to continue Jack Smith's work and a Supreme Court that won't interfere and that will interpret official acts to allow both cases to proceed.

So they would have to define official acts in a way that makes it clear that keeping confidential documents is not okay, that it isn't an official act, and that the things that Donald Trump did to interfere with the election in which, by the way, the president has no role. Those are state operations. So they'd have to make it clear. And at this point, we don't have an 11th Circuit opinion on Cannon's dismissal or a DC Circuit case that has talked about what Judge Chutkan might have decided was official and what wasn't official.

So all I can say is in four years, the court will not be any better than it is now, and it could be worse if anything happens to one of the three liberal justices or sane justices, I would say. And if Trump appoints another MAGA justice so that it's not six-three, it's seven-two, eight-one, whatever. So-

Kim: Oh my God.

Jill: ... I am not predicting a good outcome here, but there is still hope you would also need finally, a decision that the statute of limitations was told during this period of time. From the time of his president-elect date until the January 20th of 2029 when he is out of office. So those are three hurdles that would have to be overcome to proceed in 2029.

Kim: Wow. So Joyce, there's been a lot of talk too about the DOJ-OLC memo and that alphabet soup of course refers to the policy by the Justice Department not to prosecute sitting presidents or apparently sitting presidents-elect. Some people call it a made-up rule. I don't quite agree. I understand where they're coming from, but I don't quite agree. Can you make it all make sense that the fact, part of the reason why what Jill just explained is the truth is because of that memo?

Joyce: Yeah, so something that I have really tried to focus on recently is that as somebody who was a DOJ insider and who spent a lot of the time, I served, inside of that building on Pennsylvania Avenue, where we're very insular and we speak in alphabet soup, is how much I take for granted the role of OLC in ways that may not resonate with people who haven't worked at DOJ or aren't lawyers.

The Office of Legal Counsel is just that, it's the legal counsel to the Attorney General, but in many ways it's more than that. The office also issues legal guidance that's binding in other parts of the executive branch. So if you're at DOJ, you understand that the Assistant Attorney general for the OLC who like people like me, US attorneys or other assistants, attorneys general, is appointed by the president and confirmed by the Senate.

That's the office where the brainiacs go, the policy wonks, not appellate lawyers like the folks in the Solicitor General's Office. These are people who think about policy in a very broad sense. They tend to be very much not political, they don't really pay much attention to who's in office at the current moment. And they tend to think about how will this decision that we are going to make impact not just this administration but other administrations, how does it impact the whole of government? How does it impact democracy?

You don't have to be a lawyer to understand how people who make decisions on that basis can sometimes frustrate us in specific situations. And I can recall a number of issues where OLC made decisions that were clearly the right decision if you thought holistically about government, that made me mad in the context of something that I wanted to do in a case or something like that. So that's I think the backdrop for the OLC memos on prosecuting a president.

Whether you like the policy or not, it is the policy. It is binding on every federal prosecutor including the special counsel. And there are consequences, by the way, to violating binding policies, including that the decisions that you make can be very easily

undone. The one thing that I would say, these are decades old memos, sometimes OLC reconsiders memos to decide whether they still make sense in light of changing mores.

And the interesting situation here is that there's a little bit of uncharted territory because Donald Trump was not President Trump when he was indicted. He was Citizen Trump, but Jack Smith went back to OLC to consult before he decided to dismiss his cases. We know this because he says so in his pleadings and apparently the advice that he received was that these memos applied in this situation. I think that's something that could be up for robust debate.

I can think of a lot of reasons why that shouldn't be the case, and yet that is the reason here. That's what's happening. There are plenty of vibrant democracies that do prosecute their leaders. For instance, next week in Israel, Netanyahu, their prime minister will be in the final phase of a public corruption trial where he will put on his defense. Israel is still a functioning democracy as far as I can tell.

We've seen other countries where leaders have been prosecuted and democracy has not suddenly ceased to exist. I think we are ripe to rethink this one, but again, we should do so in that very measured way that OLC does, thinking about not just Trump but the whole of government.

Kim: I agree with everything you said, and the one thing that I take issue with was the idea that the rule was simply made up. I mean you pointed out that there was another reconsideration of it in the course of this trial. There was another reconsideration of it during the Clinton administration, and that's all on top of the very careful considerations that were made including common law, relevant Supreme Court precedent or nearly relevant Supreme Court precedent, history, tradition and, yes, norms.

I mean all those things make up the rule of law too. It's not just the constitution and statutes and regulations. So I may not agree with the outcome, but I think to say that it was pulled out of thin air given the careful consideration by all those committed people in the Justice Department that you talked about, Joyce, I just think that's incorrect.

Jill: Can I add something to that? Because I was the prosecutor who was first affected by this in 1973 when the first version of it came out. I did not think there was a constitutional basis for what happened, and I think we have suffered as a result of not holding President Nixon accountable. I fully understand the argument and even if there hadn't been any OLC opinion, Leon Jaworski who replaced Archie Cox felt very strongly that impeachment was the proper way to deal with a criminal president rather than the criminal courts.

And I understand the logic of that, but I've seen the consequences of the fact that impeachment is no longer viable. When Leon Jaworski said impeachment is the right way, impeachment was a viable option. There was bipartisanship and the Republicans, which was Nixon's party, supported impeachment and conviction. So I think we have to really think about whether this rule serves democracy and justice and the rule of law.

Kim: So just one last quick question for you both. A lot of people have been expressing a lot of anger at Attorney General Merrick Garland for not moving fast enough in the beginning,

and that's why we got to this place. I have a different view. I wrote a column about it, I'll put it in the show links, but the too long didn't read of it is once we saw the Supreme Court the way it acted, I knew that there was no way that Garland could win even if he started right away.

And people underestimate how long, deep thorough investigations take, they were pointing to January 6th as an example of they were able to do an investigation before the... A., we don't know that, DOJ could have been investigating and, B., that took a lot of time and a lot of witnesses and a lot of efforts to obstruct to get through. I don't think this could have been up and running and with a grand jury returning an indictment in just weeks. But anyway, what do you guys think? Is this a Garland mess up?

Jill: Okay, so let me go first. I was less critical of him at first than maybe others were because I had seen Edward Levi take over after Watergate and restore credibility to the Department of Justice. And so I was willing to give Garland a break and see what he was going to do. So I was holding off judgment when everybody else was ganging up on him.

But I soon became critical because the facts demanded investigation. They were obvious. And I agree with what you just said. I'm not sure we would've had jury verdicts in any of the federal cases if he had acted sooner. And the thing is we'll never know now. And so I wish he had acted sooner.

Kim: Why do you think, Joyce?

Joyce: Yeah, so I mean that's an interesting point, whether we should consider how Garland acted or didn't act in the context of how quickly the cases could have moved? I've a slightly different metric. I mean my metric at DOJ was always that we should do the right things for the right reason in the right way. And that to me would've dictated immediately beginning to investigate Donald Trump for insurrection upon Merrick Garland taking office.

And that would've been essential for the country, for the public, but also for Donald Trump to make a determination as to whether or not a grand jury wanted to charge him or whether there was nothing there to charge. I think it's not entirely clear whether or not that was happening from day one. There has been some suggestion, for instance, that Lisa Monaco, the Deputy Attorney General, was early on issuing subpoenas, looking at some sorts of matters.

By the same token, we did not see much of what I would've expected to see if there was serious investigation going on early. For instance, every time one issues a subpoena to someone like Donald Trump Jr., he jumps up and down in public and fusses about it. He would've been an essential witness to put in front of a grand jury to talk about what was going on ahead of that speech on The Ellipse. Others who I would've expected to see go in front of a grand jury clearly did not early on.

So y'all are right when you say we could not have expected to see an indictment of Donald Trump in weeks. This is not a case like that. These sorts of cases take a long time to put together, but what we could have expected to see was earlier investigation leading to an earlier indictment and a longer runway to decide issues like the Supreme Court's

immunity case or to sort out the mishegoss that went on down in Florida with Judge Cannon. The reality is though we didn't see it, and as a country, we're going to have to live with them.

The holidays are almost here, so why not give your loved ones the gift of Glow with OSEA. Right now we recommend OSEA's Super Glow Body Set. It's a surefire hit for everyone on your list, even if they're hard to please. It includes three of OSEA's best-selling body care products at an incredible value, packed in a box so beautiful you can skip the wrapping paper. It makes gifting easy, but it's so luxurious, you'll want to grab one for yourself too. Don't wait. This limited edition is sure to sell out super fast.

Jill: It's the perfect way to complete your self-care routine and reconnect with your body while you enjoy the iconic all-natural and uplifting scents. For me, that means going all out with an everything shower, using the entire set.

I start with the Undaria Algae Body Wash to remove impurities and cleanse my skin for a soft and revitalized feel. Then I apply the antioxidant rich Undaria Algae Body Oil for nourishing hydration, firming and softening. Followed by the Hyaluronic Body Serum, it's so powerful that it will leave your skin hydrated for 24 hours.

Yes, a full 24 hours. The formulas feel amazing the second you apply them infusing your shower with the healing power of the sea. The nourishing effect is incredible. And when you're done, you won't stop hearing that your glow lights up the room.

Barb: Jill, I got to turn down the brightness on my screen. You're so bright. Yeah, I don't know how you guys find the time for all of these skincare routines and face routines and makeup routines. But I do think it is very cool that OSEA is Women-founded and led, and I love it that OSEA has been making clinically proven seaweed-infused products that are safe for your skin and the planet for more than 28 years.

Everything is clean, vegan, cruelty-free and climate-neutral certified. You have to try OSEA. And the Super Glow Body Set is the perfect way to experience three of their best-selling products at one incredible value. Save 32% on the set at [oseamalibu.com](https://oseamalibu.com) plus get an additional 10% off with code Sisters. It's your go-to gift for everyone on your list, including yourself. Never choose between your values and your best skin.

Give the gift of glow this holiday season with clean clinically-tested skincare from OSEA. Right now we have a special discount just for our listeners. You can get 10% off your first order site-wide with code Sisters at [OSEAMalibu.com](https://OSEAMalibu.com).

Kim: Look for the link in our show notes.

Jill: I had trouble deciding what topic I wanted to cover in this segment. Misogyny in the Trump era or what advice to give to government lawyers and other federal civil servants about staying or leaving in the face of threats from the incoming Trump administration. I decided that because the federal lawyers are going to have to make decisions pretty soon, not just lawyers, other civil servants. Those with subject matter expertise in various agencies. Whether they should stay under threat of being fired or prosecuted in order to



protect our democracy, our system of justice, our health, our environment, education, civil rights, our liberties, everything, or should they leave?

Those decisions will not be easy. It's their safety weighed against the public interest, but they will be made soon. So I decided that's what I wanted to talk to you both about. We all have different experiences to bring to this discussion, but I wonder if we will all come out the same way and why that would be?

So first, let me start with you, Joyce. Trump has accused government lawyers of frustrating his first term agenda and falsely claims lawfare at our beloved DOJ because of his two now dismissed federal criminal indictments. His second nominee for attorney General Pam Bondi has said, quote, "The prosecutors will be prosecuted, the bad ones, the investigators will be investigated."

I don't think any acted badly or not in full compliance with ethics and law, but it does open the door to thinking about the risk they are taking by staying. And there are 44,000 federal lawyers, about a third of them at DOJ, the others at other agencies, do you think they should stay or leave?

Joyce: Yeah. Boy, is it a tough question? I mean, obviously it's a question that every individual will have to decide for themselves and people will have lots of different factors to consider. And I just want to say at the top line, this is a lot of experience in the federal government, when you lose somebody who's senior in a legal office, whether it's a US attorney's office, an office of legal counsel in one of the other agencies, you are losing people who use their institutional knowledge to benefit taxpayers and citizens every day, day in and day out. And we do not benefit when any of this sort of thing happens.

So look, I hope obviously that as many of these folks as can, as are able to, will dig in and they will stay. During the first Trump administration, I watched a lot of federal prosecutors and other lawyers move from an office they were in where the leadership became intolerable for them personally to other offices where the leadership was less political.

And that's the issue. We don't want these people to dig in and stay so they can prevent Donald Trump from instituting his agenda. We want them to dig in and stay so that they can make sure that government lawyers do the right thing. I mean, that's what this is all about. It's not about politics, it's about law. And to the extent that Pam Bondi or anyone else wants to politicize these offices, then we need career prosecutors, career lawyers to dig in and refuse to do that sort of bidding.

But it is asking a lot for these people who are tremendously underpaid in the first place to stick around and do that. If they get fired, there will be lawsuits. They will probably win those lawsuits, but they will do it when they're not getting a paycheck and having to pay for a lawyer out of pocket.

And so again, I guess this isn't the answer to your question, but what I hope we'll see happen is I hope that we'll see private sector lawyers rally around these government lawyers. They won't be able to accept any private sector help while they're still government lawyers. The ethics rules prohibit that. But if we do see people getting fired



for trying to stand up and do the right thing, then I hope the private bar will run to their defense across the country.

Jill: I am quite sure that you are right, that if they get fired, the private lawyers will defend them pro bono. And I also want to point out, you mentioned about the non-political nature. Only 400 of the 44,000 lawyers in the government are non-career-

Joyce: Yeah.

Kim: Right, a tiny percent.

Jill: ... political appointees. So it's I can't even figure out the percentage, but it's 43,600 are not political.

Joyce: And shouldn't we just say, by the way, to explain to people what that means? As a line prosecutor, I was career, once I became the United States attorney, I was political. There is a top tier of lawyers at the Justice Department who have those sort of political jobs, very few. Virtually everybody is career. And you will watch the career people time and time again, roll their eyes at the political people and say, "We are bees. We be here when they come, we be here when they go." And those are the folks that make sure that DOJ is the Justice Department no matter who's in the White House.

Jill: Okay. Let me ask you both a follow-up question, which is particularly focusing on the lawyers who worked for Smith who are now facing threats of prosecution. Are they in a different category? Does it make a difference because of that threat?

Kim: I think it does, certainly. It just adds on all the other considerations. So just talk first about all the attorneys, whether you're career, political or a part of Smith's team, they are facing the fact, if Project 2025 is to be believed, that as a way to better control the federal government. In addition to purging the folks that they don't want there as a way to better control it, they are tightly limiting and controlling things like benefits and things like paid leave off time, overtime protection.

I mean they're really making it so that you really, really need to work there and you really got to want to work there because you're going to get paid less, work harder and have fewer protections. So if I were a lawyer, I'm like, "Well, that's not the job I signed up for." I would look for something else too. That plus the fact that they will be labeled deep state, which is something that could affect them and their careers or other things as they're trying to figure out just what to do.

And then on top of that, people on this team, they will be, probably, I mean who knows what will happen to them. Will they be doxed, will they be harassed, will at worse attempts to prosecute them? I mean it's really, really frightening, which is why overall I think about this lawyer exodus. I do hope the private sector not only rallies around these folks for representation, I hope they hire them.

Because another point to be made is that people, particularly people with experience working in the federal government, they could if they wanted, go out into the private sector, go to a law firm, go in-house, go somewhere and make three, four more times

what they were making at the government. They're doing this because they love it, because it's important. And those are going to be, if it comes down to it, the best employees these firms and private companies could ever find.

Jill: And Joyce, in terms of the people who are specifically threatened, like those who work for Smith, would it make any difference to their being prosecuted if they voluntarily leave to protect their futures? And also in terms of timing, will they get better jobs if they leave voluntarily now instead of waiting to be fired?

Joyce: So look, I think if we're talking only about Smith's team, for one thing, let me just be really clear, none of those people have committed a prosecutable offense.

Kim: Mm-mm.

Jill: Absolutely.

Joyce: That means that if they-

Kim: They worked doggedly.

Joyce: ... come after that, right? If they come after them, it'll simply be, "Gloves are off, none of the rules apply, break in the rules to go after the prosecutors." And so I don't think anything that they do one way or the other impacts that.

Now there are a lot of fail safes in the system that'll keep that from happening. For one thing, I think you're going to have individual prosecutors that are just going to refuse to touch these cases. But maybe Pam Bondi gets confirmed and maybe she brings in people who are mission sensitive Trump folks who go after them. You've still got to get a grand jury to indict. You've still got to get a judge to take your case seriously and not dismiss it for the harebrained witch hunt that it is. You still got to get a petit jury to convict. So I think long-term, these folks will never be convicted.

It's unlikely that they'll even be charged. What they'll be is harassed and treated very, very badly. Most of them have components at DOJ to go back to. They weren't hired from the outside to work for Jack Smith. They were in other components. They will go back to those components before the administration changes. And the question is whether there will be an effort to fire them, to hound them out, to give them really crappy work. A time-honored strategy used during the Bush administration, frankly, was that some career folks that they wanted to get out of the department were just given really boring, pedestrian, meaningless work to do in hopes that it would run them off. So we could see some of that.

Others of the folks on Jack Smith's team are very senior lawyers who came back in for private practice. They will just go back. Something that I have heard from a number of places outside of government is that they are gearing up to find jobs for these people. I've heard people say, "I'm going to meet the moment and hire a set number of people that we weren't otherwise planning on hiring just to meet the moment."

But boy, the notion of prosecutors being hunted and singled out because they engaged in righteous prosecutions. Jack Smith's cases were indicted by grand juries, they were considered by courts. Even the United States Supreme Court did not say boo about dismissing these cases as political witch hunts, right? So to come in and retaliate against these prosecutors, that is the stuff the banana republics are made of.

Jill: This has been a great discussion, and I just want to say we focused on DOJ and Jack Smith's team, but there are thousands, tens of thousands of lawyers in all the other agencies. And they help to protect us in the health, education, environment, DEI, civil rights, and they have the same issue ahead of them and whether they'll be able to continue to do their jobs. And based on my experience in Watergate where Archie Cox said, "Do not quit, stay, don't give them what they want." I hope that they will have the courage to stay and I didn't face the threats that they face. So it's easy for me to say it will be harder for them.

Well, I don't know about you, my sisters, but I am really worried about climate and environment and I'm really hoping that I can do things to help prevent what might be coming from the new administration. I want to make a difference for the environment, and I'm doing that by incorporating sustainable practice into my routines. It sounds like it's hard, but Lomi makes it easy.

All you have to do is push a button on your Lomi to start saving the planet. So this holiday, you can avoid a lot of waste and you can give the gift of less trash, a cleaner kitchen and a smaller carbon footprint to anyone in your life looking to go green with a Lomi.

Joyce: I love Lomi. If you haven't heard yet, Lomi is a countertop electric composter and it turns organic waste like food scraps into nutrient rich dirt in just hours. It's so convenient when I've just cooked a big meal and I know I have a plant that needs fertilizer. It runs quietly. It's just incredibly quiet and your house produces a lot less trash so that you won't have to make the long windy walk out to garbage cans. And it's a free source of food for my garden.

I love Lomi because it's super easy to use, just toss in your leftovers and weight. I can run it overnight so that when I wake up, it's ready for my plants and they seem to love it. They all look healthier than ever.

Jill: With Lomi, you won't have to feel so guilty about throwing away extra food, especially after having tons of people over for the holidays. Now everything is either eaten or transformed into Lomi Earth instead of getting shipped off to a landfill.

That's so important because overflowing landfills aren't just gross. The methane they produce is a big problem for our cities and the planet. With a Lomi, you'll feel great knowing that you're doing your part for the environment and cutting your carbon footprint. Plus your kitchen will look great too. Thanks to Lomi's modern and sleek design. It's the perfect addition to any home and it makes a great green gift too.

Barb: If you are ready to start making a positive environmental impact and make cleanup a breeze, Lomi is exactly what you need. Head over to [lomi.com/sil](https://lomi.com/sil) and use promo code

SIL to get \$50 off your Lomi. That's \$50 off when you go to L-O-M-I dot com slash SIL, and use promo code SIL at checkout.

Say goodbye to food waste and hello to a cleaner, greener kitchen with Lomi. With the holidays coming up, Lomi makes the perfect gift for someone on your list.

Kim: Look for the link in our show notes.

Joyce: So earlier this week, Elon Musk said that Alexander Vindman should be prosecuted for treason. That is just crazy talk. For one thing, Musk, who is at this point, I guess Trump's first lady in waiting doesn't have any say so over who does and who doesn't get prosecuted, right? Not an American educated lawyer who knows the law.

But treason of all things, that's a really hefty charge to be thrown around against someone who was willing to end his storied military career serving his adopted country in order to do the right thing. I mean, Alex Vindman of all people, right? So Jill remind folks, it's been a while, what was Vindman's role in Trump's first impeachment?

Jill: Yeah, this is really only a continuation of what we've been talking about with the lawyers. This is ridiculous targeting. Alex Vindman was the director for European Affairs for the National Security Council. He is now a retired lieutenant colonel from the Army, and he retired because, at least he says, "The vengeful behavior and bullying by Donald Trump and the undue delay of his promotion that was underway for him to get to Colonel."

And this happened after he testified in October of 2019 about the call that he was on in his official role as part of the NSC between Trump and Zelenskyy. The phone call that led to the first impeachment, which was the call, I'm sure you all remember, "Get me something," Trump said to Zelenskyy, "That I can use Biden and I'll give you the weapons you want." That led to the abuse of power impeachment charge.

Vindman is now working at a think tank. He was, by the way, born in Ukraine when it was part of the USSR, the Soviet Republic. And it is what Putin is trying to recreate by his attack on Ukraine now.

Joyce: Well, Kim, Musk goes after Vindman on X, which is just all sorts of crazy. But let's talk about the specifics. What was the threat that Musk issued?

Kim: Yeah, he said, "Vindman is on the payroll of Ukrainian oligarchs and has committed treason against the United States." He goes on to say that, "He will pay the appropriate penalty." So first of all, before we get started, I mean Musk calling him an oligarch or talking about oligarchs is the black, pot, kettle. Everything is black.

But yeah, he's essentially threatening to prosecute him, use the force of government, exactly like you said, banana republic style, and turn the government and the DOJ into the private arm of grievance of Donald Trump. So I mean, I know we say this all the time, this is serious stuff. Treason is when someone conspires with a foreign government to wage war against the United States. This is serious, serious stuff.

But that's part of the game, right? By bringing words like treason and the rule of law, using it in a non-ironic way and talking about his enemies being a threat to democracy, et cetera, et cetera. They confuse and obscure the issue and try to take the meaning out of these words so that they can't be used against them. So it's really gobsmacking to see this just play out right in front of our faces.

Joyce: It feels like we might have to have a SistersInLaw book club in 2025 and start by reading 1984, right?

Kim: Yeah.

Joyce: Because your explanation of what they're doing with the language is-

Kim: Newspeak.

Joyce: ... just utterly amazing.

Kim: It is Newspeak.

Joyce: I mean, Jill, you're like me, you're a prosecutor. You understand that if you want to charge somebody with a crime, whether it's treason or anything else, Congress has established elements that make up that crime. And prosecutors have to be able to prove every element of the crime beyond a reasonable doubt to get a conviction. And beyond that they have to have a good faith reason for believing that they can get there when they indict a case.

Treason is a little bit different because it's one of the few crimes that set out in the constitution, although there's also a parallel statute in the Federal criminal code. But technically, let's just say for a second that the facts are like Musk assumes that they are, and obviously he's very wrong. Is there any scenario under which this could possibly be treason?

Jill: Joyce, you are absolutely right. There are two things that should guide what happens. And first, let me just stress again that Vindman has done nothing that should lead to any of this discussion. It's absurd. But the Constitution specifically says treason and it defines it as solely of loving war against the United States or adhering to their enemies, giving them aid and comfort. Well, that certainly doesn't apply.

And the federal statute sort of mirrors the same language and imposes some fines and possible imprisonment, but it does have the same kind of language. It requires a declaration of war. And as far as I know, there has been no declaration of war. So you cannot even possibly consider bringing a charge of treason or any other charge for having done his proper role as a whistleblower.

Joyce: I mean, it really is crazy, aside from the fact that there's probably a statute of limitations problem, right? I mean, I'm just thinking out loud here. The federal statute of limitations is five years, unless the treason statute is different for some reason. But certainly for any other sort of violation they would try to come up with, the statute of limitations has already run on this sort of thing.

And this to the point you started out with Jill, saying that this ties into the prior topic and this notion of people just being harassed and bullied and threatened. I mean, this really paints a target on Alex Vindman's back in a way that I think is really in many ways emblematic of what we're about to see out of this administration.

I mean, Kim, even if Vindman is never charged, never convicted, even if this is all we hear of it, how dangerous is this sort of commentary from somebody in Musk's position? And also what do you take away about this odd sort of role that he appears to be set up to play in the next administration?

Kim: I mean, this is such an important point. He is not and has never been a government employee. Whatever role he is set to play is something that has never been, something that has never existed or been contemplated by previous administrations. We don't even know what it is. We don't know if Elon Musk is the funder of Donald Trump's dark money transition. This is why we have ethics and national security laws is to keep people who we don't know whose interests they have at heart from having their hands on the levers of federal government.

Look at what Elon Musk is doing with absolutely no vetting, no official role, no formal role whatsoever. He's already basically announcing how he's going to run things. That's insane. People should be gobsmacked by that. I mean it's just unbelievable.

Joyce: Right? This is the guy who broke the public square, who broke Twitter, which was phenomenally helpful in getting out true facts ahead of the 2020 election. And Musk broke it, and now he's going to play this undefined role in government. Trump, as you point out, Kim, this transition has never signed the memos of understanding with the Biden administration that would give the public access to reporting about who's funding it.

Which means, and by the way, this is like one of the only loopholes. This drives me nuts, where you can actually have people who aren't American citizens donating, right? For virtually everything else, foreign donations are prohibited. So now this Trump administration is being set up by people unknown to us, whose interests are unknown to us and who may have nothing to do with benefiting American citizens. So thanks Elon.

Barb: Well, we've all been victims of identity theft. I know I have. And sometimes it happens at holiday time when we are making online purchases and you find your credit card is frozen because of suspicious activity. Usually my husband tells me that our cards have been canceled because of suspicious activity. And I have to say no. That actually was me. I was the one buying lots of things after midnight last night.

But we've all been there. And we're proud to say that this podcast is brought to you by Aura because it can really be crazy out there. Hackers may have executed one of the largest data breaches in history, potentially compromising every single social security number. Another 2.9 billion plus records were stolen in an attack on National Public Data, a company that provides personal information to employers, private investigators, staffing agencies and others conducting background checks. The stolen data includes full names, addresses, dates of birth, social security numbers, phone numbers, and even alternate names and birthdates. And most alarming, the report suggests that the hacker group responsible has put this information online for free.



Jill: Barb, listening to you, it reminded me that I thought that I might've lost one of my credit cards, and I called them to see if there had been any charges since I remembered last using it. And they said, "Well, you had some charges today." I went, "No, no, I didn't have any today." Then I realized I did. It was in the period between 2:00 and 3:00 in the morning, but it was that day. So it was a time to think about how valuable having something like Aura is.

If safeguarding personal information wasn't a priority before these incidents should serve as a critical wake-up call. The risks to personal security have never been more severe. That's why we are thrilled to partner with Aura. Aura offers comprehensive protection by monitoring the dark web for users' phone numbers, emails, and social security numbers then delivers real-time alerts if suspicious activity is detected. Additionally, in the event of a worst-case scenario, Aura provides up to \$5 million in identity theft insurance to give you and your family a robust safety net.

Joyce: Aura goes the extra mile by scanning the dark web for your sensitive info and alerting you instantly if anything is found. So when ID theft strikes, don't panic, Aura's US-based 24/7 fraud resolution team works around the clock to fix it fast and get you back on track. Aura truly is the complete online safety toolkit thanks to credit and transaction monitoring, virus protection, a VPN, a password manager, parental controls, and more.

For a limited time Aura is offering our listeners a 14-day trial, plus a check of your data to see if your personal information has been leaked online, all for free when you visit [aura.com/sisters](https://aura.com/sisters). That's [aura.com/sisters](https://aura.com/sisters) to sign up for a 14-day free trial and start protecting you and your loved ones. Again, that's A-U-R-A dot com slash sisters. Certain terms apply, so be sure to check the site for details.

Kim: You know where to find the link. It's in our show notes.

Joyce: So now we're at the favorite part of our show where we answer your questions. Like always, this week we had a lot of good ones to pick from, but please keep an eye on our social media feeds, which these days means Bluesky and Threads. We'll try to get to as many of your questions there as we can throughout the week. And of course, in the meantime, if you've got questions for us, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tag us on social media using #SistersInLaw.

First question this week, Kim, this one is for you from Martha. She says, what is behind the transition and ethics agreements for incoming administrations? More importantly, why is Trump not signing them?

Kim: This is a great question. We hinted at it a little bit in the last segment, but essentially both the Presidential Transition Act and the Presidential Transition Enhancement Act require certain things in the process of transferring power. And those agreements are called memos of understanding. And one of them requires that the incoming administration agreed to a set of ethics rules that are set out by the federal government. And they do that in exchange to getting federal funding for the transition to pay for the new office space, hiring people, overhead, internet, whatever they have to get, the light bill.



But Trump, for the first time, the first president ever refused to sign that agreement saying, "Oh, we'll post our own ethics rules later on our website." And that essentially, they don't feel they need this money because they're getting it from dark money sources. So they are just not taking that agreement for the first time ever in our history. And he's signing them because it's in his interest clearly to keep those things secret.

Also, he can get a lot more money to fund his transition privately through dark money than he can. There's a, I believe, seven and a half million dollar cap for the federal funding. So clearly he thinks it's better to play footsie with goodness knows who.

Joyce: And of course it means that there's no vetting going on of his appointees, right? They're being vetted by quote, unquote, "Private companies."

Kim: Correct.

Joyce: Nothing like a functional democracy.

Kim: Totally [inaudible 00:51:46].

Joyce: Related question, maybe just the follow on from the first one comes to us from John, who says, "The Supreme Court has found Trump may not be prosecuted for crimes he commits in office. Does that mean that for the next four years he has a license to break the law with impunity?"

And so John, my answer is yes. Yes, it does. Kim hinted at this earlier in the show. This is just all about Trump being sure that anytime he engages on questionable conduct, that it is arguably an official act. For instance, anything that he wants to insulate behind immunity, he just has a conversation with his attorney general about him. The Supreme Court has said, "Oh, clearly that's not a prosecutable crime."

So if Trump is smart or more to the point, if the people around him are smart, he can do whatever he well pleases for the next four years and protect himself from any sort of liability. And I'm sorry that that's the answer, but it just is. I'm not going to sugarcoat it.

Kim: No.

Joyce: So Jill, we had a lot of questions similar to this one from Carol that I want to ask you. This seems to be something, lots of interest in this. "After immunity, what happens if someone who works for Trump follows an order from him that breaks the law? We know how it works for Trump. What happens for the people around him?"

Jill: They do not benefit from the Supreme Court immunity which was granted to Donald Trump. It is something that we've seen in the past. I mean, the Nuremberg defense didn't work. You can't say, "I was just following orders." You are guilty. And the same thing was true for Nixon's aides who went to jail for the crimes they committed. Nixon under this rule would've been immune, but they aren't. And so the same's going to be true here. And hopefully that warning may make people think twice before they follow an illegal order or an order that would cause them to commit a crime.

Joyce: You are way more optimistic than I am on this one because I think, A., the Supreme Court will issue a ruling at some point in the next two years that will, in essence say, "In order for presidential immunity to mean anything, we must insulate the President's key aides and advisors," and they will extend that immunity.

And then the second thing is Trump can just give them pardons. So in essence, he can protect anybody. And you guys, I am so far out on the ledge on this whole issue. I really hope that I'm wrong. And what you're saying, Jill, is true, that people will be deterred. I don't think that there's much to deter at least this first set of folks who walk in the door with Donald Trump. I think the Project 2025 crowd, they are ready to go pedal to the metal and do their stuff.

Jill: So Joyce, I was trying to end on a happier, more optimistic note-

Joyce: Well, I totally [inaudible 00:54:44]-

Kim: Instead now-

Joyce: ... bring that up.

Jill: ... so I didn't mention those things because I agree with you completely. I'm less worried about the Supreme Court, but I am very worried about the first group ignoring it because they know that they will get a pardon. They will get a overall pardon even if they aren't indicted, because they won't be indicted under this administration.

But should they get caught doing these criminal things, the next administration, if it is not a Republican, MAGA administration, could bring actions against these people for doing the wrong thing, but they will be pardoned. And that raises the issue of whether Biden should pardon everybody who is going to be charged in his administration.

Joyce: Thanks for listening to #SistersInLaw with Jill Wine-Banks, Kimberly Atkins Stohr and me, Joyce Vance. Follow #SistersInLaw on Apple Podcasts, or wherever you listen. And please give us a five-star review that really helps others find the show.

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Kim: You're all right?

Jill: Yeah. Now it fell to the floor and my headset disconnected, so I couldn't hear anything, but I know what the question was. So I-

Joyce: Yeah, I just ended with exactly that sentence. It could just be freezing.

Kim: But you're okay, right?

Jill: Okay. Yeah, I can just go ahead.

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Kim: Yes.

Jill: Sorry, I apologize. I don't know best.

Joyce: No worries.

Jill: Never.

Joyce: I tried to drag it out for as long as humanly possible-

Kim: There you go.

Joyce: ... to give you time to recover and it didn't work.

Jill: It's I did hold up my finger going, "One minute," as I was trying to find this.

Joyce: I saw, yeah.

Jill: Yeah. Okay. Sorry. Anyway-