

Jill: The days are shorter, but our to-do lists aren't. Power through busy days more easily and deliciously, thanks to Factor's no-prep, no-mess meals. Choose from 35 nutritious options every week. Get 50% off your first box plus free shipping with code SIL50OFF at factormeals.com/sil50off. The link is in our show notes.

Welcome back to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr and me, Jill Wine-Banks. Barb will be back next week and we miss her this week. Especially with some of the topics we're talking about, I wish she was here. We have a great show today. We're going to be discussing Trump's getting sentenced and also talking about whether Alito should have voted in that decision.

The Smith Report may be coming out on Monday, maybe not, we'll see. And we'll also talk about whether fact-checking and content moderation are a thing of yesterday, and there will be no more truth on any Meta site. But before we get to those serious topics, I want to talk about the fact that we have a great new design, thanks to Kim's idea for a T-shirt that we can't all wait to wear and that you should all be ordering right away.

Kim, tell us what your idea was and how it came that we now have a T-shirt on our merch site.

Kim: Yeah. So you know, I was walking Snickers, this is a true story and I was thinking, sort of in my walking meditation what it means to be a part of the resistance, and thinking about all the ways that I can resist. And then I thought, "Oh, wait a minute. There's an S-I-S in resistance."

We are the resistance, the resistance. So that's what our T-shirt says, and we want all of you to join the resistance and not only listen to #SistersInLaw every week, but get a T-shirt to show all your friends and everybody in your community that you too are a part of the resistance.

Joyce: And look, for this purpose, you don't have to be a woman to be a sis.

Kim: No.

Joyce: We can all be part of the resistance. I'm so excited about it. Kim, it was a great idea. Our team did a great job of putting the design together. You know, none of us are big on obeying in advance. Maybe wearing these shirts, this is a form of disobeying in advance and I am pretty excited about it.

Jill: Remember, we're the SistersInLaw, but we are also the resisters-in-law. So join us, and the T-shirt looks great. I know you can't see it until you go on politicon.com/merch. That's where you'll see the actual navy blue shirt with S-I-S in big bold letters and our Lady Justice behind it. So, get the T-shirt so that you can show your part of the resistance.

Before we get started on the serious topics, we also wanted to say how much we are thinking about everyone at risk, and everybody who has already lost everything in California. We are grateful that so many lives have been saved, but we are really sorry

that this has happened. We all wanted to express our sympathies and hope that this will end quickly.

Our own team here, two of them live in California and have been with Go Bags packed. So it's definitely impacting us personally, and we reach out to everyone.

Kim: Yeah, and I want to give a special shout-out to all the first responders, all the folks who are out there fighting their best to save what they can, including the lives of Californians. We are eternally grateful for them, and our prayers go out to everyone affected.

Joyce: Look, we love y'all. I know it's impossible for people who aren't there to really understand what you're going through if you're in the L.A. area. As a native Angeleno, I've got to say it's just breaking my heart. And something we want you to know is that you remain in our thoughts, constantly making us concerned for you, hoping that you will be able to rejoin this community when you're able to, and definitely wanting to hear from you and let you know if there's anything that we can be doing to use our platform to help make things better for you.

January is all about fresh starts, which means now is a great time to swap out the skincare products weighing your skin down in favor of a regimen scientifically proven to transform your skin at the cellular level. Enter today's sponsor, OneSkin.

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Kim: OneSkin's products are also free of unnecessary irritants, like sulfates and fragrance. Plus, they're packed with nourishing ingredients, like andiroba oil, oroblanco, and moringa seed extract to naturally boost collagen, reduce inflammation and protect skin from environmental stressors.

So if you're ready to detox your routine, improve your skin health and look your best, head over to oneskin.co and use code SISTERS at checkout for an exclusive 15% off your first purchase. Make 2025 the year you invest in habits like OneSkin that will keep you and your skin healthier at the cellular level.

Jill: You know, I love that, Kim and I also love when people notice my skin. Ever since I've started using OneSkin, people have been saying, "Your skin looks really good," and it's a real confidence booster.

I think I know why I keep getting those compliments. It's because whether I'm in the wind, which is violent in Chicago but not as bad as California these days, or warming up next to the heater, I use OneSkin's OS-01 face topical supplement to fight back against dryness. Now my skin is ready for anything, anything the elements can throw my way.

I especially love that OneSkin's regimen works fast and the formulas feel amazing when you apply them. They're so refreshing and I'm certain that you'll be a big fan too.

Joyce: Founded and led by an all-woman team of skin longevity scientists, OneSkin is redefining the aging process with their proprietary Os-01 peptide, the first ingredient proven to help skin look, feel and behave like its younger self.

Get 15% off with code SISTERS at oneskin.co. That's 15% off oneskin.co with code SISTERS. After you purchase, they'll ask where you heard about them. Please support our show and tell them that we sent you. Invest in health and longevity of your skin with OneSkin. Your future self will thank you. The link is in our show notes. I really do love that stuff so much.

Jill: Donald J. Trump is now officially a convicted felon. His scramble to prevent being sentenced was rejected by SCOTUS and he was sentenced to unconditional discharge. No fine, no jail, no probation. Not even a, "Don't do it again."

So Joyce, what was his argument and what were the two grounds on which the Supreme Court said, "Nope, not going to do it"?

Joyce: Yeah, so Trump's argument was pretty much, "Because I'm me and I'm special and you can't sentence me like anybody else who's been convicted in the criminal justice system." It was really interesting to me to see this order from the Supreme Court, this very unusual decision with an unusual split on the court where the court said, "You know, evidentiary questions," which is what Trump wants to raise.

He wants to say that the trial court impermissibly used evidence of official acts towards his conviction, and the court acknowledged what we all know to be the reality. Those sorts of issues are appealed after conviction and sentencing, routinely in all cases. No reason Trump should get special treatment. And by God, five justices on the United States Supreme Court agree. So that was sort of a hopeful sign.

Then the court used this second sort of rationale, and it's that the way this sentencing was being teed up indicated to them that it wouldn't impermissibly burden the presidency. I think Judge Merchan was utterly brilliant in the way he teed this up.

I wrote a piece for MSNBC earlier this week on Tuesday, and this is because by saying upfront that he would not sentence Trump to any time in custody, which I know made a lot of you really angry. But let's be realistic, this wasn't going to be a custodial sentence ever. This isn't the kind of crime that gets custody in New York State.

By doing that, Judge Merchan really cut the legs out from underneath Trump's lawyers. And the Supreme Court said, "Look, he's not going to jail. It's not an impermissible burden on the presidency." Had Judge Merchan not done that, there would not have been a sentencing Friday morning.

Kim: So that's so interesting that you say that, Joyce because when I saw the Supreme Court order, one question that I had, yes, Judge Merchan said, and he said it in a filing that he was inclined to sentence to unconditional release, but he had the option right up until he handed down that sentence, to pick something else, including conditional release, which was still have had the same effect, but he could have said, "You are released conditionally so that you don't commit more crimes," or XYZ and other things.

He didn't do that and I get the why he may not have, but I sort of felt like when the Supreme Court issued its order and put unconditional release in the order that, they were locking him in. They were not giving him any other options. I thought that was a bit of an overstep. Am I reading too much into that?

Joyce: You know, I sort of think that it was very clear to everybody, and we heard the judge say it in the sentencing hearing. The prosecution had already said it, that it was the only legal sentence. That any other sentence, there would've been endless wrangling over.

Kim: Yeah, there would've been appeals, and I get that that's not why-

Joyce: I think it would've failed. I mean, I think here's this. I'll tell you something from my days as an appellate chief. Something that you don't do is you don't go and poke the tiger when there's a chance that you're going to screw up the entire body of law, nationwide.

And with this particular, Supreme Court would've just been asking them for them to expand the imperial presidency even further than John Roberts already has. I just say we try to cut our losses at this point.

Jill: So Kim, based on what you and Joyce are talking about, why did he fight so hard to prevent being sentenced? Why does it matter? I mean, he didn't get any fine, any jail time. He's not even on probation. So why did he fight so hard to prevent it?

Kim: So, I think a few ... Listen, I always give a caveat. I don't know what's going on inside of Donald Trump's head. I cannot accurately put myself in his shoes, I can't. So I am just going to say based on what he has said and how he has acted, it seems pretty clear that A, he hated everything about this entire prosecution. Right?

So he's going to fight it for the sake of fighting it. He's going to keep fighting it and he's going to keep fighting it in the court of public opinion for the rest of his life. That's one.

Two, hatred of Judge Merchan, which is absolutely clear. We've talked about it many, many times. Three, anger that any of the cases before him actually got to the point of completion. So he is now a convicted felon. Let's be clear, under New York law, he was a convicted felon from after the moment that the jury rendered his verdict. But what this does, the sentence completes all of the procedural steps that precede his ability to appeal.

And what he wanted to do, because it would make him feel better and it would give him enough fodder to lie about being exonerated or something, he wanted to push that process into the past inauguration, to try to foul up the ability for any more of it to happen. And he didn't get it, so he was angry. He's petty.

This really is a winning situation, as you point out. I mean, he basically is above the law. Judge Merchan basically had to say as much in order to secure this sentence in a way that won't get appealed, but he's petty and he's a sore winner. So this is why he's appealing.

Jill: Yeah. I think the last is the most important reason in his mind, is he is now officially a convicted felon. The time for appeal is starting to run. He's going to have to act on that. I

think that was just a step too far for him and his comments during the sentencing hearing, but his postings afterward reflect really horrible thoughts.

But Joyce, let's address the fact that this was a 5-4 decision. So there were four dissenters, that means that two of the six conservatives went with the three liberal justices, but the four others didn't. And of course they didn't have to state a reason, they didn't state a reason. But what were the arguments, and should this have been a clear 9-0? Was there any possible reason why anyone would have gone differently?

Joyce: Yeah, I mean, would've, should've, right? They didn't go. Four justices voted to delay Donald Trump's sentencing in a way that would've prevented that conviction from becoming final before he-

Kim: And can we name them? They are Justices Clarence Thomas, Samuel Alito, Neil Gorsuch and Brett Kavanaugh.

Joyce: The Four Horsemen of the Apocalypse.

Jill: Yes.

Joyce: Look, I'm not a fan of their decision. We don't know if they had a rationale because they did not write. They simply did not vote to hear the case. I'll tell you, I'm going to do something that I usually don't do. I usually have more self-restraint than to do this, but what I'm going to say is I think it's a concerning signal about what will happen when Trump's conviction itself comes up to the Supreme Court, which it will do because of the issues involved.

I think very likely it will go there, unless perhaps the New York court reverses on its own. But I'm sort of thinking that these are four votes to reverse Donald Trump's conviction. The question is whether or not John Roberts will join them next go-round and make it five and reverse the conviction. And that's what I'm really looking at in this 5-4 split, whether it might not become 5-4 the other direction, the next go-round.

Jill: Yeah, and it could be John Roberts or Amy Coney Barrett.

Kim: I was going to say, it could be-

Joyce: I think she's less likely. Let me tell you why. Remember in the original presidential immunity case, she wrote a concurrence and she was the one who was not a fan of the part of the court's opinion that said, "Oh, and by the way Justice Department, you also can't use any evidence that might be of official," which is the whole predicate for Trump appealing the New York case, this idea that he used testimony from Hope Hicks and one other woman about conversations that were had inside of The White House.

Kim: But that was an easy stance to take, right? So I think when she's in the majority or she's not the decision-making vote, she can have that little bit of, I don't know. I feel like she only shows that kind of gumption when it doesn't really count. Now to give credit, in this case-

Joyce: I love that we're having this ... Yeah, this now.

Kim: Yeah, in this case she did show gumption because she was the decider. If she'd gone the other way, this would be different. Trump wouldn't have been sentenced. So I will give her that much props, not based on what she's done before.

Joyce: I think she showed gumption there too in the immunity decision because she didn't get anyone to join her view that what the majority said about the use of evidence was wrong. So I find myself being forced to give her credit for sticking to her view, which is not easy to do when nobody else ... You got eight friends and none of them are willing to stick by you.

I think she's less, but Kim, you know what this could be? I mean, it could end up being a 6-3 to reverse the conviction, right?

Kim: Yeah, it could be, but I take your points. I mean, we should ... Listen, it is for us to see clearly what each of the nine justices are doing, so I take your points. And obviously, other people have made similar points too. I am just after ... I have to admit, I'm biased from her voiceless vote with the Dobbs majority with no concurrence, no nothing, no tweet. She just said, yep, what they said and that filled me with a great bit of wariness about her jurisprudence. So I'm coming out from a hole, but I can see-

Joyce: If you are not wary of her jurisprudence, I would be disappointed because I am, too. It's like I'm not sure if I'm living in Pollyanna land, but I have come to think that on these democracy issues, it's a coin flip which side she'll be on, and sometimes she's on the good side. And so, give credit where due.

I'm looking forward to seeing more, by the way of each of the justices' reasoning, which is of course, yes, there's the decision. What matters is, what does this say to us about whether or not we're still a rule of law country?

Jill: Important questions that we will be discussing for many years to come, I am sure, but there's another issue when we're talking about this split and it being 5-4.

I'm wondering, I said, "Should it have been a 9-0?" Should it have been 8-0 because Justice Alito should have recused himself and not voted? So Kim, he violated some ethics. He had a phone call with Donald Trump the day before taking this case and ruling on it. What do you think?

Kim: Oh, my goodness. So apparently, I thought it was bad enough when I thought the possibility ... When I first heard the news of this phone call, allegedly for a reference check for a potential employee who previously worked in the Trump administration, but who now wants another job in the Trump administration. And I thought, I don't know.

He was a former clerk of Alito and maybe Alito placed a call to Mar-a-Lago to put in a good word, which would've been bad. It's even worse that the phone call reportedly was initiated by Donald Trump. So Donald Trump, who knew because we knew, because we've been talking about it for weeks, that he had multiple cases waiting at the door of the Supreme Court, if not already there, like we talked about the brief he filed in the

TikTok case too, have phone call ex parte, which means outside of the course of the proceedings, not in a courtroom, not with opposing counsel present with Alito and Donald Trump had a phone call.

So the only people who knew what happened in this phone call is them, but Alito claims that all they talked about was this potential applicant, this former clerk. First of all, we don't know that, but the standard, the ethical standard is either a conflict of interest or the appearance of a conflict of interest.

And let me tell you something. We mentioned before that at the end of the year, I was rereading *The Brethren*, which is Bob Woodward's seminal supreme court book. And there was a situation where someone who was friendly with a justice just chatted with them and then the justice found out they had business before the court and the justice immediately recused. He probably hadn't even read the pleadings yet and was like, "Oh shoot, I talked to ... That was so inappropriate. I'm going to recuse."

So Samuel Alito, if he talked to Trump, he knew Trump would be appealing everything to them. He shouldn't have taken the call. And once he did, he should have recused from every case involving Donald Trump and the TikTok case in which Donald Trump filed a brief. There is no ... This is ethics one ... I'm rambling, but I just cannot impress enough how this is an opened and shut case of a violation of ethics.

Joyce: You are praying. You are praying in court. Amen. Amen. Amen. You are so right.

Kim: It's crazy. I mean, this is insane, people. This is not normal.

Jill: You are 100% right. It was outrageous, but not just because of the timing. It's also outrageous because does anyone believe that the president-elect is doing the vetting by making reference calls? Please, there's no way. It's outrageous.

Joyce: For low-level positions. This isn't for a cabinet secretary. I mean, it's like, "Come on."

Jill: Yeah. No. I mean, this wasn't a low-level. I mean, it's a sub-cabinet. It's a general council of a department, but it is not a cabinet-level position. And even for the cabinet, that's what you have a transition team for. They make those phone calls. That's why you have background checks by the FBI. They do those phone calls?

Joyce: Absolutely.

Jill: Please, this is so ridiculous.

Joyce: Jill, that is such a good point. Can we just underscore how dysfunctional this is? Trump has said he doesn't want the FBI doing backgrounds, but he wants us to believe he's talking to a Supreme Court justice about it. Give me an effing break.

Jill: Okay, so Joyce, let's follow up on that because now Donald Trump is sentenced. The judgment is final. He's a convicted felon. It can't be undone, the sentence, but the whole thing could be set aside after a regular appeal. We've talked about that. So what's the

appellate process now in terms of timing, and what's going to happen, because it's going to end up back at SCOTUS, right?

And then I want to throw in another little tweak, which is normally the trial lawyers would handle the appeal, but those are going to be Justice Department officials if they are confirmed by the Senate.

So what's it going to mean for the lawyers who won't be able to represent them if they are confirmed, and what's the timing? What can we expect? You're our appellate expert. Tell us.

Joyce: So look, I think something that we should explain about the appellate process is that this was always going to happen. No matter when Donald Trump was sentenced or what the sentence was, there was always going to be an appeal. There is always some risk that the government will lose in an appeal. Donald Trump will make some interesting legal arguments. They will be unique. They will be what lawyers call issues of first impression. So the Supreme Court will have to decide them for the first time. That's what we've just been talking about.

The risk of the conviction being reversed on appeal is no greater now than it would've been if Donald Trump had been sentenced back in April. This is something that was always baked in and that we knew about. But it's still ... I mean, it's going to be a moment, right?

We'll, I think, all hold our breath until we see if this conviction is going to be affirmed. I feel like the prosecutors and the judge handled this very cautiously. They were very deferential protecting the rights of Donald Trump as a defendant, which many people didn't like. In my appellate lawyer's heart, I was always very happy because when judges are careful about protecting a defendant's rights, I know I'm going to have an easier time on appeal.

You raised this super interesting point about who his lawyers are going to be, right? This will go up through the New York State courts and then possibly flipped back to the Supreme Court. I think we're all expecting that. I suspect that even if Donald Trump's lawyers weren't about to become Justice Department high-ranking officials, he would've had a different team on the appeal.

For one thing, appellate lawyers tend to be specialists. And I'll tell you one of the dirty little tricks of the trade. I was always super happy, especially when I had a tough appeal, when my trial prosecutor didn't play any role in the appeal because that meant that I could be a little bit more carefree about how I characterized the conduct during the trial. It just gave me a little bit more of an ability to be nimble about making arguments, and appellate lawyers like to have that freedom.

It's always good to be on appeal and to have the judge look at you and say, "Now you weren't the trial lawyer, were you? Oh no, judge, I wasn't that guy." And that can be helpful strategically, and it just gives you ... You know, being an appellate lawyer is all about having flexibility-

Kim: I didn't make that mistake.

Joyce: ... to make the best arguments you can make for your client. I don't know who will see Donald Trump hire, but I suspect that there will be some outstanding appellate lawyers who will be willing to jump in to represent the President of the United States who might not have been willing to hop over and become a part of his government. So I think we'll see first-rate lawyers.

Kim: So now I don't want to ... I know we've been talking about this a lot, but one question I've gotten a lot that I wanted to ask with both of you, which is we understand that Merchan wanted to make sure that the verdict held, but just a fine. I have people just like, "Why does he just get to walk away? Would a fine-"

Joyce: There would not have been a sentencing hearing if there had been a fine. The Supreme Court was explicit that it was because it was an unconditional discharge, otherwise we would not be here.

And I get it. Everybody who wants to hate on Judge Merchan and the prosecution for that, I totally get it. This is not the justice that any of us wanted to see. I think that the judge was dealt a really bad hand and I think he played it to perfection, and Donald Trump is now convicted felon Donald Trump, accountable. Even if it gets reversed on appeal, he will take office as a convicted felon.

Jill: You know, I was really worried about how I would feel because of course, Judge Merchan had basically announced in advance that he was going to give unconditional discharge. I thought, "That's going to be so unsatisfying." And then I listened, as particularly the prosecution made its remarks about why they were recommending that and it suddenly felt right and just.

And I'm just wondering if both of you agree that this was at least the best that could be done in the circumstances, and whether you had any particular reaction to the prosecution remarks or to what the judge said about why he was doing this, or to Trump's lawyer's remarks or Trump's own remarks?

Kim: Yeah, I don't have anything to say about any remarks. All I can say is while I totally understand and completely agree with both of you about why this is the sentence and that this was the best-case scenario given these circumstances, I hate the circumstances.

I hate the fact that we essentially have created, unwittingly by this court, unwillingly by this court a president-elect immunity doctrine because the only reason that he's getting this treatment is because he's the president-elect. And that essentially says he is above the law.

No matter how we explain it and how technically that's not what the ruling means, for most of Americans it is what it means, for when you look at this with your own eyes, it is what it means and that's profoundly unsatisfying.

Jill: If your New Year's resolutions include eating healthier, as mine does, saving money or creating meals you're proud to serve, HexClad is here to make it happen. It's time to

upgrade from scratched up pans and mismatched tools to stylish and practical cookware with HexClad.

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Joyce: You know, they really do. My oldest child is in his first place that he's ever purchased and he has a great set of HexClad. Not a lot else, no rugs, no furniture, but he's got some HexClad. And really when you think about it, HexClad can completely transform the way you cook.

There are hybrid pans that combine the durability of stainless steel, the convenience of non-stick, and the versatility of cast iron in one beautiful design. The sleek pepper mill gives you precision seasoning with a touch of elegance, helping you easily take your meals to the next level and to make every dish shine. You'll seriously want to show this off with every meal.

So I think HexClad is something that we can all agree on. We've talked a lot about cooking on this show, mostly in the ads. Everything new that we do ups our game a little bit. HexClad has been fabulous.

Kim: Yeah, I have to agree with that. And it also, because it's so easy to use and easy to clean, it has allowed me to bring out dishes that I haven't made in the past because the cleanup is such a mess. I made Indian food, some nice saag aloo with butter chicken-

Joyce: Ooh, yum.

Kim: ... and you have a lot of spices in that and you're cooking. Usually at the end if you have a subpar pan, that cleanup is tough. But I was using the HexClad pans, and cleanup was a breeze. So I really love that and my family enjoyed the Indian food.

So Gordon Ramsay, you want to listen to him. He's one of the toughest critics in the world and he relies on HexClad in his own home and in his Michelin star kitchens. They even have a lifetime warranty, so you can trust you'll never need to replace your HexClad.

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It has been a roller coaster of a week when it comes to news about the report of Special Prosecutor Jack Smith. It started out, I thought, "Okay, are we going to get it?" And then I saw one filing from Jack Smith and it made me think, "Oh no, maybe we won't get it." And then there was another thing, I'm like, "Oh, we're definitely not getting it." Then I'm like, "Well, maybe we'll get it." And it's like, "Well, maybe we'll get half of it."

Listen, I'm so confused, Joyce. So it began this week. I think one of the first news items I saw was a filing that Jack Smith made in which he was giving the status about this report. And he indicated that it's up to the Attorney General whether to release it at all.

And I'm like, "Wait a minute. What?" And then things got worse from there. Kick us off and make it make sense how this week got started.

Joyce: So full disclosure, we were talking about this before the podcast. It's sort of tough to make sense of this if you, our dear listeners are feeling confused.

Kim: It was so confusing.

Joyce: But here's as best as I can piece together what happened. If I was going to title this answer, I would say it's called No Good Deed Goes Unpunished because apparently the Justice Department shared a copy of the report that the special counsel was going to file a draft version with Donald Trump's lawyers in advance so that they could take a look.

And what happened as a result of that was that Donald Trump's two former co-defendants in the classified documents case in the Southern District of Florida ran to Judge Aileen Cannon and asked her to keep it from happening. "Do not let the government file the report."

So the pleading that you're referring to, Kim, is this pleading that the government filed. It was a notice in response to the defendant's emergency motion. Just a quick reminder, Donald Trump is no longer a defendant in this case.

The Justice Department has dismissed him because he's going to be the future president. But also a good reminder, Judge Aileen Cannon had also dismissed this case finding that the special counsel was unconstitutional.

So it's sort weird that these two defendants go running back to the judge who's dismissed their case and no longer has jurisdiction, but here we are anyhow. And so the government files a notice in response to their emergency motion and it just says, "Look, we got this draft report. We're not entirely sure what we are going to do with it yet."

And then in essence, what this pleading does is it promises good faith on behalf of the government. You know, "We will not be turning this stuff over until these set of dates. So judge, if you're going to rule, here's sort of what our timeline looks like." It was this very mild-mannered opener, all triggered by the government sharing with Trump and perhaps with the defendants too. And then as you say, Kim, it got crazy.

Kim: Yeah, Jill. So then the Eleventh Circuit entered the chat. What happened there?

Jill: So this is one of the most complicated, convoluted procedural things I've ever seen. It got me totally dizzy. I actually wrote to the two of you and said, "Help. What is going on here?" And Joyce in her very professional, professorial mind said, "Okay, here's what we can make of this." And it was absolutely clear after she said it, but it is totally-

Joyce: You are so sweet.

Jill: No, it was a really good answer and you weren't dismissive of my going like, "What is going on?" I'm like, "What case is pending?" The judge, Judge Cannon threw it out. She said, "It's an unconstitutional appointment of a special counsel. He can't prosecute it, so case over."

Joyce: I mean, once a district judge dismisses a case, that judge has no more jurisdiction to do anything in that case, which is why it befuddled us so much.

Jill: Well, right, but it's also why they also filed at the Eleventh Circuit, because she clearly ... First of all, Judge Cannon had no jurisdiction left because she had already dismissed the case. She also had no jurisdiction ever over the report about the January 6th case in D.C.

So her outreach, her overextension of any possible power to cover either one of those was outrageous. But apparently the defendants kind of realized it maybe too late after they had filed with her. And she didn't wait. She jumped right in and she dismissed it, issued an injunction saying, "You can't have it." But then they realized, "Well maybe she really was the wrong place to be," so they filed at the Eleventh Circuit, and we're hoping that the Eleventh Circuit would also give an injunction.

And then the Eleventh Circuit did this really strange thing, and I've read their paragraph multiple times and I have to go. I go, "Okay, who's the appellant? Who's the appellee? Oh, yeah. Okay, I get it. Who's the defendant? Who's the prosecution?"

And basically, the defendants were asking for an injunction. So they were the appellants. They said, "Give us an injunction, Eleventh Circuit," and they didn't get it. They didn't get it. So the Eleventh Circuit left in place Judge Cannon's order, which said that it would expire three days after the Eleventh Circuit made a decision. That means that the Eleventh Circuit has now decided that they won't issue an injunction.

And so on Sunday, which would be three days later, the part that the Department of Justice wants to release ... Actually it's not the ... Yeah, I guess it is, the attorney general would release, would be the part about January 6th case, because they have announced that because they are trying to reinstate the case against the two co-defendants of Trump, they won't release that because that's a pending case.

Now I personally-

Kim: The two co-defendants in the classified documents case.

Jill: In the classified documents case, yes, exactly. The people who helped to obstruct justice and hide the documents. I personally think, obviously, they will be dismissed as defendants as soon as Donald Trump is inaugurated. So frankly, I think that Jack Smith

should dismiss the case against them so that part of the report about the January 6th, sorry about the Mar-a-Lago documents case can also be released on Sunday.

Kim: I got it.

Jill: That's what I would like to have happen.

Kim: So Joyce, it seems that after all of this, Trump is losing, Jack Smith is winning, but there was an appeal filed after this by Jack Smith. And I was like, "Wait a minute. You're going to get the report on Sunday. Why are you appealing?" Make that make sense.

Joyce: Okay, so this is sort of fun. And since we're all friends, I'm including our listeners in this, I'm going to do the appellate nerdy thing. If appellate nerdiness sort of bores you, just go get a cup of coffee or something for the next two minutes and I'll try to make it easy and painless.

In the Eleventh Circuit's order, they declined to enter an injunction and then they said something sort of puzzling. I don't have it in front of me so I'm just going to characterize it. But they essentially said, "Hey DOJ, you might want to go ahead and file an emergency appeal of Judge Aileen Cannon's order, which we would be happy to hear."

And here's how that landed with me. I thought that it was the panel judges saying, "Yo, if you guys want us to reverse Aileen Cannon, who is restricting your release for an additional three days, you must appeal her. And you, government, did not appeal her order. We don't see anything that says that you filed an appeal from the Southern District of Florida. So, get yourselves right and come back and see us again."

Well, DOJ did that. It was just after midnight last night. I think midnight my time, maybe 11:00 their time in the Eastern Time Zone. They did file their notice of appeal with the district court and then they filed a notice that they had filed that notice with the Eleventh Circuit. And it was sort of cute. These are appellate lawyers in Washington, not lawyers from one of the U.S. Attorney's Offices in the Eleventh Circuit.

And so they filed a notice where they said, "Well, we think that you guys have jurisdiction, but even if you don't have jurisdiction, please construe this as a request for mandamus." And I'm thinking this is nice and it's some very pretty lawyering, but y'all, the Circuit told you, "Come on, why didn't you do it the first time? They think that they have jurisdiction. Let's go."

Kim: Oh, man. Okay. So let's just break it down, Jill. Are we ever going to see any part of this report? Because if it's not released before noon on January 20th, we're not going to see it. Right? So how confident are you that we will see any or all of this report?

Jill: Confident is hard in this world today where the Supreme Court has given up on precedent and is totally unpredictable, results-oriented decisions based on their political views. But I have to say, I do think that it's going to come out before it can get any further.

I don't think that, right now, as of Sunday it can be released and I don't see anything happening that will prevent it.

Kim: At least half of it.

Jill: At least half of it. And that's why I'm saying I would immediately dismiss the rest of the case against Nauta, and what's the other defendant's name? Anyway, against his two co-defendants, Trump's two co-defendants because it's going to happen anyway. So why not get the benefit of getting this out?

Justices said, "Well, we'll give this report to Congress because they have a right to it even if it's not made public." And that's true, and that's good, and it does mean that it can't be destroyed once Donald Trump takes over the Justice Department, that it would be in someone else's hands.

Kim: Well, no. I think the way they do it would be custodially, right? They'll let Congress see it, not have it.

Jill: Right, right, but-

Kim: But then once it's taken back to DOJ-

Jill: But it would still be part of official records that would be subject to FOIA, Freedom of Information Act, that would have to go to the archives. And I think that that's an important thing.

So those two co-defendants are not going to get tried. The Department of Justice will dismiss the case. There's not even a question about that. So what's the dilly-dallying around-

Kim: Supreme Court-

Jill: ... and I do understand that Jack Smith may want an opinion from the Supreme Court that says, "Of course, this appointment is constitutional, but why risk it?"

Kim: Yeah. So let me ask this one last question that I've gotten a billion times in the last week or so. Why doesn't Joe Biden just release it and say, "YOLO, I got immunity"?

Jill: So I had to look up what YOLO meant, Kim. Sorry, but I did look it up, and here's the thing. Joe Biden is not allowed to have it. The order from the court said it only goes to the Justice Department, and that means that someone at Justice is going to have to violate the order, and that person doesn't have any presidential immunity.

Kim: Well, but let me ask this. So if the Supreme Court said not even the evidence comes in, and Joe Biden is just like, "Hey Merrick, bruh, drop it." How are they going to investigate that if you can't use that as evidence? I'm just asking. I'm asking y'all what people are asking me.

Jill: Okay, so I'm saying that the president is home free except whoever gave it to him, whoever gives it to him is not.

Kim: But if it's in conversation with Merrick Garland, I thought that that's presidential actions that are off limits in terms of evidence. I'm asking what people-

Joyce: Oh, Kim, I think you're making the assumption that the rules that apply to Donald Trump apply to everyone else. And girl, I am here to tell you, I don't think that that's the case. No. I mean, I don't mean to be sarcastic about it.

Kim: No, I think you're right though.

Joyce: I do worry about that though, but let me just say this. In a very principled way, and I think the Supreme Court counted on this, quite frankly when they gave Donald Trump and only Donald Trump presidential immunity, they counted on the fact that Joe Biden was a good man who loved the country and honored the Constitution and would not see the rule of law further destroyed on his watch.

Now look, I get people are like, "The rule of law is dead. It's dead in the water. I don't have any confidence in it, so Biden should just do this." I want to offer a different view. I think we're looking at a single moment in time right now, and as time goes on, we are going to understand that we must remain a rule of law country. The alternatives are too dark and too dismal.

And the question is, what can we do to best preserve the rule of law in this unbelievably difficult, challenging moment? Joe Biden being Joe Biden is a big part of that, just like one Merchan preceding the sentence, Donald Trump is a big part of that.

And although we are at our lowest point right now, we are seeing people begin to start us on the road to recovery. And I, for one, honor those people. I don't want to hear any criticism of them.

Kim: It's New Year, which means it's time to say goodbye to uncomfortable shapewear for good. Let's be real, life is short and you want to feel comfortable. And today's episode is brought to you by Honeylove, the brand that's completely reimaged shapewear.

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It gets better. For a limited time, you can get Honeylove on sale for 20% off your entire order with our exclusive link, honeylove.com/sisters. Support the show and start your year off right by checking them out at honeylove.com/sisters.

Joyce: With winter in full swing, Honeylove is an amazing pairing with cozy sweaters and outdoor exercise. Personally, I'm really into how comfortable the leggings are. They're perfect for everything from yoga classes to relaxing in front of the fire. I like leaving my Honeylove on all day, to tell the truth, especially when I'm working from home.

And now that Honeylove is my go-to base layer on chilly days, I'm warmer all the time. Thanks to their targeted compression technology, you'll never feel like you're suffocating in your clothes no matter how many layers you have to put on. And today, that's a lot for us with a couple of inches of snow out there on the ground.

Jill: I can't believe you have more snow than Chicago, but here it's cold enough that I like wearing them under my jeans. Those leggings really insulate and are comfortable. And Honeylove has so much to offer. Treat yourself to the most comfortable shapewear on earth and save 20% off site-wide at www.honeylove.com/sisters.

Use our exclusive link to get 20% off, www.honeylove.com/sisters. After your purchase, they'll ask you where you heard about them. Please support our show and tell them we sent you. Start the new year with confidence, thanks to Honeylove. The link is in our show notes.

Joyce: So let's talk a little bit about Meta. Y'all, it's a non-Donald Trump topic, or at least it's not about Donald Trump's criminal legal woes, but it's pretty interesting.

On Tuesday, Mark Zuckerberg, the CEO of Meta announced plans to eliminate fact-checkers across Facebook and Instagram. And in its place he's going to impose a community note system. That system is inspired by Elon Musk's badly broken approach that has caused all of us to leave the former website known as Twitter.

Zuckerberg's announcement, this was this videotaped piece. I bet a lot of y'all saw it. He advertised fewer guidelines for content moderation and a higher threshold before content would be removed. All of this happens on the heels of Meta's \$1 million donation to president-elect Donald Trump's inaugural fund, which I guess goes to prove that when ABC ponies up \$15 million and you've only sent one million, you need to find a way to up the ante. And here's the way, making it easier to lie about politics on Meta.

I suppose we should try to sort it and figure out whether this is as serious as it sounds. Maybe we can get a baseline. We'll see more when we see it actually go into play. But first up, Kim, Zuckerberg has made some personnel changes at Meta. So, read the tea leaves on this for us and tell us what you think the personnel changes mean, and do they signal anything about what we can expect to see in terms of content moderation or not at Meta?

Kim: Well, I think these personnel decisions are just the cherry on top of what we have seen over the last couple of years, be a clear rightward shift by Zuck in terms of his feelings toward not just Donald Trump and the potential of, and now the reality of an incoming Trump administration, but also Joe Biden.

So as for these appointments, he selected Dana White, who is a hard-line Trump ally, as well as Joel Kaplan, a Republican operative to join the team. Kaplan will be chief global affairs officer and White will be on the board. But even before they got to that point, recall that Zuckerberg really was one of the most vocal opponents of Joe Biden's response to misinformation leading up to the 2020 election, misinformation about covid in 2020, really fighting tooth and nail to do anything about it.

And even actually being a part of a challenge to the administration, alleging that, or it was a conservative challenge alleging that Joe Biden was somehow bullying them or violating the First Amendment rights of Facebook by trying to keep people safe and ensure they have the right information.

That didn't go anywhere, but it definitely shows you how he feels, in addition to donating money to Trump's administration, meeting with him. I even think the new way he dresses, which is weird is part of it too. He's turning into a tech, I don't want to say ... I don't know that he's full on MAGA, but he's a MAGA-adjacent tech bro in all the ways that seem alarming to me.

So all of those tea leaves say to me that he's not just kissing the ring because he is afraid. He's kissing the ring because he's a believer.

Joyce: Well, that's really sort of chilling. You know, I have to say I'm surprised by that. I don't know a lot about Zuckerberg. I don't follow it closely. I thought maybe it was just expediency, but I hear what you're saying and my question for Jill is about the substance of the changes that we're going to see at Facebook and Instagram, which I think gives some more content to the notion that maybe he has become a true believer.

Jill, talk with us about that. And what do you think about the state of remaining protections for people who use Zuckerberg's forums?

Jill: I am so glad you asked this, and I have a lot to say and a lot of strong opinions on this. His new rules include reducing prohibitions on hate speech, harassment, misinformation. It will let a lot more controversial and harmful, dangerous content be put on the platform.

It raises the stakes for removing anything in a way that's going to allow really bad stuff to stay. And it also includes, and I'll address that a little more as well, but one of the things that hasn't gotten a lot of attention is he said he was going to move people to Texas instead of California because they're seen as biased because they're in California.

Well, if you move them, they're the same people. And what are we saying about Texas? That Texas is this special place where people just don't think. They are biased for the other side?

Joyce: It's one way of getting all of your women of childbearing age employees to quit.

Jill: Good point. No. I mean, I just think that deserves a little bit more attention than it's getting, is that this idea that Texas will make everything better. But the other thing is he's moving everything to be community-based comments. And I really had never paid attention to community-based comments. But my former iGen politics partner, Victor Shi put something up that was completely factual about what the fires are and what the budget of Mayor Bass has been in terms of firefighting, and has been immediately community fact-checked as being false even though they're the ones who are false. What he posted is 100% accurate and true.

So now you have this ability for hate speech and those who spew it and those who want to purvey misinformation or disinformation to post and say, "Watch out for this particular

post because it is not true," even when it is true. So now we don't have professional fact-checkers. We have the ability for all of the trolls to start marking up comments. It really eliminates any hope that social media could become a place where one could obtain facts.

And by the way, Victor got community fact-checked by Elon Musk himself, not just by all the other people. He actually had a retweet by Elon Musk saying, "Truth wins out here." And it's an astounding set of circumstances. And there's been a history of violence resulting from some of the lies that appear and from the lack of fact-checking.

So we're into a very dangerous time when I think I'm going to certainly give serious thought to getting off X and Facebook because I think they are dangerous platforms. I'm just hoping people will start moving, who follow me on those platforms, to following me on Bluesky.

And I think probably all of you feel pretty much the same as that. And I hope they will engage on Bluesky with conversation as they currently do because my followers really ask good questions and engage in real conversation, particularly on what used to be Twitter. And I would like to see that continue on Bluesky so that I don't feel like all this false information can be put up by community people.

Kim: So I just want to make two points. Anybody who looks at X and says, "Oh yeah, I want to model my business after that," I automatically question your motives. But also, I mean, the tough ... And I agree with you, Jill, about moving, but it's not just ... I haven't been on Facebook for years, but you know what? I'm struggling right now because at least for time, less so now was enjoying threads. And I certainly use Instagram.

Jill: Yeah.

Kim: And so I'm just like, "Oh dang, what do I do? Can I just post my videos on Bluesky?" I hate that we are even in this position.

Jill: Yeah, well the Instagram dog videos are the best, right? That's one reason to stay.

Joyce: If he ruins Instagram, there are going to be half a million angry knitters coming for him because the knitters all use Instagram.

Kim: Especially if TikTok goes down. What do we have, but Instagram? If TikTok goes down, I need my Shorts.

Joyce: Oh. I don't know what I would do without kitty cat videos, but that's the good side of this stuff, right, Kim? Jill mentioned the fact that there really can be a danger, and there's a great example of it.

Facebook goes into Myanmar with very little cultural understanding. There's an absence of content moderation. Do you want to talk about how that situation evolved?

Kim: Yes. So Facebook was at the center of a big controversy for its entrance into Myanmar, as you said, during very unstable times. And according to Amnesty International, I'm not just making this up. Amnesty International says that Facebook promoted and used

dangerous algorithms that basically allowed the Rohingya people to be targeted in 2017, in a way that promoted violence and atrocities against them.

And Amnesty International is actually seeking reparations from Meta for the Rohingya people because of the disinformation and the violence that it fomented on that site. But we don't even have to go to a different country to talk about the damage that we know Facebook can do. We know the damage that Facebook did in 2016.

We know the role that they made in disinformation campaigns in the 2016 and subsequent elections. People went to jail. People were convicted by the Justice Departments for their interference using platforms like Facebook in our elections. And if you look at our discourse and the divisions, we know that Russians use Facebook to try to promote racial strife, racial disagreements and cultural disagreements to foment hate about immigrants.

They're already doing it. And all you need ... The powder keg has already been set and all it needs is a spark and the same thing can happen here. So, the risk is clear.

Joyce: Well, look, Jill, I think Zuckerberg's response to Kim would be that content moderation is censorship, right? And that we shouldn't have censorship. And so that by rejecting any moderation of content and letting the community comment, he is preventing and reducing censorship. Is it really that easy?

Jill: No. And I think this is one of those cases where semantics matter. And if you listen to his video in which he was dressed really strangely, the locket around his neck, especially troubling, although I liked his new hairstyle, but he didn't say content moderation. He started using the word censorship. And content moderation is not censorship.

Truth still matters. Facts matter. And this is a platform that's privately owned for profit. He didn't get to be, I'm not sure what his number, the most richest man in the world, but he's in the top group of the richest people in the world because of his ownership of Facebook.

And so the government can't do certain things that would be considered censorship, but private companies must do it. And if you put it in the context of what Kim was just telling us about where genocide resulted from false information being put on Facebook, that we should be very careful about allowing no content moderation, and stop calling it censorship.

Joyce: Well, I suspect we'll be talking about this a lot moving forward, but this is a great primer. Thanks, you guys for engaging on this one. I know it's a little bit off the beaten path for us, but it's really fascinating.

Jill: It is now time for our favorite part of the show, and we think it's part of your favorite part too. And I want to remind you that if you have a question for us, please email us at sistersinlaw@politicon.com or tag us on social media using #SistersInLaw. And if we don't get to a question you have sent us this week, watch our feeds during the week because we try to answer more questions there.

And today we have some really, really great questions. I'm going to start with a question for Joyce that comes from Terry. And I love this question. "When does the new," this is the part that I love especially, "The federal attorney (attorneys)?" And I'm sure that's because we've had this discussion about attorneys general. So the question is, "When does the federal attorney general take office? Before or after inauguration?"

Joyce: You know, this is such a great question. I'm sort of a procedure geek and so I like this stuff. Y'all will remember that we already have a new Senate and a new House that the new folks have been sworn in. And that means that they can start working on confirmation proceedings even before Donald Trump is inaugurated.

We're seeing some signs of an effort to do that. There may be an early hearing for Pam Bondi, who would become the next Attorney General if she has the votes for confirmation. Apparently there's pushback on other of Trump's nominees because background clearances have not been completed.

But I think the short answer to this question is that we will see the Senate move as quickly as it can to confirm Donald Trump's nominees. Typically, that's a good practice to make sure that there is a seamless transition between the two administrations, and we'll probably see that here too.

What makes this so interesting is that DOJ isn't just about the attorney general. There are a whole host of other officials who have to be confirmed, including 93 United States attorneys across the country, every place from the north to Guam and the Mariana Islands. There's a U.S. attorney in Puerto Rico. There's one in Alaska. All of the federal jurisdictions will get their own U.S. attorney and they will be confirmed in a rolling sequence.

We saw as part of Project 2025, this effort by Heritage to go ahead, and in essence start vetting people early for those kinds of jobs. And it remains to be seen how quick they'll be at getting them through. But also in Washington D.C., inside of Main Justice, the building that we all think of as the home of the Justice Department, there are a lot of people who will need to be confirmed.

The Deputy Attorney General, the number two person, the Associate Attorney General, the number three person, heads of divisions like criminal, civil, civil rights, antitrust, tax, all of those litigating groups, but also some of the parts of the Justice Department where policy is formed, like the Office of Legal Counsel, folks that we have often talked about who write policy memos, or the Office of Justice Programs, which is the grantmakers.

All of that to say there are going to be a lot of confirmation proceedings going on, and we will have the opportunity to take a look at a lot of Donald Trump's picks to run these big, major offices.

Jill: And Kim, I have a great question for you from Gavin Frantz on Bluesky. "Can you please explain the difference between when Trump received backlash for his quick filling of a vacancy on the Supreme Court during the 2020 election versus now when many are pushing for Biden to fill in his judicial vacancies before the president-elect has a chance to fill them instead?"

Kim: So Gavin, there is really no confusion here as I see it. A president has the right to nominate members of the judiciary to fill vacancies until he or she, hopefully one day is no longer president. But so in this case, did Donald Trump have the right to make an appointment to the Supreme Court when the vacancy was created by the death of the late Justice Ruth Bader Ginsburg?

Yes, he did, but the backlash came not from the filling of it, but the fact that it was filled, and so quickly after Donald Trump's party, the head Senate, member of the Senate, Donald Trump's party, Mitch McConnell during the Obama administration blocked a vacancy for a year that Barack Obama had the constitutional right to fill, and then turned around and hypocritically gave a completely different justification for doing the exact opposite and ensuring that Donald Trump could fill a vacancy that occurred even later in Donald Trump's term than it occurred in Barack Obama's term.

That's where the inconsistency was, not in the fact that Donald Trump could fill a Supreme Court or other vacancy in 2020, not that Joe Biden can fill a Supreme Court or other vacancy in 2024 or 2025 up till January 20th. It was the hypocrisy of Mitch McConnell. So I hope that's clear for you.

Jill: Thanks, Kim. And now I'm going to take the last question, although I think one, it's an extremely depressing answer. And so I'm hoping that not only will I answer this one, but that maybe Joyce and Kim will have something to add to it.

And the question comes from Don in Michigan who asks, "Suppose the president through official acts could prevent the House from voting on impeachment, having a coup d'etat. Are there any constitutional remedies left to control the executive branch?"

And of course, it's just depressing that this is a question that anyone is thinking about, is that the president might actually try to prevent the constitution from functioning and having a coup d'etat and not having any penalties for it.

And I'm afraid that under the horrendous ruling of the Supreme Court, which we've talked about today a lot already for giving immunity to the President, if there is a way to say, "I'm issuing an executive order to eliminate elections this year because I think we're in danger and we can't have an election," or to finding ... Apparently he's now looking for a disease that will justify closing the border.

Kim: Which is racist.

Jill: It's way more than racist. And then we could talk about the fact that Democrats are supporting a bill that would allow the removal and deportation of anyone who is accused of a crime before there's a trial, and even if they are pending legal status.

But okay, so you're getting me off on a different topic, but I really think that right now we are in a serious risk of having a completely authoritarian government, where we are losing the checks and balances that are built into our constitution. Do either of you think that there is some guardrails left? I know you'll think so, right?

Joyce: I'm sorry, guardrails?

Jill: Oh, the silence is deafening. Oh, god.

Kim: I would not stake my life on a guardrail at this moment.

Jill: Okay, we can't end on this note.

Joyce: No, but look, can we be serious about that for a second, because I mean, it's a bleak moment, right? It's not a great moment in American history, but there's an election in two years. And historically, the party that has a president in office doesn't do great in the midterms. I think Donald Trump ... You know, American, our mentality, our memories, man, they are short. People voted for Donald Trump again. I will never, for the life of me understand that.

But once all of this stuff starts and people realize that the price of eggs isn't coming down, I am optimistic actually, that in the midterms we will restore Democratic majorities in the House and in the Senate, and that, that will become the new guardrails. But until then, you know what? It's us. We are the guardrails. The cavalry is not coming. It is up to us.

Jill: So everybody, go out and decide how you are going to participate in our democracy. What are you going to do to make sure that in two years there is a Democratic House and Senate, and we'll still have a Republican president, but he won't be able to do the things that are laid out in Project 2025 if the Congress stands up to him.

Kim: Join the resistance. And I've heard there's a T-shirt for that.

Jill: Yes. That's how we can end on a happy note, is we're going to put a picture of the new T-shirt in our show notes so that you can see this gorgeous thing and you can join the resistance with your sisters. So please go to politicon.com/merch and order your T-shirt and we'll all wear them in a few weeks when they come in.

Thank you for listening to \$SistersInLaw with Joyce Vance, Kimberly Atkins Stohr and me, Jill Wine-Banks. Barb McQuade will be back with us next week. Follow #SistersInLaw on Apple Podcasts or wherever you listen, and please give us a five-star review, that you can help others find the show by doing that.

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The Smith Report may be coming out on Monday, maybe not, we'll see. And whether there's going to be any hope for facts and dismissive ... And-

Kim: Sorry. Dismissive? I'm going to start calling that. That's what I'm going to start calling-

Jill: I'm going to have to do it again.

Kim: ... non-factual ... Sorry. That's some dismissive.

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Jill: Okay.