

Barb:

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Joyce:

Welcome back to #SistersInLaw with Jill Wine-Banks, Barb McQuade, and me Joyce Vance. Kim is off this week. She'll be back next week and that's a good thing because we need her expertise. So, y'all, listen, I know you've been having trouble getting our resistance T-shirts. We've ordered a lot more. We're delighted that we keep selling them out. We're excited that all of you want one. So now you should be able to get one again. Go to [politicon.com/merch](https://politicon.com/merch) to get yours now.

This week, we have a lot to talk about. We'll start with the Alien Enemy Act. I think everyone is concerned with that this week. We'll also talk about the call by Trump cronies to impeach federal judges and the disturbing attempt at DOD and elsewhere to erase history and specifically to erase BIPOC history. So before we get into this deep and heavy show, the times we live in certainly aren't conducive to laughing as much as we all like to. But I wanted to ask you guys, I mean, y'all, the pollen is out here, which is to say the flowers are out and the trees are getting green and it's spring break and my kids are older, so we don't necessarily have the ability to get everyone in the same week and check out, but I still like to travel with the kids.

So I'm interested, what are your favorite trips? Spring break trips, other trips? What should I be thinking about doing with my small fry and my not so small fry? Jill, what's your favorite?

Jill:

Well, as you all know, I love really adventure travel and exotic travel. But I have to say, when you mentioned just now spring break, I love cherry blossoms, and Washington and Japan are ideal locations to see them. If you can time a trip to coincide with that, it is a perfect trip. Paris is also always good for spring. I mean, what could be bad about spring in Paris and especially since the Olympics portrayed how wonderful Paris is. I'd say those are some of my favorite spring breaks. But for other trips it has to involve wild animals and hiking and other adventurous stuff, rafting and falling out of the water and almost dying. Love those things.

Joyce:

We have two really huge cherry blossom trees and the one that the chickens are always wandering around under is spectacular this year. I've always wanted to see the cherry trees in Japan and I never had. So that's a great suggestion. Barb, what about you? What are your favorites?

Barb:

Well, whenever I go somewhere, I just like to do stuff. That is something that happily my husband and I have in common. Friends talk about how much they want to just go to the beach and veg, and hang out. If we ever get to a beach after about five minutes we say, "And then what do we do? Like now what do we do?"

Joyce:

We are the same way. That's exactly like how we are.

Barb:

Yeah, we like to do stuff. So lately our spring breaks have mostly been ski trips. That's something that the whole family can enjoy despite varying abilities among the faster skiing children and the white-knuckled mom. Those are always fun. We like doing that. Anywhere where you can go and see new things or learn new things and just be active are things that I like to do. And that can be places far away or places close to home. Sometimes staycations are great and just know as long as you've got active things to do.

Jill:

Staycations are great during spring break so that you avoid the crowds. I don't mind that. I did go skiing one spring and I'm not a skier. I mean, don't even ask about my skiing, but I ended up at the top of a black diamond only run and I'm a beginner. When we have time, I'll tell you about how I actually made it down and lived to tell about it.

Joyce:

So my cats are really picky eaters and they definitely deserve the best. Cats should not eat processed food for every meal, which is why Smalls has become my go-to cat food. Your furry friends will adore you if you try it too. I only learned about Smalls when they started advertising with us, but I am super glad that they did because Smalls cat food uses protein packed recipes made with preservative free ingredients you'd find in your fridge.

And best of all, they deliver it right to your door. That's why cats.com named Smalls their best overall cat food. Harry, Juliet, Dingus and Tofu are cats. They all agree. So don't wait. Get 50% off your first order plus free shipping when you head to [smalls.com](https://smalls.com) and use our promo code, SISTERS.

Barb:

Wait, how many cats do you have, Joyce?

Joyce:

Four.

Barb:

Four cats? You are a crazy cat lady. I love it.

Joyce:

Yes, I definitely am.

Barb:

For proof, give your cats a taste test. Just put a bowl of the tired old stuff next to a bowl of delicious Smalls and your cat will go for Smalls every time. We've seen it in action. And the company has a great story too. Smalls was started in 2017 by a couple of guys home cooking cat food in small batches for their friends. A few short years later, they've served millions of meals to cats across the USA. Smalls not only smells better than the other brands, but you'll feel a lot better knowing that you're giving your furry friends the good stuff instead of burnt-out kibble.

I mean, if you were a cat, would you want dried-out pellets meal after meal? I don't think so.

Joyce:

Hey, Jill. Jill, you know who else likes Smalls?

Jill:

Who?

Joyce:

Bella occasionally tries to nose her way into Smalls. Maybe it's not just for cats.

Jill:

Oh my gosh. Because as you all know, I am a loyal and devoted Dalmatian person, but I know Joyce, you and many of my friends are cat people. You're also a dog person too, thank heavens. And I know from them that they say you can't just feed your cat kibbles. Just remember your cute kitty descended from ferocious desert cats who I love seeing in the wild, and they hunted live prey for food.

Your cat isn't any different. They still need fresh protein-packed meals to be at their best. Other cat food brands know this, but they chose to put their wallets first with low-quality ingredients and unnatural preservatives. If you're like us, we want our cats to be eating as good as we do. Smalls is so confident your cat will love their product that you can try it risk-free. So what are you waiting for? Give your cat the food they deserve. Head to [smalls.com](https://smalls.com) and use promo code, SISTERS at checkout for 50% off your first order plus free shipping.

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Joyce:

This is serious. I mean, our cats think this is the best food they've ever had.

Barb:

Well, we've seen an extraordinary week involving President Donald Trump's use of the Alien Enemy Act to deport more than a hundred men he says, are members of a Venezuelan gang known as Tren de Aragua? The drama began last weekend when Trump issued an executive order and a lawsuit was filed on behalf of five men subject to the order who say they're not members of the gang. A federal judge last Saturday granted a temporary restraining order as to all non-citizens in US custody who are subject to this order. And he even ordered planes to be turned around if they were currently in the sky.

Now three planes in fact made it to El Salvador where the men were transferred to a high-security prison that has had human rights allegations and all kinds of things. Court filings went back and forth all week with Trump calling for the impeachment of the judge. So first, Joyce, let me ask you, what is this Alien Enemy Act of 1798? When does it apply and what's the process for finding out whether these men were indeed members of this group?

Joyce:

Yeah. So this is an act that applies during wartime. Let me say that one more time, during wartime. Currently the United States of America is not in a declared war with any country, and that should be the end of this. Game over, no further conversation necessary. We are not at war. And we are certainly not, as one of the greatest world powers at war with a gang from Venezuela. But in the time of Donald Trump, of course, here we are.

This act, by the way I should say has a little bit of a nefarious history. This is the act that was used to intern some Japanese citizens during World War II. The Japanese were subject to internment under several different legal theories, but this was one of them. And here, Barb, and maybe this is where you

want to focus, I'm not sure, but what I find most disturbing about this entire episode, other than the fact that we are not at war. So Donald Trump has no legal authority to be doing any of this.

And despite the fact, by the way, that as a former law enforcement official, I think it's a great thing to keep America's streets safe, right? I think something law enforcement should be doing is policing against crimes of violence and making sure people in our country are safe. But this is not the way to do it. What's happened here is they've rounded up people, they've given them no due process. They've deported them to a hellhole in El Salvador and incarcerated them for an uncertain length of time.

And the whole point of this is that these are folks who, assuming the government has gotten it right, they can be legally deported. This notion that they are being incarcerated in for-pay prisons in El Salvador is an entirely different sort of a setup. So, look, these folks have had no opportunity to test whether or not the government is incorrect when it picked them up. And they're now, as you've said, five named plaintiffs who say we're not members of a gang.

Other claims like that are beginning to occur. And the use of tattoos as a way to identify gang members, which is what we're learning, has been done in large part, that has a really troubled history. I don't know if you had this same problem, Barb, that we had, but when we were doing aggravated deportation cases, people who were here without legal status and who had committed prior felony crimes, or who were involved in violent crime, sometimes we would get cases where we would be told, "Well, this person has tattoos that indicate they're a murderer or that indicate that they're a member of a violent gang."

And we had problem after problem with those cases. Tattoos, not a reliable indicator. In one of these cases, a woman has come forward saying that her brother who was rounded up far from being a gang member is a young man, a gay artist who escaped from Venezuela because of problems that he was having being threatened. And now he's been rounded up and sunk into this just hellhole of a prison in El Salvador.

Barb:

Yes. Well, speaking of tattoos, Jill, you raised a good point when we were talking the other day about tattoos, right? Tattoos can mean a lot of things. And in fact, some of these men say the tattoos they've chosen are the logo of their favorite soccer teams, like a crown with a soccer ball on it or something. And our own Secretary of Defense has some controversial tattoos that he says have been misinterpreted. Right?

Jill:

Exactly.

Joyce:

Such a good question, right? Would his tattoos have been enough to get him rounded up as a gang member?

Jill:

That would be a good thing.

Barb:

Well, Jill, I want to ask you about the judge to whom this case is assigned. His name is James Boasberg, and we've seen Donald Trump calling him a radical, I don't know, leftist, whatever adjective you want to use, criticism. I actually know Judge Boasberg a little bit. He comes and speaks to my national security law class every year virtually because he is an expert in national security law. Tell us about Judge Boasberg.

Jill:

He is hardly the ideal candidate to be the one you're picking on and saying that he is a left-wing activist judge who should be impeached. He was appointed by George W. Bush to the DC Superior Court, and then Obama appointed him to the district court where he was confirmed unanimously. He roomed with Justice Kavanaugh at Yale. He's also a graduate of St. Albans, a fancy school in Washington DC where a lot of conservative Republicans send their children and so do Democrats.

I don't think it's a partisan school. And he also went to Oxford. He was appointed by, and this goes to your point about his expertise by Justice Roberts to the US alien terrorist removal court, and he served as the presiding judge of the FISA court. So he is not someone who you would normally associate with a liberal left-wing judge. I really think that he's just not the person who should be picked on, but there's a bigger issue, which is no judge should be picked on for their decision. Impeachment is for misconduct. It isn't for this kind of, "I don't like your opinion." Appeal the opinion, don't impeach the judge.

Joyce:

And can we just talk about the point that we're at in these cases? I mean, we are talking about a temporary restraining order that the judge issued just to say, "You can't take these people out of the country while we're briefing these early legal issues." And everything that's going on right now is about whether the government violated that temporary restraining order. We are not talking about a substantive determination that the government can't do this, right? This is such an early stage. It's really sort of crazy that so much animosity has developed so quickly.

Barb:

Yeah. It really does seem like they're just spoiling for the fight. Well, one of the things that happened on Friday while we were recording was an inquiry into the state secrets privilege. So as this battle has gone on all week, Judge Boasberg has asked for more information. The Department of Justice lawyers have said, "We can't tell you. We won't tell you." And he's been trying to get answers like, "Did these planes leave? When did they leave? Did you defy my order?" And one of the things they said earlier in the week is, "Well, we're thinking we just might invoke the state secrets privilege, but we haven't yet." What is the state secrets privilege? Can you tell us what that is?

Joyce:

Well, Professor McQuade, this would actually be a really great question to ask you, but I will outline the contours and then you fill in, if I leave anything important out. It's a common law doctrine that the Supreme Court has developed over time called the state secrets privilege. And it protects sensitive national security information from being disclosed in civil litigation. It's meant to protect, for instance, pieces of sensitive evidence if there's a reasonable danger that disclosure during litigation would expose military matters, which in the interest of national security should not be disclosed. That's a Supreme Court case from 1953 called Reynolds.

And it talks about this notion that we should protect sensitive secrets. So look, I'm following this with interest because it's unclear to me what the state secrets are here. And although judges under this doctrine don't look too deep, once the privilege is asserted to avoid bumping into sensitive areas, they do need to make sure that there are actually secrets involved before they let the government take this protection. And here where you've got the government openly bragging about what it's doing, right? And the president of El Salvador talking about his help and the whole oopsie tweet. "Oopsie, too late. We've got these people."

We've got video of these planes landing and men being pulled off of them. We understand that there's a deal between our country and El Salvador. I'm not really sure what secrets they intend to invoke on. So I'm very curious about how this proceeds.

Barb:

Yeah, I think if they had started down this path, they could have said, "The routes we take, the planes we use, all of that is secret because if we reveal that to the world, it could in some way compromise our operations." Maybe so. But they posted this like glitzy Hollywood-style video of these men being transported to this prison in El Salvador. So you can't have it both ways. I mean, it still may be that some of these details don't get shared publicly. They could be shared with the judge, but not with opposing counsel, for example, or with the public if it is simply about the routes. What he's trying to figure out is, "Did you defy my order?" And they say, "We can't tell you that."

Joyce:

And there's this amusing exchange in the first hearing, which I painfully listened to the entirety of where they're saying, "Well, judge, we can't tell you that in open court." And you can imagine him rolling his eyes before he very patiently in this very civil tone says to them, "Well, I know how all of this works because I've served on the FISA court and we can go into chambers and talk in private. We could even go downstairs where I have a secure facility at my disposal."

He's so sweet and so kind and everything that you want a judge to be. I just hope that at the end of the day he will find a way to hold these folks accountable because as you say, he's just saying, the government is essentially saying, "We can do whatever we want and you can't hold us accountable." And it's time for a federal judge to say, "Actually, government, we can and we will."

Jill:

Barb, you mentioned the brazen and bragging and the photographs, which are to me, pictures of cruelty. The men being taken off the plane in that horrible bent position by masked men is, it's so un-American. And this is not that they were brought to their home country. They were brought to a third country where we're paying about \$20,000 a year to house them for no reason at all that we know there's been no facts presented.

Joyce:

Can I ask you guys about that? I know this is getting us a little off track, but this is a provision, the Alien Enemy Act that lets you deport people, right? And presumably there's some provision that lets you somehow round them up and contain them because that's what happened in World War II. But I'm a little bit weak on the legality of taking people and locking them up in a third-world hellhole that wouldn't pass Eighth Amendment standards for cruel and unusual punishment, doing it for an indeterminate period of time and holding them incommunicado. How is that even close to legal? It just cannot be. It's a human rights abuse.

Jill:

Well, and the government is now claiming it also authorizes them to do warrantless searches to find these people. So they're really stretching the limits. The Supreme Court did say that we couldn't keep people in concentration camps in America, which is, I don't know if that's exactly what they're called, but they were detained in camps in America, Japanese Americans, some of whom were citizens. And it's despicable. We don't know what's going on here and that's why the court needs to find out. And so I'm hoping as you said, Joyce, that Judge Boasberg will be able to get the information and then enforce a contempt if they don't answer.

Barb:

Yeah. One of the things you mentioned, the cruelty that we see in the videos, when I was researching my book, I read an awful lot about Nazi Germany and I know nobody ever wants to compare anybody to Nazi

Germany because the extermination of 6 million Jewish people is something so horrific and you never want to compare somebody to that. We haven't reached anything close to that. But one of the things that was done there was to dehumanize Jewish people by showing them in these submissive positions, blaming them for everything, forcing them to scrub the streets and people would jeer at them because they had been indoctrinated that these were a lesser form of human life. They were awful and they were being made to do this thing because they deserved it.

And watching those men being treated that way... Now, if they're Venezuelan gang members, I'm sure the Trump administration chose this group to be their pawns because there's going to be no love lost for people who truly are members of a transnational criminal gang. But treating them, shaving their heads, pushing their heads down, showing them kneeling in their underwear, it really feels like to me, an effort to dehumanize maybe not just these Venezuelan men, but all immigrants that we need to get them out of here because they are less than human or something. So it really felt-

Jill:

And we don't know if these men are here legally, we don't know if some of them are citizens, and we don't know if any one of them is a gang member. Family members have said, at least some of them, they are definitely not a gang member. One family said he was gay and being tormented in Venezuela and escaped Venezuela to the safety of America and is now in a prison in El Salvador with inhuman conditions. So we really need some facts here that we're not getting. And until we have that we should not rest.

And to your point about not comparing to Nazis, I agree it's a horrible thing to compare. There's very few things worse, but remember what was said by many, first they came for the trade unionists and I said nothing. And then they came for me and there was no one left. And that's the point here. You can start with gangs who no one would object if you proved that they are gang members. No one is going to object. And part of this is intimidation of all the other good people in America who would say, "You can't just randomly deport whoever you declare is a threat. You have to show us that there is something."

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Barb:

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Jill:

Their trees really last. They're fabulous. They are so sturdy.

Joyce:

And they really are good. I've called repeatedly with questions about how deep should I plant this or what's the right time? They are always fabulous. Fast Growing Trees offers 6,000 plants to provide the perfect choice for you. Everything from indoor plants to fruit trees, full-sized privacy trees and more. Just follow their 14-point quality checklist and Fast Growing Trees will help you care for each plant

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And that means you'll be giving your plants the care they deserve the moment they ship to your home. I have been buying plants from Fast Growing Trees for about a decade, but there is always something new to look at every year. And this year we were excited to learn you can grow a vanilla bean plant indoors. Did you guys know that?

Jill:

No.

Joyce:

It's so cool. I'm really looking forward to that one.

Jill:

Are you going to make your own vanilla flavoring?

Joyce:

If I get a vanilla bean, I technically know how it's done. And we've done this with our Fast Growing Trees plants over the years. We have a lot of citrus that comes from them. And it's always a lot of fun to do it for yourself. So there are a lot of choices. You can pick whatever interests you the most, but always good stuff to choose from.

Barb:

Wait a minute. What are you doing with the vanilla beans?

Joyce:

You can extract it. You can use alcohol to extract it and make like the vanilla extract that you would purchase in the grocery store.

Jill:

Except it's way better than the grocery store.

Joyce:

I don't know because I've never done it.

Jill:

A friend of mine made it.

Joyce:

Is it?

Jill:

And it's so good, yes. Fabulous.

Joyce:



Here you go. That's the experiment for SistersInLaw this year.

Barb:

Interesting. Well, I'm here for the plant experts who can answer questions about your soil type. They can give you advice on landscape design and how to take care of your plants. And everything else you need. No green thumb required. So don't wait. This spring, they have the best deals for your yard with up to half off on select plants and other deals. Listeners to our show get 15% off their first purchase when using the code, SISTERS at checkout. That's an additional 15% off at fastgrowingtrees.com. Use the code, SISTERS at checkout. Again, that's fastgrowingtrees.com code, SISTERS. Now is the perfect time to plant. Use the SISTERS code to save today. The offer is valid for a limited time. Terms and conditions may apply. The dreaded terms and conditions, whatever those are. But the link is in our show notes.

Joyce:

Well, here's something that's not new, but that it's time for us to talk about. Donald Trump and his cohorts, no surprise want to impeach federal judges, but only the ones who rule against them. Y'all may recall that when Donald Trump was at the Justice Department giving his speech there, he talked about how horrible it was for anyone to criticize federal judges and held up Aileen Cannon who had ruled in his favor in Florida as a shining example of the federal judiciary.

But all bets were off this week. Elon Musk has been at the forefront of this calling for impeachment and trying to move along with political largesse. Jill, what exactly is Musk up to and others? Why are they calling for impeachment of federal judges?

Jill:

Well, they're calling for impeachment because they don't like the outcome of cases that are based on law and fact. And Elon has gone as far as you could possibly go. I mean, there's a group now that he's giving money to. The members of Congress who are supporting impeachment are getting money. And Wisconsin voters are being offered money to vote for a conservative judge over another candidate in the April 1st election. And they are also giving money to the candidates themselves, not just to the voters in Wisconsin, but the judicial candidates.

But more importantly, he is using his 220 million followers to gain support by posting criticisms of judges. And now the members of Congress are in a position of saying, "Well, it's not a bribe." They're not using that word. They're just saying, "I didn't do it to get Elon's money. I didn't know he was going to give me money when I did this act of saying that I would support impeachment." And so this is all ridiculous and this statement that he's making about no one judge should have power to make a nationwide effort. What happened when Judge Kacsmarykruled on the abortion pill? They were all for it.

So this is total hypocritical and there's no due process being involved here. And so we need to really stop Elon Musk and Donald Trump and all the others who are supporting impeachment.

Joyce:

It seems to me that whoever is happy with the result of a nationwide injunction usually stands up for the process. And there's a good argument for it when the government's involved, right? If you didn't have nationwide injunctions, you could have 50 different rulings. So I mean, Barb, do you think that this is improper too? Does it give you any pause?

Barb:

It's so improper. Judges can be impeached for just like the president, treason, bribery or other high crimes or misdemeanors. So if they engage in misconduct, yes, because they're appointed for life, it's the only

way to get them out of there. But the reason they're appointed for life is to insulate them from politics because there are times when there is a tyranny of the majority, when that which is popular is not the same as that which is constitutional.

And so to protect us from those moments of the angry mob, we have a constitution and we have laws. And it's the courts who are to decide what the law is. So this idea that judges are somehow a single judge, a local judge is telling an elected president what to do? An unelected judge? They're all unelected. That's the whole point of them. They are there to rein in abuses of a president. That's our system. I say this all the time, didn't these people watch Schoolhouse Rock? We have free branches of government and the courts are there to interpret the law.

And if Congress passes a statute that turns out to be unconstitutional, the courts strike it down. If the executive branch takes some action that either violates a statute or violates the Constitution, it is their job to stop that. And that is what we're seeing by many of these judges. The idea that somehow that makes them impeachable offenses, I think is really more of an attack on the judiciary than any good faith effort to remove them from office.

Joyce:

So I guess you're suggesting that you can't impeach judges just because you don't like their decisions. But not to go back to Schoolhouse Rock too far, but I think I will because it's worth making the point here. Who is it that has that responsibility? Would it be the president to whom the decision about whether or not to impeach a judge falls or would that be to someone else?

Barb:

The impeachment decision is for Congress, right? The House impeaches, passes articles of impeachment, and then it is the Senate that would convict the same process that we see when it is a president or other, I think civil officers of the United States. That is the method for removing them from office.

Joyce:

Yeah, I mean, Jill, what kind of things are judges impeached for? Is it stuff like the president doesn't like their decision? What's the sort of quantum of conduct that we're looking for before a federal judge is impeached by Congress?

Jill:

So even just limiting the discussion to judicial impeachments, and as Barb said, it is an impeachment. Articles of impeachment are like an indictment. It sets forth the charges and that's the house's responsibility. And then two-thirds of the Senate, 67 senators have to vote to actually convict on those charges. So it has to be serious enough to get two-thirds of the Senate to vote. And in all the cases that have been brought, and there have been 15 judges brought up for impeachment charges, eight have been convicted, three have resigned rather than finish the trial. And they are for crimes or for misconduct. All are misconduct. Drunkenness on the bench, which is proven. And I just wonder if that applies to other cabinet officers.

Joyce:

That sounds like an impeachable offense to me, drunk on the bench.

Jill:

Drunk on the bench is one.

Joyce:

You shouldn't be a federal judge.

Jill:

Arbitrary and oppressive conduct, abuse of the contempt power refusing to hold court and waging war against the US. That was during the Civil War for one judge who apparently was on the wrong side of the winners. Also, improper business relationship with litigants, clear conflict of interest, favoritism in appointment of bankruptcy people, receivers. Income tax evasion, that's one. Perjury is another. Accepting a bribe, sexual assault and false statements and obstruction of a proceeding.

So those are the kinds of things that have been proven and have resulted in the conviction and removal of judges. There's nothing even remotely alleged against Boasberg or any of the other judges that Musk and Trump are calling for impeachment of. And so there's really no legitimate basis for this discussion. But to Barbara's book's point, saying it loud in office makes people believe that there's something wrong in the same way that they're saying that these men are Venezuelan and criminal gang members, they aren't proving it, but they say it loud and often and people start to believe it. Common back to the Nazi propaganda machine.

Joyce:

Yeah. I mean, I think that's just the most salient point in the whole discussion, Jill. It feels important to me. It feels weighty and it feels like something we shouldn't be letting this administration get away with. And someone that we might not have expected to tried to step into the breach this week and maybe calm the discussion down a little bit. Barb, the chief justice took the unusual step of making public comment. Do you want to talk about what he did and just how unusual that is?

Barb:

Yeah. This was really something. Chief Justice Roberts who plays things by the book, he doesn't give a lot of public statements, he gave a statement that he issued after Donald Trump was calling for the impeachment of Judge Boasberg, but we've also been seeing articles of impeachment against other judges and he issued a very short statement. I'll read it. He said, "For more than two centuries it has been established that impeachment is not an appropriate response to disagreement concerning a judicial decision. The normal appellate review process exists for that purpose."

And so the idea that people are seeking the impeachment of a judge just because they don't like their decision, I was pleased to see Chief Justice Roberts reach out and say this thing because I think that there are many people out there who think that this is all about politics and that Judge Boasberg is only ruling against Donald Trump because of politics, and he was appointed by a Democratic president.

In fact, to see Chief Justice Roberts, who of course is the author of the Trump immunity decision who just a week earlier at the President's speech before Congress said things like, "Hey, thanks for helping me out. I'll never forget it. I won't forget it. I'll remember that." I think it was important for Chief Justice Roberts to be the one to speak out about this and let the public know just how inappropriate it is to be calling for impeachment.

As he says in his statement, "Look, there are appeals courts for this purpose. If you're not satisfied with the decision of a judge somewhere in our country, then we've got a mechanism for you to re-litigate that issue." So I was pleased to see that. We saw this just once before you may remember, and I think it came in the judge's annual report when Donald Trump was talking about Obama judges and Trump judges and all that sort of stuff. And Chief Justice Roberts wrote, "There are no Obama judges and no Trump judges. They're just United States judges, and they're all doing their level best to apply the law faithfully." So

every once in a while, Chief Justice Roberts will flex for the courts a little bit. And I think it was really important that he did so here.

Jill:

In addition to what Justice Roberts rightfully said, and Justice Breyer has weighed in support of that, the American Bar Association issued a statement on behalf of its over 400,000 members asserting the same thing about the rule of law. And I think it's really important to know how utterly, unbelievably unconstitutional this action is to go about impeaching judges for decisions that you don't like. And it would end what we know as the three branches of government if they can get away with this.

Joyce:

Who does not love the good things in life? Definitely not us. We all love the good things in life, and I enjoy a little bit of luxury, but affordability used to be a concern until I discovered Quince. I was apparently the last of the sisters to discover Quince. You may remember Kim mocking me in an earlier episode because I'd never heard of them, but I'm so grateful that she egged me on because now Quince is my go-to for luxury essentials at affordable prices. Think cashmere. Quince offers a range of high-quality items at prices within reach. Beautiful, 100% Mongolian cashmere sweaters from \$50, washable silk tops and dresses, organic cotton sweaters, 14-karat gold jewelry and more.

And here's the best part. All Quince pieces are priced 50 to 80% less than similar brands because Quince partners directly with top factories cutting out the cost of the middleman and passing the savings on to you. Shopping on their website is a lot of fun and I never feel guilty because I can refresh my closet without breaking the bank. Quince is also perfect for gifts.

Barb:

Yeah. We started advertising for Quince and I liked the sweaters I got so much that the next time we recorded an ad, I had to stop the recording because I just remembered how much I liked these sweaters and I ordered more. They're fantastic. We love it that Quince uses only factories that use safe, ethical, and responsible manufacturing practices to bring us the premium fabrics and finishes that make every piece feel luxurious. Our favorites, my favorite is the Mongolian cashmere sweater. They've got the cardigan. They've got the pullover. They've got the crew neck. They're all fantastic.

There's also the stretch wool dress pant. The materials feel amazing, and they're the perfect combo for looking good and keeping warm. The style is perfect for getting things done in the office, teaching a class, or making an impression at a dinner party if one does those things.

Jill:

Joyce, you are so right about them being the ideal gift. Once I discovered Quince, I fell in love with it and I did do some price checking, and they are unbelievably priced for unbelievable quality. And they are comfortable. The fabrics are fabulous and we guarantee they'll be even more comfortable with the prices even though the fabrics are unbelievably comfortable. So give yourself the luxury you deserve with Quince. Go to [quince.com/sisters](https://quince.com/sisters) for free shipping on your order and 365 day returns.

That's [quince.com/sisters](https://quince.com/sisters) to get free shipping and 365 days returns. Again, [quince.com/sisters](https://quince.com/sisters) and don't forget the men in your life. They make great pants. My husband loves the pair I got for him. The link is in our show notes.

Hey, guys, you have to really tell me this isn't really happening. Say it isn't so. So the Pentagon surprised me with the depth and detail of its ostensible implementation of President Trump's executive orders to eliminate what he calls "illegal DEIA" programs in the government. And if he and Bondi have their way

in all private companies too, one result that I didn't see coming is the erasure of the military history of Black, Hispanic and women service members, including Jackie Robinson. Can you imagine that?

History-making female fighter pilots, a Black Medal of Honor winner, the Enola Gay, the Tuskegee Airmen, the Navajo Code Breakers who were so crucial to our success in the war, a decorated Japanese American army unit, Ira Hayes, who was one of the six Marines who raised the American flag at Iwo Jima and pages of the Arlington National Cemetery's website highlighting the graves of Black and female service members, and the entire Civil War vanished from their website.

So one website that was terminated in addition to all that was the women's military memorial at Arlington, which I want to mention because it's very special museum, and I encourage everyone who hasn't seen it to visit it. It's at the entrance. And as of now, it still exists. And when I checked last weekend, the website was back up as were the pages that the Army and Navy had removed about the history of women in the military and that the Air Force took down profiling 10 women who piloted one specific stealth bomber that carried out important missions.

One prominent page that has not as of now been restored is the one that honored Colin Powell. It was headlined first Black joint chiefs chairman also was the youngest. And it was deactivated and replaced by the words DEI. Colin Powell was not a DEI, he was a capable, wonderful secretary and war fighter in the terms that Hegseth uses now. But, Barb, before we get to the legal issues of what's happening and whether it is legal or not, why does the obliteration of history matter?

Barb:

Oh man, that's a big question. History is so important because if you are somebody, especially who is underrepresented in an organization, it says, "We see you and you matter, and we want to include you." I also think it's so important for current members of every group to understand the struggles that people went through to open doors for women and minorities. Jill, I think about some of the things that you had to endure in the '60s and '70s so that people like me could have a smoother path in the '80s and '90s.

I endured indignities so that women today could have a smoother path. And I think that history is really important for people to understand, and the accomplishments and the pride that comes from seeing people who were the first, who did break those barriers. The people who did the Ginger Rogers dancing, doing everything Fred Astaire did, but backwards in high heels, right? I mean, understanding that is critically important.

And so there are plenty of prominent people who say that to erase this history is to try to erase these groups. And I think it's really disturbing. I also want to say one more thing about DEI. To call someone a DEI hire is to suggest that they're somehow unqualified. And that is just wrong.

Joyce:

Affirmative action, baby. Right? It used to be affirmative action, baby.

Barb:

And I don't speak for my university, but we have had prohibitions on affirmative action by state statute for a long time. There was a proposition passed after the big University of Michigan Law School case one. And so there has been no use of affirmative action. So the way it operates in practice is through recruiting of people who have been underrepresented. That means going to rural communities in northern Michigan and finding people mostly white who have not had opportunities to go to a major university or go to a law school.

The Go Blue Guarantee at Michigan like many universities is if your family makes less than the median of the state income, you can go for free. That is an effort at inclusion to try to get people to the university

who might not otherwise be able to afford it. Recruiting in urban areas where kids have not had prior generations go to college to help them understand what it takes to apply to college and how you get there.

What is FAFSA? How do I apply for financial aid? People who don't know that there is efforts made to do that. So that's what diversity is about, it's what equity is about, it's what inclusion is about. So that when you get here, you're not eating by yourself in the cafeteria, that there are groups where you can find people like you who have managed to navigate the system. We have a group here for undergraduate women in science and engineering because they are often very outnumbered by their male counterparts.

And so ways to show them support and opportunities and just fellowship, just being together among other people to help them navigate those things. Those aren't discriminatory things. Those are things that are designed to give everybody an equal opportunity to participate in society. And I believe that we are best when we include all citizens and we aren't systematically excluding a significant percentage of the nation's talent from opportunities in the military, in government, in private, the private sector, and wherever.

Jill:

Let's just stress that is not changing the qualifications, it is opening the door to those who meet the same qualifications. And that's what's important to know. Women in the military meet all the same requirements. In the old days, they had to have higher... They had to be high school graduates and men who were enlisting did not. So it isn't an unequal playing field. It's equalizing the playing field and offering opportunity. That's what's really important. And those who don't know history are doomed to repeat it.

It is a way, as you said, to erase groups and to eliminate some of the benefits, for example, in the military where they were one of the first institutions to integrate and now they're trying to unintegrate it. But, Joyce, let's talk about the law now. Trump is attempting to justify what he's doing by claiming that DEI is illegal, but he doesn't define how it's illegal. But talk about the difference between anti-discrimination laws that Barb just mentioned and DEI programs that are sex-based preferences and what the difference is and how you think this is going to play out in court?

Joyce:

Yeah. I mean, what Trump has done is he's obscuring the legal argument with jargon, right? He's drumming up hatred instead of focusing on legally what does it make sense for us to do and what doesn't it make sense? And the reality is we still have a constitution. We still have laws. And although as Barb says affirmative action has fallen into disfavor, particularly in an academic context, we still have rules in place that make it illegal to discriminate against people even if you don't have to go the extra step to include them. But the reality is that the law typically provides a floor and not a ceiling.

And so up to this point in our country's history, people who are inclined to be more inclusive, people who see value for their business or their school or their military organization to be open to all segments of society have been permitted to do that. And that I think is how this issue will present in the courts. This will be about Trump trying to put a stop to that. And the question will be whether this Supreme Court will go along.

Jill:

What you said just reminded me of one place I don't think I've talked about that I worked was-

Joyce:

Oh no, another one? I know. I know.

Barb:

Wait, what? How can there be a new job?

Joyce:

I know. Hold on.

Jill:

What can I say? Winning Workplaces is a not-for-profit that was created by the Lehman family who used to own a company called Fel-Pro, which was always on the Forbes list of the best companies to work for. And they wanted to give back to the community when they sold Fel-Pro by creating something that would help small and mid-sized businesses. I became the CEO. One of the things that we did was research, which showed that the inclusive workplace is one that does better. It makes more money, it's more profitable, it benefits everyone. And so what I'm worried about is the extension of what they're trying to do in the military to be beyond the military.

Barb, there's one consequence, and this does go to my army experience where I was responsible for billions of dollars in procurement is outside the government. They're trying to say that the federal contract compliance group, which is an official federal agency, is being abolished. And government contractors who used to not be able to discriminate as opposed to give preferences or quotas, but they couldn't discriminate, are now going to be able to. And by the way, government contractors account for 20% of the entire US workforce in terms of their employees. So if they can discriminate, it's a serious thing. What's going on there? And can these rules apply outside of government?

Barb:

Well, Jill, of course, federal contractors should not be permitted to discriminate. I think what the administration would be saying here is that, well, our whole goal is to end discrimination because that's what DEI is. But I think, as you say, with 20% of the workforce subject and reliant on these kinds of contracts, if we start seeing contractors discriminating, we are going to find ourselves in a situation where a whole lot of people find themselves without jobs and without recourse, right?

There would be no place to bring your claim if you believe that you were the victim of discrimination in one of these. So I don't know. It's just creating such uncertainty. And maybe I'll also say, uncertainty is the bane of business existence. It is what makes it so difficult. I remember Liz Cheney came around before the election and she spoke to the Detroit Economic Club, and her pitch was you might like some of the policies Donald Trump is advocating, but what you want most is notice and stability.

He brings chaos and unpredictability and that is going to be the biggest problem that hampers you in your ability to do business. It's going to make the markets go crazy. It's going to make it impossible for you to do any long-term planning. And I think we are seeing that come home to roost.

Jill:

Boy, she should go into the fortune-telling business because she sure was prescient on that. Oh my God.

Barb:

No kidding.

Jill:

Unbelievable. And, Joyce, there are other consequences because, for example, you remove the webpages and you wonder, are they, as you said earlier, trying to eliminate the existence of these group? Are they

limiting services? Is it going to impact the services that veterans get at the VA if they can't even advertise by sex or gender? What services are offered?

Joyce:

Yeah. I mean, it's absolutely nuts, right? I just don't think any doubt that there will be consequences in terms of eliminating or eliminating access to services at the VA. And this seems to me is just nothing other than mean-spirited, people who deserve, who need help. I'm at a loss for words. Who wants to make it more difficult for veterans who've served our country to access necessary care? And yet that's precisely what they're doing here.

And it says to me, and I'll just pontificate for a minute and maybe use you guys for therapy because y'all are cheaper than calling up a therapist and making an appointment. I mean, what does this say about who we are? This is mean, this is cruel, and the notion that Americans are behind the idea of trying to eliminate services for veterans, for veterans of all people is shocking to me.

The fact that we would dishonor Colin Powell's service to this country, the idea that we would try to erase the Navajo Code Talkers and then the government would flippantly dismiss it as, "Oops, we didn't mean to do that". Well, I've been hearing a lot of, "Oops, we didn't mean to do that," lately. And I think the way we hold that sort of misconduct in government accountable is in the courts. Congress should be doing it, by the way. Congress has the power to do it, but Congress has decided to take a permanent knee. So I've pretty much given up on them, at least until the midterms. But I remain hopeful that the courts will step in and restore some semblance of constitutional order. Because if they don't, I mean, we're in deep kimchi.

Jill:

I want to stop with your hopefulness, but there is one question that I have to ask as a follow-up for both of you guys, is the removal and restoration of webpages and the claim of error that you just, "Oh, whoops, we made a mistake. We'll put it back." Of course, they're only putting it back because of public outcry, but it shows a callousness and a carelessness. But this isn't the only example. The release of the Kennedy assassination documents with people's social security numbers, living people's social security numbers included, firing nuclear safety workers and taking away their emails, so you couldn't then go, "Whoops, we didn't mean to fire you. We need you back."

Or deporting people without going through the legal requirements for deportation and deporting women and non-Venezuelans and saying, "Oh gosh, I guess we have to bring them back to America." What does this all mean in terms of why are they being so careless and what is the danger of this?

Barb:

Well, I think this is what Silicon Valley refers to as the move fast and break things ethos.

Joyce:

No kidding.

Barb:

And when you're running a startup or it's Twitter, who cares, right? You just, "We want to change everything really quickly, and so we're going to throw out that server and we're going to eliminate all these jobs, and we're going to cut this cost and that cost." And then you realize, "Oh, we made some mistakes. We'll piece it back. We'll fix it. We'll modify. We'll do this." It makes sense when you got a little startup. It's catastrophic when it's the US government. And that is why you cannot run government like a business.



Government is not a business. A business is all about making money. Government is about protecting people, serving the people. And so when you move fast and break things in the public sector, things like this happen, like, "Oops, we released social security numbers." That can cause identity theft for those people that will be difficult, if not impossible for them to ever completely resolve.

So the idea that it was so important to release these Kennedy papers so quickly without having somebody actually review them and redact them properly is just careless. Somebody wrote recently, there's a book about Facebook called Careless People. It's supposed to be kind of a tell-all, but it makes reference to Tom and Daisy Buchanan in *The Great Gatsby* about that phrase about they're the kind of people who are very careless. They'd make a big mess and break everything for other people to clean up. I think that is the MO of the current administration.

Joyce:

I have read and reread that book during the Trump era in American politics repeatedly, because I think it's the perfect metaphor. And in so many ways, it's the answer to this question. I mean, Elon Musk does not live our lives. And maybe it's not fair to expect somebody who's that wealthy to understand how his actions affect real people, but they have consequences in the real world for folks. And here I think we're talking about real examples of that. As lawyers, when we filed on the e-filing system in federal court, we had an obligation to redact any personal identifying information, and there were consequences for even inadvertently getting it wrong.

And now in this Kennedy release, we have social security numbers of people, and Barb makes the point that there are consequences that can't be fixed. I mean, maybe the right way of viewing what's going on is to demand that the administration slow down and that it look before it leap, and that it not take steps that can't be fixed because I'm not seeing a lot of results. I'm not seeing a lot of waste and fraud that they're fixing or putting an end to. Instead, what I'm seeing is disaster for everyday Americans as a result of this crazy "let's break some eggs to make the omelet" approach.

Jill:

There's a lot happening these days, in case you hadn't noticed, but I'm sure you have. It can feel especially stressful or hopeless when things are outside of our control. That's why I'm so happy with Calm. Calm can help you restore your sense of balance amidst outside chaos. Since I've started using it, I've found that it is so much easier to find my inner strength, stay committed to my goals, and have more energy for what's truly important, which is fighting for our democracy.

Calm is the number one app for sleep and meditation. It empowers you to calm your mind and change your life. Calm knows everyone faces unique challenges in their daily lives. And mental health isn't just a cookie-cutter approach to everyone. That's why Calm offers a wide range of content and programs like meditations that are designed to help you work through anxiety and stress, boost your focus, build healthier habits, and take better care of your physical well-being.

Barb:

There are also sleep stories, sleep meditations, and calming music that will help you drift off to restful sleep quickly and naturally. It's so relaxing. It's the perfect end to a stressful day. But when you're feeling overwhelmed, we recommend you try their grounding exercises too. These short guided sessions use sensation, movement, and breath work to help you relax and reset. I don't love the breath stuff, but I love the stuff with grounding, and sensation, and movement. Calm even has powerful expert-led talks designed to help you handle grief, improve self-esteem, care for relationships, and more.

Joyce:

Calm puts the tools you need right in your pocket and can help you dedicate a few minutes each day to live a happier, healthier life. Stress less, sleep more, and live better with Calm. For listeners of our show, Calm is offering an exclusive offer of 40% off a calm premium subscription at [calm.com/sisters](https://calm.com/sisters). It's so hard to say calm.com. I feel funny every time I do it, but I'm always happy when I visit. Go to [calm.com/sisters](https://calm.com/sisters) for 40% off unlimited access to Calm's entire library. That's [calm.com/sisters](https://calm.com/sisters). And the link is in our show notes just in case you can't understand me.

So my favorite part of the show is getting to come here every Friday afternoon and ask you guys all of the burning, pressing questions that I have, because by the end of the week, I have been storing up questions all week long, and I want to hear your thoughts about them. And our listeners are obviously doing the same. Every week we get great thoughtful questions. And this week we had a bumper crop to choose from, so I'll be interested to hear everyone's answers.

So to our listeners, if you have a question for us, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tag us on social media using #SistersInLaw. We'll try to get to your questions in the show as many as we can, but also keep an eye on our social media feeds throughout the week because we try to answer as many of your questions there as we can too. This week though, we've got... Why don't we start, Barb. I've got a question for you from Chris up in Maine, one of my favorite places in the country, so I'm happy to have a question from a Maineac. Here's the question, "Is it true that pardons auto-signed by President Biden are not valid?"

Barb:

So this issue came up because President Trump posted on social media this week that, "Just found out that Joe Biden signed all the pardons with autopen. Therefore, I'm declaring them all invalid. And all of those people are subject to prosecution. Ha, ha, ha." That's just garbage. Autopen is an absolutely legitimate way for a president to affix his signature. The president has to sign so much stuff, and as long as he directs that his signature be affixed, it can be affixed by someone else. And that is based on a couple of things.

One, since 2000, there have been federal statutes that say, "All of us can use these auto signature things." I mean, haven't all of you signed things with DocuSign and some of these other kinds of things where they say, "To sign this document, click here." You have to take a minute, and you say, "I want to sign this thing." And you do and you can do it electronically. And the law recognizes that. The rules of evidence recognize that. And in fact, during the administration of George W. Bush, the Office of Legal Counsel issued a lengthy opinion talking about all of this to explain that, yes, the president's signature is valid when it is affixed through autopen.

I think this is just one of these efforts designed to distract us and to get us talking about things and to scare the people who got these pardons into thinking, "Oh no, now I'm back in the hot seat." I don't think any of them can be prosecuted based on this, the pardons they got from President Biden. And this is just nonsense thrown out there by Donald Trump to create more chaos.

Joyce:

Mr. Bright Shiny Thing, right? And there's also this meanness, just this meanness behind this, the suggestion that, well, Joe Biden didn't know what he was doing, and so they were using the autopen because he had no idea. We obviously know that that's not the case. We all watched Joe Biden walk, talk and chew gum at the same time to the end of his presidency. And, look, I just think that this sort of casting of insinuations is on brand, but also really disturbing.

Second question, this week. Y'all, this is from Jay. Jay doesn't say where he or she is from, but it's I think a great question for all of us. Jay asks, "How old were y'all when you went to law school? Do you know anybody in their thirties or forties who took the plunge? I'm 42. And wonder if that's realistically too old."

Well, Jay, I went straight through from college, although in hindsight, I think it would've been better if I had spent a couple of years working and getting some real world experience.

But I have students all the time at the university who are in their thirties and forties. I've had a couple who were older than that. And I would say that law school is a valuable exercise no matter how old you are, if you're at that right stage in your life for a law degree, to make sense for what you want to do in the world and the contributions that you want to make. Plus, I'm just going to say this because everyone knows I'm the geeky one. I thought law school was fun and interesting. I loved my law school friends. I loved the material that we studied. Yes, we worked hard. Yes, there were times when I would have preferred to have gone out on a Saturday night than to have been at home reading case law, but it was a great experience. I wouldn't trade it for anything. So I would encourage you. Jill, Barb, do you have anything to add?

Jill:

Like you, I was barely 21 when I started, but I have a very dear friend who was well into her thirties when she went to law school, and she has had a fantastic career. She started out because of her love of civil rights, but has gone on to do international work with a Brazilian law firm. And so I think it's great. And why not change careers? I mean, look, I just started at MSNBC when I was in my seventies. Who starts a television career in their seventies? So why not start a law career in your forties?

Barb:

Yeah, I absolutely second that. There's absolutely no reason that you can't. Lots of people change careers, and I think that in some ways, starting law school a little bit later in life like that could actually bring benefits to you because you will have some experience, some real world experience that can help you put some of your studies into context. So 42 is by all means, not too late. And I don't know if there's any age that is, but I think that you would be a welcome member of any law school class.

Joyce:

Go for it, Jay, and let us know how it goes. So last question, Jill. This one has your name all over it, and it's time for an update. The question is, what's the status of the ERA becoming an amendment? Is it possible with this administration? That question comes to us off of Bluesky, @jjacd @bluesky.social. What do you think? Is there any hope?

Jill:

Oh, thank you, JJ. You're going to make me eat my words where I at one point said maybe the best thing for ERA would be to ask President Trump to get a joint resolution from Congress saying that the time deadline was lifted, even though I think it is totally irrelevant and shouldn't matter, and that we should have had the 28th Amendment already in effect. I would say based on what they are doing to women and the elimination of women's rights and what we just talked about in terms of the military, for example, and eliminating the women's history from the military despite their service to our country, means that this administration is not going to do anything to implement the already ratified Equal Rights Amendment. So I am sorry to say, please, Donald Trump, prove me wrong. Do it. Go ahead. You said you wanted to help women even if we didn't want your help, we do want your help. Please help pass the Equal Rights Amendment. That would be great.

Joyce:

Well, that's a slightly uplifting note to end on. I know that this has not been the most uplifting show that we've ever done. It has been a tough week. There is reason for optimism, though. I know many of you are participating in and we're seeing increasing efforts to protest. We are seeing people writing letters

insisting that their members of Congress act in responsive ways. And there's every indication to believe that although things look a little bit dark at the moment, that we have the ability to really make things improve as the weeks go forward.

So don't give up hope. Stick around with us. Thanks for listening to #SistersInLaw with Jill Wine-Banks, Barb McQuade and me, Joyce Vance. Follow #SistersInLaw wherever you listen, and please give us a five-star review. It really helps others find the show. Also, please show some love to this week's sponsors. We are especially fond of them. Factor, Smalls, Fast Growing Trees, Quince, and Calm. All SistersInLaw's favorites. The links are in the show notes. Please support them because they make this podcast possible. See you next week with another episode, #SistersInLaw.

Jill:

So, Barb, I was in Kaprun, Austria skiing on a glacier and took a cog railway to the top, get there and there's not enough snow at the top. You have to hold your skis. You can't wear them on the lift, and jump off, and get away run because you're not gliding off.

Joyce:

Oh, geez.

Jill:

And so I say to the people I'm with... And by the way, this wasn't a planned trip, so I had to borrow clothes from... It was when I was with the Army. Some officer's wife gave me a T-shirt and something to wear. And so I say, "So where's the beginner's slopes?" And they look at me and go, "Oh, there's no beginner's slopes up here." I said, "Well, I have only skied about twice in my life." This is a trail where, I mean, if you go off the trail, you fall off the mountain. And luckily the Army had sent with me two Olympic skiers and they side-slipped me down most of the mountain.

Barb:

Oh, man. Wow.

Jill:

I mean, literally, that's how I made it down. It was humiliating. At the base I could ski, but all the way down the steep part, it was terrifying. It's pretty terrifying.

Barb:

Well, it's nice that you happen to have Olympic skiers nearby. Not everybody has that luxury.