

Kimberly Atkins Stohr:

Welcome back to #SistersInLaw. I'm Kimberly Atkins Stohr. This week, we'll be looking at what redress Governor Cuomo's victims have now that impeachment is not on the table. And we'll be looking at the weaponization of the DOJ under former President Trump and we'll check the status of mask and vaccine prohibitions and requirements. And as always, we'll be answering some of your questions at the end of the show.

But first in our chit chat, I want to talk to you girls about one of the things that I learned to do during the pandemic, which was make a proper cocktail. I enjoy an occasional old fashioned. I'm a brown liquor type of chick, and so I enjoy a nice bourbon drink. But I could never make cocktails at home. I would get all the ingredients, put them together and it would taste like poison. But I managed to master the old fashioned and here's... I won't give all of my tricks away, because there are several, but one of them I will and it's to use orange bitters, not just regular [dax 00:01:23] bitters, but the orange flavor bitters makes it outstanding. What about you guys? Have you mastered cocktail making? What about you, Joyce?

Joyce Vance:

And this is true when I cook too, I prefer to not work from a recipe. So a lot of the time I'll just look at what we happen to have in the kitchen and make something with it. And I grow herbs and I would like to make those simple syrups where you would put herbs into them and just mix whatever was there. Sometimes it was good and sometimes it wasn't. But my husband in the last month has declared Sunday evening to be family cocktail night. We have grown children who live in town. And so Bob has started this pretty adventurous approach to cocktail making. Last week we had Mary Pickfords. They were a little bit strong for me actually.

Kimberly Atkins Stohr:

Wait, what's a Mary Pickford?

Joyce Vance:

I don't know. It was really strong. I hope he's not listening to the podcast. I didn't really love it to tell you guys the truth, but he had made one the week before with Chartreuse, which was this green liquor that was really, really good. And I think this week he's doing something with pineapples and rum. So I'm a fan, but I confess I'm into cocktails more for the sweet fruitiness and less for the alcohol. What about you Barb?

Barb McQuade:

Well, in my old age, I tend to drink more Diet Coke than anything else. Although with my new lifelong commitment to Noom and healthy eating, the one real Achilles' heel in my diet I have concluded is diet pop, as we say here in the Midwest. And Kim, displaced Midwesterner, back me up on this. It's pop, not soda, right?

Kimberly Atkins Stohr:

They do say pop there. I have been on the East Coast-

Jill Wine-Banks:

Absolutely. This Midwesterner [crosstalk 00:03:12].

Kimberly Atkins Stohr:

Yeah. I've been on the East Coast for 20 plus years, so I've become a soda person. Apologies.

Barb McQuade:

So pretentious.

Joyce Vance:

People down here say Coke. It doesn't matter what you're drinking.

Barb McQuade:

It's Coke for everything?

Joyce Vance:

It's just a Coke. Yeah.

Barb McQuade:

Yeah. Well, we call it pop but I have been a drinker of Diet Coke for many, many years. And I'm a little bit inspired by my Member of Congress, Debbie Dingell, who very publicly had an ulcer and then publicly gave up Diet Coke because she was also quite an addict. And so I'm a little bit inspired by that and I want to give up my Diet Coke habit, but I'm looking for a substitution of a drink that will carry me through the afternoon. There are times when I want a refreshment, doesn't need to be caffeinated. I think I like the carbonation. I think I like the fizz. So I would love for our listeners to share with us any thoughts they have. I'm thinking maybe some flavoring seltzer water in some way might be good, but I need a little flavor too. Just plain water is not as satisfying. So do you guys have any suggestions for good soft drinks without drinking soda pop in the middle of the day?

Kimberly Atkins Stohr:

The last time I was on a plane, I got club soda and I was offered watermelon flavor and I don't like watermelon, but it was really good. It was not sweet.

Barb McQuade:

Yeah. Put some fruit and some seltzer.

Kimberly Atkins Stohr:

Yeah. I think the problem with me with soft drinks is when they get sweet, so I tend not to do soda, but that was actually really refreshing, so you might want to try that.

Jill Wine-Banks:

My drink of choice-

Joyce Vance:

I drink a lot of ice tea in the afternoon too.

Kimberly Atkins Stohr:

Same.

Jill Wine-Banks:

I hate ice tea, but I drink a lot of SodaStream, which is where you make your own seltzer at home. No soda. It's just carbonated water. It's got no salt in it.

Barb McQuade:

It sounds like a lot of work. Is it a lot of work?

Jill Wine-Banks:

No, it's so simple. You just screw the bottle into the device and you press it and presto. And you don't have to go to the store and carry home heavy bottles, you don't have to worry about recycling bottles because you use your own at home and you keep using the same one. Another thing that I do is-

Barb McQuade:

Okay. Yeah. No, that's good. That would also help me reduce my footprint, so that's all good.

Jill Wine-Banks:

Yes, it would. And the other thing I love to do to answer your question is I have a little pitcher that has an infuser built into the cap and you can put any kind of fruit or cucumber. Cucumber is really good, but you can put watermelons, strawberries, lemon, and you infuse it into just plain water. And with a few cubes of ice, that's a very terrific, refreshing drink.

Barb McQuade:

Can I make it even if I'm incredibly lazy?

Jill Wine-Banks:

You certainly can.

Barb McQuade:

I got to be honest, Jill, it's sounding like a lot of work to me.

Jill Wine-Banks:

All you have to do is peel a cucumber or cut up of a lemon. I mean, it's really easy. Throw in-

Barb McQuade:

She lost me at peel. I don't know.

Kimberly Atkins Stohr:

Basil also. Basil and water.

Joyce Vance:

Jill, are you sending us all a link. I think I might need to get one of these.

Jill Wine-Banks:

Oh, I will. I'll send you a picture. It's a fabulous device. You could put it straight into the water, but this way it doesn't mush into the water. It just lets the flavors seep in. And refrigerate it, it's terrific.

Barb McQuade:

All right. Sounds really interesting. I will explore it.

Jill Wine-Banks:

Very good. I also make mojitos that's my specialty for summer drinking.

Kimberly Atkins Stohr:

Now we're talking. Okay. So let's get into our first topic. Now that we know that an impeachment is unlikely for Governor Andrew Cuomo, let's talk about what other redress could happen. Jill, why don't you lead us in that conversation?

Jill Wine-Banks:

Great. So I want to start with some background, which is, it's not very long ago, it was on August 3rd that the New York State Attorney General Letitia James issued a scathing 165 page report detailing 11 credible claims of sexual assault and harassment by Governor Andrew Cuomo, and describing his office as embodying the very definition of a toxic work environment. Governor Cuomo claimed he was innocent and would never resign, but a week later on August 10th Cuomo announced he would resign effective two weeks later. And I wondered why he left it for two weeks. And I think it has to do with the fact that the impeachment rules are what they are and that that would have delayed any kind of action and might've interfered with it. But as of today, he announced that he will not likely be impeached. So let's look at what the future holds for him and for the women who accused him.

I tweeted that if he thinks that his resignation would end his legal or political problems, he should think again. And multiple district attorneys, including our former sister-in-law Mimi Rocah are investigating assaults that occurred within their geographic jurisdictions. And one criminal complaint has already been filed by the woman who was known as Executive Assistant Number One, Brittany Comisso. She was the one who claimed he reached under her blouse and fondled her breast. In addition, although there's no impeachment, there are possibilities of civil cases for damages by individual victims for torts, as well as under the New York Human Rights Law or federal EEOC law.

So let's break it down for our listeners and see what consequences Cuomo may still face. And I was going to start with you, Barb on talking about impeachment. But now that we know that the government isn't going to impeach him, why do you think they aren't going to go ahead with that?

Barb McQuade:

Yeah. That's an interesting question, Jill. I think one of the reasons is some of the vagaries of the laws of New York, it's not clear whether you can impeach someone after they've left office. Now of course he's going to be in office for another, I don't know what. It's not 14 days anymore, but 10 days or so. And you can't have the trial until 30 days after the impeachment. So he will be gone by then. As we learned in the Trump impeachment, it could be that even if... As long as he's impeached before he leaves office, you could have the trial afterwards. But the New York Constitution is much vaguer than the US Constitution. The US Constitution talks about high crimes and misdemeanors. The New York Constitution doesn't even say that. It does say that the assembly has the power of impeachment. It

doesn't specify who is subject to impeachment. It does in some of the procedural stuff mention the governor and the lieutenant governor. So at least those two are included.

But at one of their constitutional conventions, one of the members of the committee, the delegates said something like, he thought it would be unwise to define impeachable acts specifically because it is beyond the power of human ingenuity to think of everything that would be punishable. This guy was thinking of a Donald Trump someday, perhaps.

So for that reason, because things are so vague, I think it would be risky. If they were to have an impeachment proceeding, it could be that it would tie things up in legal challenges or it might not stick. I think the one reason that would... to argue the other way, is that impeachment brings with it, not just removal from office, but barring a person from ever seeking office again. And that is a way to hold him truly accountable. And so they're giving that up by saying, "We're going to forego impeachment." And that's a reason perhaps to argue in favor of it. I also think that just politically once he's gone, I think there will be pressure on the New York Assembly to just move on and get to other business. Certainly COVID relief and economic relief and other things are very important right now. So I think there may be a practical aspect to it as well.

Jill Wine-Banks:

Yeah. From what you're describing, it sounds like due process is at issue here and that maybe New York needs to amend its constitution so that if there ever was a time when they wanted to impeach, they could do it in a proper fashion.

Barb McQuade:

Yeah. I think you're right, Jill. You shared with me an excellent article from Fordham Law Review about the problems with impeachment law in the State of New York. And as you mentioned, due process requires that laws not be vague, that we know what it is. We're entitled to notice of what the law prohibits. And so by not listing anything, even high crimes and misdemeanors is pretty open, but at least it lets you know what it is. And the worry is that impeachment could be used for political purposes. What if somebody just advances an infrastructure bill that is politically unpopular within his own party, is that a grounds for impeachment? Well, it doesn't say it's not. So there is room for abuse there, and I think it might be important to tighten up that language to include misconduct in office, but not things that might be considered within the bounds of political activity.

Jill Wine-Banks:

Exactly. And other potential consequences could be civil. And Kim as our civil litigator here, I'd like to turn to you and ask about what possible civil penalties soon to be former Governor Cuomo could face because of the actions that he's been accused of.

Kimberly Atkins Stohr:

Yes. So when it comes to the question of whether the women who have accused soon to be former Governor Cuomo have legal recourse, the answer is resoundingly, yes. But as I'll explain, there is a hitch and a twist that are possible. So first let's look at the law. Both federal and New York State Law prohibit the very contact that he is accused of having engaged in, according to the report from Attorney General Letitia James. On a federal level, Title VII prohibits sexual harassment in the workplace, it also prohibits the creation of a hostile work environment. And it also prohibits retaliating against someone who raises a claim of sexual harassment or hostile work environment. And in all of these 11 cases, the 11 people

who came forward and accused the soon to be former governor, it is at least one of those three, if not more than one of those three, that is alleged according to this.

So if they are able, they can bring a civil claim through the EEOC on the federal level. And if they are able to prove that, then that could be liability that Cuomo could face. There's also a New York State Law, it's part of the State Division of Human Rights Law. Now, interestingly enough, it was amended in 2019 and signed into law by Governor Cuomo. And it actually changed the requirement that must be proven to show sexual harassment or hostile work environment. Previously a claimant had to prove that the harassment was "severe or pervasive" in order to win. And that was such a high bar. It's very difficult if somebody is... for example if someone has a supervisor who on a daily basis or frequently says, "Oh, you look really nice. You should dress like that more often." Or occasionally would put a hand on them, but it didn't happen every single day, or if it didn't happen enough to be "pervasive".

Then that wouldn't be enough to be able to bring a civil claim, even though that would... if you're experiencing that, of course, that could feel very much like sexual harassment. So it took that requirement away. It also extended the statute of limitations to bring these claims from one year to three years. So for both of these things, anything that the governor did since 2019 now in the past two years, he could face civil liability for.

Now, I want to get to the hitch. Cuomo can seek to have the State of New York be the defendant since that was the employer in this case. And if that happens, if he's successful in doing that, then the taxpayers of New York can be on the hook for paying these civil judgments, which certainly wouldn't make me very happy if I still lived in New York State.

Now that's not to say that he cannot be found individually liable in civil court. In fact Attorney General James specifically said in her report, she laid out that this could be the subject of individual liability for Andrew Cuomo. But you can bring claims and have a judge and or jury find that both the state and Cuomo himself individually are liable, and a jury can award damages against both or either. It depends. So there's still the possibility that taxpayers might have to pay a civil judgment.

And then finally the twist. If the state is deemed to be the defendant here, then that means that Attorney General James, her office would be in the position of defending it. That comes from her report. Now, of course, the state could contract out that, have an external attorney handle that. Of course, since their office was involved in doing the investigation in the first place to involve conflict of interest. But that's just one of the additional twists in this case as it plays out.

What I suspect will happen, which often happens in civil cases is that there probably will be settlements. If that is the case, one thing that I am hoping is that it does not come with any sort of gag order, any sort of prohibition that prevents any of these women from speaking truthfully about their experience and what happened to them. They may not be able to disclose the exact terms of the settlement if that happens, but I certainly hope that they are not prohibited, which often happens in civil settlements, from discussing the facts of the case. Because I think public policy really mandates that the public get a full accounting of exactly what happened, and that these women be allowed to speak freely.

Jill Wine-Banks:

Before we move to the possible criminal consequences he may face, I just want to stress something that you mentioned, because I know I found it extremely disturbing and unsatisfying as I researched this, that the civil consequences particularly under EEOC and the New York Human Rights Law intended to stop the process, stop the action. So it's injunctions, it's fines, it's reinstatement if you had to quit or you were fired for wrongful reasons. And that's not, I don't think what any of the women who have been

harassed or assaulted in this case want. And so that seemed very unsatisfying to me. And then you're left with maybe tort actions where you could get damages for him touching or causing emotional harm through the harassment. But it wasn't that clear cut. There's a real remedy for this. And that's something that we need to be looking at. But let's look at, are there some criminal consequences that he could face? So Joyce, I'm going to ask you to address what possible New York violations or federal violations there might be.

Joyce Vance:

Well, we're getting to the start of the law school year so I'll play law professor just for a sec, and talk about the crime of assault, because that's most likely if a district attorney were to charge this, what we would be looking at, some kind of an assault. And an assault is an action that causes another person to fear that she's about to suffer physical harm. You don't actually have to make contact. The point of the crime... As lawyers say, the gravamen of the offense is placing another person in fear of imminent bodily harm. And we recognize that actually creating that fear in another person is something that's worthy of moral approbation. So because this is a pretty low level situation when you think about it. I mean, technically if I, Jill were to lean out and you were to be afraid that I was about to strike you, that could be an assault. But we grade assaults into different levels of severity.

The most serious kinds of assault, assault with a deadly weapon are felonies and they carry long sentences. But here, we're probably not looking at that. And that too may be a disappointment to many people as they look at this situation. Assault is typically a matter of state law. That could be a federal assault if it was for instance, committed inside of a federal building, but that's not what we're looking at here. We're talking about state crimes. And so in New York Cuomo's conduct is most likely a misdemeanor. That means it's a simple assault, a crime that's punishable by up to one year in jail, if it is in fact punishable. The exact section of the New York Code as best as I can tell is 130.52, which prohibits forcible touching. And the elements of that crime are to intentionally or for no legitimate purpose forcibly touch either the sexual or the intimate parts of a person for purposes of degrading them or abusing them or to gratify the actor's sexual desire.

So this is a pretty broadly based sort of prohibition on touching. The statute explicitly says that it includes squeezing, grabbing or pinching. So when we're thinking about the conduct that you talked about, Jill, with Executive Assistant One where Cuomo reached underneath her shirt and grabbed her breasts, that would seem to fit this crime. And we do know that up in Albany, they have opened a criminal investigation. The sheriff up there has said, he believes that it is most likely a misdemeanor crime, other DA's our friend Mimi Rocah, as you mentioned, have reached out to Attorney General, Tish James, and asked that she share her information with them so that they can determine if they too should be opening a criminal investigation. I think the important takeaway though, is that we're likely looking at misdemeanors, not felonies here.

Barb McQuade:

Joyce, one point you made that I think is really important is when you read that statute, it is not just about sexual gratification, but it also includes things that are demeaning to the victim. And I think that's really important because you think about some of the touching here, running his finger down someone's back or rubbing a hand across their stomach. It may not have been for his own sexual gratification, but the women who were the recipients of that behavior found it degrading. And so that would also fit under that statute.

Joyce Vance:

And Barb, it's something that you flagged earlier this week when we were talking about this, that I think is really important here. You do get a sense, and I think it would be viable evidence here that he was about degrading these women. For instance, there's the woman he forced her to learn the song, Danny Boy, and to sing it to him. What a degrading sort of thing to do to a woman in the workplace, trying to show that you have power and that's really what's going on in these sorts of crimes. These aren't about sex, they're about power and control. It's unfortunate that these crimes are only misdemeanors, but a criminal prosecution would allow the truth to come to light, and it really would be some form of accountability here.

Jill Wine-Banks:

And I would add to that. Not only would it let the facts come out and be satisfying in that regards, but is also as a message to all other potential predators, to those who want to use their power that they cannot do this. And to the extent that he has raised the issue of, I am just behind the times and this is a generational thing. The worst is, it's how Italian Americans behave. This is sending a message that absolutely that is not acceptable behavior and no one should engage in it anymore. So I think that's important that it become public.

Joyce Vance:

A good night's sleep really matters to me. I know it matters to all of us with how busy we stay. So for me, taking the Helix quiz and being matched with just the right mattress was a really great thing. How about you, Barb?

Barb McQuade:

Well, I also value my sleep. And so making sure that you have a mattress that works for you is very important to me.

Jill Wine-Banks:

And I sleep less than most people, so every hour that I am asleep really matters a lot. And after I took the quiz, I was surprised to find that they matched me with a much softer mattress than I was used to, and it's wonderful.

Kimberly Atkins Stohr:

Yeah. I was really skeptical of changing mattresses other than the kind I grew up with. And I have to say it really does make a difference. I am recently married and I will say that having a good mattress and one that does not wake the other up when they get up or move is really important. So the quiz was definitely a good thing.

Jill Wine-Banks:

It matched me with the Helix Midnight Mattress because I wanted something just right for me.

Barb McQuade:

It matched me with the nightmare customer. No, I'm kidding about that. It'll find just the right match for you if you go to [helixsleep.com/sisters](https://helixsleep.com/sisters), to take their two minutes sleep quiz to match with a customized mattress that will give you the best sleep of your life; from soft to firm, plus size and cooling, they have

it all. Helix mattresses come with a 10 year warranty and you can try it out for 100 nights risk-free. It gets delivered right to your door and they'll pick it up if needed.

Kimberly Atkins Stohr:

Helix is offering up to \$200 off all mattress orders and two free pillows for our listeners at [helixsleep.com/sisters](https://helixsleep.com/sisters), that's [helixsleep.com/sisters](https://helixsleep.com/sisters) for up to \$200 off and two free pillows. And look for the link in our show notes. Thanks to Helix for sponsoring this episode. And we thank you, our listeners for supporting Helix.

All right, for our next topic, we are looking at the weaponization of the DOJ under the former administration, particularly with respect to the Georgia election. Barb lead us through that.

Barb McQuade:

Yeah. This has been a really interesting story to watch unfold, Kim. We have seen this week mounting evidence of efforts by Donald Trump to use the Department of Justice to help undermine the results of the 2020 presidential election. Using its law enforcement powers, using its litigation powers, the machinery of government to undermine the election results. So this week we saw news that the Senate Judiciary Committee and the Department of Justice inspector general have been meeting with a number of former DOJ officials. So the former acting Attorney General Jeffrey Rosen, his Deputy Richard Donoghue, and the former US Attorney in Georgia, BJay Pak, all answered questions in some very lengthy sessions with the committee. And reporting indicates that what they were saying with the story they had been telling is that President Trump wanted them to investigate election fraud, or at least to say that the election was corrupt and leave the rest to him.

And Pak the former US attorney said that he resigned abruptly in January because Trump planned to fire him for refusing to falsely announce that there was widespread fraud in Georgia. And remember this comes even after Attorney General, William Barr had declared that there was no substantial fraud in the election. We've also seen that draft letter that Jeffrey Rosen refused to sign. That letter was drafted by Jeffrey Clark, who was the acting Assistant Attorney General for the Civil Division. After he had met personally with Trump in violation of DOJ policy, the letter was to be sent to six states advising them that they could declare their elections to have failed and to then throw the selection of electors for their states to the Republican controlled legislatures in their state.

So it was essentially a roadmap for how to rig victory for Donald Trump. And Trump wanted to elevate Jeffrey Clark to acting attorney general, but he backed down when others at the Department of Justice threatened to resign. So it's really heating up and pretty interesting. But Kim, let me ask you at the moment, this investigation is at the congressional level, where can it go from there and what can Congress do with all of this and where else can it go from there?

Kimberly Atkins Stohr:

Yeah. So there are a couple things that can happen. The congressional investigation is aimed at fact-finding, for informing the public, creating a record so that the public understands what's going on and what happened, but it also gives lawmakers the information they need in order to reform the laws that need reforming to make sure that any uncovered election interference never happens again. And in that vein, we may ultimately see new legislation introduced, we may see a recommendation to the justice department that it changed its internal policies and procedures in order to guard against this. This would be in order to boost transparency. We might see increased whistleblower protections, for example, that encourage people to come forward in real time when these things are happening in order to protect

them. And also penalties for this kind of interference, for anybody who is willing to do it. I know you spoke about all the people who declined to, but we have folks like Jeffrey Clark who apparently according to the reporting was willing to do it if he were allowed to.

Now, on the inspector general side, that's a little different. Now, the inspector general's office can investigate and create a report and then refer that to federal prosecutor. So if they find any criminal laws were violated, then it would be up to federal prosecutors to decide what to do then in terms of bringing potential criminal charges and against whom.

Barb McQuade:

Yeah. That reminds me of the topic we were just talking about with the delegate to the New York Convention said, "Human ingenuity can't even imagine all the bad things people might do for impeachment purposes." And same is true with regard to crimes. Sometimes it's not until somebody does something really awful that you can say, "There ought to be a law. We should criminalize this." So the things that Donald Trump did to undermine the election, maybe they are, maybe they aren't against the law. But Congress, I suppose, can figure out if it needs to fill gaps in the law about that. Kim, who else do you expect the committee will ask to testify? And how long do you think this investigation will take before the committee can get to the bottom of what happened?

Kimberly Atkins Stohr:

Yeah. I mean, it seems to me that this along with other investigations, to get to the second part of your question, that they're going to take as long as it takes. They're going to follow the facts to get to what happened in order to put out a complete report about what happened. And we should be able to see several other former Department of Justice officials testify in part because the Department of Justice has said that it has waived any executive privilege claims that would prevent them from coming forward. So we may see people like Patrick Hovakimian, I'm saying that name wrong or Bobby-

Barb McQuade:

That was pretty impressive.

Kimberly Atkins Stohr:

... or Bobby Valentine. These are both people who worked under Rosen in the DOJ. But I think the number one person who at least I'm waiting to see testify would be Jeffrey Clark. And Jeffrey Clark of course, is the former assistant attorney general who Donald Trump wanted to elevate because he was reportedly willing to carry Trump's water on the false claims of election fraud in Georgia, to do exactly what you outlined, which would be to send a letter informing Georgia officials that the election was fraudulent and that could essentially give state legislators the ability to try to overrule the will of the voters.

It's really extraordinary when you think about it. I know we've talked about this a lot, but every time we do it's really incredible. So that could spur what we haven't seen yet, which is the potential for a subpoena if he tries to avoid testifying. As I said, the DOJ has already said that they're not going to raise executive privilege, that they have waived that. But Donald Trump's lawyer, Doug Collins, you probably remember him from Congress. Doug Collins sent a letter basically saying that he believes that that waiver of executive privilege is "unlawful". He didn't really explain why it would be unlawful. And that they still hold the ability to try to assert that privilege. So that could end up being a fight. I don't know

how winnable it will be, but it will be a battle that we haven't seen so far. So far everybody who's testified has come willingly, but that could be what's next.

Barb McQuade:

Kim, as a reporter, you must have some insights on this. I find it fascinating, Katie Benner of the New York Times has been reporting on this like every day.

Kimberly Atkins Stohr:

She has good sources.

Barb McQuade:

Who do you think her... Do you have any thoughts about that?

Kimberly Atkins Stohr:

If I had known...

Barb McQuade:

Yeah. Right. I mean, she shares some really important information, I think, and doing important public service. But no doubt, some of these sources are reporting anonymously, right?

Kimberly Atkins Stohr:

Absolutely. When you are a dogged reporter on the beat and you earn the trust of the people that you're covering, you have the ability to get scoops like this. It's really incredible. It's people like Joan Biskupic at the US Supreme Court or other folks, Pete Williams has really great DOJ sources. There are really good reporters out there that have earned the trust, that do good work and that are able to inform the public like this.

Joyce Vance:

Katie and I were on, I think it was Nicole Wallace's show together a couple of days ago and they screwed up the chyron and put my name below Katie. I was so flattered to be confused with Katie, because like you say, her reporting is just so immaculate.

Kimberly Atkins Stohr:

It is.

Joyce Vance:

She's also a knitter, but I won't go there because it'll get Barb upset.

Barb McQuade:

No, I think it's really important news and she's serving an important public service here, so I hope she keeps digging. Jill, let me ask you about this. So the witnesses that Kim has named, there's like six of them, I think, total. Three have already testified, but three more who got these letters from DOJ saying that the Department of Justice would not be asserting executive privilege, which is pretty extraordinary. I think they said something like because of the extraordinary circumstances we are clearing you to

testify and we will not be asserting executive privilege. Can Donald Trump do anything to block their testimony? Do you think there's any way he could do that?

Jill Wine-Banks:

Well, fortunately, so far he has chosen to do nothing, which I think is the right thing. And let's just talk in general about what executive privilege really is. Executive privilege is intended to protect the office of the president so that the person who occupies that office can get good policy and political advice in order to do his job. It is not intended to protect the president from criminal allegations. And there has long been a crime fraud exception just like there is in the attorney client privilege. And the president himself and any of his advisers can be required to give testimony and provide documents. That's after all what the Watergate decision, the US v. Nixon decision was about, was that the president himself was going to have to turn over the tape recordings of his conversations that were criminal in nature, that proved crimes were being committed in the Oval Office where they were recorded.

And I think that that rule is going to apply here because I would go further than I think Kim did in saying that I suspect that these conversations are criminal, that the attempt by Donald Trump to get enough votes to overturn the vote or to say, "It doesn't matter if you actually investigate." Remember the people he was talking to said, "We have investigated, there is no fraud." Well, the Attorney General, Bar who left said, "There's no fraud." And Rosen and Donoghue in the conversations that we were talking about said there is no fraud. And he said, "Well, just say that it was a corrupt election. Let me do the rest with my Republican supporters in Congress." That to me is an attempt to interfere in an election and is a crime. And so if those conversations are crimes or are evidence of crime, they aren't protected by executive privilege. And so I think that-

Kimberly Atkins Stohr:

Yeah, no, I just want to be clear that I agree with you. I didn't for a minute say that this is not... I just said that's not for Congress. Congress can't bring charges, but that is for the AG. The AG can refer it to federal prosecutors if there are crimes broken. Election interference is a crime. It's a federal crime, absolutely, if they find that evidence that they can bring in.

Jill Wine-Banks:

But you don't need a referral. I mean, DOJ right now can go ahead [crosstalk 00:38:27].

Kimberly Atkins Stohr:

No, you don't need a referral. Correct. .

Jill Wine-Banks:

So they don't have to wait for the AG to finish.

Kimberly Atkins Stohr:

I want to be absolutely clear. And listen, if you want to go back and look the Boston Globe... I'm on the editorial board of the Boston Globe. We put out a series called future-proofing the presidency that lays all of this out, including how people, including the former president could be brought up on charges and how election fraud is election interference, obstruction of justice. There are a number of crimes that may have been violated here. So I just want to be super clear.

Jill Wine-Banks:

Great.

Barb McQuade:

Kim, do you have any thoughts about why Donald Trump has not already tried to block them from testifying? I mean, he has famously said, "I'm going to block all the subpoenas." I mean, he could file a lawsuit to stop them from testifying, at least slow things down. Why do you think he hasn't?

Kimberly Atkins Stohr:

I don't know what's going on in the former president's head, so I'm not going to pretend that I do. I think there could be a lot of reasons, including the fact that filing a lawsuit at this point means he would have to pay for it. And I'm sure that's something that he does not want to do. But I think he is still by all accounts still tied up in this idea that there was fraud happening in Arizona and focusing on all these other things. And so who knows why he has not done that? Maybe he's listening to the counsel of Doug Collins who was telling him that probably won't work. I don't know. It's an interesting question.

Barb McQuade:

Yeah. Well, we'll keep an eye on that. Joyce, I want to ask you about your views. Should we see Jeffrey Rosen and Richard Donoghue and BJay Pak as heroes for their courage and speaking up this week?

Joyce Vance:

That's been a little bit of the public narrative. People have wanted to cast them as heroes. And I'm just not there, Barb. I see them as whatever the opposite of profiles in courage is, profiles in cowardice. These guys are it. Because what happened on January 6th, I don't view as a standalone event. In many ways, it's the end point. At least from the moment he realizes that he's lost the presidency. And I'm making a couple of assumptions here, and these are fair points for investigation, but I'm in Jill's camp. I think that if there is investigation, it will reveal that Trump did believe he had lost the election. And he was looking for ways around that factual conclusion. I think conversations as they come to light and investigation will reveal that. And so he begins with the easy stuff. Can I get the military to stage a coup with me? Can I go to DOJ and get them to cast doubt on the election so I can get electors to interfere with the process and Congress to throw the election? And he's thwarted at every step along the way, and that's how we end up on January six with this violent insurrection that takes place at the Capitol.

So what we really have here is an acting attorney general and some folks in his office and in the DAG's office who could have intervened, they could have told the truth. It would have been as easy for them as calling a press conference to say, "We've been asked to do something and it's not the right thing for the American people." But they didn't do that. They just sat on that even after January six, even as we went through impeachment. At every point where they could have upheld their oath to the constitution, instead they worried more about their personal futures, their careers and I don't find that to be very courageous.

Barb McQuade:

All right. Well, we'll have to wrap it up there, but this is a developing story and we will continue to talk about it in future weeks.

There is nothing more delicious to me than a midnight snack of cereal. And my favorite cereal choice these days is Magic Spoon. How about you, Joyce, you eating Magic Spoon?

Joyce Vance:

We do eat Magic Spoon. My husband is the big cereal eater in the family and he loves it. I think he's the one who's been sneaking into it at midnight around here. How about you, Jill?

Jill Wine-Banks:

I am not a cereal eater, but I love Magic Spoon. Because it isn't really a cereal, even though that's what it's called, it's protein and you get a really healthy, tasty, filling breakfast. But it's also great for snacks. I actually have a secret, which is I keep a little snack pack in my car so that when I'm really behind schedule and don't have time to stop, I just have some of those and I feel like I'm eating a healthy, tasty, great snack. It's wonderful. And Kim, I know you've liked it in the past. Are you still using Magic Spoon and loving it?

Kimberly Atkins Stohr:

Yes, I have. So it's been hot here in DC and I have a tip for y'all, mixing the cocoa and the peanut butter on top of a little bit of vanilla ice cream, gold. Do it, try it. Thank me later.

Joyce Vance:

Magic Spoon has zero grams of sugar, 13 to 14 grams of protein and only four net grams of carbs in each serving. It's only 140 calories a serving. It's keto friendly gluten-free, grain-free, soy-free and it's low carb.

Jill Wine-Banks:

You can build your own box or get a variety pack with available flavors, Coco, fruity, frosted, peanut butter, blueberry, and cinnamon. And I've got some great news for our listeners. Magic Spoon is bringing back two super popular flavors, cookies and cream and maple waffle permanently. I haven't tried those, but I look forward to it.

Barb McQuade:

They're delicious, indulgent and healthy. You have to try them. Go to [magicspoon.com/sister](https://magicspoon.com/sister) to grab your delicious cereal and try it today, and be sure to use our promo code sister at checkout to save \$5 off your order.

Kimberly Atkins Stohr:

And Magic Spoon is so confident in their product. It's backed with a 100% happiness guarantee. So if you don't like it for any reason, they'll refund your money no questions asked. Remember, get your next delicious bowl of guilt-free cereal at [magicspoon.com/sister](https://magicspoon.com/sister), and use the code sister to save \$5 off and look for the link in our show notes. Thank you Magic Spoon for sponsoring this episode.

Joyce Vance:

Now I'm going to have to order more because I really want maple waffle.

Kimberly Atkins Stohr:

And I want that cookies and cream. Was that cookies and cream on top of the ice cream, listen.

Jill Wine-Banks:

They had jelly donut as a special the last time I ordered and it was like, they gave you such a special price on it that it was your irresistible so I ordered that and cinnamon, which I hadn't tried because my favorites were frosted and fruity and they were both terrific.

Kimberly Atkins Stohr:

Yeah. I like cinnamony stuff.

Jill Wine-Banks:

You'll love it then. You will.

Kimberly Atkins Stohr:

And now for our final topic of the day, it is mask and vaccine requirements and prohibitions. Joyce, lead us through it.

Joyce Vance:

So there's a lot going on with vaccine and mask mandates right now. And especially as students begin to head back into school in the deep south. Of course, there are also folks out there who want to prohibit mandates that would require vaccination or masks. It's a little bit of a mess, frankly. You need a scorecard to keep track of what's going on, not just in states, but in counties in states. So as the Delta variant takes off in parts of the country, we have essentially a hot mess. I think it makes sense for us to try to sort out some of the laws surrounding what government and business can and can't do to help folks understand what we're looking at. So Kim, why don't I start with you for a general overview? Is it possible that there could be federal or state mandates for an entire state or even for the entire country that would require vaccination?

Kimberly Atkins Stohr:

Yeah. So the short answer is, on the state and local level, the answer is yes. States and local municipalities very clearly have the ability to impose mandates, including vaccine mandates in the interest of public health. And that stems from a 1905 Supreme Court decision Jacobson versus Massachusetts. And what that had to do with was a smallpox vaccine mandate in the middle of that outbreak there, and it was challenged and it said it was within the police power of a state to impose that mandate in order to facilitate public safety. And that decision was affirmed a couple of decades later. There have been challenges to it seeking to overturn Jacobson and they have not been successful. So to this day, that is the law of the land and it empowers local officials in places like New York City, which has imposed a vaccine requirement in public places in San Francisco to do that. And it is very unlikely that challenges against those would be successful.

Now, on the other hand, the federal government is different. There are limitations to what the federal government can do. It can regulate conduct of the general public. We're talking general public here, only where it affects inter-state action or international action. So for example, the federal government could impose a vaccine requirement to fly on a plane interstate or to come in and out of the country on a plane. They could do that. They have not done that yet, but they could. Certainly federal employees working in federal agencies and departments can be required to get a vaccine as a term of their employment. And we're seeing that beginning to happen already with the Biden Administration. Also the military, there is a vaccine requirement for the military and that is within the

power of the federal government. But President Biden cannot just order a nationwide mandate for everyone for the general public.

But importantly, I think he can use the power of the presidency in other ways, like encouraging private businesses to impose vaccine mandates for their workplaces and their employees. And the federal government can also give aid to businesses in order to establish vaccine and mask requirements in their workplace. But he has to tread carefully as well.

Listen, we know that one reason that a lot of people have resisted getting vaccinated is a distrust of government mandates in themselves. So if he or local officials are seen as going way too far at forcing this, it could be because a backlash which despite its good intentions could have the effect of working against the public health interest in trying to get everyone vaccinated. It could discourage people. So there's that line that he needs to walk, and all officials need to walk but that's where we are now. The state and local mandates seem to have really strong legal ground.

Joyce Vance:

It's interesting, Biden is certainly trying to use his bully pulpit with the order that federal employees and federal contractors get vaccinated perhaps in hopes that every incremental group that can be vaccinated gets us towards some sort of a herd immunity. But Jill, that leads us to a really important sector, which is education and schools. And let's start by talking about school staff. As people start back to school, there seems to be some dispute about schools entering orders that teachers have to be vaccinated and staff has to be vaccinated. Do you think these orders are lawful? Will they get affirmed if there are legal challenges?

Jill Wine-Banks:

I think they will be. And the evidence of that is that Justice Amy Coney Barrett has said that Indiana University can require vaccination. It was in the context of a student challenge. But the language that the actual rule that Indiana had was that faculty and students had to be vaccinated. And she let that order stand so that they will have to be vaccinated.

And in Illinois, there's been a case where the board of education said, if you don't have this happen, you will not be able to participate in sports through the Illinois State Sports Association. And your diploma will not be recognized, which means you can't go to college on that diploma. I also want to mention the Oregon governor who said that you don't have to have a reading or math skills requirement for graduating high school, which virtually makes that a useless degree. So that school that was refusing to acknowledge that they would go along with even just the mask mandate is now going along with a mask mandate because the severe penalty was just too much for them to bear and they couldn't stand it. But yes, I think that it will be upheld.

Joyce Vance:

It's pretty interesting, the case that you referred to, the Indiana case, where Justice Barrett rules, it doesn't go through that normal process that we're used to where cases work their way up and they're accepted or not by the court and briefed and argued. And they're heard over a long period of time. This was actually an emergency appeal. And so she oversees that federal appeals court that's in question, the Seventh Circuit. And she turns down that request for emergency relief, really without comment. It's how the court sometimes rules on these emergency applications. But it seems to suggest that the student's claims are so meritless that no further litigation in this area will be successful, at least if like Indiana

does, the school is willing to entertain some sort of legitimate objection to being vaccinated, whether it's medical health or whether it's some sort of a religious objection.

But this really seems to foreclose that for states that are willing to impose these sorts of restrictions. Of course, other states like the one that I'm sitting in have not really seen fit to do that. And some schools are using really interesting strategies. Birmingham-Southern, which is a small private school in Birmingham, is imposing fees on students who aren't vaccinated or requires them to get tested very frequently and to bear that cost themselves. Do you think that those sorts of rules will hold up in states like Alabama and others where colleges are turning to that approach?

Jill Wine-Banks:

I think in those states where the government isn't going to support them, schools are going to have to be very clever in what they do. And I want to add one thing to what you said about Justice Barrett and her decision. She didn't even ask for a defensive brief, which does to me suggests, as you're saying, there was no merit to this, and there's no reason for you to even try to persuade me.

So again, that sets up, I think a context for how all of these rules are going to be viewed. Science makes it clear that masks and vaccines are essential to our returning to any kind of normalcy in this country, to protecting the health. And students, particularly younger ones, are not eligible for vaccines. So they're really at risk and they're at risk of bringing it home to immune compromised family members, et cetera.

So I think we have to find ways and this \$500 fee for a school in Birmingham seems to be a perfectly sensible thing. If you're not going to be vaccinated, they're saying, "Fine, we have to test you. And that costs money and you're going to have to pay for those weekly tests in order to protect the rest of the student body." And I think the courts are going to see this in a sane scientific way.

Joyce Vance:

I hope you're right. I think we'll get to find out about that one because Alabama's attorney general has already indicated that he's going to sue the college if it goes forward with that, so more on that in the future. But let's shift from that scenes to masks. And Barb, I'll turn to you. Some governors have forbidden masking, which seems really absolutely insane in light of the fact that we're already seeing states like Florida and Texas, where they're having problems with infection and teachers and students have taken sick and some have even died. But where the governors have forbidden masking and there are either school districts or counties or individual schools who are defying them. Do you think the folks that are trying to be sane and to get their students to wear masks, do you think that they'll have trouble when they go to court?

Barb McQuade:

I don't think they will. I think the case that Kim cited at the outset about mandatory vaccinations, if the state has the ability to do that, then I think that a state authority has the ability to enforce masks. But what's tricky about this-

Joyce Vance:

But Barb, can I ask you? It's a pretty old case, do you think it's good law still?

Jill Wine-Banks:

What a set up?

Barb McQuade:

We were joking about this. You'll always hear people talk about when it's old and they want to rely on it. They say, "Why this has been the settled law for over 100 years." But if they don't want to rely on it, they'll say, "That case is over 100 years old, it has no relevance today." So I think the answer is yes, that it does have relevance. And there's been no subsequent case decision that's gone against it. But I think the twist here that makes it a little bit uncertain is what these governors are doing is the opposite. They're using their emergency powers, not to force people to do things to protect public safety. They're forcing lower levels of government. They're prohibiting them from forcing people to be healthy. So it's a really interesting twist on the governor's emergency powers.

So we're seeing this play out in a couple of different states. In Texas, we've got Governor Greg Abbott who has issued an executive order prohibiting mask requirements. No county, no school district can require masks. But we have seen some lawsuits filed against that saying, "Look, we want to protect the kids in our schools." And in one case, a judge has found that under the Texas Disaster Act, the local judge had the authority to find that there is a disaster and to enact a masking requirements. So that's really interesting because a judge is doing that. And as you pointed out, Joyce, that judge is getting death threats I think, right?

Joyce Vance:

Mm-hmm (affirmative).

Barb McQuade:

And I think this is one of those things that's going to be state by state. Every state has their own different rules about emergency declarations and how they can play out. Governor Abbott and the Attorney General in Texas, Ken Paxton, have already appealed their orders to the Fifth Circuit Court of Appeal. So they are still fighting to give their people the freedom that kill themselves and others.

In Florida, we've seen kind of a similar thing with Governor DeSantis has threatened to cut school funding if they violate his order about masking. And so that includes the salaries of administrators if they defy his order. And his order says, parents get to make the final decision about whether their children should wear masks. And at least two school districts have persisted in their masking requirement. And he has now backed down on this cutting of salaries because he apparently does not have that authority under Florida Law. So we'll see how that plays out.

Here in Michigan, a Republican member of our state board of education has called masks for school children child abuse. Is it child abuse to require children to ride in a car seat? Is it child abuse to require older children to use a seat belt? These people have lost their minds. It's really strange to me the extent to which people are falling for this propaganda, that simple steps to protect public health like wearing a mask is somehow violating your individual liberty. No shirt, no shoes, no service, no mask, no school. It seems like-

Jill Wine-Banks:

I would actually argue that it's child abuse to not require a mask because you are endangering your child and exposing them to a deadly disease.

Kimberly Atkins Stohr:

I mean, they have to wear a helmet when they play football. It doesn't make any sense.

Barb McQuade:

What kind of nanny state is that, Kim? Football helmet, that's [inaudible 01:00:18].

Joyce Vance:

Well, we for sure live in the upside down, when suddenly these folks are really concerned about folks having bodily autonomy and making decisions for themselves. And I'll be interested to watch how quickly that evaporates when we get into the Supreme Courts next term, and the abortion issue comes back to life. But I guess that's snarky of me and I won't end on a snarky note. Instead, I'll just share an email that Barb and I both got this week. I think we and a number of other people were on it.

I couldn't tell if this gentleman was serious or not. But he said, "Whether or not a child should wear a mask in school is a decision that should be made by the parent, not the state. Parents have an inalienable right to allow their children to infect other children in school." I suspect that that was a little bit of snark. But it really is what it comes down to, what are we willing to do as communities? And as we've discussed, President Biden has to tread carefully here. He probably can't do everything that he wants to do because the waters are politically fraught. So beyond what the law can do, what are the ways Barb that you think our government and our leaders can actually massage public opinion so we can get to the point where we are protecting our kids and our communities?

Barb McQuade:

Yeah. I don't know. I think we got to get this out of the political arena. People have really become... fighting like cats and dogs about this. I think there is also some social media disinformation going on where people get their information. So public service announcements may be getting spokespeople to talk about this, trusted people. I also thin doctors, the American Medical Association, people who are trusted, who are seen as non-political actors, I think need to be the ones messaging this. Although, look at Dr. Fauci. Somehow he's become a political actor despite his efforts to just give good health information. But I think that we need to find people where they are and try to come at them from a lot of different methods with this message. I also think that as we see hospitalization rates and infection rates and death rates skyrocketing in these states like Texas and Florida and others, that I hope good sense will prevail.

Joyce Vance:

I think you're right. And it actually may take increasing rates of sickness and horribly even deaths. And that may ultimately be the only thing that can turn this around. Because as much as the law can do some of the heavy lifting here, it clearly can't do all of it.

Jill Wine-Banks:

Hey Joyce, I just was on the website for Policygenius and they have life insurance, auto insurance, home insurance. It's really a good way to find the top rated providers of insurance in your neighborhood and to get the best price possible.

Joyce Vance:

If you're like me, you don't want to spend your entire life thinking about insurance. And I like Policygenius because it makes it easy to compare quotes from over a dozen top insurers all in one place. You don't have to do the research yourself. And you can save 50% or more on life insurance by

comparing quotes with Policygenius. That means you could save \$1,300 or more per year using Policygenius to compare policies.

Jill Wine-Banks:

They have licensed experts ready to help you navigate the shopping and buying process with service that has earned Policygenius a five star rating across thousands of reviews on Trustpilot and Google. Getting started is easy. Just head to [policygenius.com](https://policygenius.com). Any eligible applicant can get covered in as little as a week with an award-winning policy rated number one by Forbes. And all it takes is a simple phone call. No doctor visit required. In minutes, you can work out how much life insurance coverage you need and compare personalized quotes to find your best price. They never sell your info, don't add on fees and even handle the paperwork for free.

Joyce Vance:

So head to [policygenius.com](https://policygenius.com) to get started right now. Policygenius, when it comes to insurance, it's nice to get it right. That's [policygenius.com](https://policygenius.com) or find them in the link in our show notes.

Kimberly Atkins Stohr:

As always, we've received some great listener questions this week. If you have a question for us, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tweet us using #SistersInLaw. If we don't get to your question during the show, keep an eye on your Twitter feeds throughout the week. We'll answer some of those questions, as many as we can. So the first question that we have is from Wendy and the question is, whatever happened to the Election Finance Law crime, for which Michael Cohen went to jail? Presumably individual number one was Trump. Is the issue done, or will it be resurrected or in progress? Joyce, what's happening there?

Joyce Vance:

Well, we're at least arguably coming up on the statute of limitations in that case, if the former president was ever going to be charged. My answer to why he hasn't been charged is, I don't really know. In fact, I reread the statement of offense that prosecutors in the Southern District of New York used when Michael Cohen pleaded guilty. I had occasion to reread that recently and they lay out a pretty clear case against individual number one, whoever he or she may be. So I'm at a loss frankly, to understand why they have not gone ahead and charged. And the last thing that I would say is Cohen is not the most culpable person in that case. He's acting to benefit somebody else, individual number one. DOJ's policy is to typically go after that person at the top of the food chain. So it's really inexplicable to me that this case has been circumvented.

Kimberly Atkins Stohr:

Anybody else have any ideas?

Jill Wine-Banks:

Yeah. No, I'm just thrilled that Wendy asked that question because it's been puzzling me as well. I expected as soon as the administration changed and Merrick Garland was confirmed that the Southern District of New York would go for an easy case, which was this one that was laid out and to which there is a witness, it was good enough to send Michael Cohen to jail. And as Joyce just said, the person that he acted on behalf of and at the direction of has been let go free. And that makes no sense to me. So DOJ, if

you're listening, Southern District of New York, if you're listening, we trust you, we think you should take some action.

Joyce Vance:

The one thing that I will say is that there's been some suggestion that Trump's CFO who has been in the news recently as he's indicted by the Manhattan DA, that he may not have been completely forthcoming with prosecutors in the Southern District of New York, where he was given limited immunity in order to testify. So maybe there's some sort of porky evidentiary hold-up there, but it's tough to imagine how Cohen gets prosecuted and there's a hold-up in the evidence against Trump.

Barb McQuade:

The only other thing I would add is, it always sounds easy when we're sitting here to just charge and prosecute them. Proving someone guilty beyond a reasonable doubt is a very high standard. And although Michael Cohen was willing to admit to his crimes, having to prove them in court might be quite another thing, especially when your only witness is Michael Cohen. And I don't think they should prevent-

Joyce Vance:

Oh, come on, Barb. You don't want to put Michael Cohen on the witness stand?

Barb McQuade:

Maybe. I also wonder DOJ lawyers are supposed to bring charges only if they believe it is probable that they can obtain and sustain a conviction. Is there any worry about whether you can get 12 jurors to convict Donald Trump in America today?

Kimberly Atkins Stohr:

All right. Well, we mentioned statute of limitations. So I want to go to Gwynne Young's question, which is, do you think statutes of limitation should be eradicated? It gets me really angry whenever I hear that someone can't be charged for a vicious crime because the time has run out. I can see it for something like petty theft, but not for sexual assault.

I will start with this and then have y'all jump in. So just back up a little bit. The reason that there are statutes of limitations is to protect folks from being charged from crimes where the factual events happened so long ago that the memories of actual witnesses and the evidence that would have been available no longer exists. So it makes it very difficult to defend against. So there is a policy that encourages people if a prosecutor has evidence of a crime to go ahead and move expeditiously to investigate and charge.

There is the other side though, that you don't want to make the window so small that essentially allows someone to wait it out, and if charges aren't brought, then they can get scot-free. And that's why for things like sexual assault, we have seen in modern times municipalities move away from statutes of limitations for things like rape, because the crime is so atrocious that you don't want to limit the ability to bring charges, if you are able to get a witness, if you are able to get evidence. Also, other crimes like kidnapping and murder often don't have a statute of limitations, but there is a reason why we do have some of them. And if anybody else wants to jump in please do.

Joyce Vance:

No, I think that's a great explanation. Alabama is one of the jurisdictions that has abrogated statute of limitations for sex crimes. So you can go back and charge old sex crimes. That's particularly important for instance, in the situation that we've discussed with Nassar, who was convicted of sex crimes against the gymnast who were in his care. And so I think that's an important step.

Jill Wine-Banks:

Yeah. It's especially important in crimes where people are reluctant to report them and who may take longer than the statute of limitations to build the courage to admit that they were raped, for example, that's one of those situations. We're seeing men who have been raped are very reluctant, much more reluctant than women to report it. And that's true in the military as well as in civilian populations. And I think we need at least long enough statutes of limitations. But Kim is right, that there is a reason evidence goes stale, memories go bad and it's very hard to prove a case at a certain point. So it's not to protect the defendant from having this hang over their head and say, "Well, if I can wait it out five years, I'm safe." But it is to make sure that when a trial happens, due process is done.

Kimberly Atkins Stohr:

All right. And our last question is from Robert in Canada. He says, the Dominion Voting machine company has filed a lawsuit against media outlets for defaming them in comments in relation to the 2020 election. Could there not only be a cash settlement involved, but also a requirement that the media outlet state their error, that there was no fraud in the election? What do you guys think?

Joyce Vance:

Well, that's one of the first things that happens in a defamation lawsuit. In some places you have to go to a person before you sue them and demanded retraction of the defamatory comments. And in most places, the law says that you're entitled to that retraction in the same forum where you were defamed or libeled. And so I think that absolutely, that's a form of relief that a court could order in these cases. And it would be fascinating for instance, to see Fox News forced to retract the big lie. I'm all in favor of it.

Kimberly Atkins Stohr:

Yeah. And we did see on some networks already. I won't say which one I thought because I'm not 100% sure. But we did see when these lawsuits started flying, people began to try to defend against these lawsuits, begin issuing those retractions online. So that certainly is the type of relief that is available.

All right. Well, thank you so much for listening to #SistersInLaw this week with Barb McQuade, Joyce Vance, Jill Wine-Banks, and me Kimberly Atkins Stohr. Don't forget to send in your questions by email to [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tweet them for next week show using #SistersInLaw. This week sponsors are Helix, Magic Spoon and Policygenius. You can and should find their links in our show notes. Really, please support them. We're so grateful to them because that is why we are able to bring you this show. To keep up with us every week, follow #SistersInLaw on our Apple Podcast and wherever you listen. And please give us a five-star review, and we love to hear your comments. See you next week with another episode, #SistersInLaw.

Joyce Vance:

Perfect timing. Thunder just starting outside [crosstalk 01:13:56].

This transcript was exported on Aug 14, 2021 - view latest version [here](#).

Kimberly Atkins Stohr:

Me too. Literally, I looked at the radar on my phone. I was like, "Ooh, it's a big nasty cell coming." So that worked out.

Barb McQuade:

You know what, I bet it's the one that was across the Midwest in the last few days, we lost power for a couple of days. That's rough.

Jill Wine-Banks:

I had no power from 7:00 PM until noon. I mean, I was this close to not being able to interview Joy Reid because I had no power. And we were figuring out, Mike came up with a solution. I could go to my car to charge my cell phone, which was dead so that I could do it from my car on my cell phone. Five minutes before the lights went off, I had done my first use of a pressure canner, which requires precise timing. And if it had gone off, I would have had to start all over again and none of you would have been able to appreciate my habanero peach jam, which I was in the middle of making.