

Barb:

Welcome back to #SistersInLaw with Jill Wine-Banks and me, Barb McQuade. Kim and Joyce are both away this week and we already missed them. Check out our brand new shirts that celebrate the resistance. Go to politicon.com/merch to find those shirts designed by Kim focusing on the resistance, with sis at the heart of the resistance. Go to politicon.com/merch.

Now we'll get on with the show, where we'll discuss government firings, this week's confirmation hearings and some of Donald Trump's new executive orders and other orders that are causing chaos in our federal government. But first, Jill, I wanted to chat with you. It's just the two of us today.

Jill:

I know. It's really weird.

Barb:

Kim's away and Joyce is away, so it's just us. They haven't moved to Canada and forgotten to tell us it's time to go, have they?

Jill:

They have not. They are just going to be back next week. And I know we'll miss them this week. I hope our listeners will put up with just you and me.

Barb:

Yeah. Well, we talked about trying to impersonate them and changing our voices to try to sound like them. I bet we could do it if we tried.

Jill:

I think we should hire somebody like Colbert or Fallon to do it, or Kimmel. That's who we need.

Barb:

Voice actors. Okay. Well, listeners, if you can impersonate the voices of either Joyce or Kim, let us know and maybe we'll hire you to be the understudies. But before we get started, Jill, I've been thinking about something. You, I'm sure, have read by now that President Trump has renamed the Gulf of Mexico, the Gulf of America, and Mount Denali, Mount McKinley, and it makes me wonder what other American icons or landmarks ought to have new names. Anything you would rename if you were the president and had that power?

Jill:

Well, I have two and maybe three. And I'm going to give them all. Two I would hope would only be temporary name changes. One would be the Statue of Liberty, which I don't believe is representing liberty or a welcoming face to anyone outside of America anymore. So temporarily I might call it the Statue of Unliberty.

And then there is a Belmont-Paul Women's Equality National Monument. And I have to say, it's sort of new to me, and I cannot wait to go see it. It's in Washington, D.C. And obviously I don't think there's women's equality right now. And until the ERA is officially used as part of the Constitution, as our 28th amendment, I want it called the Women's Inequality National Museum.

Barb:

Ooh.

Jill:

But then there's one that I really want to change. It's definitely not a national monument, I hope it never is. But along the Chicago River, there is a gigantic monstrous building with a gigantic monstrous lettering that says, "Trump." And I definitely want to rename that, because I also think it would help Chicago because the condos in that building would sell faster if it wasn't named Trump. People would go to the restaurant if it wasn't named Trump. So yeah, I find it an offense to see it on the Chicago River.

Barb:

Yeah. Well, that's good.

Jill:

What would you rename?

Barb:

I've been thinking about it. I got a couple. I think that one would be to rename the Edmund Pettus Bridge. That was the scene of Bloody Sunday with the march to Selma during the Civil Rights movement. And Edmund Pettus is actually a Confederate general.

Jill:

Yes.

Barb:

How about the John Lewis Bridge? He later went on to become a member of Congress, but was a leader in that movement, got his head cracked open by police when he was trying to just peacefully march across that bridge. I'd like to see that one.

One that has always stuck in my craw is Reagan National Airport, and I know that we should say a word, our hearts go out to the victims of that horrible tragedy of that plane and helicopter collision that occurred there this week. Really tragic accident. But I've always kind of bristled at the name Reagan National Airport, because you may recall, Ronald Reagan fired all the air traffic controllers when they went on strike. So I'd love to see something celebrating the workers and the people who serve as air traffic controllers. Maybe name it after the victims of this air crash. I don't know. Anything other than Reagan, I think.

Jill:

Yeah. And it's not... I think you are so right on both of those, Barb. Great, great ideas.

Barb:

Thank you. But I have one more, and I think you might really like this one. I think we should rename the Watergate office complex and call it the Jill Wine-Banks Center. What do you think about that? In honor of your achievements.

Jill:

Aside from my career that revolves around the Watergate office complex, right after Watergate, I joined Fried, Frank, Harris, Shriver & Kampelman with offices in the Watergate office complex.

Barb:

Wow.

Jill:

And my favorite store, where I bought so many of my clothes, was the Miss Watergate part of the Watergate Menswear Shop. So I mean, really, I feel like I'm part of the Watergate, no question. And I've stayed at the hotel since they've remodeled it, and it's fabulous. I highly recommend it. And all you government employees, they accept government rate.

Daily habits add up to massive changes, and taking daily care of your own skin is one of them. So start making the choices that matter in 2025. Give your skin a new glow with luxurious, clinically tested body care from OSEA. The sisters and I discovered that OSEA's Undaria Algae Body Butter can help your body have healthier, glowier skin all year long. It's a must have, and has transformed our shower routines for good. Putting it on right as you get out of the shower really absorbs into your skin and makes it feel good-

Barb:

Okay, Jill. That's just too much information. I don't want to hear about your shower habits. Just talk about the skin cream.

Jill:

Okay. Well, it's luxurious. Its unbelievably rich texture absorbs instantly and feels fantastic. It's like nothing you've tried before. And once you do, you'll never go back. The Undaria Algae Body Butter infuses your daily skin routine with an incredible citrusy scent that awakens your senses with 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 for a tropical paradise.

Barb:

Yeah, I won't tell you about my shower habits, but I do like the Undaria.

Jill:

I want to know, Barb. I do want to know. So do our listeners.

Barb:

Yeah, no, we're not talking about that. But it is great. In fact, my hands have been like sandpaper and I've been putting them on. I just love what it smells like. It smells so good. OSEA's famous Undaria Algae Body Butter is not your typical body butter. It has a reputation for a reason. It's made with ingredients normally reserved for your face, like Undaria seaweed and ceramides, which means it's tailor made to transform dry, crepey skin so its soft, smooth, and supple. The nourishing effect is amazing, and when you use it, your glow will light up the room.

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 with clean, clinically tested skincare from OSEA. Right now we have a special discount just for our listeners. Get 10% off your first order site-wide with code SISTERS at oseamalibu.com. The link is in our show notes.

Jill:

Barb, we have a lot to talk about this week. And one of the first things I want to talk about is the firings and the Office of Personnel Management and the civil service and the rule of law.

Let's start with talking about the firing of the IGs, the inspectors general. And like attorneys general, it is inspectors general. They are Senate confirmed, and they're supposed to be nonpartisan, which is why we have a law that requires 30 days notice to Congress and a substantive rationale in writing in order to fire anyone who has that position. So despite the law and its clear violation by this action, the inspectors general from almost all federal agencies, with at least the exception of the Department of Justice -- whose inspector general for some reason was not fired, and of course there's speculation as to why that is -- they were fired. And it clearly seems to me that it might have been a test of the power of the president. It was illegal, but is it immune under the SCOTUS decision? What do you think, Barb?

Barb:

Yeah. Well first, kudos for using the term inspectors general. It is like attorneys general. Inspectors general. This was especially disturbing because inspectors general are there to be watchdogs of government. Their job is to root out waste, fraud, and abuse. And so, if there is a whistleblower, they go to the inspector general.

And so, this blanket firing -- especially in violation of this law that requires, as you said, 30 days notice and a reason -- without any cause -- there's nothing to suggest any of these inspectors general did anything wrong -- strikes me as disturbing for two reasons. One, Trump doesn't like people who are ensuring the integrity of federal agencies. So that's disturbing. But two, as you say, it does seem that this is a power move designed to test the limits of executive power. So, this is not a crime. I don't think anyone can charge him with a criminal offense. So I don't think the immunity kicks in here. But I think what will happen, and perhaps this is the goal, is this is an invitation for one of these fired inspectors general to file a lawsuit saying, "You failed to comply with this statute. And at the very least, I'm entitled to 30 days back pay." Because you have to provide this 30 days notice. And without any cause, maybe he can't even fire them at all.

But I think the goal here is to tee this up and get it to go all the way to the Supreme Court and test what some referred to as the unitary executive theory. And that is, Congress can't tell me who I can and cannot hire or fire, despite the fact that there's this statute here. And the separation of powers between the president and Congress is a little murky on this stuff. There's kind of a famous case called *Youngstown Steel*, where President... Was it Truman?

Jill:

Yes.

Barb:

Tried to take over the steel mills during the Korean War in the name of national security in violation of a federal statute. And the court stopped it and blocked it. But it gave some interesting language about the power sharing between the president and Congress, and talked about how in some areas, if it's outside the president's realm, then Congress gets to act. If it's some things that are uniquely situated to the president, then he gets to act. But when the president acts in conflict of a federal statute passed by Congress, the president's power is at its lowest ebb. What is that? It talks about this twilight zone, this gray area of what we don't quite know. There's inherent powers of the president.

But I worry, because I think Congress is a really important check on abuse of a president from overreaching, that this could go up to the Supreme Court. And this court seems to be a big fan of this unitary executive theory. Justice Kavanaugh is, Chief Justice Roberts is. And I could see them saying ultimately the President gets to call all the shots when it comes to hiring anybody in the executive branch. And I think that could really damage the entire concept of an inspector general, who is there to look out

for abuse. Imagine if all of these are swearing allegiance to Donald Trump. Are they really going to ferret out fraud, waste, and abuse in the government?

Jill:

I fear any decision by this Supreme Court.

Barb:

Yeah.

Jill:

And I think that what is missing will be that although this is in clear violation of this federal law, I mean, there's no question that without a reason and without 30 days notice, it's a violation. And I just worry that the expansive reading of the Supreme Court could say, "Well, oh well, too bad." And that they wouldn't pay attention even to the normal rules of how you go about giving this power. So it's very scary.

And I think it's a bigger problem than just the 18 inspectors general who were fired, because there was a letter sent to every single federal employee, almost all of whom are covered by civil service protections. Career prosecutors, for example, got the letter. Career lawyers for the FBI got the letter. Everybody got the letter. The January 6th prosecutors were fired. So that's in a different category. They were actually fired. They go with the inspectors general, and we can talk about that. But I want to broaden it to all of those who got this letter saying that you have until February 6th, which is only a few days away now. It was only a week. If you don't resign by February 6th, we can't guarantee you'll still have your job. You may not have your job at all. And if you do resign, you'll get paid for eight months, until September 30th, with of course no guarantee of funding, especially because the temporary funding of the government will expire during that period.

Was it intended to just drive out anyone who felt uncomfortable carrying out a Trump agenda, or was it intended just to get rid of people who didn't want to return to the office? Do you have any inside information on that?

Barb:

No, I don't. The whole thing strikes me as really bizarre. Let's talk about these two things separately. So first, these January 6th prosecutors, the 12 prosecutors who worked on Jack Smith's team in the Office of Special Counsel, fired. The letter came from the acting attorney general, James McHenry, and said, "We do not trust you to work for the Department of Justice to implement President Trump's agenda."

What's so interesting to me about that is that that is not the oath that prosecutors take. Every federal employee takes an oath to protect and defend the Constitution against all enemies, foreign and domestic. You do not take an oath to implement any particular president's agenda. And so I think that is very disturbing and very clear that those people were fired simply because they were on the wrong side of a case against Donald Trump.

And I worry about others. I mean, there's plenty of FBI agents who worked on those cases too. They haven't been fired yet, but you take the assignment that you are given in your work. There's nothing to suggest that they did anything other than work with integrity. Very hard. I'm sure they worked to around the clock for the two years they were on the special counsel's team. And they're gone. And so I think this is all about loyalty.

When it comes to the rest of the federal workforce -- and as you said, it's more than 2 million people -- it is joined with a hiring freeze. And so, I don't know how many people are going to take this buyout, but I can imagine if people are disillusioned by the Trump administration already, it might be tempting to leave. Although as you said, there are a lot of unanswered questions about this offer. It looks very

sketchy, in my view, in terms of what the details are and whether they've really thought all of this through and worked it out. But clearly it's an effort to downsize the federal government. But it's being done in such a scattershot fashion. If you really wanted to reduce the federal workforce, it seems to me you would do it in a more surgical way than, "We're going to close this office. We're going to shut down this priority." Instead, it's like, "Hey, anybody who wants to go can go."

Imagine, Jill, you are working at, I don't know, a US attorney's office. In my former office, we had a small IT department of maybe four or five people, and they worked very hard all day every day helping people with their IT needs, whether it was their laptop, their desktop, their cell phone, their tablet, all kinds of devices, including things that are being used in court for digital presentations. This IT staff is running around all day working very hard. Imagine if all four take the buyout. So now the US attorney's office has zero and has a hiring freeze and they can't hire anybody. So it really strikes me as a poorly thought through process, unless we just don't know what the goal is here, and maybe it is to purge everybody who has any reluctance whatsoever about working in a Trump administration, and then lifting the hiring freeze to hire people who will agree to be loyal to carrying out the president's agenda. I don't know. What do you think?

Jill:

Well, I think you're right that they are going to lift the hiring freeze to bring in the people that have already been identified by Project '25 and trained by Project 2025 to take the place of those people so that there will be this absolute carrying out of Project 2025, or whatever you want to call it. Call it the Trump agenda. It's the same thing. And I think you're right, because the more we talk about the Trump agenda and it being carried out, that is so against our whole constitutional premise that it's astounding.

And in terms of... You said it was sort of sketchy as to how it's going to work. There is no question in my mind... I have a pin that says, "Stormy Daniels, the only contractor Trump ever paid." And so, I'm sort of thinking that anybody who accepts this offer, unless they get paid in advance before signing their resignation, and remember the letter says, "All you have to do is reply to this email saying 'resign.'" That's it. You're out. And the idea that we would pay... We don't know how many people. Just say it's only 5%. Aside from the fact it would stop government functioning if that many people left, I just don't see how we can say that the government is going to pay eight months salary to hundreds of thousands of people with not any work being done, because they don't have to return to the office for that time. I just don't see it happening. And I understand why people might feel inclined to take it, but I hope enough people will stay to make sure that justice is done, that government services are provided.

And I also think though, although I think many lawsuits will be filed about this, I don't think lawsuits are enough. It's a burden on the person fired that they shouldn't have to have, and will be very time consuming. And even if they get pro bono services, which I am pretty sure they're going to get pro bono services to bring these lawsuits, I just don't think it's enough. And I think that Donald Trump feels empowered to do this. He managed to force out the FBI director and the head of the FAA already. And somehow I think that that made him feel empowered to now go after people with actual civil service protections. And so what's going to happen to those protections going forward if this can happen?

Barb:

Yeah, it seems like they are acting without regard to cost. And I suppose that's because all of these costs will be borne by the taxpayers.

Jill:

Right.

Barb:

So in litigation, I think he's doing these test cases. He knows that it's unlawful. I think he's hoping that ultimately he ends up with this decision by the unitary executive that he gets to make all the decisions about who works in the executive branch. And if he loses, he's playing with house money. He doesn't have to pay for it. Taxpayers are going to pay for it. So I think he is going to bulldoze through all of these laws and protections designed to protect workers in an effort to change the law. And then if he doesn't, he can say, "I tried, and these deep state judges stood in my way from fulfilling the mandate I was elected to perform."

Jill:

The slim margin, not the mandate. One of our listeners, Mary, asked on X, "How is the president able to fire DOJ personnel without cause?" And Mary, that's what we've been talking about. We don't think he can.

Barb:

Yeah. Well, the question is... This is interesting. It really to me demonstrates Donald Trump's transactional view of the law. There is one theory, it's kind of like out of the law and economic school, that all law is really just a series of choices and consequences. So he can't do it under the law. No, he may not do it under the law. But he can do it under the law, there's just a consequence. If you violate a civil law, lawsuits may follow. And that's the consequence.

I've had this conversation with someone I know about it isn't the case that you can't park in a no parking zone. You can park there. You might get away with it or you might get towed or you might get a ticket. That's the consequence. But there's nothing immoral about parking there. It's do you want to accept the consequence? I disagree with that view. I think there is an imperative to actually follow the law, because when the president takes his oath, he swears to support and defend the Constitution, which includes a clause that says that the president shall take care that the laws be faithfully executed. So the idea that he's just going to run roughshod over all the laws just because he doesn't care about the consequences, I think is a violation of his duty of office. Now, what's the remedy? I think the only remedy is impeachment, and I don't see that happening because of the loyalists that are in the House and the Senate now.

Jill:

You are right. But what you said just reminded me of what I learned in grade school. The difference between may and can. May is permission, can is ability. So anyway, can would be a violation of the law.

Let's move to the third category of this personnel debacle, which is the independent agency. He fired two EEOC commissioners, two of the three Democrats on the commission, whose five-year terms had not expired. And he did force out Wray, who had a tenure term. Biden never did anything like this, although he was being pressed to fire people on the postal board so that they could get Democrats on who would fire DeJoy, but he never did that, but Donald Trump did. So is this just as bad as what he's done elsewhere?

Barb:

Yeah. And again, I think this is another place to test the limits of executive power. So independent agencies, these are agencies that do not fall under the umbrella of any of the cabinet departments. They are independent agencies who are there to serve the people. You know, the EEOC. And I think once again, this is pushing this unitary executive theory. There's the clause in the constitution called the Vesting Clause that says the president is vested with the executive power of the United States. And there is a far right group of scholars who say that means that the president is the sole recipient of executive power and everybody else just works to carry out his orders. Now, if that is the case, then there are no independent agencies. They all answer to the president and he can fire anybody he wants to.

I think that it would be a terrible development for this country. Even though President Trump was elected, as we said, to carry out his slim mandate, it doesn't mean he gets to do whatever he wants and he doesn't have to follow the law. And in fact, in the 1870s, Congress passed the Pendleton Act in an effort to get rid of the spoils system and the potential for corruption by having a president every four years replace everybody in government with people who'd made donations or done him favors, and instead create a professional civil service, hiring scientists and doctors and professionals and engineers to do the important work of our government. And we've had that in place for 150 years. This is an effort to erase all of that and replace them all with loyalists. That does not inure to the benefit of the American people.

Jill:

Absolutely. And you've mentioned consequences, and you've mentioned some of them. Obviously, the disruption of service if all the IT department leaves, but if even just 5% of the government resigns, it would totally stop services. It would, this action, lead to the full implementation of Project 2025, which means we should have all seen this coming. It would lead to the imperial presidency, the unitary executive. It would allow violations of law. It would mean a lot of things. So the question is what powers can be used either in Congress or by the public? Remember, the public outcry got rid of the first nominee for attorney general, Matt Gaetz. Public pressure made Richard Nixon turn over the tapes that he had refused to turn over. But does Congress have any powers that they could use? Do the people? Can they organize well enough to have some power to stop these consequences?

Barb:

Sure. So, Congress absolutely has power. Some of the things Congress can do, they can conduct oversight hearings to bring public attention to an issue of abuse of power. They can use their powers, such as the confirmation of nominees and their power of the purse, to refuse to fund some of Donald Trump's initiatives. Those are powers that Congress have. Now, both houses are controlled by Republicans, and so I don't know that they're going to cross the president, but that leaves the public, and the public has power. I don't know if you've read this book, Jill, but Nancy Pelosi's book, *The Art of Power*.

Jill:

Yes.

Barb:

Really good book. And one of the things she says in it that stuck with me, and she's quoting Abraham Lincoln on this, is public sentiment is everything. With public sentiment, you can do anything, and without public sentiment, you can do nothing. And so, what about getting public sentiment about one of these issues? I think one of the strategies Donald Trump has used here is to create chaos by throwing out... What? We've had like 30 executive orders already. And so it's very difficult for the public to focus on any one of them because every day there's some new outrage. But I think that if people could help the public understand the harms of some of these things, and maybe this is the one, the gutting of the federal workforce, maybe this is one that if the public begins to care enough, we will see Congress step up and push back. Because what they care about mostly, I think, at the end of the day is their ability to be reelected.

Jill:

I really believe the public can step in. And you mentioned Nancy Pelosi's book, but I'm going to mention your book, because you do talk about the mis- and disinformation and how you stop it. And some of this is a question of communicating facts. And saying these things, issuing all these executive orders, is part of the playbook of dictators. They just flood the marketplace so that you just get overwhelmed. And my

advice to everyone listening is pick one of the things you care the most about, learn about that thing, and be able to fight back on that one thing. And if each of us picks one of the hundreds of things that we don't like right now, I think we can push back against the loss of democracy.

Barb:

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Jill:

And the ready-made meals are really delicious, but I actually love the process of preparing the meal from the fresh ingredients, and it's really convenient how HelloFresh works with your schedule. Their plans are flexible, and you can change your meal preferences, update your delivery day, and change your address with a few taps of the HelloFresh app. Imagine how great it will be getting fresh seasonal produce that goes straight from the farm to your kitchen. Just don't forget dessert. Those are really yummy. The chocolate lava cake and some of the apple desserts are really good.

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Barb:

Well, confirmation hearings were held for more of Donald Trump's nominees this week, including Kash Patel, Tulsi Gabbard, and Robert F. Kennedy Jr. Jill, I want to ask you about your impressions of some of these hearings. Why don't we start with Patel? Patel is the person of course Trump has nominated to be the FBI director. What are a couple of fun facts that our listeners ought to know about Kash Patel?

Jill:

Oh my God. Fun facts? They're all scary, horrible facts.

Barb:

Fun facts.

Jill:

But fun facts. Okay. How about his picture book about the King Donald? That might be one that I would talk about. And it is sort of pushing the unitary theory and stuff. It's ridiculous. I would say, here's a fun fact that I just learned, and it was that he came to court once on moment's notice flying in from some foreign place. And because he was there on the kind of assignment that didn't require a suit, he came to court without a tie and wearing a blazer and got dressed down by the judge for how he was dressed. And I was sympathetic because that used to happen to women all the time. So I actually thought, oh, we have

one thing in common. That is a far-fetched idea about us having anything in common, let me say. I mean, he has had a really weird background. Most of the stuff I would say I can't put in the fun category. Let me see. That's pretty much it.

Barb:

Well, I was using fun in air quotes.

Jill:

Okay.

Barb:

Some of the things that perhaps make him less than qualified to serve as the FBI director. He's got a background, he's been a prosecutor and a public defender, but no real management experience for an agency of 38,000 people. Has never worked in the FBI. And then all of these things that have suggested that he is unlikely to be independent from the president, as we have expected from our FBI directors, at least in the post-Watergate era.

Jill:

I would say that on the way you phrased the question the second time, about disqualifying experience and facts, he's an election denier. He would not say that Biden won the election when he was being... in the confirmation hearings. He worked for Nunes and was responsible for the leaked Nunes memo. He has said that state government approval for actions had happened when they hadn't. This was in connection with an attempt to rescue a captured American by the SEALs, and they needed permission to fly over Nigeria, and he said, "Oh, the State Department gave that permission," when in fact they had not. And he endangered the lives of those SEALs. He has a lot of accusations of acting beyond his remit, that his job didn't include things that he took on.

He also is a conspiracy theorist. He tried to pursue this idea that an Italian software company had done something in connection with stealing the election. He also, besides his book, he was selling wine and a lot of other stuff, including a... I can't remember if it was a video or a recording of the January 6th choir.

Barb:

Yeah, audio recording. He produced it.

Jill:

Right. And he called them patriots, of course. He produced it. He wants to turn the FBI headquarters into a deep state museum. There is this video that he reposted of him cutting off the heads of people he wants retribution from. It is a disgusting, despicable display. And he had said he wanted to fire the top people at the FBI and eliminate the FBI general counsel. And of course, that's already happened. The top people at the FBI have now been fired.

Barb:

Yeah, that happened even before he got there, yesterday during his hearing.

Jill:

Yes, exactly. While he was saying he wouldn't... And he did, he backed off of that by saying, "Oh, he wouldn't actually do that." And at the very moment he was saying that, it was happening, and I'm sure he

knew that. So there's a lot of things that make him unqualified, including his lack of appropriate experience.

Barb:

Yeah. One other thing that concerns me about about him is you mentioned this children's book he wrote called The Plot Against the King, and it has characters that are supposed to be Jim Comey at the FBI going after him, and a wizard named Kash who saves the day. But it is all part of this false narrative that the Russia investigation was a hoax. And you mentioned the Nunes memo. He was involved in exposing some problems that existed in that investigation. The Steele dossier turned out to be nothing substantive that was of value that could not be corroborated. The Carter Page FISA application had a problem where a lawyer made a false assertion about whether he had been an asset of the CIA.

And so certainly there were problems there, but I think to advance this idea that therefore the investigation was a hoax is nonsense. I mean, that investigation was about Russia and Russia's efforts to interfere with our election. And remember, Robert Mueller did find that members of Trump's campaign met with Russians at Trump Tower to get dirt on Hillary Clinton, that they coordinated communications about Hillary Clinton's health in an effort to undermine her candidacy, and that they shared polling data with Konstantin Kilimnik, a Russian intelligence officer.

So you want your FBI director to be someone who is above reproach, who doesn't overstate facts, who appreciates nuance, and can be trusted to act independently.

And then in addition to his children's book, he wrote a book for adults called Government Gangsters, where he accuses all these people, including Trump appointees like William Barr and Christopher Wray, Mark Meadows of being part of the deep state. Now, at his confirmation hearing yesterday, he was asked whether that is an enemy's list, and he kept denying that it was. How do you think he did at the confirmation hearing? Do you think he's going to get confirmed?

Jill:

Well, that's two different questions.

Barb:

Okay. How do you think he did?

Jill:

I think he was what I expected him to be. I think he will nonetheless get confirmed, because this is a deeply divided Congress who has... The Republicans are pretty much doing whatever Donald Trump wants, and none of them has the bravery to stand up against him.

I want to mention a few other things that are just noteworthy. He has testified and talked about Benghazi prosecutions and claimed he had a much bigger role in the prosecutions than he actually had. And about saying that there was only one allowed to be brought for prosecution, and in fact, there were probably close to a dozen. So that was completely untrue.

And you mentioned Barr. The reason he probably would go after Barr is because Barr objected to Patel being able to come over to be deputy director of the FBI. Bolton objected to his coming over to the NSC, both of whom... Barr succeeded in stopping it, but Bolton ended up caving to Donald Trump's wishes and letting him in. He's the one who started, I believe, or certainly promoted the idea that Trump had declassified the documents before he took them and before they were stored at Mar-a-Lago, which of course, there's no evidence to support that.

But despite all these terrible things, I'm afraid... I'm not sure there's any point to confirmation hearings anymore because, like everybody else, he wouldn't answer questions. And so why are we doing this?

Barb:

Yeah, right. What's the point? You're right about that, because Matt Gaetz was the one whose nomination failed, but that failed even before the confirmation hearing.

Jill:

Absolutely.

Barb:

I guess somebody could blow up at a hearing, but they're so programmed. He was just like Pam Bondi.

Jill:

Yes. Absolutely.

Barb:

Did you notice his stock phrase was, "I will follow the law"? It's like, oh, hard question. "I would follow the law."

"Are you going to go after Trump's enemies?"

"I would follow the law."

And then how about... You mentioned he was an election denier. He was asked again and again whether Donald Trump won the 2020 election, and he would just say things like, "Joe Biden was certified the winner."

"Yeah, but do you think he won the election?"

"Joe Biden was certified the... I accept that Joe Biden just served as president."

I mean, come on.

Jill:

He was asked, "Would you say those words?"

Barb:

Yeah. And he wouldn't.

Jill:

And he would not say those words.

Barb:

He would not. Come on, it's not that hard.

Jill:

These are reasons for him not to be. And I said the same thing about Bondi. She should not be, is not qualified, but I think she will be, and I think he will be.

Barb:

Yeah. It really makes me nervous about what they're going to do in terms of these people who worked on these cases in good faith against Donald Trump and the January 6th defendants.

Jill:

Yes.

Barb:

Well, let's move on to Tulsi Gabbard, because it just keeps getting better, Jill.

Jill:

Better?

Barb:

Give me one or two fun facts again, fun in air quotes, that our listeners ought to know about Tulsi Gabbard. She's been nominated to be the Director of National Intelligence. This is the person who oversees every intelligence agency in the United States, all 18 of them, in an effort to give them their directives, their priorities, to coordinate, to share that with the president, and create his daily brief to make sure he is up on all of the threats overnight. What should we know about Tulsi Gabbard?

Jill:

That she won't fulfill those duties in a credible way. She would not say, and when you ask about... She was asked repeatedly, "Is Snowden a traitor?" And all she would say is he violated the law. She would not say he was a traitor. She tried to get him a pardon. She wanted him to be free of this. And just to remind our listeners, Snowden is now in Russia. He fled to China and then to Russia.

In addition to defending Snowden, she has defended the Syrian dictator Assad, al-Assad. She met with him in Syria against the wise choices of all other members of Congress, and she defended him. So, that's bad.

She originally blamed the US and NATO for provoking Russia's attack on Ukraine. She did back away from that in her hearing and said that... She at least admitted that Russia started the invasion, that it was Russia who did it, but that isn't exactly the same as saying that they weren't provoked legitimately, which is what she was saying before, which is why she's been called a Russian puppet.

And the experience that she has is so inadequate to manage. Because really, this is a job that is a management job. She of course, has no experience in the intelligence field. But I could almost even forgive that if she had really great management skills and could coordinate all this. And if I trusted her judgment in what she would tell the president and how she would advise him. She has ricocheted on so many different positions that it shows that she basically... I don't know what she actually believes. But I also think she lacks judgment. I mean, going to Syria and meeting with Assad twice is a lack of good judgment. She flipped on FISA 702. She was for it, then she was against it, and now she's for it. I'm not sure where she is. She was also against the Magnitsky Act. She opposed that for reasons that I just don't understand even. So I think there's a lot of questions about her judgment and her management skills.

On the other hand, let me just say, Barb, I thought her performance was pitch perfect. She stayed calm. Her answers were horrible, but they sounded good. And again, I think she will be confirmed. I don't think she's capable and qualified, but I think she will be confirmed.

Barb:

Yeah, it is concerning. You mentioned her background. She served in the military.

Jill:

Yes.

Barb:

And I admire her military service, but she served as a medic and an MP, so not in the intelligence world.

Jill:

Right. And she said she was in combat. I mean, she used the word combat. I mean, she was in a combat zone, and that's dangerous, no question. But that's a misleading statement.

Barb:

I guess. But I don't doubt her military service. I just don't think that alone qualifies her to serve in the intelligence community, which is collecting information from lots of different governments. It's a position of extreme trust, because you know the nation's most sensitive secrets, and then deciding what to pass on to the president so that he can take action. And also directing the various intelligence agencies how to use their assets to collect what they should prioritize. So I do worry about that from an experience perspective.

You mentioned a couple other things I thought I would just flesh out a little bit. So Edward Snowden, of course, was indicted by the US Department of Justice for violating the Espionage Act. He was a contractor for NSA, and he divulged secrets to the public about how we were using some of our intelligence collection tools. I know people in the government who say that the harm done by Edward Snowden is unlike any harm done before because it dried up a lot of sources of intelligence once the techniques were revealed. And so, he's taken refuge in Russia, which also to me raises a lot of concerns about who this guy is.

And so that you can't say he's a traitor to the United States. Come on. I mean, even if his motives were pure, you know, "I think that government is engaged in spying that overreaches," or whatever it is, that's not the way you go about it. There are whistleblower protections and other things that you can do if you want to share things with Congress. So the fact that she wouldn't identify him as a traitor really concerns me, and it does make me wonder if she isn't going to persist in this request for a pardon, which just sounds just too cozy with Russia and too cozy with somebody who spilled our secrets.

You also mentioned her flip-flopping on Section 702. That's a section of the Foreign Intelligence Surveillance Act, which is a provision that allows our intelligence agencies to conduct surveillance against agents of foreign powers. And one section, Section 702, allows us to take advantage of the fact that here in the United States, we have all of these internet service providers, like Google and Gmail and others, that allow us to collect through a program. As long as our targets are non-US persons located overseas, we can collect that information. But we can query those databases once that information is collected, even for US persons if it's in a terrorism case. So I imagine when there was that terrorist attack in New Orleans, they were querying the person there to see if he had any connections to a foreign terrorist organization.

There have been some legitimate civil rights concerns that people think that that is an overreach and that there should be more protections. That's a fair debate. Reasonable minds can disagree about that. But she used to be, as you said, opposed to it when she was a member of Congress, and now suddenly she's like, "Nah, we're good." It just makes me wonder if she's being truthful when she answers questions, because I don't think she really explained how she has come to change her mind on this. So I worry about her too.

Jill:

All right. Can I just add one thing?

Barb:

Yeah.

Jill:

Because of course I agree with that, and the reason I mentioned it was her credibility basically is an issue from it. But you talked about sources drying up as a result. I worry that a lot of foreign countries will stop cooperating with us because they don't trust her.

Barb:

Yes. Yes. Good point.

Jill:

And we depend for our safety on information, intelligence information that we get from other countries. And you already have Donald Trump revealed some stuff in his first term in the Oval Office that was Israeli intelligence to Russia. And so you add her relationship or her... I don't know what it really is. But her seeming relationship with Putin and with Assad, and I just worry that we're going to lose out on information that could stop a terrorist attack or that could help us in other ways.

Barb:

Well, let's move on to RFK Jr. They get progressively better, don't they, Jill?

Jill:

Yeah.

Barb:

Our listeners probably know enough about his background, about his vaccine denialism, about his mishaps with animals like the bear that he had in the back of his car and left in Central Park and the whale that his daughter said he decapitated. All kinds of colorful stories about his background. How do you think he did during the hearing? You mentioned that you thought Tulsi Gabbard was pretty smooth. How about Robert F. Kennedy Jr?

Jill:

So first of all, let me say you and I are both definite animal lovers, and so some of the stories are really disturbing beyond belief. He, unlike Gabbard, did horribly. His nomination could actually be in jeopardy. I think he did well on the Make America Healthy Again, food chain and that sort of thing, a lot of people liked that. But he tried to distance himself from his very well-known anti-vax policies, including the onesie that he sells that promotes anti-vax. He tried to walk away from abortion, which he has been a very strong supporter of, but obviously can't say that to be a nominee of Donald Trump. But the worst part was he really didn't know what the job was. He confused Medicare and Medicaid. I mean, if you don't know the difference between Medicare and Medicaid, and you're going to be in charge of those two things, which provide healthcare for so many Americans-

Barb:

Did he not do any prep?

Jill:

Exactly.

Barb:

I mean, even Patel and Bondi had their stock lines of, "I will follow the law." Like, come on, Medicare and Medicaid. That's like two plus two.

Jill:

It was amazing where he was saying that the premiums are too high, the deductibles are too high for Medicaid.

Barb:

Yeah. And there are none.

Jill:

Medicaid is for poor people who don't... They don't pay anything. So it's like, oh my God, you can't put this man in charge of these programs. It would not be something that we could possibly allow.

He also has some financial conflicts, and he absolutely was steadfast, "And I will not give up making money from referring cases to law firms to sue pharmaceutical companies that I regulate." That is another total disqualifying feature.

So I really think his lack of scientific information, his positions on vaccines. I mean, right now, we're facing a possible bird flu epidemic, and we are facing a very bad flu epidemic right now. We need to make sure that we have protections. And when he says, "Well, President Trump has asked me to look into..." things that are already well established, we don't want someone looking into them again. So I would say he's completely unqualified. He also has never managed anything of this size.

I also, I can't help but mention the letter that his cousin, Ambassador Caroline Kennedy, the daughter of John F. Kennedy, the niece of Robert F. Kennedy, the father of RFK Jr, her letter is amazing to read, but seeing her deliver it in person, she recorded herself reading the letter and called him a predator who led his cousins to death by drugs, and went on to much worse things than that. I don't know if I can say this, Barb, if you'll allow me. The blender. May I say what he did? He has birds of prey that he feeds by putting live chickens and mice in a blender to feed to his hawks. This is not someone you want in charge of our healthcare system.

Whether your look is fresh-faced like Barb, full-glam like Kim, or somewhere in between like me, you've probably seen Thrive Causemetics viral tubing mascara all over your socials. It's the one in the turquoise tube, and it's a personal favorite of all of the sisters, even Barb. Thrive has so many other amazing products that are made with high performance and trademark formulas, clean, skin-loving ingredients, and uncompromising standards. Each one is certified as 100% vegan and cruelty-free. So it's no wonder that their best sellers have thousands of five star reviews.

I love the Thrive's Lash Extensions mascara and have for many years. It's perfect for a salon look without the damaging glue or excessive prices. Your lashes will last all day without clumping, smudging, or flaking, and they slide off with just warm water and a washcloth, no soap required. Plus, the nourishing ingredients support longer, stronger, and healthier lashes over time. And their flake-free tubing formula dramatically lengthens and defines your lashes from root to tip. As soon as I found out about it, I started using it. Now every time I do, I really do get compliments on how long my lashes look. It's a perfect way to subtly stand out from the crowd and make a big impression.

Barb:

Another thing we love is that "cause" is in the name for a reason. Thrive not only defines luxury beauty with their clean, skin-loving ingredients and uncompromising standards, they give back too. Every purchase supports organizations helping communities thrive. Thrive donates to eight major causes, including the fight against cancer and domestic abuse, veteran and education organizations, and more. I'm

so glad we're a part of it. Thrive Causemetics is luxury beauty that gives back. Right now, you can get an exclusive 20% off your first order at thrivecausemetics.com/sisters. That's Thrive Causemetics, C-A-U-S-E-M-E-T-I-C-S, dot com slash sisters for 20% off your first order. The link is in our show notes.

Jill:

Okay, Barb, let's wrap up today's episode before we get to our favorite part, the listeners' questions. Talking about the fire hose of executive orders and the Office of Management and Budget memo freezing all federal grants funding, partially unfreezing it and then withdrawing it. Complete rescission, basically. So what happened, Barb?

Barb:

So this was one of the craziest and most disturbing executive orders. On Monday, we get this memo from OMB, the Office of Management and Budget, instructing all federal agencies to, quote, "Temporarily pause all activities related to obligations or disbursements of all federal financial assistance." It was absolute chaos. This includes federal grants for research from the National Institutes of Health and from the CDC. Hospitals that do research, labs that do research, programs that fund schools, programs that fund housing, healthcare, Medicaid. People were locked out of funding portals. So absolute widespread chaos. And then, not surprisingly, lawsuits filed saying that this is violating obligations that were already awarded. And then the next day, the order is rescinded in one sentence. "Monday's order is rescinded," period.

Jill:

I wish I could laugh but I can't.

Barb:

Suggests they didn't really maybe think this one through.

Jill:

What's funny is, of course, all these things that we've been talking about today were in Project 2025.

Barb:

Yeah. Yep.

Jill:

We were warned. And they were prepared. All these executive orders were straight out of Project 2025. They were all ready. They've trained people under Project 2025. All of this was done. And yet they really didn't think it through. You're right. Because things like medical research. I have a very, very dear friend whose life depends on medical research going forward, and it was cut off. It was unbelievable. But it also, aside from all of this horrible consequences, the balance of power that's established in our constitution, the power of the purse belongs to the Congress. And you can't... This goes to impoundment as well, which is where he's not going to spend certain money. One of our listeners said the balance of power is set in our constitution, and how can this even be legal for him to stop the use of federal money that's already been passed and approved? So what's the answer?

Barb:

Yeah, I think that he can't, which is why I think that that order got rescinded so quickly. I don't know if they thought... As we've discussed already today, some of these orders kind of pushed the legal limits and

seem to be a goal of testing presidential power and expanding presidential power. But with this one, remember we talked also about public sentiment. I think they realized very quickly this one's just not going to fly. Number one, we're going to lose the lawsuit, But I don't think they care about that, because as we said, taxpayers are going to pay for that, but that they could really lose public sentiment over this one, because this was going to hit a lot of people where they live and risked losing political support. So I think that's why they pulled this one back right away.

Jill:

Yeah, it disrupted essential services. And so people saw the impact right away and saw how it impacted them. That's what leads to the kind of public resistance that made them do this. States couldn't get into the Medicaid portal. Universities were very worried about funding that they would get, state universities. As I say, medical research was stopped. And this is all part of Project 2025 and part of the creation of the unitary executive. So this is a good look at what could happen.

And again, one of our listeners... And by the way, the listener who wanted to know about how it could be legal was M.B. Owen or M. Bowen on Bluesky. And another listener, Jody on X, asked, "What is the process for fighting the executive orders?" And you've mentioned that it's obviously filing lawsuits, but that's expensive and time consuming. And we've talked about the powers that maybe Democrats could use in Congress. But I'm back to thinking that the power of public pressure is what we're going to have to rely on, that that will be the fastest way, if they think they will lose elections because of this. So everyone who's listening here, spread the word and start resisting. Start letting your members of Congress know how you feel.

Barb:

And may I say, I know sometimes it feels like you're just screaming into the void to write to your member of Congress. They actually listen to that because they want to get reelected. And I remember reading a very interesting article about the Affordable Care Act. Remember how Republicans were determined to roll back the Affordable Care Act? "First thing we're going to do is we're going to destroy the Affordable Care Act." They got so many letters, phone calls, and emails from constituents that said, "Don't take away my affordable care. I like it." It turned out to be very popular with the public. And so members of Congress backed down and said they weren't going to vote for it. So that's how that changed. So public sentiment really matters. And the way you express that is by reaching out to your member of Congress and telling them how you feel about things. So we do have the power to affect change.

Jill:

If you haven't already listened to my new YouTube show, Just The Facts, I hope that you will go on to our show notes today and find a link to it, or just search on YouTube to find Just The Facts with me, Jill Wine-Banks, the Watergate Girl, because facts are more important than ever. And each show looks at the facts that matter, facts that will help you make wise decisions. Please join me.

Barb:

Well, now comes the part of the show that we enjoy the most, the part where we answer your questions. And thanks for sending all the great questions you did for today. We have a lot to choose from. 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. We'll answer as many of your questions there as we can.

So Jill, you ready to go? It's just the two of us, so we got to do double duty here.

Jill:

Yes, ma'am. I'm ready.

Barb:

All right. Well, I got one for you from Kathleen, who asks, "What would it take to get rid of the SCOTUS immunity decision? Can they void it?"

Jill:

Well, they can overrule it. But here's the rules about overruling stare decisis, as they did in getting rid of Roe versus Wade. The Supreme Court considers four factors. One is the quality of the decision that underlies it. So they'd have to look at the quality of their own decision. And you can't expect them to sort of say, "Well, we were stupid. We didn't do the right thing." They look at consistency with related decisions and legal developments since the past decision and how many people have relied on the decision. And again, because this decision is pretty new, but yet it is being used in a lot of cases to be argued.

I think the thing they might look at would be the change in facts. They didn't foresee how Donald Trump would use his immunity. And so maybe there's a small chance that they would see the consequences of their decision. I don't think they'll overrule it, but there is some chance that they will clarify what exactly they meant by core functions and what they meant by official business as opposed to personal business. That's what needs clarification. And so, maybe. Maybe. Again, this may be my Pollyanna point of view. What do you think, Barb? You think there's any chance they'll narrow the decision?

Barb:

Well, it would take first of course a case to bubble up.

Jill:

Yes.

Barb:

The court doesn't just make decisions in a vacuum, it requires a true case or controversy. Now, I suppose, say hypothetically, Jack Smith resuscitates the Trump cases in 2029, in Washington, D.C., at least the case was dismissed without prejudice. So could theoretically be brought again. I think there's a grounds to narrow the ruling, because they sort of ruled in the abstract that there is such a thing, but they didn't really apply it to these facts. The only one they addressed was the allegations about Trump's directives to the Department of Justice, and said those were within his official duties.

And so I think there could be an opportunity to narrow it in application and say that Trump was acting outside of his official duties when he did things like request alternate slates of electors and pressure state officials to organize new slates of electors, interfering with voting rights, all of those kinds of things. So they really didn't rule that he could do everything that was alleged in that indictment, just official duty. So I think there's a possibility that it could be narrowed. But I think it might take a while to see that actually get teed up and for the court to have that opportunity.

All right, our next question comes to us from Kathleen, who asks, "Did the immunity ruling," that we were just discussing, "remove impeachment from our democracy toolkit?"

Astute question, Kathleen. And the answer is no. In fact, what that decision said is impeachment is the way to hold a president accountable when he violates his official duties, that a president could be charged criminally for personal conduct if he were to, say, shoot someone on Fifth Avenue, that would be a crime. Or even some of these things that were alleged in Jack Smith's indictment that they say were outside the scope of his official duties.

So if the misconduct is within his official duties and rises to the level of a high crime or misdemeanor, then impeachment is the remedy. I think the only question is whether that is still a workable solution. We've seen in Trump's first term that Republicans refused to convict him in the Senate. And I don't know that we're going to get any better result this time around. I don't know that the House, now controlled by Republicans, will be willing to go forward. And I think that's one of the things that's really changed from the Watergate era, Jill, I don't know if you agree, is that in the 1970s, people were willing to put country over party. And I don't know that we're there anymore.

Jill:

We are not. And as someone who had to face the issue of could we indict the president while he was the sitting president, and then we had the opportunity once he resigned and was the former president. And the argument made by Leon Jaworski, who was the replacement special prosecutor, was that impeachment was the better way to handle it than criminal indictment. And it was ongoing on a bipartisan basis, so it was reasonable. We got permission to give our evidence to the committee, the judiciary committee that was looking at impeachment, so that they wouldn't have to recreate and spend years getting the same evidence that we already had. And we got that permission and the articles of impeachment were voted, and the Senate... Three top Republicans went to Nixon and said, "You will be convicted in the Senate if you don't resign."

We aren't there anymore. So if you don't have a criminal system that hold a president who commits crimes, if that isn't the way to hold them accountable, neither is the political process anymore, and that is too bad. I would love to go back to a time when Democrats and Republicans compromised and saw facts the same way.

Barb:

Yeah, Trump has made everything political. There's no such thing as honor anymore. I got one more question for you, Jill, and this one maybe can help us end on a more hopeful note. This question comes from Donna, who asks, "Is there a time limit or constraint to executive orders? If so, what is it? What happens if the time limit runs out?"

Jill:

Great question, Donna. And it is hopeful, and it gives all of us a job to do, which is to make sure that the next president doesn't share the same views. Because there's no official time limit. It's not like someone says that this is the executive policy until X date. It's until they're no longer in office. Because in the same way that Donald Trump has undone all the very beneficial executive orders that were issued by President Biden, the next president could do the same thing to his executive orders. And so what happens when the time runs out? We get better executive orders and we get rid of the bad ones. So that's where we're at.

Barb:

Yep. So vote wisely in 2028 so that we can have a president who rescinds executive orders that are not in the best interest of democracy, and writes other executive orders that are.

Thank you for listening to #SistersInLaw with Jill Wine-Banks and me, Barb McQuade. Joyce and Kim will be back next week. Follow #SistersInLaw 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, OSEA Malibu, HelloFresh, and Thrive Causemetics. The links are in the show notes. Please support them because they make this podcast possible. See you next week with another episode, #SistersInLaw.

Bless his heart. Y'all, I'm from L.A. and Alabama and Maine and Virginia and Washington, D.C., and New York. I'm from all those places. And I'll have to check with the chickens before I can let you know whether I'm able to do anything.

This transcript was exported on Feb 01, 2025 - view latest version [here](#).

Jill:

Bless your heart.