

Kim: Hey there, I'm Kimberly Atkins Stohr. With the new administration, a lot will be changing and it's a lot for us to learn about. If you want to learn about the 14th Amendment and what that means for things like birthright citizenship, please listen to my podcast, Justice by Design. The link is in the show notes, and this week and every week, we are breaking down solutions and answering questions that you may have about how the world works in 2025 and beyond. You can find it wherever you get your podcasts, and it's linked in the show notes.

Barb: Welcome back to #SistersInLaw with Joyce Vance, Jill Wine-Banks, Kimberly Atkins Stohr, and me, Barb McQuade. Get ready for the new administration by checking out our brand new T-shirts that celebrate the resistance. You get it? Resistance. You can go to politicon.com/merch and see our new T-shirt. Today we will be talking about the Supreme Court's decision in the TikTok case, this week's confirmation hearings of Pam Bondi and other Trump appointees. And it long last the Jack Smith report on the January 6th investigation. But first I want to chat with my sisters a little bit. It's a quiet time of year and I'm always curious to hear what kind of content my friends are enjoying. Books, movies, TV shows, anything good to get your mind off of the news that you've been enjoying?

Kim: My husband and I, we've been watching. We have our own things that we watch. His is usually sports related. Mine is like Real Housewives trash, but we always pick things that we're watching together and we wait for each other to watch the next episode. So right now our show is No Good Deed on Netflix, and I love it, A, because it is a total Gen X dream. It's got Lisa Kudrow and Ray Romano and a lot of recognizable people in it. And so I like that. I always feel old when I'm watching the Oscars or the Emmys or something. I'm like, "Who's that? Who's that? What's that? I've never heard of that. I've never seen that person."

Barb: Yes, I know the feeling. Yeah.

Kim: I know everybody in the show.

Barb: Oh, I might like that then.

Kim: It feels-

Barb: Although '90s might be a little recent for me.

Kim: It's also set in Los Angeles, and we were worried a little bit. We're like, "Is this going to be hard given what's going on there?" But because we've both spent time in California throughout the years, have very dear friends there, and we love that place. I actually really enjoy seeing how beautiful it is and seeing just how that neighborhood is in its glory. So I think it actually reminds me to keep that place in my heart as opposed to making it feel bad to watch. So yeah, that's what we're watching.

Barb: That's a pretty good one. How about you, Joyce?

Joyce: I don't watch TV. Almost never. I don't know why. I just don't do it anymore, and my husband and our kids watch it, so there's never anything I can watch with them unless it's

brand new because they've seen everything. So if our listeners have any suggestions for good brand new shows, I'm all ears. I would love to have one, but I'm a reader after dinner. I always try to spend some time with a book, and as you all know, I'm sort of nerdy. I've been rereading stuff like Common Sense by Thomas Paine. I actually reread over the weekend and really enjoyed, but I am just about finished with a fabulous novel. It's Never Let Me Go by Kazuo Ishiguro, a great author for people who've read Remains of the Day or others of his books. This one, man, I am just telling you, I won't ruin it in any way. It is really innovative, really novel. It's something that I think will stick with me for a really long time.

Barb: Okay, that's a good one. How about you, Jill? You got any good content for us?

Jill: So unlike Joyce, my husband and I actually do watch a lot of television. It is an escape for us. We recently watched Six Triple Eight, which I totally highly recommend. Kerry Washington is in it. It is about the WACs and-

Barb: Oh yeah, I think I saw something about that.

Jill: It's an amazing story and well done, and just uplifting and depressing at the same time. So depressing because we haven't made that much progress, even though I will just remind everybody that I was involved in the elimination of the WACs because it was actually holding women in the military back. It limited their opportunities to hold positions because most positions, generals particularly, were in the regular army. And so by eliminating WACs, they became part of the regular army. We also watched and loved Diplomat, which was an amazing series.

Barb: Oh yeah, I've heard good things about that. I've watched a couple episodes. I'm going to have to put that on my list.

Kim: Do you mind me saying that the main character in the Diplomat reminds me so much of Barb McQuade? It's just like-

Barb: I think you said that before. Is it because her hair is messy?

Kim: No, it's because she's all business. She's just like, "I don't want to wear a dress." She's just like, "This dress doesn't even have pockets." She is Barb McQuade.

Jill: It's true. Yeah, remember about the Webbys and Barb didn't want to go because she didn't want to wear a dress.

Kim: That's very, very Diplomat energy.

Jill: Yeah. We also watch all of the late night shows monologues, and then we turn to YouTube for, oh, the 5,000th rendition of Hallelujah, Leonard Cohen's song, or some other thing that gets us ready for bed.

Barb: That sounds like a nice nightly ritual, Jill. That sounds really nice. Well, I've been watching a lot of football since it is NFL playoff season. Our Detroit Lions trying to make it to the Super Bowl for the first time ever in franchise history ever in my lifetime

will be playing tonight. So I'm super excited about that. But a book I read recently that I really liked is a book called The Sequel. It is a sequel to another book called The Plot.

I don't know if any of you have read either of these. They're kind of thrillers and they're real page turners. I especially enjoyed The Plot. That was a really good story. I'll share with you just the premise and the idea is that an author has stolen the plot for a book from someone else and written it, and so intrigue ensues, and then The Sequel is the sequel to The Plot, and I enjoyed them both. So dear listeners, share with us the content you are enjoying. We'd love to get ideas for what to read and watch and stream and listen to. So if you have any thoughts, please share it with us on our feeds.

Jill: Barb, I never read much fiction, but some of the escape fiction I read is Daniel Silva. If you haven't read him, you might enjoy that.

Barb: Is that right? Okay, I'll check it out.

Well, you all know how much I like to spend time in the kitchen. It's one of the things I like best is how fast Wildgrain goes from the box to our table. Whenever I have guests over or the kids are home and I want to take our meal to the next level, it's the first thing I think of. It's perfect for delicious meals or snacks now that we've entered the NFL playoff season.

Jill: Well, you know how much I love the NFL playoff season. Not at all, but I do love watching the color and flavor come alive when the giant snickerdoodle cookies are heating up, it makes it really hard to wait for them to cool down, enough to bite into, and even the aroma of fresh bread and pastries coming from the oven is incredible. I never have to call anyone when the food is ready. As soon as the smell reaches them, they come running. Wild Grain items are delicious, super high quality and easy to make. I can guarantee the maple Belgian waffles will be a big hit.

Joyce: This episode of #SistersInLaw is brought to you by Wildgrain. If you're not familiar with Wildgrain, it's the first baked from frozen subscription box for artisanal breads, pastries and pastas. Wildgrain's boxes are fully customizable to your tastes and dietary restrictions, and there's some exciting news. In addition to their classic variety box, they recently launched a new gluten-free box and a 100% vegan plant-based box. Best of all, Wildgrain takes the hassle out of baking since all items baked from frozen in 25 minutes or less with no mess or cleanup. It is my favorite kitchen trick when I'm in a bind for time.

Kim: If you are ready to bring all your favorite carbs right to your doorstep, be sure to check out Wildgrain so you can begin building your own box of artisanal breads, pastas, and pastries. And I got to say one of my favorite Wildgrain products is actually their butter. They have this-

Barb: Oh, that French butter? Yes, yes, it's good.

Kim: Oh my gosh, it really is otherworldly. And with the croissant, listen, you'll be so glad that you signed up for Wildgrain. And for a limited time, Wildgrain is offering our listeners \$30 off the first box plus free croissants in every box when you go to

wildgrain.com/sisters to start your subscription. Listen, subscribe, get those croissants and get the butter and eat the butter on the croissants. You're welcome.

Barb: Can I just eat the butter?

Kim: Yes, you can. You absolutely can.

Barb: It's so good.

Kim: Yes, that's free croissants in every box and \$30 off your first box when you go to wildgrain.com/sisters. That's wildgrain.com/sisters. Or you can use the promo code Sisters at checkout and the link, you know where it is. It's in our show notes.

The Supreme Court just hours before we sat down to record handed down an unusual Friday opinion, but the clock was running out on them. And TikTok, the justices upheld a law banning the social media site in the United States unless it divests from its Chinese parent company by January 19th. That's this Sunday. The law was challenged by TikTok users and others saying it burdens users First Amendment rights, but the government said it was necessary to protect national security interests, particularly stopping a foreign government like China from stealing data from Americans or secretly influencing content. The court ruled that, "There is no doubt that for more than 170 million Americans, TikTok offers a distinctive and expansive outlet for expression." But the court went on to say, "Congress has determined that divestiture is necessary to address its well-supported national security concerns." So before we get to the meat of the ruling, Joyce, the decision was a per curiam decision, which surprised me. Can you explain what that means and whether the fact that it was per curiam surprised you too? Why do you think they ruled that way?

Joyce: Yeah, I mean, it's such an interesting question. We see these per curiam opinions from time to time. All of the justices on the court join in the opinion, but no one justice signs it. And that's a little bit unusual. Sometimes it's a court trying to where no one justice or judge wants to take responsibility for the opinion, but more often it's a way that the court just says, "We are united behind this decision. So if you don't like it, too damn bad we were all in it together." It's a good question why they did this. This is not exactly a court that has joined forces in good faith a lot lately.

I mean, do you remember there was that reporting recently that when the presidential immunity issue hit the court that John Roberts wrote this long screen saying, "This is the way this case should come out." And when Justice Sotomayor approached him about perhaps finding a compromise where she would give in on a few things and he would give in on a few things, he just wasn't interested. That's the most recent reporting that we've had about relationships on the court. So this does come as something of a little bit of a surprise. My guess is that this is about expediency and the timeline more than about any genuine feeling of unity.

Kim: And I also wonder if, because they also could have had it written by whoever actually authored the opinion because somebody actually had to write it and then just said it was unanimous, right? But I think in this case, and particularly because maybe because of some of the political implications, the court just wanted to speak with one voice, not just

with one justice's voice, but a solid voice on this in this way. And I think that that probably, if I were to guess, made a difference too.

Joyce: I think that's right. And we should say, especially knowing that it would be unpopular, the court did what courts are actually supposed to do. They were like, "No, we're taking a legal stance together."

Kim: Yeah. So Jill, let's get to the merits. The first thing the justices had to decide was whether the burden that the challengers alleged was content-based or if it was content-neutral. Why was that important and what did the justices say? And do you agree with their opinion on that part?

Jill: Great question, Kim. And I know that all the nerds listening, including Joyce, love this kind of question because it does get into what is the standard of review that will be, and it's sort of the difference between beyond a reasonable doubt and any lesser standard of sufficient evidence. So in this case, they have to decide if a significant right, like the First Amendment, is at stake, and that would get a heightened level of review known as strict scrutiny. If it's not a significant, then it gets an intermediate or rational basis. And so what's the difference between those? Well, strict scrutiny means that the burden is on the government to prove a couple of things. They have to prove that there is a compelling government interest for what they did for the law, and that the law is narrowly tailored to reach that interest and is the least restrictive means to achieve that.

Whereas if it's just a rational basis or intermediate lower level standard, it's much more lenient and the law just has to be rationally related to a legitimate government interest. And the burden in that case would be on the challengers to prove that it was not a rationally related thing. So the question here was fundamentally, was this a First Amendment issue for American users and that it was a... Thank you, Brisby.

Kim: Brisby has a lot of-

Jill: He thinks it's a First Amendment right, obviously, and he's speaking up.

Kim: He said it should have been strict scrutiny.

Jill: Yeah. Strict scrutiny, exactly.

Barb: I dissent.

Jill: Anyway, so it's a question of whether it was content-based burden, and the court ruled that this was facially content neutral, so not necessary to use a strict scrutiny standard, and that they were satisfied that it satisfied the lesser standard.

Kim: And Barb, once that standard of review hurdle was cleared, and thank you, Jill, for that wonderful constitutional interpretation 101, that was fantastic, then the court had to decide, okay, they're basically weighing the interest of whatever burden on the First Amendment this law would put on users against the national security interests that the government advanced. And in this case, the court decided that the national security

interests were stronger. So you are Barb McQuade are NatSec sister. That's actually what we call you NatSec sis. So how do you think the justices handled that balancing?

Barb: Yeah, I think I got it exactly right. So what they ultimately decided on the level of scrutiny is that intermediate scrutiny was important here. And that says there is a substantial governmental interest and this is substantially tailored to achieve that interest. And so the interest they found here was protecting the national security from a hostile foreign adversary, and they put China in that category. And the risk is that China will collect all of this private data against American citizens and build dossiers on all of us that they can use for recruitment purposes, they can use it to access our devices, they can use it as listening devices on our phones and other kinds of things for espionage, for recruitment to blackmail us. People who may not now be in sensitive government positions, but a young person who say 10 years from now gets a job at the FBI or the CIA and gets leverage and blackmailed for something they put on their private social media 10 years earlier.

So all of these things are a significant risk. That is what the court found. And they found that this was substantially tailored to achieve that interest. They didn't say it has to shut down altogether. They just said TikTok can continue, but only if they divest from this Chinese company. I thought one thing was interesting. They did not take up the second basis for this statute that the Biden administration offered, and that was that China has the power to use TikTok to manipulate content online and to push foreign influence to advance China's political agenda.

They said, "We're not going to go there because we don't need to. We're instead going to focus on this other thing, this collection of private data." And that was enough to uphold the statute. But it is interesting because Justice Sotomayor and Gorsuch concurred in the result and they said they wanted to write separately to note that that would not have been an appropriate basis for upholding this statute because Americans have the right to receive information they want to receive, even if it might be bad for us in some way because it is being pushed as foreign propaganda. And there is case law to support that theory.

Kim: Yeah. And it's not that unusual for Sotomayor and Gorsuch. They're actually outside of the court, pretty good friends, but they also have, this is an area where you see people ideologically different but believe in a point and both join together and say that I used to see that a lot more often before this court got as polarized as it is now. But in a way it's kind of nice to see them come together on that point.

Jill: And Barb, you mentioned an interesting point, which is about how social media can be used in the future. A very good friend of mine, Lori Andrews, is a professor at Kent Law School here. And she has been teaching for a long time a course about social media and warning the students of the consequences when they go to apply for a job even of what they have posted. And so it's a really interesting issue, not just in terms of possibly being pressured by the Chinese government, but even losing a job because of it.

Kim: So perhaps it's a surprise, perhaps it's not. But if you recall, Donald Trump weighed in on the TikTok case and he filed a brief basically saying, "No, no, no, don't decide this case now, put it off until I can come in because only I can make a deal that will fix TikTok." This ruling did not say a peep about Trump or his big deal making ideas. What do you all

make of that? I mean, his argument was crazy, let's be honest. But the fact that this court, I thought just by him filing that brief, they would have to deal with it in some way and they just didn't. What do you all think of that?

Joyce: I mean, he wanted the court to do something that the court doesn't have the power to do. He just wanted them to say, "Okay, we'll ignore the law and you can deal with this, Donald Trump, because you're such a great deal maker." And even for this court, that was a bridge too far, which is sort of astonishing, but also maybe a little bit reassuring that they do have some lines they won't cross.

Jill: I would like to be as optimistic as you. They obviously did the right thing and his argument was insane and insulting that he would actually put it in writing to the Supreme Court. But I think that they may have ignored it because it's only less than 24 hours from the deadline to his taking office. And they probably figured he could undo whatever he wanted to undo and so that it wasn't exactly ruling against him.

Kim: Yeah. And I also wonder too, if in this case, given all the heat this court has taken, including the fact that Justice Alito had a phone call with Trump right before this decision came down that I think it was before it was argued, wasn't it? Or was it after? I can't. You know what? The days run together these days, you all. I don't know what day it is.

Barb: I think it was just before it was argued like the day before.

Kim: I think it was right before it was argued. And so I wonder if the chief for more than one Justice was like, "You know what? A per curiam will be good for us right now. We're not going to get a per curiam if we even acknowledge that brief was filed. So let's just pass on that one." I don't know. Well, we will have to see. Maybe by the time this podcast airs, we'll have further TikTok news on its future. But the Supreme Court has spoken.

Joyce: Tick-tock.

Jill: Very good.

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Joyce: The luxurious, unbelievably rich texture absorbs instantly and it feels great. It really isn't like anything I had ever tried before. And once you do, you'll never go back. And let me tell you, that's not just for the women in your household, it's for the men too. We're in the middle of redoing Bob's bathroom. Bob's been using my shower. I noticed I have a bottle actually of the body wash and of the body oil in my shower, and it was going down really fast and I suddenly realized Bob had been using it. And when I told him to stay out of my stuff, the response was that he expected I would keep him stocked once his new bathroom was ready. So there you go. The Undaria Algae Body Butter infuses your daily skin

routine with an incredible citrusy scent that awakens your senses. It has hints of grapefruit, lime, cypress, and mango mandarin. Every time I put it on, it feels like I'm leaving the world behind and escaping just a little bit as soon as I open the bottle.

Kim: And you know, you need that escape, at least I know I need that escape.

Joyce: Girl, I need that escape right now.

Kim: Well, we all do, don't we? But the air has been so dry that my skin has been flaking like a croissant.

Joyce: It's so dry.

Kim: It's so dry, and I really have been relying on OSEA. The shower oil is fantastic. You put that on and it's like your first layer of moisture is locked in. And then I've used the OSEA lotion on top of that, the body butter is the best, and then I'm not reapplying moisturizer over and over again all day. I also really like the facial moisturizer. It really is making a difference because I would be cracked in half by now without it. And skincare is a habit worth keeping all year round, but especially in the winter. OSEA's body butter can help your skin have a healthy glow every day. After all, skincare is self-care and the Undaria Algae Body Butter is the perfect way to complete your self-care routine and reconnect with your body. It feels amazing the second you apply it. All their products feel really good and transforming your skin with the healing power of the sea feels fantastic. The nourishing effect is amazing, and when you see it, your glow will light up the room.

Barb: I just hope I don't confuse the Wildgrain French Butter with the OSEA Malibu Body Butter. Which one am I supposed to eat and which one do I spread all over my body?

Kim: I bet both you could do.

Barb: I bet you could do both with both.

Kim: I think you can.

Barb: Well, there we go.

Joyce: You all, this is a family-rated show. Watch it.

Jill: I'm just thinking head out of Brisby licking the butter off of you.

Joyce: Okay. Okay. You started it.

Barb: Speaking of NFL playoff season, I'm throwing a penalty flag on the end. We think it's so cool that OSEA is women-founded and led, and we 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 it for yourself. Give your skin a new year glow up with clean, clinically tested skin care from OSEA. Right now we have a special discount just for our listeners.

Get 10% off your first order sitewide with code Sisters at oseamalibu.com. The link is in our show notes.

Joyce: Well, okay, sisters, did anybody start their week watching the confirmation hearing of Pam Bondi to be the next Attorney General of the United States?

Jill: Sadly, yes.

Kim: I tried.

Joyce: Was it as much fun as the content Barb got us to talk about in chit chat? No, I'm not seeing a lot of enthusiasm. But look, there was a lot going on in the confirmation hearing, and so I'm interested in asking what stuck out? What did you think was important? What did you think was appalling? Just give me your top line reactions to get us started. Kim, what did you take away?

Kim: So it did not get off to a good start when in I believe her first answer, she said that in 2021 there was a peaceful transfer of power.

Joyce: I caught that too.

Jill: Yeah. What?

Kim: I just, oh dear. But it wasn't just her expected fealty to Donald Trump. I mean, she was speaking to an audience of one as just about all of the nominees really have been in a way that's really, really disturbing to be quite honest, because their job that they're applying for is to serve the American people. It is not to serve Donald Trump as if they are his personal troops in his little grievance war. But that's exactly how she came off. She refused to say that Joe Biden won in 2020 fair and square. She just kept saying, "Oh, he was sworn in, so he's the president." Like that like, "What?" What even-

Barb: Yeah, those are two different things, right?

Kim: What even is that distinction?

Joyce: A woman with a law degree.

Kim: Right. I mean, she is someone... And it's important to say that, and I appreciated several Democrats who made the point that's like, "We're not quibbling with your CV. You went to law school. You've worked, you've have the credentials on paper of somebody who would be considered for this role. What we quibble with is what your lodestar is, what your guiding principle is will be as the chief attorney for the federal government. It's not to serve Donald Trump, it's to serve the people." And she didn't seem to get that. And not only did she stick to her sticking point, she did it in a snarky way that just made me, I mean, this isn't funny. This is serious stuff we are facing. We are a nation that faces some serious problem and it's a real...

I happen to go to the Attorney General Merrick Garland's farewell address at the Department of Justice, and just seeing people in there talking to people who work at DOJ

and just the reverence all the entire program wasn't even so much about Merrick Garland, and it certainly was not about Joe Biden at all. I am not even sure Joe Biden's name was mentioned in this. It was about the work. It was about the investigations that they carried out. It was about the tenacity of the assistant attorney generals and all the other career lawyers in that place. And her snark was so antithetical to that, that it just made her nomination seem even more off-putting than it was in the beginning.

Joyce: Well, that's very cheery. Jill, how did you react to the confirmation hearing?

Jill: Exactly as Kim did. I thought sarcastic, snarky, completely inappropriate, showing a temperament that was completely unfit for the job that it foretells, that there will not be any cooperation across the aisle. She was rude beyond belief, dismissive of senators. She would talk over them, she yelled at them, she retorted. She did not maintain her calm during questioning by Padilla. She said, "I'm not here to do your homework." And he was asking her questions about the 14th Amendment. Good God, really?

Kim: Like was literally asking her about her understanding of the 14th Amendment, and he asked her about that and is like, "I know what it says, but I'm not here to do your home..." I mean, just ridiculous or said to someone else, "Well, I guess you don't want to hear my answer because you don't let me talk." I mean, she's not the chairman of the committee.

Jill: She talked over them all the time. With Schiff, she was really, really awful. She was like saying, "I'm not playing politics like you did when you leaked about your colleague Devin Nunes." She went on way beyond that. He asked her a factual question sitting here today, "Do you have any factual predicate for saying that there was an unfair election? Yes or no?" And that's an easy yes or no question. Yes, I do, or no, I don't. And she kept saying, "That's a hypothetical question."

It wasn't hypothetical. Do you or don't you sitting here today not asking you for any information that you might have as the attorney general because you're not the attorney general, just as a citizen of this country? Do you have any information? And she kept referring to, well, there were things in Pennsylvania. Well, let her come forward. If she had something that happened in Pennsylvania, which by the way, I just want to remind our listeners, she went there with Rudy Giuliani who has been disbarred for putting those remarks in a court filing. So lucky she was only under oath in front of the Senate instead of in front of a court.

Joyce: Well, Barb, did you have a takeaway from this hearing?

Barb: Yeah, a couple of things. One is, I know some of you, all of you maybe have testified before congressional committees and hearings. And some people when they actually show up are very smooth in their execution of this and others not at all. I thought it was so apparent that she had been coached and that the coaching was to give her sort of two safe lines, "When in doubt, here's what you come back to." And dear listeners, this is the strategy. It's very different from being a lawyer in an ordinary courtroom case where your job is to answer the question when a judge asks you. Because if a judge asks you a question, they're concerned and they might rule against you on that basis.

So it's your job to really engage with the answer and give them the answer to the question because it's in your best interest in this situation. It's just the opposite. She probably has the votes. So her job is don't make waves, don't make news, don't do anything that could cause a problem. Your job is just to get in and get out and be done with this. Not to answer their questions because you've got enough votes. And so her two safe phrases clearly where, number one, "I will uphold the law," we heard that how many times, and, "I'm not going to engage in hypotheticals," which Jill, you just mentioned.

What? It's all about hypotheticals. The law is all about hypotheticals. That's what we do as lawyers. Every candidate for attorney general or other high-level position is asked that question. I can remember when Sally Yates was asked this question, if the President asks you to do something that is illegal, will you have the character and the strength to stand up to him and to stand up for the rule of law? That's what this job is all about.

Joyce: She said every time she had the gumption to do it when it came down to that with the Muslim ban too, I mean, I always remember that about Sally.

Barb: Yep, she absolutely did. I think when she was asked the question, they were envisioning Barack Obama, but instead it was Donald Trump who asked her to violate the law and she refused to do it. That's the kind of person we want as an attorney general, but I don't think it's the kind of person Donald Trump wants as an attorney general. And that's the job of members of Congress is to highlight that for the American people. But she kept coming back to, "I'm not going to engage in hypotheticals," and shame on everybody on that Senate committee for letting her get away with it. Of course, you're going to engage in hypotheticals. That's why you're here. I'm going to ask you a bunch of hypotheticals. So I didn't like that. I also really do find some faults with the Senate members who are just such bad questioners, aren't they? They have a question.

They read it. It might be an excellent question, but they get some BS answer like that. I'll uphold the law. They really got to just stick on one thing and stick to it and come back and back and back until they get an answer. And instead they totally leave her off the hook and they move on to their next question when she says, "I'll uphold the law." Okay, next question. No, what do you mean by that? Right? What do you think the law says?

There was one instance where they asked her if she thought the special counsel law was lawful, right? And she says, "Oh, yes, I'll uphold the law." She signed a brief for the 11th Circuit Court of Appeals and an amicus brief saying that she supported Judge Cannon in her order, finding the special counsel statute unconstitutional, come on and confront her with that. So I thought that they did a very poor job, and maybe they just know that the writing's on the wall and she's going to get confirmed. But I thought they could have done a much better job to really highlight her failures to answer questions and the times that she has contradicted herself.

Kim: This is an important point because I get asked, I think we all get asked all the time, well, are they under oath? What are the consequences of not telling the truth? They are under oath. But this like many other things, there is no consequence if it's not enforced, to Barb's point, I think the members of the Senate, members of the committee, they didn't hold her feet to the fire, but they also did not say, "You are under oath. You are under oath right now. You will perjure yourself if you don't tell the truth." And use that to really make clear what the consequences are, even though the consequences are nothing.

Because somebody would actually have to bring perjury charges against her. And even if the DOJ could do that in the next 24 hours, it would get thrown out.

Jill: To your point, Kim, it's been suggested that the process be changed so that it's not the seven-minute go from A to B to C, from Democrat to Republican, Democrat to Republican, that you assign one person who's a really skilled questioner to do all the questioning.

Kim: I love that idea.

Jill: They don't need their five minutes in front of the camera. They need to get these points made. And by the way, I forgot to mention that I've just written an ED for U.S. News & World Report about the Bondi hearing, and so I'm going to put that in our show notes.

Joyce: Hey, so listen up, Democratic senators, #SistersInLaw, we are volunteering to come on over and share some of our best trial tips for getting an answer out of a recalcitrant witness. I know you all listen. We'll come anytime you say, but Barb, I noticed another Pat answer that she had, and I wonder if you noticed this too. Anytime she was asked a sticky ethics question, she said, "Well, I would consult with the senior ethics official, the career ethics official in the Justice Department." And she said that at least a dozen times. And every time she said it, I thought, yeah, your new boss is going to insist that you fire that person because that person is going to be loyal to the Constitution. We all know, right, who. And that person is loyal to the Constitution, not Donald Trump. So I thought that was an interesting answer. What did you make of that one?

Barb: That's actually the right answer, I think.

Joyce: It is a good answer, right?

Barb: Is that I would consult with the relevant ethics officials at the Department of Justice, but you're right about that. Do you think it's going to be the same kind of ethics, the rigorous stuff that we got, Joyce? I mean, think about that. Can I serve coffee at the staff meeting? No.

Kim: Right. Is this person in charge of ethics Senate confirmed because it might end up being [inaudible 00:39:22]?

Joyce: No, it's actually the senior career official at the Justice Department.

Barb: But with the new Schedule F, if there's any policymaking involved that a presidential-

Joyce: Boom. So you all, I got to tell you, my biggest takeaway from listening to Bondi testify and the way, as you all have pointed out, she just refused to say that Joe Biden got more votes than Donald Trump in 2020, right? And this is my takeaway, a woman who's not going to say no to Donald Trump about the big lie, she's not going to say no to him about anything. Donald Trump can ask her to have the Justice Department do anything he wants, and she's in the tank. So I thought that was pretty disturbing. Bondi was, by the way, not the only person having a confirmation hearing this week. I know that comes as no surprise to our listeners, but Russell Vought is returning to management at OMB, the

Office of Management and Budget. And while this may not sound like a very sexy confirmation hearing, for those who oppose Project 2025, which is like all of us, it's sort of a big deal. So Kim, is Vought horrible or is he awful? Which is it?

Kim: He's terrible and awful and horrible. So he is an architect of Project 2025, let's say it how it is, and Project 2025, the most important agency to carry out everything that's in it is the Office of Management and Budget. And what makes Vought so dangerous is not only did he help write this plan that we've been talking about for the last year, but he formally was Trump's OMB director. So he knows more than where all the bathrooms are, right? He knows exactly how to get in there on day one and start carrying out the things that are in that document. So I urge everyone, even though I don't think I have not heard people talking about Project 2025 the same way that it was being talked about before the election, this is the time that we really need to pay attention to it. This is the same guy who, when Donald Trump broke the law, there is a federal law saying that a president cannot withhold funds appropriated by Congress.

Congress appropriated aid to Ukraine and Donald Trump blocked it, said, "Nope, we're not giving it to them." A little thing called an impeachment happened over all of that. And who was his guy in OMB who helped him block it? It was Russell Vought and he's not sorry. The law, when he was asked about it during his confirmation hearing, he said, "Well, speaking of Donald Trump, well, he believes the law is unconstitutional." I'm sorry, what? I don't care if he believes the sky is green. It's the law. The president takes in oath to uphold the Constitution. And the Constitution says that a president must take care to execute the laws fairly. That's called the Take Care Clause. It's not hard. It's not hard, but he is saying that he believes he doesn't have to. He believes he's above the law. When Senator Maggie Hassan asked if Donald Trump told Vought to withhold funding from Blue States, this was his answer, listen to this, "I don't engage in hypotheticals, but the president would never ask me to do anything along those lines." I'm sorry. What?

Barb: Yeah. Have you met Donald Trump?

Kim: What? So this dude, I mean, it was unserious. It was alarming. And I think for people who did not watch that hearing, go back, go to C-SPAN's website and look it up. It's really dangerous stuff and I don't think it got quite the airtime that it should have.

Joyce: Well, Jill, you've got experience at the Pentagon. Another confirmation going on at the same time was Pete Hegseth, serial adulterer, accused fraudster, accused rapist. He also had his confirmation hearing. What was your take on whether he's fit to run DOD?

Jill: It's an easy answer. He is completely unfit to run DOD. He wasn't even fit to run a not-for-profit of teeny size. That does not mean, however, that he won't be confirmed. I think it's obvious that he will be, but let's look at some of the horrible things that he is responsible for or that he has said. I thought Tammy Duckworth, my senator, asked some really good questions about his foreign policy experience. She asked about the ASEAN nations. He named I believe Japan and some others who are not members. Those members-

Joyce: Asian nations. Right? He didn't get it.

Jill: Right, exactly. He does not even know that ASEAN is an important negotiation partner for the Pentagon.

Kim: Good God.

Jill: And he didn't even know the names of the military organizations he would be negotiating with. But I guess my biggest problem with him has to do with women in the military. And he got a lot of questions on that. And of course he was sort of backing out of everything he has said, which is that women should not be in combat, end of story, period. And we need mothers, but not in combat. I don't know. We need fathers and we need them in combat. I don't get the difference. And I have personal knowledge of the opening of the military jobs to women because under Carter we opened what are called MOSs, Military Occupational Specialties. And women have performed admirably. They have performed with distinction. In fact, of course, Tammy Duckworth is a prime example as is Joni Ernst too has turned and is going to vote for him anyway. I just think it is-

Joyce: Bless her heart.

Jill: Yeah, thank you. That is Thank you Southern belle. It's just appalling and alarming to me that someone who ran into the ground the veterans organizations he ran and is now going to have a budget, I can't even say the number of percentage times bigger that he will be running is going to be in charge. And they're sort of saying, "Well, he'll have good people making the day-to-day decisions." So what is he a television moderator? Is he just sort of like the face that will be there? It's absurd. He's completely unqualified. I can only say that whoever votes for him should bear the burden of what could happen in the military. He was a major, he will be supervising millions of personnel, civilian and armed in conflict. He will be in charge of hundreds of billions of dollars of procurement. And he is completely unfit to run DOD.

Kim: And can I say for all his and the Republican senators antipathy for DEI saying, "We got to get the DEI out of the Pentagon," there is no bigger DEI higher than him. He is only there because he's a white dude from Fox News. That's right, I said it. That's right, I said it. But for that, he wouldn't be sitting there. And the implicit and sometimes explicit just disrespect to the person who was currently, as we tape this, the Secretary of Defense, the fact that it is currently a Black job clearly gets under his and other people's skin, and I am going to call it out.

So all of that DEI mess when the current Secretary of Defense Lloyd Austin has served with distinction, and really his biggest scandal was the fact that he didn't tell everybody immediately that he was being treated for cancer. That's literally his biggest scandal, right? So I don't want to hear it. I don't want to hear about DEI. That is not the reason for the failure of anything. But this guy is going to be in charge of the Pentagon, which has a major sexual assault problem that has been persistent over administrations, I will say. It's been persistent ever since I've been in Washington, which is almost 20 years.

Joyce: It'll fit right in with this whole administration.

Kim: Good God. I could not imagine being a woman in the military right now already with that peril, but thinking that that's the guy who's in charge and they're going to fight tooth and nail all of the progress the Biden administration made in putting claims of sexual assault and the adjudication of it out of the chain of command. They're going to put it right back in. These people don't have a chance, not just women, when men get sexually assaulted in the military too, they are not going to have a chance, it's going to be in the chain of command. It's going to be nothing they can do. That's a horrific problem.

Jill: Numerically more men are sexually assaulted than women. Percentage-wise, not. I was on a committee that looked at that.

Kim: Wow, Jill. I mean, it's awful. It's awful.

Barb: Well, I just want to chime in. I guess on the effect this has on the public servants who work in all of these departments. So you just mentioned the men and women in uniform who are going to get this clown, Pete Hegseth, as their boss. Good luck serving there. These people who sacrifice so much to serve our country and they get this guy in here who is completely insulting the women who are serving in the military and everybody else who's serving there. I think about my former colleagues at the Department of Justice who are now going to get Pam Bondi. The attorney general, you may like some better than you like others, but you always had the sense that these were wise lawyers, skilled, experienced, practiced, and now we're going to have an election denier as the attorney general. So what does that do to the troops in the field who are working every day to enforce the law?

And then back to Russell Vought, Kim, I called up a quote of his about Russell Vought and what he has said, and he has said he wants to put career civil servants, "In trauma, so that when they wake up in the morning, we want them to not want to go to work because they're increasingly viewed as the villains."

Kim: Oh my God.

Barb: What on earth is that? We all know people who work in government. These are good people, people who could be making a whole lot more money in the private sector, but choose to serve their country instead. I know tons of people working in law enforcement, in the Justice Department, in HHS, in other agencies, the VA, and they do it because they want to serve the public. The idea that somehow we're going to villainize these people is disgusting. And so Russell Vought, I put at the top of the list is unqualified, but right up there with Hegseth and Bondi.

Jill: Did you know we're eating and drinking roughly a credit card's worth of plastic a week? It's crazy. Products we use every day go on to contaminate our water supply, which means we end up regularly ingesting a multitude of microplastics. Luckily, Blueland decided to step up by eliminating the need for single use plastics in the products we use the most. So don't wait. Start your journey to a cleaner, greener, healthier home with Blueland.

Joyce: So last year was the year that I Swedish death cleaned our house, which means I got rid of like 25 years of crap in our house and organized everything and tried to make it pretty.

This year I'm really focusing on streamlining and being much more careful about not using plastics. We've always been really good about recycling, but like the big jug of plastic laundry stuff, all those sorts of things. And it's the cleaning supplies that kill us. That's why I'm super happy that Blueland is one of our sponsors. This is how I learned about them and I'm religious about using their stuff now. Blueland is on a mission to eliminate single use plastic by reinventing cleaning essentials to be better for you and the planet while still delivering the same powerful clean you're used to. And it works great for me. The idea is really simple. They offer refillable cleaning products with beautiful cohesive designs that look great on your counter, and it's super easy. You just fill your reusable Blueland bottles with water, drop in the tablets, give them a good shake and watch them dissolve.

Kim: You'll never have to grab bulky cleaning supplies on your grocery run. And you know what else you'll never have to do? Stand there for 25 minutes waiting for somebody to unlock the products that you want to buy in the drugstore because I don't know about you all, but where I live, everything is locked up in a convenience store. And if you want to buy something like laundry detergent or dish detergent, you have to wait. So if you have Blueland, you don't have to go through that rigmarole and refills start at just \$2 and 25 cents. You can even set up a subscription or buy in bulk for additional savings.

Better yet, Blueland products are independently tested to perform alongside major brands and are free from dyes, bleach, and harsh chemicals. And because of that, your clothes are going to last longer. Not only are you preventing unnecessary plastics from being washed into our oceans and streams, but those detergents break down your clothing so that they don't last as long. And then your clothing is going to end up in a landfill. So this is a good idea for so many reasons. From cleaning sprays to hand soap, toilet bowl cleaner and laundry tablets, all Blueland products are made with clean ingredients you can feel good about.

Barb: Well, I'd like to avoid the rigamarole of going to the store. In fact, rigamarole is one of my favorite words, Kim. It's a great word. It's right up there with cockamamie. And I don't want any cockamamie rigamarole, so that's why I'm getting Blueland. There is a reason that Blueland is trusted in more than 1 million homes, including ours, not only to avoid the cockamamie rigamarole, but the fragrances add such a pleasant vibe to your home. And I can't begin to tell you how many times the subscription has saved me from running out of cleaning products. When you need them, you need them right away. It feels great knowing that I'm incorporating sustainable practices into essential everyday activities. And we know you'll love it too. That's why we're excited to share that Blueland has a special offer for listeners. Right now, get 15% off your first order by going to blueland.com/sisters. You won't want to miss this blueland.com/sisters for 15% off. Again, that's blueland.com/sisters to get 15% off. The link is in the show notes.

Jill: So Kim, I like rigamarole and Barb, I like it, but not as good as recrudescence. That's an even better word.

Joyce: What about dissimissa? I mean.

Barb: That's a good one. Word of the year. Dissimissa, Word of the Year.

Joyce: My new favorite. I've been saying it all week.

Jill: Okay, well, what can I say?

Last week we discussed Judge Cannon's blocking release of the entire Jack Smith report. Even though she had no jurisdiction over either case anymore, she had dismissed and closed the Mar-a-Lago documents case and the 11th Circuit had jurisdiction over it now and she never had jurisdiction over the D.C. election interference case. We discussed that all last week, but now we have a new set of facts. There were arguments before her about the volume two, which is the one about Mar-a-Lago, but we did get volume one because she clearly had no jurisdiction there and the court slapped her down. So I want to ask each of you to tell me what takeaways we learned from this volume one about the election interference case that clearly concluded that, but for his being reelected and the Supreme Court's ludicrous immunity case. He didn't say ludicrous. That's my adjective. He would have been tried and convicted. There was sufficient evidence. So what did we learn? What's its importance? Is it just to history or is there some current thing that stains his reputation and that matters? Joyce, you want to start the discussion?

Joyce: So look, I think in a very pragmatic sense, we know much of the material that's in this report. It may be underlines some of the points, but this was all public domain. And I'll just tell you, I had a very personal takeaway, which was reading the report refreshed my recollection of all the ins and outs of all the horrible things that Donald Trump did. And it just drove home for me the fact that half of the American public was willing to vote for him nonetheless. And this sort of gangster worship cult that's grown up around Trump that I find to be so deeply disturbing.

And having had that reaction, I thought that's why these reports have to be preserved. They are important documents about American history in ways that I really don't remember a legal proceeding having historical impact, at least in my lifetime. I mean, Watergate of course matters, but here, this report so uniquely speaks to a failure by the American electorate in a really powerful way. And I'm glad, frankly, that at the end of this administration, DOJ is going to the trouble it's going to try to preserve this. I hope that they'll have similar success with volume two.

Jill: Right. And it is more than just preserving it for history. It is a current stain on the man who will be inaugurated in just a few days. It really does matter. Barb, you want to have any takeaways?

Barb: Yeah, the section that most interested me, because it was new, and I agree with Joyce that in terms of the substantive allegations, we had seen most of that before. But it really struck me seeing it all in one place, how much effort Donald Trump expended in putting roadblocks in the way of Jack Smith. There's been a lot of criticism about the delay and how long it took, but a big part of that is because Donald Trump was going every step of the way. And it talks about how he asserted not just presidential immunity, but presidential communications privilege.

So whenever somebody was a former White House employee or former executive branch employee, they would file a motion to block their testimony and the courts uniformly rejected it using the Nixon case, Jill, the Watergate case about how presidential privilege has to yield in a criminal investigation. But again and again, they asserted that even though they knew they would lose, Twitter came to the aid of Donald Trump when a

search warrant was used to get the content of Donald Trump's Twitter account. Twitter refused and in fact was fined \$350,000 before it ultimately agreed to turn over records.

Kim: That's why Elon will be on the dais at the inauguration.

Barb: Yep, absolutely. And this occurred after Elon Musk took over at Twitter. All of the threats that Donald Trump made to witnesses online, "If you go after me, I'm coming after you," all that stuff, that actually turned into real threats and harassment to witnesses and judges in real time from Trump's supporters. So you see the tough talk online and you say, "Oh, well you got to have thick skin." But meanwhile people make phone calls and harass people in response to that, including some really ugly death threats to Judge Tanya Chutkan and her family using all kinds of racial and sexist slurs. So if you think about all of that that they were up against, the fact that they were able to indict this case and get so close, I think, is impressive. And it was really Donald Trump's huge efforts to obstruct this investigation that I think ultimately succeeded.

Jill: And Kim?

Kim: Yeah, I think I echo all of that. The only other point that I will make is how Jack Smith made it very clear that of all the while praising the hard work of everyone on his team, that the decisions that were made in terms of prosecution and how to proceed were his, that the buck stops with him. He was taking responsibility for everything in a way that I thought was aimed in part to say, "Look, you want to come at this? Come at me. Don't come at these individuals that worked hard, don't come after the career prosecutors who were just doing their jobs. You don't like what happened? Come after me, I can take it." But let's be real clear about what happened here and everything was done vigorously. It was done by the book and it was because of the results of election in Donald Trump's obstruction that it didn't get to trial.

Jill: But isn't it pathetic that he has to be worried that there will be investigations and possible indictments for doing the job that he was hired to do and doing it within the framework of our rule of law? That is really pathetic. I also was struck and I wonder what any of you has to say about the report and what it said about not indicting Trump for inciting insurrection and whether that means the 14th Amendment doesn't apply to keep him from taking the oath on Monday.

Joyce: We had talked about that on the podcast. I mean the hinky issue here is that you have to prove the intent to use violence for the insurrection charge to stick. And Smith concludes that the evidence is equivocal. He's not sure it's proof beyond reasonable doubt. I'm sort of reading between the lines of what he said.

Jill: No, that is what he said. Yeah.

Joyce: I think that's the explanation that we get from him. And this goes back to criminal law 101, right? Every crime is set forth in a statute. That statute creates elements. The government has to prove every element beyond a reasonable doubt in order to get a conviction. Smith did what good prosecutors do. He said, "On this one issue, I'm not sure I've got proof beyond a reasonable doubt." And so that's where he lands. And as you say, Jill, that does have 14th Amendment implications.

Jill: So I want to move to volume two because it has a different legal impediment and I really am wanting to hear all of you address this. Garland said he wouldn't release it because although the case against Trump was dismissed, the case against his co-defendants Nauta and De Oliveira is pending on appeal. The report could be prejudicial against those two. So not releasing it while the case is pending is proper, but although we can't say for 100% sure that the case will be dismissed on Monday or maybe Tuesday, I'd put money on that happening. And so-

Joyce: 105%.

Jill: Yeah, I mean I don't think anyone's going to argue with me that that case is going away. So Trump doesn't want that information out at trial, so he's not going to let it go to trial. And so you may not want the decision that Smith appointment, you may not want it coming from this court about Smith's appointment being constitutional, which is an issue that's pending. But should Garland dismiss the case in order to release the report before he leaves DOJ? And I'm going to start with you, Barb, because you have a very strong opinion on this that I want all of our listeners to hear.

Barb: Well, I know a lot of people agree with you as do I, that it seems very likely that on Monday Donald Trump will either pardon Nauta and De Oliveira or the Justice Department will dismiss the case against them. So why not just get ahead of that and do it now? And I think it would be wrong for Garland to do it because Garland has a duty. He can't speculate what the next president might do, even if we think it's very likely we can predict what he will do. Garland has to do his job and his job is to defend the special counsel regulations. And so I don't think he should be doing anything, sacrificing some prosecution just to make a point just to get this out.

And I don't think there's any real risk that this will be lost to history. I think that people have already filed FOIA requests and a pending FOIA request cannot be... There's an exception for it. Now while there's a pending case, but as soon as that disappears with a pardon or with a dismissal, then the executive branch is going to have to produce that report. There are records laws that prevent them from destroying this report. So it's coming out whether it comes out today or next week or next month or next year, and I don't think it's worth bending the rule of law just so that you can get it out a little bit sooner.

Joyce: Barb, I have a minor quibble with that. I actually started out trying to make the argument, sort of the institutionalist argument, that Garland should not dismiss the case anticipating Trump, that the Solicitor general certainly would not want to do that because there's actually a legal issue there that they want to pursue, which is getting the courts to reverse Judge Cannon on whether or not the special counsel's appointment was unconstitutional. And where I ended up when I tried to make that argument was actually deciding that Garland should go ahead and dismiss the case now. For one thing, they've already done that with Donald Trump, right? They've looked down the road and said, "This has to be dismissed. We're going to go ahead and do it now." And so Trump is no longer a defendant. And I think this situation is analytically indistinct. And what pushed me over the edge is this problem.

Theoretically, they should not be destroying volume two of the report, but we now live in a new world where Donald Trump is the president. And that same woman who testified

in her confirmation hearing was unable to say that Donald Trump had lost to Joe Biden, I don't think she's going to say no if Donald Trump tells her to destroy volume two of the report and she's simply going to reverse Garland on whether or not it should be released, and it might disappear for all time. I mean, maybe somebody has it on a thumb drive, maybe not. I don't want to risk the historical record on that. And increasingly, I'm of the view that we sort of need a new institutionalism that's forward leaning that instead of pretending Donald Trump with all of his flaws doesn't exist says what can the institutions do within the framework of the rule of law to combat Donald Trump to make sure that we remain a democracy? And so I regretfully conclude that they should dismiss the case and release volume two over the weekend.

Jill: And I think Bondi's testimony was particularly powerful in supporting you, Joyce, because she was evasive about whether she would assure that she would not destroy January 6th evidence. And so something has to be done to protect that evidence. Some of you may remember that during Watergate in the fear that Cox was going to get fired by Nixon, we took copies of key documents home with us and knew that if we ever released it, we would be violating the grand jury secrecy and were willing to take that risk if we had to preserve the evidence. And so you are right that something has to be done to make sure that Bondi doesn't come in and just destroy the record.

Joyce: We just can't be naive anymore. We shouldn't violate the law. We have to operate within the legal framework, but we can't be naive.

Jill: Exactly. So maybe one last question, which is, can this case, it's been dismissed against Trump because he was elected president and can't be tried under the Department of Justice rules, could he be tried in 2029? Could the case be reinstated?

Barb: Yes, sure, I think it can. Now, the one question would be whether the statute of limitations bars it, but I would argue that since the sitting president cannot be charged or prosecuted that the four years during his presidency should be told and so that a new administration could bring this case in 2029.

Joyce: Realistically though, I don't think that's going to happen. Evidence gets old, moods change, prosecutors change. I think this stuff is dead.

Jill: You're both right, of course. But I'm hoping that the answer that Barb gave is the one that comes to pass.

Joyce: So listen, 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 are very selective on #SistersInLaw, and I wanted to try it out like we do with all products before we talk about them. I took the quiz to tailor my mattress to my sleeping style, and I got matched with the Helix Midnight Mattress. Maybe that's because I'm always awake at midnight. I must've aced the quiz though because I've been getting the best sleep of my life ever since it arrived, and I get woken up a whole bunch. We have dogs, we have cats. We have this nasty old rooster in the backyard. One great thing about my Helix is I fall right back to sleep whenever I get woken up. So I am truly in love, so much so that I got them for my whole family and they love them too.

Kim: Helix has so 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. And that really also comes in handy if you like me, are in a mixed marriage, which means one of you sleeps hot and one of you sleeps cold. It makes sure that everybody's comfortable.

Barb: I'm amazed Helix has been part of my sisters' sleep habits for almost two years. Making the switch is such an upgrade. Since then, we've heard so many stories of people seeing transformational improvements in the quality of their sleep on their wearable devices thanks to their Helix mattresses. Add that to the quick and simple setup and no fuss trial policy and upgrading to a Helix is an easy choice.

Jill: Right now, helix has an incredible deal For our listeners. Go to helixsleep.com/sisters for 27% off site-wide, plus two free Dream Pillows with your mattress purchase. That's helixsleep.com/sisters for 27% off site-wide, plus two free Dream Pillows with your mattress purchase. Again, helixsleep.com/sisters, the link is in our show notes.

Barb: And now comes the part of the show that we enjoy the most, the part where we answer your questions. If you have a question for us, please email us at sistersinlaw@politicon.com or tag us on social media using #SistersInLaw. If we don't get to your question during the show, keep an eye on our feeds throughout the week where we'll answer as many of your questions as we can. Our first question comes to us from Leslie in New York. She asks, "Why hasn't the FBI done a complete background check on Pete Hegseth and the other nominees?" Jill?

Jill: Yay for that question. Thank you, Leslie. I love that question. And the answer is that the FBI views the president-elect as their client, and he sets the parameters for the investigation. He says, "You cannot interview X, Y or Z. You should only interview the people that will support his nomination." This happened once before, as we all know, the FBI did not investigate all of the accusers against Kavanaugh and look what happened with him. So the same is true for Hegseth. It was limited by Donald Trump, and so we don't have a full report. There should be a way for the Democrats to have ordered a fuller investigation so that it wasn't just left to holding up a gigantic piece of paper or pile of paper that was a forensic report. I wanted to hear from the people who said he mismanaged the money. I wanted to hear from the people who said, "He sexually assaulted me."

I wanted to hear from the people who said that he was drunk on the job. Now I know the risk that they face. And we also read Jane Mayer said in the New Yorker. She wrote a very powerful piece about the fact that people were intimidated and threatened and didn't come forward for that reason. And I certainly understand that, but we have to get past that. We have to find a way that before a vote is taken, even the Republicans hear directly how bad, for example, Hegseth was, and who knows what's in the other people's background checks.

Barb: All right, our next question comes to us from Cameron in Oregon who asks, "If Donald Trump cannot face a trial during his presidency, does he also have to wait until his presidential term is completed before he can pursue an appeal of his felony convictions?" What do you say, Joyce?

Joyce: This is such an intriguing question. I love this because you look at it in your initial response is, "No, that's not how it works," but it does sort of seem like turnabout should be fair play right? However, president or not, Donald Trump has 30 days from the date that he was sentenced to file his notice of appeal. That's jurisdictional. If he does not do that, he cannot challenge his conviction. And as we all know, Donald Trump constitutionally, I mean his internal constitution, he has got to challenge that constitution. He can't leave it alone. But this question raised an interesting possibility for me. I wonder if Donald Trump might not make this argument and say, "Well, I'm the president, just like I can't be prosecuted, I shouldn't have to appeal." We sort of got a hint of that argument during the proceedings in Manhattan. I think we might see it surface again.

It's not as compelling, frankly, as the argument he shouldn't have to face trial. Not a lot of time involved on his part in the appeal. Not a lot of stress that's cumulative, but maybe he'll make that argument. Here's the interesting twist and why I think this is such a great question, Cameron. This conviction is not final until it's affirmed on appeal. And what that means as a practical matter is that there's a risk of abatement. If Donald Trump were to die before it's final, then not just the conviction, but the indictment gets wiped out. It's as though it never happened.

And so there are obituary writers all around the world who have already written Donald Trump's obituary. He's of that age. I don't mean anything bad by that, but they've written the first ever president of the United States to be a convicted felon, and they may have to take that line out where he to die before the conviction became final. Maybe Trump will do whatever he can to keep that out of his obituary and try to keep the appellate courts from ruling for four years. But good luck with that. I think we'll get a decision on his appeal while he's in office.

Barb: All right, and our final question comes to us from Nina who asks, "Why do some cases get before the Supreme Court in the blink of an eye and others do not? It seems to be random." Kim, what do you think about that?

Kim: Oh, Nina. So there was a time that I would say yes, that may seem that way, but there are reasons and considerations, and that sometimes is true. For example, the TikTok case, the Supreme Court took that up, scheduled arguments and issued a ruling very quickly because they had to. This is a law that was set to go into effect this upcoming Sunday in just a matter of weeks by the time that challenge got to them. So they expedited the schedules, they took the unusual move of holding both arguments on a Friday and releasing the opinion on a Friday, something that they don't do, but they had to fit it in on top of an already busy docket. That makes sense. When it came to the foot dragging, particularly now that we have the 2020 vision of hindsight on, say, the immunity ruling, which helped Donald Trump run out the clock, that was on them, they had multiple opportunities to take up and rule on that case a lot faster.

Whether that would made a difference, whether that would've sent it to trial before then, I don't know. But they could have moved quicker and they made a choice not to. It is true that once a term is in motion, and there are already other cases on the docket, it's harder to take up a case and move it fast and get it done than say, I know a lot of comparisons are made that Jill makes and that are fair to Watergate, which was decided at lightning speed. But that was also over the summer when there weren't other cases pending. But

just the TikTok case lets you know that they could have decided the immunity case a lot faster. That was a decision, in my opinion.

Barb: Well, thank you for listening to #SistersInLaw with Joyce Vance, Jill Wine-Banks, Kimberly Atkins Stohr, and me Barb McQuade. Follow #SistersInLaw on Apple Podcasts or wherever you listen, and please give us a five star review. It really helps others find the show. And please show some love to this week's sponsors. Wildgrain, OSEA Malibu, Blueland, and Helix. The link is in the show notes. Please support them because they make this podcast possible. See you next week with another episode, #SistersInLaw.

Kim: Body butter, churn butter, so much butter.