

Kimberly Atkins:

Welcome back to #SistersInLaw. I'm Kimberly Atkins. And this week, we have a lot to talk about, from the trial of Derek Chauvin, which is going to the jury on Monday in which they'll get jury instructions and we'll break down what they'll be seeing, as well as the culpable negligence standard that's in the Kimberly Potter case, as well as the Chauvin case. And then we'll fill you in on the recent sanctions on Paul Manafort associate, Konstantin Kilimnik. Remember him from the Mueller report. And as always, we'll be answering some of your questions at the end of the show. But first, I want to start, we chat a little bit before we get started here and we were talking as we often do about Jill Wine-Banks' pins. And Jill, tell us a little bit about how you got started collecting pins and how you choose them. We just love.

Jill Wine-Banks:

It's been so much fun for me. I actually started wearing pins in high school. I've just always loved them as an decorative accessory. And when I first appeared on MSNBC, everybody, all the men anyway, were wearing flag pins on their lapels. And I thought that was just too hokey, too trite. And I happened to have a collection of pins that included a very old celluloid pin that was an eagle holding a shield that said defend America. Because it was celluloid, it was almost see-through. And I thought, no one will notice it, but it'll be my way of being patriotic without being trite. And sure enough, someone noticed it and tweeted to me and said, what's your pin, I really like it?

Jill Wine-Banks:

And then I realized I was sending a message with my pins, and we've also talked about sending messages with how we dress and how other people dress. But I thought, well, if I can send a message, then I'm going to start looking for pins that fit the news of the day. And it became an obsession to go to flea markets and antique stores. And then my fans on Twitter and Facebook and Instagram started sending me pins. And honestly, my best pins come from them. I have some of the most unbelievably clever ones.

Jill Wine-Banks:

The ones I'm wearing today for this episode match the Chauvin trial and the new information about Konstantin Kilimnik. It's a Russian skyline that I got when I was working in Russia and the other is a Black Lives Matter sign. So it's been really fun to do. I never thought it would become a thing. Now I'm thinking of writing a book about it because people get it a lot. And it is a way of summarizing, at least the last Trump administration, in an aesthetic way through my pins. So that's why I have them. And I started collecting really when I started traveling internationally and didn't want to carry real jewelry with me, I started collecting costume jewelry. And now I almost never wear anything that isn't costume.

Joyce Vance:

I love that, Jill. I seem to wear the same boring standard pair of earrings every day. And I think you've inspired me. I've got a box of my grandmother's pins. I need to go through them and maybe I'll branch out a little bit.

Barb McQuade:

Well, I got to up my fashion game to hang out with you guys. I have always been of the view, like Jim Harbaugh, who's the Michigan football coach says, he wears the same khaki pants. He's got like five pairs of the same pants and as Michigan sweatshirt, because he never has wants to have to think about

what he's going to wear that day. I've lived my life the same way. I've got my group of conservative, dark business suits. And I don't really have to think too much about what I'm going to put on. It's like Garanimals mix-and-match. So, if I can avoid having people comment on my attire, I consider it a good day.

Joyce Vance:

Yeah. But to be fair, Barb, we both have four kids. So I think we get a certain amount of latitude about how much time we invest in how we look.

Barb McQuade:

All right. I'll count on there. Kim, you're the fashionista, right? You've got a design line. You're always looking sharp.

Kimberly Atkins:

Well, thank you. Yeah. I think it's, for me, it's just an extension of who you are. And I love the way Jill has been able to connect it to her work and also to her audience, which is so wonderful to have that inner connection and have that extra way to communicate. And especially in pandemic times, it's perfect. It's been really hard for me. I designed dresses mostly and it's like, okay, well, you only see me from the shoulders up. So you know what? This doesn't really fit pandemic times. And we all want to wear comfy things on the bottom and the Arabs.

Barb McQuade:

Want to see Sisters in Law in jail next time, right? [crosstalk 00:04:54].

Jill Wine-Banks:

If you would wear it, I can get it created. [crosstalk 00:05:00].

Kimberly Atkins:

Okay. We're all going to wear it. We're all going to wear it.

Jill Wine-Banks:

I have to say as someone who was identified by what I wore during the Watergate trial, before anybody commented on what I said, I was very cautious about becoming known for my pins, but it was just so much fun and it does have a meaning. So I'm okay with it now. And I think it may be age, I just don't care anymore. I think it's fun and I'm going to do it.

Kimberly Atkins:

All right. So since you have your pin that signifies the Chauvin trial, which is moving to its final stages on Monday when the jury gets their instructions and then are sequestered until they come to a ruling. Barb, take us through what we should expect to see next week with the jury and Chauvin?

Barb McQuade:

So the only remaining parts of the trial yet to come are the closing arguments. And then one part of the trial that might seem obscure to some of our listeners and that's jury instructions. Joyce is a former

appellate lawyer, flagged this issue as one that is so critically important. It's a place where judges often get it wrong and there can be mistakes and issues for appeal. But before we go there, because I do want to talk about what's left to come, I did want to take just a quick look back at this week when the defense presented its case. We haven't had a chance to talk about that at all. It came through this week. And just gauge what you guys thought about the effectiveness of the defense case. Do you think that the defense created enough reasonable doubt for even one juror? Kim, I know you've been watching closely, what do you think?

Kimberly Atkins:

I think the chances are that are very high. And I'm watching this with several hats on from several different perspectives, right? I'm watching it as an attorney who understands how the cases are being presented and why the attorneys are focusing on what they're focusing on. I'm looking at this as a person of color in America who feels the trauma every time that justice does not seem to be done. And I'm also trying to look at it as an average American who doesn't have the legal background, who won't be seeing these jury instructions, and who, by and large, I believe will walk away believing that Derek Chauvin should go to prison for killing George Floyd. But I do know as that, that first hat that I wear, that it only takes one juror with reasonable doubt to at least get a hung jury. And just based on if past is prologue, it is so very difficult to get a conviction against the police officer for actions he takes in the line of duty, even when he goes so far beyond the line. So I am, again, hoping for the best, but bracing for the worst.

Barb McQuade:

And I think that, as you said, it only takes one juror to have some doubt, that's all it takes. And so the defense has thrown up a few different theories, causation, reasonableness of Chauvin's conduct, the angry mob. There's been all kind of efforts at ways to chip away and throw some smoke up there. Jill or Joyce, do you have any thoughts about the effectiveness of the defense case?

Jill Wine-Banks:

I do. And I agree with what Kim said, but I want to take a slightly different approach, which is as a trial lawyer, I always worried about that one unreasonable juror, because I always felt that my evidence was really strong and that it justified conviction. So could there be an unreasonable juror on this panel? Of course, there can. And we can't judge because we haven't seen them. And even if we saw them, they were wearing masks, which would take away some of our knowledge of how they're reacting. But I think the evidence in this case, viewing it both as just someone watching trial, as someone who is a trial lawyer, but I think that the prosecution did a fabulous job. They've laid out everything. I think the defense did not chip away during cross-examination at anything the prosecution said. And I think the defense witnesses were really weak and the cross-examination of them really eviscerated a lot of what they were saying.

Jill Wine-Banks:

So I am hopeful that if there is one unreasonable juror on that panel, that the other 11 are going to influence that person to see the truth. Now that doesn't take away from the fact that one unreasonable person can stick to it. And we've seen time and time again in police shootings that they get away with it, or police abuse, the Rodney King trial, or even in O.J. Simpson. I mean, there are just so many examples of things where you see the evidence and say, yeah, it's going to go, but I want to stay hopeful and positive. And call me Pollyanna, but I would rather stay that way and then prepare in case it's horrible.

Joyce Vance:

Okay. Pollyanna. I'm going to agree with you in part and disagree with you in part, because I think your assessment of the case is dead on the money, right? This case has tried very well, the prosecution did a good job of proving all of the elements for each of the charges. And the jury clearly has the ability to convict. There is guilt beyond a reasonable doubt at their fingertips.

Joyce Vance:

But the reason that I disagree and tend to side more with Kim is that I am usually really optimistic about juries doing the right thing. I'm a big believer in the jury system. I do have more concerns when it comes to these police excessive force cases. And I've spent some time consoling trial lawyers who worked for me when they got hung juries or even the rare acquittal in a police excessive force case, because there was one juror who didn't want to, in their view, ruined the life of a nice police officer because of one bad thing that he or she had done. And I worry about that. And I worry about it, not just in this case, obviously, this jury is about justice for George Floyd and for his family. I worry about what it says in the larger sense if we can see this video of Derek Chauvin's knee on George Floyd's neck for nine minutes and 29 seconds and a jury can't return a guilty verdict.

Barb McQuade:

Yeah. And I know what you mean Joyce about, at least traditionally and historically, jury's holding out for perhaps an even higher standard than guilt beyond a reasonable doubt when police officer is involved. I can remember a case at my former office when a prosecutor was charged criminally and he was acquitted and a juror was reported in the press to have said words to the effect of, we wanted more evidence before we were prepared to convict a law man. The idea that there's two systems of justice for people in law enforcement and then the rest of us. And so I worry about that, but I do wonder the extent to which that may be changing.

Barb McQuade:

I think that there has been some awakening in this country by all Americans about some of the excessive force that police officers sometimes use. And in this case, the facts are so different from your typical police excessive force case, where an officer shoots someone and the defense is, I feared for my own life. I thought he had a gun. I didn't know if he had a gun. I saw him reach into his pocket. In this case, we have George Floyd who is restrained and in handcuffs. And so the argument that the officer feared for his life is so much less in this case that it does seem like this is a much stronger case for conviction.

Barb McQuade:

But as you're right, it's 12 individuals, it's 12 strangers, persuading 12 people to agree on anything. I can't get my family of six to agree on which movie we're going to watch on any given night, and so to convince 12 strangers of guilt beyond a reasonable doubt is a big challenge. So we'll see how that goes. Well, let's get onto this topic about jury instructions. Then Joyce, tell us, if you would, what jury instructions are and what we might expect to see in the Chauvin jury instructions?

Joyce Vance:

So at the closing of this case, before the jury deliberates, the judge will sit down with the jury and he will explain to them that while they are the judge of the facts, that they will decide what happened, that he is the judge of the law. And he's going to explain to them the law that governs their decision-making

process, and they're obligated to follow it, whether they agree with him or not. This is pretty standard for judges in every trial. He will use standard language approved in Minnesota when he delivers this message. And then he'll explain to them what the law is, starting with concepts, like this notion that the prosecution has to prove its case beyond a reasonable doubt and that the defendant is innocent until proven guilty.

Joyce Vance:

This process started in this case back in February, when the lawyers for each side submitted their requested jury instructions to the judge two different versions, but they're actually similar in most cases, about 13 pages each, to give you some idea of length. And it starts with these general principles of law. And then it goes through each of the charges. You'll remember that we have murder two, murder three and second-degree manslaughter at issue in this case. So it explains each of those charges what the prosecution has to prove. And then it'll close by giving the jury some idea of how to weigh conflicting testimony, how to evaluate expert testimony, how to reach a decision. So it's a comprehensive law school 101 specific to this criminal trial, if you will, and it will be the authoritative context, the legal rules that will cabin the jury's conversation. How did I do, Barb? It's hard to explain jury instructions. It's something we live with them, we assume them, it's a little bit difficult to explain what they are.

Barb McQuade:

Well, I'll tell you that it's an important part of the case. And I think it's one that is underappreciated, just how important it is. As a prosecutor, I always like to submit my own because I wanted the power of the pen, I wanted a chance to do it, but as you say, Joyce, in this case, and in most cases, the judge will accept jury instructions from each side. And oftentimes, they're in agreement on 90% of it, but sometimes it comes down to the definition of intent or the elements of the crime. And that is a place where the prosecution has to be really careful because if they get it wrong, there can be a reversal on appeal. That is one of the probably most significant places where you see issues that arise in the appeal.

Barb McQuade:

I tell my students as a matter of strategy, if you're on the defense team, you can be very aggressive in shaping the jury instructions, because if you win at trial, there is no appeal for the prosecution because of the concept of double jeopardy, you win a trial, you win, you're done. And so the defense can be, I think, very aggressive in their arguments and take a really strong position on behalf of their client.

Barb McQuade:

When you're the prosecutor, on the other hand, I think you have to be much more conservative because you want to win not only in the trial court, but you need to protect that on appeal because if the appellate court reverses you, then the defendant gets a new trial. And now you find yourself trying the case again a year or two down the road when the evidence is stale and the defense has had a preview of the case. And so strategically, you are in a much worse place. And so as a result, as you're negotiating those jury instructions, I think the defense might have the upper hand because the prosecutor doesn't want to win the battle, but lose the war.

Kimberly Atkins:

So I have a question about, I was reading some of these proposed jury instructions. I believe it was from the defense. And it's one of these instructions that is the reason why I have the concerns that I talked about a little earlier. I call it the blame the victim instruction. It's about the negligence of Mr. Floyd.

Remember that George Floyd is not a defendant here, but it says, in considering whether or not a defendant exercise the care, the defendant being Derek Chauvin, exercise reasonable care, the jury may take into consideration the conduct of Mr. Floyd and all the other circumstances that existed at the time of the incident. He goes on later to say, you may consider if Mr. Floyd's own conduct, you may consider Mr. Floyd's own conduct if it contributed to his death.

Kimberly Atkins:

And that gets to this whole idea that if he'd just gotten into the car, or maybe it just because he had a bad heart, or maybe because he took these drugs or because, that instruction is really alarming to me that they point to relevant state case law to support it. But you all as prosecutors, what do you think about that?

Joyce Vance:

I think this speaks to Barb's point about the defense being very aggressive, because the defense has asked for these, it almost sounds like a civil case contributory negligence kind of jury instructions. I don't believe that we'll hear all of those from the judge. It's not really something that you see happen. And so Barb is absolutely correct, nobody wants to get reversed except for the defense. The prosecutor doesn't want to get reversed, the judge certainly doesn't want to get reversed. And so judges have this little safe harbor where they can rely on packages of jury instructions that have been given in similar cases. If a court on appeal approved those instructions in the last case, they're probably going to approve them in this one. So I don't think we're going to hear those contributory negligence sort of instructions, Kim, at least not in depth, but I agree with you. I had that same, just sinking feeling when I saw them. It's like, why are we putting Mr. Floyd on trial here as though he's responsible for his own murder?

Jill Wine-Banks:

[crosstalk 00:18:56] a lot of that evidence to blame him, including a prior arrest, which I find completely irrelevant to how he behaved in this case. And just I thought that one way too far, but I want to stress what I think, both you, Barb and Joyce are saying about the importance of protecting it for the future. And the reason that the Department of Justice, when I started there, all trial lawyers started in handling appeals. And the reason is so that you start to be aware of how easy it is to commit reversible error and how badly you or how strongly you need to protect the record and to take caution.

Jill Wine-Banks:

In many cases, I've had situations where the judge I knew would do what I asked, but it was risky because it might be reversible. And so instead of just winning a trial, I wanted to make sure that it didn't get reversed. And I didn't go so far as to ask for something that might've helped me at trial, but might've ended up with a retrial. So I think those are important. And people do underestimate how important the instructions are. The jury takes them with them into the jury room and they really, they debate what is a reasonable doubt. And that could be a real key in this case, because as I was saying, to me, it's going to take an unreasonable doubt to not vote to convict in this case. So it's really important.

Barb McQuade:

Before we finish this topic, last thing on this, give me your predictions, not on the verdict, but how long the jury will deliberate?

Joyce Vance:

I'll take Thursday for the day that they return their verdict.

Kimberly Atkins:

Okay. So I was going to say four days, which probably would be Friday. So I'll say Friday.

Jill Wine-Banks:

Well, I don't want to go with one of the two of you just which you have. Okay. I'll say Wednesday, although I think that's probably Wednesday, depending on how fast the instructions, how fast they get into the jury room. If it's truly, fine Monday.

Barb McQuade:

Yeah, same. I think three days. And I based that on this old rule that prosecutors often have, which is an estimate that a jury will deliberate one day for every week of trial. And if it goes longer than three days is when I would start to get worried as a prosecutor, because the longer it goes on, it suggests that there's some disagreement which could mean that you're getting close to a hung jury or an acquittal.

Joyce Vance:

If you don't love your hair, then you need to break up with your current hair care routine, do it right now. It's time to try Function of Beauty instead. So Jill, I'm not sure how long you've been using Function of Beauty for. I started using it a couple of weeks ago and I really like it. My hair is softer and it's really shiny. But my favorite thing about it is that they let you pick the colors. And so when I reached for the bottles in the shower, I know which one is the shampoo and which one is the conditioner. It's really great.

Jill Wine-Banks:

It is. And I've been using it for several weeks now. And I just went and had my hair cut. And the lady cutting my hair said, "Your hair seems really softer now." So I think it's definitely working. And you're right about the colors. I always had trouble. I don't wear my contacts in the shower and so the bottles look the same. It was so easy to confuse. And now I have a white one and a pink one, and I know which is which. So it does work. And I picked three things. They let you pick three things that are really important to you. And it does all of the things that I asked it to do and shine was one of them. But the thing I also like about it is that it uses only vegan cruelty-free products. They never use sulfates or parabens, and you can go completely silicon-free and you can go fragrance-free. So I think it's really a terrific idea.

Joyce Vance:

It really is. I'm never going to buy off the shelf again because that way, I won't be disappointed. I know what I'm getting and it fits exactly what I want. You can do the same thing. You can go to functionofbeauty.com/sisters. You can take the quiz that helps you personalize your products and save 20% on your first order. That applies to the full range of Function of Beauty Products, hair, skin, and body.

Jill Wine-Banks:

So go to functionofbeauty.com/sisters to let them know we sent you and to get 20% off your order. That's functionofbeauty.com/sisters, or look for the link in the show notes. You won't be sorry.

Barb McQuade:

Why don't we move on to the Kim Potter?

Joyce Vance:

So I start us off by saying that second-degree manslaughter would be with us for a while. And this case is the reason for that. We all know the facts by now, Kim Potter was a veteran police officer. She spent her entire career in Brooklyn Center, Minnesota, and now she's charged with second-degree manslaughter in the April 11th death of Daunte Wright. He was just 20 years old. And in a press conference the following day, the police chief who has now resigned, attributed Daunte's death to Officer Potter mistakenly drawing her gun instead of her taser. The excuse is she thought she was tasing him, instead, she shot and killed him. So let's start out by talking about that manslaughter two charge. Jill, what does it involve and what does the government have to prove?

Jill Wine-Banks:

So it's really interesting when you look at the Minnesota various types of charges that you could have for a death. And they are really pretty strict on the murder charges. So I think the reason that they used the manslaughter is that if you look at the elements, you have to show that the defendant caused the death. Well, that's clear here. She shot him, he died. But it has to be by culpable negligence, which is an intentional act by the defendant without intent necessarily. It can be with intent, but not necessarily with intent to cause harm, but that a reasonable person would know has a strong probability that it will injure someone else. And it's more than, we were comparing this to like negligence cases, it's more than just negligence, more than even gross negligence. It's has to be gross negligence with recklessness, a conscious disregard for what might happen.

Jill Wine-Banks:

So we were talking about what the specifics are in this case, the defendant has to create a risk that is substantial with no reason to take the risk. And I would stress the words, no reason to take the risk, because in this case, arguing it was a mistake. I meant to do something else. I had both of them. And I just, in the heat of the moment, I was confused, I picked up the wrong weapon, but there was no reason for her to pick up her taser or her gun in response to a traffic stop. That's why I think she could be found guilty under this set of elements for a killing. And otherwise, if you read everything else, she didn't intend to cause harm, and she probably didn't, but she did.

Jill Wine-Banks:

And I think that without that fact of she had no reason to pull the gun and maybe that's the big thing we need to look at in policing is why are they approaching traffic stops with guns drawn? Why was the Lieutenant Nazario in Windsor, Virginia, why did they approach him with a gun drawn? Why did they approach Daunte Wright with a gun drawn? It's just wrong. And if you don't pull your gun, you're not going to kill anyone.

Joyce Vance:

That's such a good point. It's time to challenge some of these long held assumptions in policing, like the fact that we need to spend officer time on traffic stops for routine traffic violations, for failure to have an up-to-date registration, which was what prompted this whole incident. And when they examined Officer Potter's tool belt after the shooting, they found that she, consistent with what typical police

procedure is, had her gun on the right side and had her taser on the left side. The rule is you put your gun on your dominant side and the taser on your non-dominant side. And that's exactly where she had them. She would have had to have hold the cross to draw the taser with her right hand. So this notion that she made a mistake, it's going to be interesting and difficult to see whether her defense actually continues to float that. Kim, can you talk about what kind of sentence she's facing if she's convicted and whether you think second-degree manslaughter was the right charge?

Kimberly Atkins:

Yeah. So second-degree manslaughter comes with a potential prison sentence of up to 10 years and up to a \$20,000 fine. And to put that in context, Kim Potter is free because she was released on a \$100,000 bond. So as understandable, Daunte Wright's family is furious and said that this does not seem to fit. This sentence does not seem anywhere harsh enough. This charge, rather, is not strong enough and it's totally understandable given the potential relatively low level of punishment that comes with it. And keep in mind, this is the lowest charge that Derek Chauvin was charged with. And these are a very different set of facts. But because of that intense standard, I am very concerned, Joyce and I were tweeting about this a little bit, at how this fits.

Kimberly Atkins:

And I think this is a problem that is probably true in many states, is that the state statutes for murder and manslaughter don't always fit the situation when it comes to the level of seriousness that is required here. Kimberly Potter is a police officer who went through training and who was trusted by the community to know the difference between a taser and a gun. And I think not doing that and causing someone's death as a result should be punishable by very stiff crime. But the statute here, in my opinion, doesn't seem to be able to provide for that. And that seems problematic to me. I am very worried that that intent element is going to lead to her acquittal in this case. But even if she's convicted, I'm afraid that it will be a relatively low crime, her attorney's fees and other fees will be paid for whatever the benevolent patrolmen association that's probably handling this. And it really won't be a punishment. And it won't feel like justice to the Wright family and it won't feel like justice to the folks of Minnesota or throughout the United States. I'm really worried about this.

Joyce Vance:

We've talked before about the fact that words matter. Here's another example of that, whether it should or not, there's just a weighted difference between manslaughter and murder. And I can understand how the family could take that word manslaughter, which still is a serious felony crime that carries serious sentencing time and view that as not doing enough to honor the memory of their loved one and not enough for accountability. And I have sometimes pondered whether we just need different statutes. There's a problem with the Federal Civil Rights Statute that's often used for excessive force cases. It has an extremely high standard of intent. That's one of the things that the federal statute that's now moving to the Senate, the George Floyd Act would actually change, but it is what it is for now.

Joyce Vance:

State law too has these burdens that apply pretty well in situations where you have civilians involved, but I've thought increasingly that we might need special statutes regarding police that protect people who have difficult jobs and who face danger on behalf of all of us, but who at the same time need to be held accountable when they violate the trust that's placed in them. So I sometimes think that maybe

that's what we should be talking about. But Barb, whether I'm right or not, what we have here is a very quick charge. Officer Potter gets charged three days after this homicide takes place. That seems-

Kimberly Atkins:

I'm sorry. I don't want, I hate interrupting, but I may just underscore that point that you're making Joyce, because in this statute, how we need specific statutes that address specific things, this specific statute, manslaughter in the second-degree, an example they give is, or one element is you can be guilty of manslaughter in the second-degree by shooting another with a firearm or a dangerous weapon as a result of negligently believing the other to be a deer or an animal. If you can specify that if you accidentally shoot somebody because you think or use it, it doesn't even have to be a gun or other dangerous weapon, a taser, if you think that they're an animal and you can be convicted of this, and if you are a cop and you think you shoot a taser, you should be convicted of this. And I think if you just put those words in the law, that will make a world of difference.

Joyce Vance:

We all see that issue here, the law changes and evolves as situations come up where people see that there should be a crime or there should be a defense and the law evolves. But let's be really direct about this. Legislators have been very reticent about enacting laws that impose burdens on police officers. And certainly, for political reasons, they think it's to their benefit to be perceived as tough on crime or not to cross police unions. And so statutory changes like that, I think, have been pretty difficult. But so, Barb, I'll turn back to you and ask, three day investigation quick, does that allow enough time? How do you feel about the process here?

Barb McQuade:

Well, it's very quick. And I'm sure there is additional investigation that was going on, but I think one thing to keep in mind is even though this arrest was quick, it is likely that these charges are just a placeholder while they continue to investigate. And these maybe the first charges, but they may not be the last. I think that they move quickly in situations like this because there is a public safety desire to do so. If the public perceives that there is not justice being done, it leads to unrest and protests. Certainly, there's probable cause to charge her with this crime based on what we knew already. And so they charged, I think, the lowest, easiest to prove, we used to refer to it as the low hanging fruit. We can use this charge.

Barb McQuade:

We saw this in the January 6th insurrectionists as well. The first charges that came out of the gate were these very simple ones of being in a restricted area or something very simple, because then that gives you the power to go arrest this person, get them on a bond, make sure they're not going to disappear or get them detained as the case may be. But that doesn't mean that that's the last we're going to hear. I would imagine that there is a lot more investigation to be done. They will want to interview everybody who was present to see what they observe. They'll want to ask if anybody heard her say, make any statements, either before or after the shooting that might help show her state of mind.

Barb McQuade:

I don't believe we have to accept as fact this defense that she has given so far that she mistook her taser for her gun or her gun for her taser. Maybe she did. In which case, there's a pretty strong case of negligent homicide, they're culpably negligent manslaughter, but maybe it's something more. And I

think that they will continue to investigate, there will be a medical examiner who investigates ballistics experts and all those kinds of things, it could very well be that we see ultimately different charges added on here.

Barb McQuade:

But you're all right, in that the law does not always provide a remedy that we think is deserved. The fact that Daunte Wright's family was dissatisfied with this charge, to them, I would say, wait and see, there may be more, but it may be that there's not more. And I think one of the disconnects that the public often has in these scenarios is that we see it, we, the public, from the perspective of the victim. Breonna Taylor's a great example. My gosh, she's sleeping in her own bed at her own home. What could be more innocent than that? And she gets shot dead by police officers. How can that be possible? Same with Daunte Wright, when he's a minor traffic infraction and he ends up dead.

Barb McQuade:

We put ourselves, I think, in the situation of the motorist or the resident, but the law looks at this issue from the perspective of the police officer. And it asks, not what a reasonable person would do under the circumstances, but what a reasonable police officer would do under the circumstances. And the jury instructions typically have a lot of things that are very favorable to the police officer, like the jury must keep in mind that the police officer's making split second decisions under tense circumstances in a rapidly evolving situation. And so, when you put all of those things onto the perspective, then suddenly, these things that police officers do if they were mistakes, if they feared for their lives, it ends up resulting in not guilty verdicts.

Joyce Vance:

I've heard families recently say that trials can't give them justice, they can only give them accountability. I wonder if the families would see some measure of justice being achieved if there really was transformation of the criminal justice system and particularly of policing practices. Do you think that's something that could happen or am I being the Pollyanna now?

Jill Wine-Banks:

I approve of you as Pollyanna. I do hope that that is the result. There's a recent shooting in Chicago that hopefully we'll get to discuss, which is very different circumstances because it's a 13 year old who was holding his hands up in response to command to do so. And it's very hard to tell from the video if the trigger was pulled while he still had a gun in his hand, because there is a picture of him with a gun in his hand, or if it was pulled after he dropped the gun and was holding his hands up. So it's a tricky fact pattern and you will have to play slow motion of the video. But that's a split second decision the police officer made, he saw a gun, he shot. When we look at some of these other situations of a traffic stop, or we can go back to Derek Chauvin, that's not a split second decision. He stayed for nine minutes and 29 seconds. And if he was afraid of the crowd, he's in the wrong business, you shouldn't be a police officer.

Jill Wine-Banks:

And so I think each of these is a very unique set of cases, but to go back to Barbara's original question, under the current law of Minnesota, I think second-degree manslaughter may be the top charge unless additional facts come out. And I also agree with Barbara that surely, they are continuing to investigate how she could have possibly made a mistake of confusing a taser and a weapon.

Joyce Vance:

So one last question before we move on from this topic. Barb, can you just lay out for us what we can expect to happen next in this case?

Barb McQuade:

Sure. So as you previewed, Kimberly Potter has made bond, she is released pending trial. And so in a criminal case, the next thing that happens is the exchange of discovery material. So the defense team will get an opportunity to review all of the expert reports, they'll get photos of the scene, the body-worn camera video, all of that stuff. And then they have an opportunity to file any motions that they want to file with the court. So we may see motions to dismiss charges, we may see motions to suppress certain evidence and those kinds of things. And then typically after that, once both sides have a good sense of what the case is, the strength and the weaknesses of the case, plea negotiations would ensue. And if they're unable to reach a plea agreement, then the case would go forward to trial.

Jill Wine-Banks:

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Jill Wine-Banks:

It happens to be one of the ones that I ordered and am enjoying, but my husband really likes another one. He likes the Lot 747, which is the Pinot Noir. It's, he said, smooth and savory. And he really is enjoying. It comes from California and it's less than half of what you would normally pay for the same wine under its original label. And I like that factor of a two.

Kimberly Atkins:

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Jill Wine-Banks:

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Joyce Vance:

Jill, I think that takes us back to what the former president used to like to call the witch hunt on this new news about Konstantin Kilimnik and the interesting relationship between the Trump campaign and Russia.

Jill Wine-Banks:

It's a fascinating thing that is really of interest to me. And I'll have to think about pins to wear for further discussions of this, but let's talk about the fact that yesterday, April 15th, which used to be known as Tax Day, but because of COVID is no longer Tax Day. And what is going to be remembered for this year is that the treasury issued a report with sweeping sanctions against Russia and Konstantin Kilimnik, who was a key player in the Mueller report, as you mentioned before. And that was for interference in the 2020 election and for cyber hacks. Kilimnik was a longtime associate of Paul Manafort, who was Trump's campaign manager. And that's where this gets really interesting.

Jill Wine-Banks:

Manafort, of course, was convicted on multiple counts in two different cases, including obstruction of justice. And we now know that that obstruction of justice was pretty effective in keeping facts from Mueller. We've long known that Manafort gave Kilimnik sensitive campaign data. We just didn't know why or what he did with it. And that goes back actually to Watergate, where they broke into the Democratic headquarters, but we don't know why, what were they thinking they would get? So why did he need this data? Well, we now know that neither Mueller nor the Senate Intelligence Committee was able to find that out, but now we know that he gave it, he, Kilimnik, gave it to Russian intelligence and that they used it to favor Trump and to hurt Biden in the election. It fills the gap that was left by the Mueller report and the Senate Intelligence Committee report and the impeachment trial against the president.

Jill Wine-Banks:

So you Barbara and Joyce were, you testified before the House Judiciary Committee about the Mueller report. So I think it's a good idea to start with the two of you talking about, reminding our listeners about what that gap was in the Mueller report and why it mattered then and why the new information is so important? So Joyce, you want to start?

Joyce Vance:

Sure. So Barbara and I had this very interesting experience of presenting our statements and then taking questions from members of both parties in Congress about the topics covered by the Mueller report. We focused pretty heavily on obstruction of justice and the charges that Mueller laid out, but this really refers back to volume one of the Mueller report and the conversation about whether or not there was collusion or a conspiracy between the Trump campaign and the Russian government, and the missing link was always this notion that there was a lot of activity going on and the Trump campaign welcomed support from Russia, but there was no evidence of an agreement between the two sides or of cooperation between the two sides. That's what this new statement that comes out of the treasury department would seem to begin to provide. And it's interesting for at least two reasons, of course, it's illegal to accept an offer of assistance in an American campaign from a foreign government. So it reopens that notion of whether there should be a criminal investigation.

Joyce Vance:

But to me, the even more compelling question is this, when did this information become available? Is it something that's been known all along? Was it suppressed? Did Trump keep it from coming to light during his presidency? Because if that's the case, it is really an appalling act by an American president and those around him. And it also takes us nicely back in a circular loop, as all things seem to do with President Trump to whether or not there was obstruction of justice.

Barb McQuade:

I think one of the big disconnects that always existed in Mueller's investigation and the public reporting on it was the difference between criminal activity and counterintelligence activity. And so Robert Mueller concluded that he could not make out a crime of conspiracy. And that's a crime, it has elements. It means there is an agreement to violate a particular statute and he was unable to find that. And so there are people who will say, therefore, there was no collusion and that is absolutely not what he found. And the collusion, I think, is something that should alarm us from a counterintelligence perspective, that is Russia trying to influence our elections.

Barb McQuade:

And to me, there were three big facts in Robert Mueller's report that did establish collusion, even if they didn't establish conspiracy from a counterintelligence perspective. And that was first, you'll remember that June, 2016 team meeting at Trump Tower with Donald Trump Jr. and Paul Manafort, Jared Kushner, and Russians for the purpose of receiving dirt on Hillary Clinton. That that was a meeting, that was an effort to obtain a thing of value from a foreign adversary.

Barb McQuade:

And then there was also the facts that got somewhat obscured by Roger Stone's crime, for which he was convicted about lying about the messaging between the campaign and WikiLeaks about emails stolen from Russia, and that there was some coordination of messaging that some of the message might, for example, illustrate illness by Hillary Clinton and it'd be good for the campaign to start talking about the illness of Hillary Clinton or that she's not well, or she doesn't have a lot of stamina. So we saw that what should concern us from a counterintelligence perspective of a foreign, hostile adversary trying to influence our election.

Barb McQuade:

And then the third one was this one, which was that Paul Manafort, who was at the time the campaign chairman for Donald Trump's campaign, sharing polling data with Konstantin Kilimnik at the Havana cigar Bar in New York. He flew into New York just for that meeting to get that data. And what Robert Mueller said is they never could conclude why, why did he give him that data? And the Senate Intelligence Committee concluded the same thing.

Barb McQuade:

And so what this new treasury department finding says is that we now know that Konstantin Kilimnik gave this polling data to the Russian intelligence service. And so, again, I don't know that this amounts to criminal behavior, but it certainly is awfully concerning from a counterintelligence perspective that President Trump was working in concert with Russian intelligence in an effort to influence the outcome of the 2016 election. And now we know that also with the 2020 election with Konstantin Kilimnik.

Joyce Vance:

And Barb, to your point about national security and gathering information, it's really hard to believe that Kilimnik had this relationship with Manafort, and it was only used on one occasion to transfer this specific data. And there's certainly a need to learn more about what else happened in this relationship.

Jill Wine-Banks:

Before we turn to Kim, I want to make one, Barb, I just want to make clear one of the things you said was about Hillary Clinton being ill, and that was a false rumor that they wanted to create. I just want to make it clear that there was no evidence of that. It was just one of the things that-

Barb McQuade:

It was one side-sided. I remember there was the event around the September 11th anniversary when she was having, she was suffering, she was ill and in the heat. And so they wanted to build that up to suggest that there was zones, but yeah, you're right, Jill, this was disinformation. The point I was going to make is that we know that Konstantin Kilimnik well, he has been charged at least by Robert Mueller with working with Paul Manafort to obstruct justice and tamper with witnesses in relation to Paul Manafort's charges about acting as an agent of a foreign government for Ukraine. So I agree with you, Joyce, that there are additional links between those two and what else is currently unknown and what else is not even if it's publicly unknown, does our government know?

Jill Wine-Banks:

So Kim, do you want to weigh in on anything they've talked about or about the fact that this is some evidence that Russia interfered in both 2016 and 2020, and both were to help Trump and hurt president Biden in this 2020 campaign? It was also to blame Ukraine, to shift the blame to Ukraine and hurt them to take it off of Russia. So what are your feelings on that?

Kimberly Atkins:

Yeah, so yes, it is true that after the Mueller investigation and after the Senate Intelligence Committee report, there was not a concrete finding that the reason that Kilimnik wanted this information or got this information or whatever, what he did with it specifically, that is true. And now that is a new piece of information that we know that he was acting as a Russian spy and he gave it to Russian intelligence. So that is important on the one hand. On the other hand, my reaction was, well, duh, what do you think [inaudible 00:51:08]? I'm glad that we have that document that says so, but of course, that's why he was interested in this.

Kimberly Atkins:

I think the big revelation is the fact that now we know that there was a back door, that there was a channel. And who knows what else that backdoor or channel was meant to set up. That is at the heart of what Donald Trump and every one of his associates kept calling the big hoax, the Russian hoax. It was not a hoax. We know that there was a backdoor channel through between the Trump organization, the Trump campaign and Russian officials and Russian intelligence. Now, I agree with what my sister said, in that we don't know if that rises to the level of criminality. We don't know that if it was just Russia being able to manipulate the fact that folks who weren't that sophisticated or whether it was something more nefarious, but I think it is really concerning that that channel even existed.

Kimberly Atkins:

And certainly, we know that this idea that Ukraine, a much smaller country, a country that itself was under dire, horrific threat by Russia, was somehow masterminding this whole idea, this whole campaign of Russian interference. And it also, this report also underscores what another door that, of course, if Russia's interference campaign in 2016 was so successful beyond even Vladimir Putin's wildest dreams, that of course, they would try to do that again in 2020 and we have gotten that confirmation.

Jill Wine-Banks:

And of course, there is a \$250,000 reward being offered for information leading to the arrest of Kilimnik. And since he seems to be the channel to Russian intelligence, capturing him would be a major advancement in trying to find out what happened and what the guilt is.

Barb McQuade:

We could split that four ways. That'd be a lot of money if we could get. [crosstalk 00:53:16]. We buy pins with it.

Joyce Vance:

I don't think he's going to be a lot of pins.

Jill Wine-Banks:

[inaudible 00:53:20] ever again. Well, as you pointed out, though, Joyce, one of the most interesting things is, did the Trump administration know this and conceal all of this, or is it something that was somehow recently uncovered by the Biden administration? And so maybe let's close this discussion with, are sanctions even remotely enough? Could they possibly have any impact? You have Russia still occupying Crimea, still hurting Ukraine in every way possible and having plenty of sanctions on them right now. So if we don't get indictments out of this new information, what besides sanctions might be forthcoming?

Barb McQuade:

I think sanctions are powerful. I mean, they were so desperate to get out from under them. The subject of the Michael Flynn investigation about trying to get out from under sanctions. I think they mean a lot. I think being able to have access to US bank accounts is part of the game plan of Vladimir Putin to continue to export money out of Russia into bank accounts of oligarchs. And so I don't know if it's the only thing that can be done, but I think it is at least one effective measure.

Joyce Vance:

Something else that's really important here was listening to an American president stand up on the world stage and condemn Russia's conduct. That's something that was missing during the Trump administration. And I think it matters.

Kimberly Atkins:

And it matters specifically now since this week, intelligence officials, the annual intelligence report said for the first time since I can remember that the biggest foreign threats to US national security are now China and Russia, they are not a foreign terrorist groups like Al-Qaeda or ISIS. So everybody seems to, at least at this point, US officials seem to have a clear eye as to what the potential threat is and can act when necessary.

Joyce Vance:

Do you think we'll ever get to see the translator's notes that Trump had suppressed. Remember that meeting, the one-on-one meeting, only the translator is there. I mean, come on, you're the president of the United States, you don't disappear those notes unless there's a problem.

Barb McQuade:

April means getting fooled, getting rained on and getting your taxes done, but don't get fooled by insurance prices.

Kimberly Atkins:

PolicyGenius can help you compare top insurers in one place and save 50% or more on life insurance. Then once you find your best option, the PolicyGenius team will get you started. Barb, people don't like to think about life insurance, but it's an important thing. I'm thinking about it right now. I'm about to get married. My fiance and I are looking over our finances. And it's great to have the convenience of comparing different policies in one place. It really saves a lot of time and hassle.

Barb McQuade:

Yeah. I think whenever I'm buying something like insurance or looking for a mortgage rate or a new car, the thing that concerns me most is that I don't know what I don't know. And so the beauty of PolicyGenius is it brings all of those different prices to you and that you can look and compare. And so you don't have to do your own investigating to find those things. Well, it's easy if you want to use PolicyGenius, just head to policygenius.com. Their awesome agents will be standing by if you have any questions. Their excellent services are in PolicyGenius a five-star rating across thousands of reviews on Trustpilot and Google. And the best part is, it's free to use.

Kimberly Atkins:

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Barb McQuade:

Go to policygenius.com to get started, or look for the link in our show notes. PolicyGenius, when it comes to insurance, it's nice to get it right.

Kimberly Atkins:

All right. Now let's go to some listener questions. If you have a question for us, please email us at sistersinlaw@politicon.com or tweet using #SistersInLaw. And if we don't get to your question during the show, keep an eye on our Twitter feeds because we often answer them there. Our first question is from Irene. It says, I've been a long fan of the Supreme Court, especially since RBG, but often wonder how the lower courts funnel into the highest court of the land and why the Ninth Circuit Court of Appeals is so important?

Kimberly Atkins:

I will start a little bit, I think by funnel, you mean by how cases get there. And essentially, it's by litigants. Litigants can file an appeal from lower courts and those appeals are heard by state and federal appellate courts. And then after that, if a case is appealed again, people can file what is called a writ of certiorari. And it basically is asking the Supreme Court to take a case. The Supreme Court takes up only a tiny percentage of those cases. So the chances of it getting in there is very low. But that's how it worked. There's a couple of other areas called original jurisdictions like when states Sue each other that the

Supreme Court has to actually try the case, but for the most part, that's how cases get there. And any one of my sisters want to tackle why the Ninth Circuit comes up so much?

Joyce Vance:

Well, I will. First, I'll say the numbers of cases, like you say, Kim, are really low. The Supreme Court out of about 7,000 petitions every year will only hear a 100 to 150 cases. So they're really trying to take only the cases that present unique issues that have never been decided before and that are really important to the development of the law. And as Kim says, we have a three level system of courts in the federal system, cases are tried in the district courts. They can be appealed as of right to the courts of appeals, the circuit courts, there are 11 of them plus some specialty courts and they're divided roughly into geographic reasons. For instance, I'm in the 11th circuit in Alabama, the ninth circuit.

Joyce Vance:

And it's a really interesting question that you ask, the ninth circuit, until the Trump administration had a reputation for being notoriously liberal. It's also huge. I've actually had the experience of talking with some of the judges on the circuit and they say that they simply cannot read every opinion that the court issues. So it's become unwieldy and unmanageable. And I know I've had the experience of arguing in the 11th circuit, I don't think I'm giving up any state secrets here, and I'm not going to name names, but I've had a judge say to the defense lawyer, well, Mr. So-and-so, that case is from the ninth circuit, isn't it? And then the judge would look at me and we would knowingly shake our heads, right? That crazy, insane liberal circuit.

Kimberly Atkins:

And the ninth circuit is the most overturned by the Supreme.

Joyce Vance:

That's right.

Kimberly Atkins:

I mean, when I practiced, I've argued before the first circuit. And it's news when the Supreme Court even takes up a first circuit case, the Supreme Court doesn't even know the first circuit is there, but it takes up and overturns ninth circuit opinions almost daily.

Barb McQuade:

And the ninth circuit we should interject is West Coast, right? California, Washington, Oregon.

Joyce Vance:

They cover a lot of territory. I mean, there's some conservative states in the mix too. The reality is that circuit's so big, it really needs to be split. In the late 1980s, the old fifth circuit, which stretched from Texas through Louisiana and Mississippi into Alabama and Georgia and Florida. So another massive two big circuit was split into two. That's why Alabama is in the 11th. That really needs to happen out on the West Coast.

Jill Wine-Banks:

I want to mention that [inaudible 01:01:16], because when we talk about important circuits, it seems to me that the cases, the type of cases that come out of that, by its very nature, all of the government agencies are there and so a lot of very important things come from them to the Supreme Court. And it's considered not only, when we use the word funnel, a funnel for justices for the Supreme Court, many of them came from the D.C. Circuit. But also the type of have a big impact.

Kimberly Atkins:

That's a really important point. Before I move on to the next question, I will also underscore that, yes, we have that three-tiered federal system, but the Supreme Court also hears cases from state appellate courts as well in the same way. Okay. So Fairness Doc, @fairnessdoc asks, what was the moment, person or event that cemented you on the path to the law? I will start. It was my mother who told me when I was maybe eight or nine years old that I'm really good at arguing and so I should probably become a lawyer. What about your sisters?

Jill Wine-Banks:

For me, it wasn't wanting to be a lawyer that sent me to law school, I wanted a better job in journalism. And in the era when I graduated, we were known as girls and we were offered jobs on the women's page, talking about society events and tea was served to Mrs. Smith board, which is wonderful and fine, but I wanted to talk about how foreign affairs and courtrooms and hard news, crimes. And so I went to law school hoping that it would help me get a better job in journalism. And then I had to pay back my student loans. So that's what's mentored me into practicing law for at least a little while. And then of course, once I got into it, I totally loved trying cases and arguing appeals. And so I stayed.

Barb McQuade:

Well, Jill, you'll love this. The thing that inspired me to become a lawyer is Watergate. I can remember, it's really, as a child, it was a very formative memory. It was kind of the really big current event, the first really big current event that I can remember. And I didn't really understand it as a child all that had happened. I just knew that the president had done something really bad and that these hearings and these lawyers had taken him down. And as I got older, I was very curious about it and spent a lot of time learning about it. I enjoyed reading All the President's Men and other books about it and seeing the movie and other things.

Barb McQuade:

And this idea of holding wrongdoers accountable was something that very much appealed to me. It's what appeals to me about the law and what also appeals to me about journalism, we've all dabbled in journalism and law. And I think both professions have that in common, which is playing this watchdog role. And I think the idea of, in America, where we're all created equal, where we're all a government by and for the people, when someone has the privilege of serving the public and they abused that power, I think that there is nothing so noble as holding them accountable. And so it was Watergate that sparked my interest. How about you, Joyce?

Joyce Vance:

My granddad played a really formative role in my childhood and he was very committed, I grew up in California in the '60s in the middle of the civil rights movement, and he was very committed to social justice and social change. He was born from immigrant parents, grew up in New York and so had that very traditional Jewish immigrant experience that was a cradle of progressive thought. And in some

families and in mind, that was very important. So I went to law school, not with the goal of becoming a lawyer who would go into private practice and make a lot of money, but rather with the goal of becoming a civil rights lawyer and having the opportunity to help people out.

Jill Wine-Banks:

The civil rights movement played a part in my going to law school too, because in the '60s, when I was in college, that was obviously a very major thing. And I was chairing a forum on civil liberties and civil rights. And I took a constitutional law class so that I would be better prepared for chairing that symposium. And as a result of that class, I took the law boards instead of the GREs. And so when I was graduating and getting lousy job offers in journalism, I said, "Well, I took the law boards, I could go to law school." So it was civil rights that led me to that same place.

Kimberly Atkins:

Well, that's all for this show. Thank you all for listening to #SistersInLaw with Barb McQuade, Jill Wine-Banks, Joyce Vance, and me, Kimberly Atkins. Don't forget to send in your questions by email to sistersinlaw@politicon.com or tweet them for next week show using #SistersInLaw. And please support this week sponsors, Function of Beauty, Cameron Hughes Wines, and PolicyGenius. You can find their links in the show notes. To keep up with us every week, follow #SistersInLaw on Apple Podcasts, Spotify, or wherever you get your pods. And please, give us a five-star review. We love to read your comments. See you next week with another episode #SistersInLaw.

Jill Wine-Banks:

In this case, when you look at someone, I made a mistake, I thought it was my... [inaudible 01:06:44].

Joyce Vance:

Best music.

Jill Wine-Banks:

Sorry. It's my telephone. Oh my, it's [crosstalk 01:06:57].

Joyce Vance:

I love that.

Barb McQuade:

It's trifecta.

Jill Wine-Banks:

He has, would use landline. He doesn't have my cell phone.

Kimberly Atkins:

Now. Okay. All right.