

Joyce Vance:

Before we start this episode, I want to note for some of our listeners that we will discuss the R. Kelly case, which involves some serious allegations of sexual assault, rape, and sex trafficking. So we felt like we should issue a trigger warning to our listeners who might find this to be a difficult subject in the event that you want to skip through that set segment. The first segment of this week's episode.

Welcome back to #SistersInLaw with Jill Wine-Banks, Barb McQuade, Kimberly Atkins Stohr, and me Joyce Vance. Today, we're going to discuss the R. Kelly trial, take on Donald Trump's lawsuit against the New York Times and his niece Mary, and discuss the implications of a possible decision by the Supreme Court to reverse or restrict Roe versus Wade. As always, we really look forward tackling some of your questions at the end of the show. We've got some great ones today, but before we start in, it's fall, I woke up this morning and it was cool. Even in Alabama, the calendar says it's fall. So I'm curious, and I need to ask my sisters, what are you most looking forward to this fall? Barb, start with you, because I bet I've got a clue about where you all head.

Barb McQuade:

Well, for me, the seasons are all about which sport gets played and fall means football. So I really enjoy football. I play in a fantasy football league. In fact, this weekend I will be attending a high school football game tonight, Friday, a college football game on Saturday and an NFL game on Sunday. So I really enjoy football. I think it's a lot of fun. I enjoy watching it. And that's what fall means to me. How about you, Jill, what does fall mean to you?

Jill Wine-Banks:

It definitely does not mean football. For me it means this year a return to live Ballet. And I just received my Joffrey tickets. I'm a subscriber. And I'm also for Hubbard Street, which are two of our wonderful Chicago dance companies. And I just love that, but it also means for me cooking soup or casseroles, but mostly soups. I love cooking soups of all kinds, whether they're mostly vegetable soups, I would say is my favorite with all kinds of ethnic spicing. Love it. So that's what I look forward to. Anybody else do soup cooking or Kim, what are you looking forward to?

Kimberly Atkins Stohr:

I do do soup cooking, but the one thing that's sad for me is summer is my favorite seasoned by far. So it's really sad when the first day of fall comes. And like you said, this year, it was pretty stark with the weather. It got very cool very quickly which caused me a little bit of depression, but I'm a fashion girl and I will say I love boots. And so I am looking forward to wearing, I have a very nice collection of boots, maybe too many. But I wear them all. And I bought a new fall handbag last week. So I'm leaning into the browns and the leathers coming back into fashion.

Barb McQuade:

What about you Joyce?

Joyce Vance:

I'm like Kim, for me fall, a lot of it is about fashion because as a knitter, it's the time where I can make the switch from knitting with linen and silk back to knitting with wool and cashmere and alpaca, my favorite things to knit with. So I'm excited about wearing my hand knits. I've got yarn that I ordered and that's laid out so I can cast on two knit sweaters to wear this fall. So I'm looking forward to that. Like Jill,

I love to cook and I do love making soup Jill and I do something I wonder if you do. I use pumpkin pie as a thickener in a lot of soups and stew in the fall. I think the flavor is wonderful, but I also love pumpkin custard, whether it's savory or sweet. So I'm looking forward to that. But most of all Miss McQuade roll tide.

Barb McQuade:

Blue, blue.

Joyce Vance:

So Jill, I think you're starting us off this week with a discussion of the R. Kelly trial.

Jill Wine-Banks:

I am. And this week the trial of R. Kelly for sex trafficking and racketeering has gone to the jury. His defense said all the witnesses lied. They compared him to Martin Luther King, Hugh Hefner and Mike Pence. A strange combination. And you may scratch your head about why, no one can explain the reference to Martin Luther King, but the reference to Playboy founder, Hugh Hefner was to rebut the accusation that R. Kelly's lifestyle was a crime because he was really just a playboy. Now of course there's no accusations against Hugh Hefner that he ever had relations with minors, which is what's charged here. And the reference to Pence was to reduce the sting of the evidence that Mr. Kelly forced his housemates, which is what I'll call them victims in other language. He was forcing them to say daddy, as his title in the same way that Vice President Pence's calls his wife mother.

Prosecutors summarized the voluminous evidence against him. And I think it's now time for us to look at what the charges are and why it matters. So let's start with looking at the charges. He of course is accused of heading a criminal enterprise that employed agents, runners, bodyguards, and others to lure and trap girls and young women to satisfy his sexually predatory desires. And the indictment, if you read the whole thing reminds me of the scheme that Jeffrey Epstein used and the allegations reported about Matt Gaetz in terms of having an enterprise to procure young girls and transport them and then trap them. So let me start with you, Kim, you could maybe summarize the charges of sex trafficking the Mann Act and RICO, and maybe compare it to charges against Kelly in the past and why this case is different than the Epstein and Weinstein and Cosby cases.

Kimberly Atkins Stohr:

Yeah. So in this case, as you said, it's a racketeering charge that sort of over arches over the entire thing. And there are 14 underlying charges as well, which includes things like kidnapping, forced labor, sex trafficking, as well as multiple counts, eight counts under the Mann Act. And the Mann Act is a federal statute that prohibits sex trafficking cross state lines. So really serious charges here. And so according to the indictment, basically what the prosecutors are charging is that there was a grand scheme. This wasn't just hearing their occasional instances of R. Kelly acting improperly, there was a grand scheme in which he oversaw through the help of his managers, his bodyguards, his drivers, personal assistance, everyone who worked under him this enterprise to recruit women, fans of his music to engage in illegal sexual activity. Many of them were minor.

And these girls were essentially identified, picked out for R. Kelly and escorted backstage at events, even during his first trial. These girls were found who came out to support him at the courthouse and lured in and groomed for him. And for nefarious sexual conducts. Again, many of these women were underage. It's really horrific, but I think the fact that he is being charged with racketeering is really

important here. Generally speaking, when you have charges of sexual misconduct, they're individual, one person is alleging this charge against a defendant. It becomes a, he said, she said situation in which the credibility of the victim is a huge component of the case. When you're charging racketeering, that gives prosecutors the ability to really paint a broad and full picture. And in this case with R. Kelly, he had been doing this activity for years, for decades and they can bring in a lot of evidence about a broad pattern of conduct over the years.

And it really makes it easier not only to make that case, but also just for the jury to understand what this is. It's not just one person often in cases when it's just one person. Even if there are other allegations of sexual abuse, they're not always allowed to come into evidence in a particular trial. So this gives them much more fulsome showing of it. And I think going for racketeering, which is something we usually see in mob cases, I think was an important approach to prosecutors here.

Jill Wine-Banks:

And what do you think is the difference between past celebrity cases and this one?

Kimberly Atkins Stohr:

Yeah. So one big one that I see is and one reason why we are talking about it, if you did not know that this trial had gone on for almost a month, you would be forgiven because hasn't been given the same mainstream media cable news attention as say Bill Cosby's trial or Harvey Weinstein's allegations or others. In my opinion, it's because these are predominantly young black women who made these charges. I think that's why it took, although R. Kelly in the past did face charges of child pornography for which he was acquitted back in, I believe it was 2008. In this case, I think it is a lot more difficult for law enforcement or less likely for law enforcement, for media, for others to believe young black women, when they say that R. Kelly was committing these crimes.

And I think as important as the Weinstein allegations as important as the Cosby conviction, even not withstanding what happened in the end, were for the victims, for the survivors of sexual assault to say, "Okay, we can see people being held accountable." I think in this case, the idea that R. Kelly to be held accountable for this is huge, not just for the specific victims who he, and we're talking about, he kidnapped these women, he held in hostage in his home, really atrocious things. If you saw the documentary Surviving R. Kelly, you know what I'm talking about, awful, awful things. For him to face justice is so important in a way that transcends for black women, the Me Too Movement. And I think that this is really important and I'm really glad we're talking about it.

Jill Wine-Banks:

Excellent. And from what you just said, I think it's important to note that the defense partly is defending on the grounds that these women were really stalking him, they loved him, they adored him. The prosecutors closing argument, ridiculed the notion raised by the defense that Kelly's sexual exploits were completely legal and consensual. And the prosecutor said, quoting her, "Having sex with underage girls isn't a relationship, it's a crime. Causing money to be paid to a public employee for a fraudulent ID. So you can marry a 15 year old is bribery and that's a crime." And then she went on to tick off a list of his other alleged crimes, which included videotaping sex with minors and exposing a sexual partner to herpes without telling them, forcing minors to participate in star in pornographic videos, et cetera. So, with all of that evidence in mind. Joyce, can you tell me what you think the strength of the evidence is both for the defense and for the prosecution in terms of the elements of the crime charged? And does it matter that he did not testify? Will that hurt his defense?

Joyce Vance:

So really interesting questions, especially because you and Kim have highlighted how unusual it is to approach these sorts of crimes with the racketeering charges. And I have heard some commentators characterize his defense's scattershot. I think that that's pretty kind. It's neither a good nor a strong defense. They just seemed frankly, to be unable to get it together on the defense side of this case, from earning the judge's displeasure for only disclosing their witness list at 7:00 PM last Sunday night, they were pretty late and she was unhappy about that. And even then, just once they'd their witnesses, it seemed like they had no clarity, no focus. One of the witnesses they called the witness stand only to acknowledge that he was out of town and unavailable. So the government's theory here was novel. It was an unusual approach, it's appropriate because it highlights, as Kim says that this wasn't just in individual acts of sexual misconduct even though they would be crimes, it was this overarching racketeering activity and the use of this structure and people around him to enable his conduct by committing a lot of other predicate offenses.

The government's case took a lot of time and a lot of witnesses to put together more than 40 witnesses, but the government built it's case pretty meticulously establishing all of the elements of racketeering. And the defense because it was a novel theory could have tried to pick away at it, could have tried to really make some inroads on the technical legal elements of the offense. And they just really didn't do that. They focused heavily on witness credibility. It didn't go very well for them. One example was a defense witness, Larry Hood, a childhood friend of R. Kelly's. He testified that he had never seen R. Kelly with underage girls, but was subsequently forced to testify that he was in fact there the night that Kelly met Aaliyah, when she was only 15. So that obviously seriously damages his credibility, same thing happens later on, on cross examination where he takes this incredible hit.

One of the reasons that they put him on the witness stand is he's a former police officer. So high credibility. And he explains that he left the police force in good standing, but on cross examination, he's forced to concede that he left the police department because he had pleaded guilty to forgery charges at that time. So even if he had been a good, strong credible witness who had said, "I never saw Kelly with underage girls." Even that I don't think would've been a very good defense because the prosecutors would've just said, "And he wasn't around him all the time." And we have specific, highly credible witnesses who testified a specific crime specific instances of misconduct. So that alone wouldn't have done it, which leads us Jill to the last part of your question, which is whether Kelly is harmed by not taking the witness stand.

I have maybe a slightly different take on this judges routinely instruct juries that they shouldn't take any notice that doesn't mean anything when a defendant doesn't testify that the government bears the burden of proof beyond a reasonable doubt, it's not up to the defendant to establish his innocence. And I think juries listen to that. And I think that they're capable of taking it seriously. They may not like it, they may want to hear the defendant's side of the story. I don't think that they hold against a defendant per se, but the problem in this case is that most defense lawyers argue that the defendant didn't have to testify because the government had failed to prove one or more elements of the offense. And Kelly's lawyers are going to be hard pressed to do that. I think this will be a fairly quick verdict of conviction on at least some of the counts.

Jill Wine-Banks:

It'll be interesting to see. And Barb let's look at really importance of this case. Why does it matter? Why should we care? How long do you think it will be before the jury reaches a verdict? They went out about four hours before we started recording this. And if you can hear in the background, my dog is howling because I don't know why. I mean, maybe he's saying the jury's in.

Barb McQuade:

He's saying convict.

Jill Wine-Banks:

Yeah. He crying the crimes. Go ahead.

Barb McQuade:

I think these are very serious crimes and I think it's easy for people to minimize some of the ways that R. Kelly's defense attorney did. I think sometimes a defense tactic is to accuse the government of being the morality police. In that they don't approve of sexual activity, but this case involved underage girls, and it also involved using the power that he had the trappings of his wealth to force girls into forced labor, forced sex. And as you said, there are even allegations in this indictment of kidnapping. So I also want to move. So this is in my view, a very egregious case. I want to move even a little bit beyond this too, to cases where maybe there's not a kidnapping. I think sometimes when we think about sex trafficking, we imagine women in chains or bound and gagged during a cage.

And so often that's not the case. They are instead lured in with drugs and become addicted to drugs. There are threats of beating or there are financial coercion that is used that causes people to be making decisions against their will. And so I think it's a very serious crime and I'm pleased to see the case taken so seriously. And I think it does send an important message that this is a serious crime. I also echo Kim's thoughts, which is, women of color. We're seeing in this case, the case of Gabby Petito, I think it is, we carry an awful lot when a white woman is missing or a white woman is murdered as we should. But a lot of times we don't give that same concern to women of color. And I think this is an opportunity to elevate that concern and to say all people who are victims of horrendous crimes matter and should horrify us and we should hold the perpetrators of those crimes accountable.

Jill Wine-Banks:

Those are two really important remarks in terms of why this case matters. And the sex trafficking is something that maybe we should spend some time on in a future episode, because I don't think people realize how widespread and important sex trafficking in America is and what exactly it means.

Kimberly Atkins Stohr:

Hey, Jill, are you still using Noom?

Jill Wine-Banks:

I am, but I'm just got an SOS message from my coach, Olivia, all of our coaches. And it's because they're encouraging us to go out on our own take responsibility. So I thought, okay, I'm not logging and I'm not going to read the articles. I'm just going to do it on my own. And you know what? I miss it. I'm looking forward to going back to reading and logging. What about you?

Kimberly Atkins Stohr:

Yeah, I'm still doing it too. I really do like the way that it makes me mindful about what I eat. I have to admit, I was really hesitant to do any fitness or food logging app, but Noom is different. And it really makes you learn about the way to eat, why you eat the way you do. And I found it really helpful. What about you, Joyce?

Joyce Vance:

Noom is so forgiving. I had a bad couple of weeks when I went back to teaching, it was tough to make time for everything. And so I was still eating pretty mindfully, but I wasn't doing a good job of tracking. Olivia was so kind, she worked with me very patiently. I mean, I'm starting to feel like she's a friend, to help me get back into the groove without making me feel like I had failed and needed to leave Noom behind. So it's been really great. And that's what I like the Noom app it's easy to use. And it's a really powerful tool that shows you how to understand your cravings and build new habits to reach your goals.

Barb McQuade:

Noom shows you how to pursue your goals that you set for yourself and make sure you reach them. It focuses on motivation and improvement. No gimmicks, no food is off limits. It's about finding your balance.

Joyce Vance:

And if you're like us, you really are busy. So I love that Noom only asks for 10 minutes a day. Over 80% of Noomers end up finishing the program. And more than 60% of users lose 5% or more of body weight, 60% keep the weight off for a year or more.

Barb McQuade:

I've lost 35 pounds since April using Noom.

Joyce Vance:

That's so amazing.

Barb McQuade:

I'm back to my pre-baby weight-

Kimberly Atkins Stohr:

Wow.

Barb McQuade:

... of 24 years ago, I'm feeling fit, strong, energetic, and with Noom, you can start building better habits for healthier, long-term results. Sign up for your trial at noom.com/SistersInLaw that's noom.com/noom.com/SistersInLaw. To sign up for your Noom trial. Look for the link on our show notes.

Joyce Vance:

Kim, the former guy has filed a lawsuit against the New York Times and also against his own niece. Help us understand what's going on here.

Kimberly Atkins Stohr:

Yes, you are absolutely right. Former President Donald Trump has filed suit against the New York Times, several of his attorneys and his own niece who wrote a book about him, that came out very recently. So I'm going to turn to Jill to help us understand what exactly this lawsuit claims and what the former guy is seeking. And also, I didn't see a defamation charge in here. Tell us what's going on, Jill.

Jill Wine-Banks:

Okay. So that's a lot of different questions and they're all good ones and important. And I think that in our show notes, we should post I'll send a link to the actual document because it makes fascinating reading, partly because his lawyers have all quit on him and he's taken on brand new lawyers. The lawyer who actually filed this may have had it drafted by Donald Trump, because it sounds a lot like his language. And I'll read you some of it and you'll know why I say that. But his new lawyer is from a small firm near his New Jersey country club in Bedminster. And she filed this lawsuit in Duches County, New York, and it accuses Mary Trump, three reporters from the New York Times and the New York Times of conspiring in an insidious plot to improperly obtain his confidential tax records in violation of Mary Trump's nondisclosure agreement with him, which was part of the settlement that she reached with him and other family members for cheating her out of her inheritance.

And he accuses them of exploiting these documents in news articles and her book. And for, of course he says, it's a personal vendetta. And it's because of their desire to gain fame, notoriety, a claim and a financial windfall, and to advance their political agenda. And I will say there are two different ways of analyzing this. One is the case against the New York Times and the reporters, which I think all commentators have widely said, "There isn't a chance that that case is going to proceed anywhere." There is at least one commentator Danny Cevallos who thinks that the case against Mary Trump could prevail in some way. But let's look at it. It starts with an NDA, a non-disclosure agreement, much like the one that we all heard about during the stormy Daniels and Karen McDougle non-disclosure agreements. And I'm not sure in reading this NDA that the documents that he's complaining about his tax returns are actually within it because the non-disclosure agreement says, "Mary Trump shall not directly or indirectly publish or cause to be published any diary, memoir, story, interview, article, essay, account, or description, or depiction of any kind whatsoever concerning their litigation."

Doesn't say anything about documents or tax returns. So I'm reading it narrowly I know, and the court may broaden it, but the first question is, is this document even within her non-disclose agreement? And then secondly, is the public interest in it make this non-disclosure agreement against public policy? Which means it's a contract that the courts will not enforce. He's asking for compensatory and punitive damages in the randomly picked amount, or my interpretation that it's randomly picked 100 million based on absolutely nothing that says why he had that kind of damages and to get to your last question, which is why wasn't there any defamation? I would say, well, he's lost so many defamation cases that maybe he's learned his lesson. But more importantly, because everything that was published is true and truth is a defense to defamation.

And even if it was incorrect and harmful, because it was published in the way it was in the United States, you would need proof that the writer or publisher acted with actual malice by knowing the falsity or by reckless disregard for the truth. So one it's true. So it false completely, but even foreign, was mistakenly untrue they would have to have known that and acted in malice. So that's probably the main reason, but in March, Trump did lose a defamation case against the New York Times for reporting that he was linked to Russia and it was based on, there was no malice. So I would say that's why he didn't bother with defamation while he's, by the way, defending being charged with defamation by E. Jean Carroll and Summer Zervos where there are also, I think, new lawyers replacing the lawyers who were defending him.

Kimberly Atkins Stohr:

I'm so glad you mentioned about the request for damages 100 million. When I saw that, the first thing I thought was Austin Powers, [crosstalk 00:27:39].

Jill Wine-Banks:

\$1 million. I wish our audience see you doing that-

Kimberly Atkins Stohr:

Same.

Jill Wine-Banks:

It was so cute.

Barb McQuade:

We should take a picture of [inaudible 00:27:48].

Kimberly Atkins Stohr:

And yes. And it's also worth noting that the piece that he's complaining about in the New York Times also won the Pulitzer prize. So yeah, really shotty reporting. So Barb, what do you think of this suit? Is there a chance that Trump could win particularly against his niece?

Barb McQuade:

Yeah, I think there is actually, it's a breach of contract case as Jill described. And I think one of the things, when you take on somebody like this, and as Mary Trump even said publicly and said in her book, "I don't care what the consequences are. I think the world needs to know about this information. He's the president, his tax returns matter. And I think the public should be aware of that." So, we study civil disobedience in my criminal law class and sometimes students are upset to see that people go to prison for engaging in civil disobedience. That's what it means to engage in civil disobedience is that you are willing to take on the consequences because you want to get attention and make your point.

So I think there is a chance. I agree with Jill that number one, the language of the contract is really going to matter. And it talks about the litigation as Jill pointed out. So I'm not certain the language covers the underlying tax records. I also think that there's another issue that is really interesting with regard to both Mary Trump and the New York Times. And that is one of the elements of a breach of contract or tortious interference with a contract is damages. You have to show that as a result of this reporting or the disclosure that you suffered some harm. And I think it might be really difficult for Donald Trump to show that he suffered any harm. Because on the one hand, you've got his supporters about whom he has said, "I could shoot somebody in Times Square and they'd still love me." True. And then you've also got people who find him revolting for whom nothing more you can say would make you think any less of him.

True. So it may be difficult for him to show that his reputation was in any way damaged by this disclosure. So I think that's really interesting. And then with regards to the New York Times, tortious interference, means that I knew about this contract and I deliberately set out to cause one party to breach it. I think you'd have to show evidence that the New York Times knew about that contract and that they overcame the will of Mary Trump and forced her to breach the contract. I don't know that the facts are going to bear that out here. Number one, whether they knew about it, but number two, whether she was an unwilling participant, it seemed that she was very eager to share these documents. So I think the New York Times is probably going to be in fairly solid shape. I think Mary Trump is a closer call.

Kimberly Atkins Stohr:

Yeah. We call that in law school, a judgment proof plaintiff who has a reputation as such that it can't really be smirched. So Joyce speaking about tax returns, how does this case, if at all impact the ongoing civil and criminal actions against the Trump organization and those within it?

Joyce Vance:

Yeah. So this is such an interesting question. It's hard to figure out what the exact interplay is. Of course we know there's been litigation between Mary Trump and Donald Trump in the past. He tried to keep her from publishing her first book. And in that earlier litigation, she was actually able to get a ruling that said that the non-disclosure agreement was probably unenforceable. That's not what lawyers would call res judicata binding in this case, but it's a very similar analysis. And it's quite interesting, especially because the documents that the New York Times used, weren't Donald Trump's financial, or weren't his tax forms themselves. They were underlying financial documents that had been used in an earlier dispute over complicated stuff about whether Mary Trump was entitled to more of an inheritance than she'd received under family members wills. So it's an interesting question and whether or not this case will intersect with the criminal investigation that Cy Vance's office and that Leticia James, the New York attorney general are conducting.

Technically it looks to me like this case should go away pretty quickly. It has serious first amendment implications and New York has a pretty new anti-SLAPP statute. That's a statute that you can use against people who are trying to tamp down against participation in the Public Square against First Amendment exercise with this special law that allows you to fast track a dismissal and then to get attorneys' fees awarded to someone like Mary Trump. I would expect this case to go that way. But if that doesn't happen for any reason, and if this case were to move into discovery, Trump would be deposed pretty early on. One of Mary Trump's lawyers and the New York Times, lawyers is Ted Buttros a very experienced first amendment lawyer. I would expect to see Ted notice that deposition pretty quickly. And maybe others,

Jill Wine-Banks:

I want to add to what you said, because I think first of all, this is going to increase sales of Mary Trump's second book and maybe of her first as well. And the discovery could be a gold mine for the New York Times and for other, and maybe for Mary for a third book. So it seems like this was just a really bad idea to bring this case in that it's very unlikely to prevail.

Joyce Vance:

Yeah. I mean, I think that's really right Jill because depositions Trump, others who are involved like his sister, a former federal appellate judge, and it exposes them to risk even on the criminal side. To Kim's question, it's the law of unintended consequences. You get into a deposition, you're talking about taxes and financial matters in the context of this tort and a contract case. You're never really sure what's going to come to light and what it could do. So I think for those reasons, Jill's right, this case feels more like a stunt than it feels like a legitimate lawsuit. And given Trump's track record, you've got to believe that he'd dismiss it before he would sit down for a deposition.

I think that means the real question is why did he bring it in the first place? Is it a distraction for some of this other bad stuff going along? Is it maybe a fundraiser for him? It helps Mary's book sales, but maybe he gets money for his 2024 campaign. Maybe it's a warning shot to other people who have non-disclosure agreements with him that he will try to enforce those vigorously. But it could just be a

bad strategy from someone who can no longer attract top flight legal talent. I think we'll just have to wait and see.

Jill Wine-Banks:

Joyce, are you using Thrive Causemetics?

Joyce Vance:

I am. In fact I have their mascara on right now. I'm such a huge fan. It's like big without looking clumpy. I'm not a big makeup person, but I am sold on this mascara. What about you, Jill?

Jill Wine-Banks:

I totally have been using this for years and love it. It works with my contact lenses on because it never ever flakes. It never bleeds onto your skin. It never leaves us some dark shadow. It stays on, it makes your lashes look really long. It's totally perfect. Completely. And Kim, what about you?

Kimberly Atkins Stohr:

I love it. So unlike Joyce, I'm a total makeup person. I love makeup. I was doing lashes before even, I had to do it for TV for all those years and I stopped using false lashes because Thrive Causemetics mascara makes you look like you have them. They just look so great. I get so many compliments on my lashes. And it's good to know that it's a product that does good while it's making you look good. What about you Barb?

Barb McQuade:

Yeah, I use the mascara also. I'm not a big makeup person, but I do use the mascara and it's terrific. And I too, Kim am a fan of the fact that they are not testing on animals. They are a sustainable company. So I think that's important.

Jill Wine-Banks:

They are Thrive Causemetics makes high performance vegan, 100% cruelty-free products without the use of parabens or sulfates, their clean beauty clinically proven formulas highlight your best features and they even improve your skin.

Kimberly Atkins Stohr:

Thrive Causemetics, never test on animals and are leaping bunny and PETA certified as 100% vegan and cruelty free. On top of that, Thrive Causemetics has a bold mission that's truly bigger than beauty. For every product purchase, Thrive to help women thrive, by supporting non-profit partners with funds or products. That's how Thrive makes sure that their beauty brand that goes beyond being skin deep.

Jill Wine-Banks:

We love everything about Thrive Causemetics. Their bigger than beauty mission is truly in aspiring, and you're going to love their products as much as we do.

Kimberly Atkins Stohr:

Visit thrivecausemetics.com/sisters for 15% off your first order. This is an exclusive offer. You can get only here, that's thrivecausemetics.com/sisters for 15% off your first order. Look for the link in our show notes.

Jill Wine-Banks:

I'm going to order more product today.

Kimberly Atkins Stohr:

Me too.

Joyce Vance:

We've had lots of reasons to discuss abortion law in America the last few weeks, but there's more. Barb, can you lead us through a discussion of the latest developments in the law and what it's going to mean for our rights?

Barb McQuade:

Yeah, we've seen more news this week in the wars against reproductive rights. Not only in Texas and Mississippi, but also in Arizona. And so first Joyce, let me ask you maybe to bring us up to date on some of the latest developments we've seen in Texas, that's the place where the legislature passed SBA, the law that prohibits abortions after six weeks, we know that DOJ filed a lawsuit and a motion to block the law, but we have not seen a decision in that case yet, but there was some activity in the courts this week, we had two lawsuits by private parties and an appeal in the original lawsuit that was brought by abortion providers. Can you tell us about those cases?

Joyce Vance:

Sure, there's lots going on. It's a little bit difficult to keep it all straight, but the plaintiffs in the first case, the challengers, providers of abortion and advocates of abortion in Texas have asked the Supreme Court for *Vershashi Hari* before judgment. That means they want the Supreme Court to hear the case without waiting for the Fifth Circuit to decide the pending issues and issue, of course, is whether a state can construct a law to insulate it from federal court review by delegating enforcement to the general public, the private vigilante mechanism we've talked about. So this type of a request to leapfrog over an appellate court is not usually successful. Perhaps this is more to look forward to on a future shadow docket ruling from the Supreme Court late at night. That leads us to the DOJ lawsuit. In that case, U.S. District Judge Robert Pitman, Barb's and my former colleague has scheduled a hearing for October 1st.

So only about a week out to consider in DOJ's case a request to temporarily block SBA while it's constitutionality is being litigated. And that of course is the same kind of request that the plaintiffs in the first case filed and that the Supreme Court refused to grant. So even if Judge Pitman were to impose it in this case and look, DOJ will have a lot better evidence than the first plaintiffs had, because now the law is in effect and we have some evidence that talks about what happens once SBA does become the law in Texas. Nonetheless, it would still face appeal in the Fifth Circuit and in the Supreme Court. So we'll have to see what happens there. But it's interesting to note that also in that same case yesterday, Jonathan Mitchell, the Scalia clerk, who's responsible for writing the law. He's trying to intervene in the DOJ case on behalf of three future SBA plaintiffs, private plaintiffs.

It's not clear yet how that's going to proceed. So we'll have to keep our eyes on it. But to me, just off the cuff, it looks like a real strategic error because it reinforces how clearly the state is vesting

it's authority in private parties and depending on them, I think that's good evidence that DOJ can flip back on the State of Texas.

Barb McQuade:

Yeah. And Joyce, may I also ask you, maybe you're about to get this. Speaking of private parties, there's also the reliance on private parties and we saw a doctor engage in civil disobedience by performing an abortion. And now we've seen some lawsuits filed against him. Can you just tell us about those?

Joyce Vance:

Yeah. So that's the last and this [trica 00:41:08] of legal actions that we have to try to untangle to understand the landscape here. As you said, Barb, a doctor in Texas, Dr. Brad wrote an opinion in the Washington Post, indicating that he had done an abortion that violated the statute. And so we've now got at least two vigilante suits. I say at least two, because who knows when the next one will come? They're really pretty squirrely. I haven't seen scheduling orders in these cases yet, but I would expect them to proceed like any other state court action. That's where they're filed in state court. And it's unclear, but one suspect that the defendant in this case, Dr. Brad, who will be represented by the fine lawyers at the National Center for Reproductive Rights, writes that they will try to use these lawsuits as a vehicle to declare the law void and to try to block it from staying in effect while litigation is ongoing.

So there's a little bit of subtext here, at least in the second lawsuit, it's clear that the person who filed the lawsuit is hostile to SBA. He labels himself on the complaint as a pro-choice plaintiff and Dr. Brad is a pro-choice defendant, which is a dead giveaway. And then he proceeds to ask the court to declare the law void rather than to award him \$10,000. The first lawsuit brought by [Amber Dowel 00:42:29] de-barred and convicted lawyer is a little bit closer to what Texas intended. He asks for an award. He wants a \$100,000 in damages, but he acknowledges that the statute provides for a base of \$10,000, but he's more of an opportunistic person who seems to figure, "Somebody's going to get this money. It might as well be me."

And so that appears to be the environment that led him to file the lawsuit. The real question, though, with these state suits is in state court in Texas, where the judges may be a little bit less friendly to this law than the Fifth Circuit and the Supreme Court have been, will there be a different ruling in state court, which would set up a conflict between the state and the federal court rulings?

Barb McQuade:

Yeah. And I know a lot of people laughed at these two lawsuits, but I think at least it gets the wheels of justice turning. And it could be, it now gets the question before a judge, the whole point of the statute was to try to chill behavior but make it incapable of judicial review. And so it took somebody to actually perform an abortion and for somebody to sue that person to tee up the question. And so now it's in the court. So maybe we will see a successful challenge there. Well, Jill, let me move on to you and ask you about what's going on in Arizona because not only is there activity in Texas and then of course, Mississippi, where the Supreme Court has taken a case that it's going to hear this term that makes abortions illegal after 15 weeks. We saw some action in Arizona where a new law makes it a crime to end a pregnancy based on a genetic abnormality. And we had some news in that case this week. Can you tell us about that situation?

Jill Wine-Banks:

Yes. It differs from the Texas law because it, first of all defines person at is at the time of conception. So that makes it different. It's not even six weeks, it's at the moment of conception. But it also focuses largely on, you can never knowingly perform an abortion because of a genetic abnormality. And it's of course, just one of about 90 laws that have been passed by states in reliance on the new 63 conservative majority on the Supreme Court. And this one has criminal penalties. It's not the bounty hunter that Texas creates, but is a truly criminal case where the doctor can go to jail.

It doesn't make it illegal for the woman. The National Council of Jewish Women, two doctors, the Arizona AMA and Arizona NOW, the National Organization of Women, have sued to try to and join that law going into effect on September 29th, which is next week. And it was heard in federal district court this week in a very unusual kind of argument where the judge said, "I don't want to hear any argument. I'm going to ask each of you questions and you can only answer my questions." So I've never seen an argument like that.

And I listened to it. It was very interesting. There were a couple of arguments made by the plaintiffs, the National Council of Jewish Women of Arizona one is that it was basically so vague that it was void for vagueness that it included internal inconsistencies. So for example, it criminalized the action of the doctor doing the abortion solely, and I stress the word solely for genetic reasons, but it also requires that the physician sign a form saying the abortion was not sought because of genetics, which omits the word solely. And that leaves the doctor wondering, well, is it an enough that it's just because of in combination with something? So the state argued for example, that, well, if the woman argues that she wants the abortion because she can't afford to have a child that will be born with this abnormality, then not solely because of, and so she wouldn't, or the doctor wouldn't be prosecuted for that. But since she has to be told that it's because of not solely, that creates some confusion.

And so they challenged it about that unclarity and then it's also because of personhood. So in this case, it's unclear what happens if all of the laws of the State of Arizona apply to the fertilized egg, which is all it is at the time of conception, than could a pregnant person who miscarries because for example, she works and has to lift something heavy and that causes a miscarriage. Would that be considered manslaughter? There are a lot of other questions that come up in that when you think about what laws might apply to a person and it also of course, is confusing because it requires the doctor to tell a potential patient for an abortion that Arizona law prohibits abortion because of the unborn child's sex or race, or because of a genetic abnormality.

But that isn't what the law says. It makes it a crime for the doctor, not the patient. So there's nothing that prohibits the abortion. It's only prohibiting the doctor who knows the cause to do it. It was really interesting to hear the defense of this by the attorney general of the state. The state argued that it was really just an extension of the protections of the Americans with Disability Act, and they were going to apply those protections to an unborn child from the time of conception before it's even an embryo. And it would fulfill, they said the state's obligation to protect the disability community. And they also argued, well, "We wouldn't really prosecute a woman as long as she lies about the reason." So it's not that she can't get an abortion. She just can't tell the doctor the truth. And that is actually not only a bad idea, because I don't think any law should encourage people to lie or this reverts back to what happened in gays going into the military, don't ask, don't tell, so you just can't tell you can and do it just don't tell.

But the argument against that is so strong that, that is not a reasonable way of approaching it. First of all, the doctor would almost surely know because Arizona requires a mandatory sonogram and there are many genetic abnormalities that would show up in a sonogram so that the doctor is going to have circumstantial knowledge. That, that is the reason for the abortion. And no doctor's going to take that risk because he could be disbarred, he could be charged with a crime. So when you put all that together, it was a very interesting argument. It is a very strict law, but everybody should be aware. This

is only one of many. And that you should be aware your state may be one that has passed something you didn't even know about.

Barb McQuade:

I was just going to say that last point is such a good one because states like Alabama, pass personhood bills and they did it a couple years ago, knowing it was unconstitutional so the language in the bill says, "And when the Supreme Court reverses Roe, this bill will become the law in Alabama." We're not alone in that practice.

Joyce Vance:

Yeah. And you know this idea about personhood too. I am waiting for a lawsuit. My Jewish sisters have explained to me that in the Jewish faith life begins at birth, not at conception and I am waiting for the religious rights challenge to say, "You are discriminating against my religion by declaring life to begin at conception." I think that-

Jill Wine-Banks:

There's actually a conversation underway about that First Amendment theory whether there might be a Jewish woman who would want to assert, it's sort of like it's the inverse of masterpiece cake. "My religion says I shouldn't have to bake a cake for a gay couple." The theory here would be, well, "My religion says I can get an abortion."

Joyce Vance:

Yes. And you're restricting my religious right.

Jill Wine-Banks:

"Later on you're interfering with my a religious practice." So that could be a very interesting theory when it's raised.

Kimberly Atkins Stohr:

Yeah. The plaintiffs in Arizona considered raising that argument, but felt that they were on such strong grounds already. In terms of this really being a ban of prohibition and not a regulation. So although they would say, of course, if it was only a regulation, it was an undue burden. And therefore also not within the Casey rules, but they did consider that. And if this goes any further, that could become an argument that they raise as well. Very interesting argument.

Barb McQuade:

Here's a conversation changer. Life doesn't begin at birth, life doesn't begin in conception. It begins earlier with a sperm. And so any sperm that is released and is not used to fertilize an egg is illegal and is a loss of life and should be criminally punished.

Jill Wine-Banks:

Look, you know how that works, right? I mean, Barb, if men had any real risk here, you'd be able to get an abortion at every ATM machine. Right?

Barb McQuade:

Yeah. Well, I want to talk a big picture about this. We've been talking about some of these individual statutes in Texas, in Mississippi and Arizona, but Kim, you wrote a fascinating piece in The Boston Globe this week about some of the arguments that are now being made are not only focusing on reproductive rights, but they're also using those arguments to also go after marriage equality and other rights that derive from this idea of right to privacy. Can you share your thoughts on that topic?

Kimberly Atkins Stohr:

Yeah. Just really quickly. I think it's important to realize that as Roe is threatened, it's not just the abortion right that could fall or could be imperiled by this. The reasoning for Roe is that the constitutional analysis is based on a privacy right, which the court found emanates from the constitution's right to liberty. It's called an unenumerated right. The constitution itself does not say, "You have a right to privacy," but what the Supreme court said is the right to liberty, that freedom, that basic fundamental freedom that the constitution guarantees also includes to privacy in order to make decisions about one's life, which includes whether or not to have an abortion. And it's very similar, not exact, but very similar to the type of legal reasoning behind a host of rights that we all enjoy every single day. Remember that the constitution was drafted in the 18th century at a time when folks like me were considered chattel property.

And when there were not full rights granted to women and not native people or not a number of things, indigenous folks. So what the court has done over the course of it;s time, and particularly in the '60s and '70s is hand down these rulings that said, "Look, we're going to look at this liberty, right. And we're going to look at these other rights enumerated in the constitution and interpret what they mean. And we think that what it actually means is that you have a right to privacy, for example, in your intimate relationships, in your own home." So laws, criminalizing, certain types of sex that was used against LGBTQ folks are unconstitutional. You have the right to marry who you want. You have that freedom. So a law in Virginia that criminalized interracial marriage is unconstitutional. You have a right to freedom and dignity that emanates from the constitution to engage in a marriage with the person you love.

So laws outlawing say same sex marriage are unconstitutional. Now, on the same sex marriage front, that case Obergefell that was handed down in 2015, wasn't just on unenumerated right. It was also based on equal protection, which is very much in the constitution itself. So I don't think that same sex marriage is in danger. If Roe is struck down. What I do worry about is the Supreme Court has yet to rule on say whether there is a personal right to bring up family as you see fit in a case involving gay adoptions. There are so many other rights that can emanate that protect LGBTQ people in particular and not just LGBTQ people, a lot of marginalized folks. All of these laws were made to protect marginalized folks.

And so I really worry about that. I also, in my piece, I talk separately and we can talk about this in another episode about the expansion of the Second Amendment in a way at a time where murders are up in this country that could really affect folks, particularly trans, people who face just such an enormously higher risk of murder in this country and it's usually done by guns and how that can affect it. But I think when we're thinking about Roe it's important to remember that these rights that we're talking about extend so much further.

Jill Wine-Banks:

So Kim, can I ask because I took constitutional law a lot longer ago than any of you, but my memory is when you're talking about the emanate from that it was called, it was in the penumbra.

Kimberly Atkins Stohr:

Correct.

Jill Wine-Banks:

You've always wanted to say that word on television.

Kimberly Atkins Stohr:

Penumbra.

Jill Wine-Banks:

So wasn't it in the penumbra of the rights that we get in the constitution?

Kimberly Atkins Stohr:

Yeah. And that's a great word because you know what a penumbra is when you're looking at sun. And you see those colors around it, that's the penumbra, it's not the sun itself, but it's an essential part of what a sunrise or a sunset is.

Jill Wine-Banks:

And if they get away with this to Barb's point about where it could expand to thus sperm, it could lead to women cannot have birth control. And that would be one of those things that, well, if they can get away with this, why not borrowing birth control? Kim, what have your experience has been like with insurance up until now?

Kimberly Atkins Stohr:

Yeah. I got married this year and it was a time that I had to think about all that stuff and we had to revisit our plans and it was good to have Policygenius as a tool to really simplify that process. What about you, Joyce?

Joyce Vance:

We've had the same insurance for a long time and I developed concerns over time. Are we getting the best deal? Is it right for us? So like you, even if you're established, it's always good to have a checkup tool. And I think that matters. Barb, what about you?

Barb McQuade:

Yeah. Information is the key to making good decisions and the ability to have that information comparison quotes all at your fingertips is the key to making good decisions. Policygenius makes it easy to compare quotes from over a dozen top insurers all in one place. 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. Any eligible applicant can get covered in as little

as one week with an award-winning policy rated number one by Forbes Advisor. And all it takes is a simple phone call. No doctor visit required.

Barb McQuade:

In a few 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 information. They don't add on fees, and they even handle the paperwork for free.

Jill Wine-Banks:

Head to policygenius.com to get started right now. Policygenius, when it comes to insurance, it's nice to get it right. That's policygenius.com or find the link in our show notes.

Joyce Vance:

Thank you to our family of listeners for always sending in such great questions. We really love this segment of the show. If you have a question for us, please email us at sistersinlaw@politicon.com or tweet your questions to us using the #SistersInLaw. If we don't get to your questions during the show, keep an eye on our Twitter feeds throughout the week where we'll answer more of them. First question this week goes to you, Barb. It's from MRB on Twitter. Now that the Jan six select committee has issued subpoenas to Mark Meadows, Dan Scavino, Steve Bannon and Kash Patel. The question is what will the committee do if these former Trump administration officials ignore the subpoenas?

Barb McQuade:

Yeah, I think that's such an interesting question. And if they ignore the subpoenas, I think it's a new landscape, I think we could see the Justice Department hold them in contempt and file a criminal case against them for contempt, which may coerce their compliance. I think an even more interesting question is what if they run into court and try to get them quashed on the basis of executive privilege asserted by Donald Trump? And that's a really interesting question and I don't think there's 100% clear answer. But based on the law that does exist, it is clear that number one, privilege does outlast a presidency. So there is a legitimate claim by President Trump that these conversations or incidents were privileged.

But the decision about whether to assert it actually belongs to the current president because he has to make this decision on behalf of the presidency, not on behalf of himself. And so we know that executive privilege is a qualified privilege. And so if he decides that the need for public information exceeds whatever protection this should get by executive privilege, the Biden administration can allow this to proceed. So I think those people are going to have to answer their questions. They may be able to delay things in court by filing a lawsuit, but eventually I think Congress is going to get their answers.

Joyce Vance:

Our next question is from Southern Dem Deb on Twitter, can congressional and DOJ investigations run congruently, She asks? Does one take priority over the other? Jill, it feels like this is in wheelhouse.

Jill Wine-Banks:

It certainly is because the Senate was investigating Watergate at the very same time that the Watergate special prosecutor was going. And it does complicate things because the Senate or the House, whichever it happens to be could give immunity. And one of the things we always were concerned about was

would they immunize someone we felt was an important defendant that we didn't want to get immunity? And there was also the question of could someone get confused testifying in public before television cameras to the Senate and say something different than they had said in the grand jury to us?

So we followed what the Senate was doing by watching it on television in a era when there was no VCRs, you didn't record something, you watched it live. So yes they can is the short answer to that. And there is no priority for one over the other. They have to somehow work out a cooperative agreement and we actually got some very good benefit from it. One was that someone on the Senate asked Alexander Butterfield, whether there was a taping system. And that's how we found out that there was. And that's how we got the tapes that ended up being the key evidence against the president and his colleagues.

Joyce Vance:

So history is always interesting. The name Alexander Butterfield is one that sticks with me. And I wonder if we'll ever get an Alexander Butterfield for the Trump era. Kim, our last question comes from Norby, Truth Seeking Dragon on Twitter. And the question is this. And it acknowledges a very sad moment in our politics this week when along awaited compromise bill between Democrats and Republicans on criminal justice reform and specifically on policing reform failed to materialize. Here's the question, is there a path forward for the George Floyd Justice in Policing Act without abolishing the filibuster?

Kimberly Atkins Stohr:

The answer to that is sadly no, and you're right Joyce. It was an incredibly disappointing, but unfortunately not surprising result that the negotiation over policing reform failed to come to any sort of agreement for months. They were haggling over the issue of qualified immunity, which in my opinion, is something that nonnegotiable you really can't move forward with police reform without it. But we have seen Republicans, including Senator Tim Scott, really staunchly against moving on that at all. And that's ultimately why it failed, which is disconcerting. Democrats have a majority in the house and the Senate, a very slim one, and they will not get a 60 vote threshold on this for the reasons I just mentioned.

They may not even get 50 votes, because I don't know what Joe Manchin's going to do on any given day. But with the filibuster in place, that's a guarantee that there will not be police reform this year. Think about that you all, I'm going to say it again. There will not be police reform out of Congress this year, after two years of protests. After everyone in America being horrified at the public lynching of George Floyd, Congress will do nothing. That's really shocking. It's really exhausting. And it's a sad week in America in my opinion.

Joyce Vance:

I think exhausting is exactly the right word here. All the Democrats were proposing to do here was to create minimal constitutionally sufficient standards for policing. In other words, a police officer can't put his knee on the neck of a person and kill them. I don't stand how we've lived through the George Floyd era. And we cannot have this reform and it's not just George Floyd, we know that this is something that happens predominantly to people of color, but to many Americans who are in the wrong place at the wrong time with police, it happens over and over. And I would say shame on them, but I think that they have no shame.

Jill Wine-Banks:

Joyce, I want to add one thing. I agree about how sad this is and how unbelievable it is. And that Kim is correct. There is no congressional action that can happen without getting rid of the filibuster, which personally I think is the next step that they should take. But Karen Bass today, representative of Bass said, "She's hoping that there will be executive orders that will take some of these needs into account and pass them through executive orders." So maybe there is some hope that we can have some police reform through executive orders. It's not ideal, passing the George Floyd Act would be the ideal solution, but it's maybe all that is left in this horrible environment where filibuster gives the minority a tyranny that they should not possess.

Joyce Vance:

Well, that's all that we have time for today. Thanks for listening to #SistersInLaw with Jill Wine-Banks, Barb McQuade, Kimberly Atkins Stohr, and me Joyce Vance. Don't forget to send in your questions by email to sistersinlaw@politicon.com or tweet them for next week's show, using the #SistersInLaw. This week sponsors are Noom, Thrive Causemetics and Policygenius. You can find their links in the show notes. Please support them as they really help make this show happen. To keep up with us every week, follow #SistersInLaw on Apple Podcasts or wherever you listen. And please give us a five star review. We really love to read your comments. See you next week with another episode, #SistersInLaw.

Kimberly Atkins Stohr:

Jill. You didn't tell me if you would make me soup.

Jill Wine-Banks:

I will definitely make you soup. And if I can get it into three ounce jars to bring with when I come to Washington, I will bring it to you. No, I'll have to figure out a way to send it to you, but I love making soup.

Barb McQuade:

What kind of soup do you make Jill, what's your favorite recipe?

Jill Wine-Banks:

I don't have a favorite because I keep trying new ones, but I would say carrots and squash are basic things that I think enrich the soup. I like making curry soups a lot. I don't know. I love soup and this year I-

Kimberly Atkins Stohr:

And Brisby loves soup.

Jill Wine-Banks:

That must be Michael coming home.

Kimberly Atkins Stohr:

Brisby says, "More soup mom."

Jill Wine-Banks:

This transcript was exported on Sep 26, 2021 - view latest version [here](#).

I did try making a two ingredient, peanut butter cookie because it's one of those things at that midnight that popped up on my screen and I thought, auch, that sounds good. It's peanut butter and puree of banana. Whoa, that's got to be good. Oh my God. It had absolutely no flavor. It didn't even taste good like peanut butter tastes, it's horrible and Brisby likes them though. So instead of getting his dog cookies-

Barb McQuade:

Oh, yeah.

Jill Wine-Banks:

... he's getting-

Kimberly Atkins Stohr:

Oh, that works out.

Jill Wine-Banks:

... two ingredient peanut butter cookies. So I didn't have to throw them away.