

Jill Wine-Banks:

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Barb McQuade:

Welcome back to #SistersInLaw, with Jill Wine-Banks, Kimberly Atkins Stohr, Joyce Vance, and mem Barb McQuade. This week, we'll be talking about the request by the Department of Justice for all of the transcripts that the January 6 Committee has put together. We'll also talk about the tragic shooting in Buffalo and The Great Replacement theory, and we'll talk about some of the practical consequences we're starting to see from the potential end of Roe versus Wade. And as always, we'll look forward to answering your questions at the end of the show.

First, I wanted to, one, acknowledge that our friend and colleague, Pete Williams is retiring from NBC News, and wondered what you guys thought about that. He's terrific. Have you guys had some interactions with Pete?

Kimberly Atkins Stohr:

Oh, I have. Pete was one of the first reporters that I met when I started covering the court, gosh, 15 years or so ago now, and he was always so good. I knew if my analysis was anything close to his, that I was on the right track, but he also is just the nicest guy. Everything from when my friends and I were planning a trip to Wyoming, that's where he is from, and he gave a ton of recommendations of things to do and was totally helpful, to just being a genuine, genuine guy when I see him at the corridor at NBC, and just, you knew his analysis was good and his reporting was spot on. So it's the end of an era.

Jill Wine-Banks:

It really is. He's been with NBC for what? 30 years. It's like amazing. He is what I think of when I think of the Department of Justice or the Supreme Court in terms of reporting. And it was really only recently that I realized he's not a lawyer. He gives the best explanations. He really understands in a very deep and profound way what the cases are about and can explain them in ways that are understandable to lawyers and to the average citizen. He is remarkable and he will be very much missed.

Joyce Vance:

So one of my favorite things about Pete was occasionally, you'd get an early on a Saturday morning call or you'd be goofing around late in the afternoon, and your phone would say Pete Williams. And he would have a question and he would always preface it by saying, "Now, I'm not a lawyer, but..." And then he would proceed to have a really strong analysis of whatever the issue was. And I'm going to try to tell a story without implicating who was actually involved, but one day he called me about a statute and he said, "What do you think the penalty is for this statute?"

And I knew the reason for the call is that the statute is ambiguous and DOJ takes a certain view of it. And Pete said to me, "I just don't think that that's right, because if you look to..." And he had gone two or three statutes back to see how it referred and what the congressional intent was. And he said, "It's clear to me that the statute should be something entirely different, don't you think?" And so I did all of the reading and I thought, "Wow, he's absolutely right and the typical way that we've done this is incorrect."

Long story short, the US Attorney's office that was involved ultimately issued an amended press release, adopting the Pete Williams view of what the statutory sentence was. And I've always loved that so much, but he was such a... He had a very nice manner when he did that. It wasn't like, "I'm the smartest guy in the room." It was like, "Can we figure this out together?" And so I'm going to miss that and miss Pete very much. Pete, thanks for being a friend to all of us during our time with MSNBC and NBC.

Barb McQuade:

Yeah. He's terrific. A real pro and I too, Jill, did not know he was not a lawyer until he started seeing some of these stories about his career. I always assumed he was a lawyer because he really is so on top of it with stories about DOJ and stories about the Supreme Court. So I think everyone will miss him, a real pro.

I had another thing I wanted to ask you about before we get into our substantive topics, if that's okay, because all of you are wordsmiths and you care about words, and you choose your words carefully. And I wanted to talk with you about something I'm working through, and that is the use of the word, "They," as the pronoun for all situations, and not using, "He," or "She," and I'm hearing more of it lately, I'm hearing it... I think I'm reading it more. I think maybe even the Washington Post has started doing this, and it makes a lot of sense.

It respects gender fluidity and it's a lot easier than having to guess at someone's gender to just say, "They," but it's been so ingrained in me all my life that the noun verb has to match intense. So if it's a singular person, you should be saying, "He," and then the verb should be singular. So I'm really struggling with it but I'm curious about where you guys come down on this?

Jill, let me start with you. You're the old school. You studied journalism back in the day. Have you changed your lexicon to incorporate, "They," or are you still using, "He," "She," "They?"

Jill Wine-Banks:

I mostly still use. "He," "She," and there are several reasons, but I want to go back because you mentioned my journalism training. And I remember early in my journalism training, I wrote something and I used the word girlfriend, and my professor crossed out the girl part and said, "A friend is a friend. It doesn't matter." I said, "But a boyfriend is different than a friend." And he said, "No, it isn't."

Well, I still sort of think it is, but it did alert me to the issue. And I'm also old enough that when I was growing up, when I first became a professional, there was no Ms. You were either Miss or Mrs. And I learned to accommodate that, not only to accommodate it, but to embrace it and to use... although I'm very happily married, I use Ms because my marital status has nothing to do with who I am.

I'm also old enough that esquire was not allowed to be used for women. Esquire was my first husband.

Kimberly Atkins Stohr:

What?

Jill Wine-Banks:

Yes. My first husband would get mail from Columbia addressed to him, "Esquire," and I would get it to Mrs with his last name. [inaudible 00:07:09] And I said, if they ever expected to get a penny from me, that they would start calling me Esquire, because I had earned that. [inaudible 00:07:16] I'm trying to remember. I think it was in the fourth circuit, when I appeared, they actually typed two S's. When you

get admitted on motion, it says blank Esquire. They typed two S's after my name so that I was Esquires because they couldn't let it be.

Okay. So I'm used to dealing with this gender-

Kimberly Atkins Stohr:

Seriously.

Jill Wine-Banks:

Seriously. These are true stories. They are. And I would like to try. If someone sends me something that says, "They," as part of their gender, I would honor that. But for most people and as a journalist also, I think it's very difficult and I can't wait to hear Kim discuss this, when you are writing a story and there's a man and a woman described in it, and then you say, "They," as to one of them, which are you referring to? If you don't say, "He," or, "She," how does the reader know which you're referring to?

And the last thing I'll say on this is I really wish they would invent a new word. "They," is a word that has a commonly accepted meaning, and you're right about the verb that follows. "They is," that sounds really ungrammatical to me, but if you're referring to a, "He," or a, "She," previously, it would be, "He is," "She is." "They is," no, "They are." So I would like them to come up with a gender neutral pronoun that would be fine for one or multiple people of multiple genders, and I think that's not so impossible that we can't be creative enough to come up with the right word.

And I'd love to hear Kim on this, and I'd love to hear our readers send in their opinions on this and their suggestions for what a gender neutral word would be.

Kimberly Atkins Stohr:

So yeah. So my opinion is that it's more ado than it's necessary, right? So one thing that I sort of took from it is, and I'm forgetting the name of it now, I should have written it down for the segment, but in France, unlike in America, the French are very particular about their language. And any change in the language has to go through this panel that has to approve it and decree that it is a proper French word, right?

Well, that panel recently decided to adopt and decree a gender neutral pronoun. Now, you know in France, they are very masculine and feminine, and there is not a lot of room in-between. If it's a man, it's [foreign language 00:09:50]. And if it's a woman it's [foreign language 00:09:52]. Well, this panel approved the use of [foreign language 00:09:56]. I think I'm saying it right, I-E-L, for gender neutral.

So I'm like, okay, if this very picky particular panel can figure this out, so can we here in America with our lackadaisical English rules, figure it out. I am with you. I have always been a grammar nerd. I get very particular about grammar. The only person more particular is probably my husband, who insists after I text him, "I love you," he texts back, "I love you, too," which is the nerdiest of nerdiest things. Right?

But even I have come to accept, "He," "She," "They." My rule is whoever is identifying themselves, gets to pick. So if you want to go by, "They," and I always use, and so far every person who identifies as, "They," has used the verb, "are, for, "To be." I'm going to use that in terms of journalism and what we do. I'm a newspaper writer, so on second reference, you always use the last name. So it's not even a problem, right? You don't really use, "He," or, "She," or, "They," or any other pronoun at all. You try to be as specific as you can and you use the person's name.

I have not found it to be a problem. I have a lot of people of all genders in my life and it's always worked out. So I think if we relax about it a little bit, it'll be okay.

Barb McQuade:

How about you, Joyce? Have you incorporated it or are you a traditionalist?

Joyce Vance:

So I have both students and family members who prefer the use of, "They," and it's a shift. I'll tell you what horrifies me is occasionally I just forget, or I do it wrong. And I'm always embarrassed because my whole goal is... We all get to define who we are. If somebody wants me to call them, "They," I am really happy to do that, and what I particularly have appreciated have been the students who've walked me through it and helped me understand how to do it with sensitivity.

So I'm all for the use of, "They." I'm not really as bothered by grammar, but the grammar not seeing my house is my husband. So I'm good with it.

Barb McQuade:

So I'm trying to actually take a step and proactively start using, "They," for all gender pronouns though, Jill, I share your pain in, "They are," "He is," that the verb tense doesn't match up. And so it causes me great anguish, but probably not as much anguish as the poor person who's being referred to by the wrong gender pronoun. And there is a word, ze, Z-E, that is the English version of the [foreign language 00:12:38] that Kim just mentioned.

So I think we're going to get there someday. People said, "Oh, what are we going to do in the Supreme Court when we can't say Mr. Justice Jackson?" Well, how about we just say, "Justice O'Connor," and we don't have to use the, "Mr. Justice?" I think language constantly evolves. I'm old enough to have been alive for the evolution of negro to colored, to Black, to African American. And I think it's up to us to keep up and try to evolve, and try to pay attention to these things.

And after this conversation, I'm going to write a letter to Columbia Law School and tell them, "Jill Wine-Banks earned a degree from you and, 'They,' should be referred to as Esquire."

Jill Wine-Banks:

And they are now doing that. I do get Columbia mail addressed to Jill Wine-Banks, Esquire.

Kimberly Atkins Stohr:

Good.

Jill Wine-Banks:

So they have evolved and I have evolved, and I will keep on evolving.

Barb McQuade:

I am currently wearing my Detroit Tigers eyewear. How about you, Kim?

Kimberly Atkins Stohr:

They look good.

Barb McQuade:

Have you started wearing any Pair Eyewear?

Kimberly Atkins Stohr:

I have to say you are really representing Detroit with your blue and orange there. I like it. Yes, I love Pair Eyewear because it's really great. I had bought many pairs of eye glasses. You can ask my husband, they're all over the house because I like to use them as accessories. For a long time I thought that glasses weren't cool, and now I'm like, no, no. It's like changing your shoes. Right? So I had all of these glasses. I couldn't find them. They're everywhere. People are stepping on them.

So Pair eyewear allows you to have that versatility without spending a ton of money. It's like a mashup of all your favorite things and there's a multitude of ways to express yourself. So celebrate all that you are and explore who you can be with customizable prescription glasses from Pair Eyewear. So you can change up your look by just snapping on a magnetic top frame on your base frame, and it makes it easy to switch up your style.

Base frames start at just 60 bucks, including prescription lenses with hundreds of top frame designs to match any base frame you choose.

Jill Wine-Banks:

This is when I wish we were a video podcast, not just audio-

Kimberly Atkins Stohr:

Yes.

Jill Wine-Banks:

Because we all look so cute in our glasses and it is so much fun. I love being able to change my glasses, just like I change clothes or purses, or shoes to match whatever my mood is. Get started by choosing your base frame with options from either a square style to cat eye, to round. Each and every frame comes in six different colors, including classic black to remix blue tortoise. Just pick your favorites and build a collection to match your personality.

You should know that a single company creates an illusion of choice in the eyewear industry and keeps prices artificially high. Luckily, Pair Eyewear has forged their own way and designs all their looks in-house, so you get high-quality eyewear at a fraction of the price. And for every pair purchased, Pair provides glasses and vision care for children around the world.

Kimberly Atkins Stohr:

That's really great. And also, you're able to get glasses as unique as you are. I got the Kirby as my base and they are totally me, and you can do the same by picking a pair that's totally you, starting at just \$60. So go to paireyewear.com/sisters for 15% off your first purchase. That's 15% off at paireyewear.com/sisters, or look for the link in our show notes.

Barb McQuade:

Oh, I'm going to put on my Pair glasses.

Kimberly Atkins Stohr:

I was going to say that too. [crosstalk 00:16:27]

Barb McQuade:

These are my Detroit Tigers pair.

Kimberly Atkins Stohr:

They're so cute. [inaudible 00:16:32]

Barb McQuade:

Did you only get one? The other one is the Atlas model. I love maps. So this one's called Atlas.

Kimberly Atkins Stohr:

Oh, that's a good one.

Barb McQuade:

World maps.

Jill Wine-Banks:

Oh, how cute. Okay.

Barb McQuade:

How about you guys?

Kimberly Atkins Stohr:

I have the little things, but my glasses and cells are upstairs in my suitcase for when I'm struggling.

Jill Wine-Banks:

Okay. So here's my sunglasses.

Kimberly Atkins Stohr:

But I have the little-

Jill Wine-Banks:

And under my sunglasses, I have-

Barb McQuade:

The little thing is hilarious.

Kimberly Atkins Stohr:

So what seems like what has been two parallel universes are finally intersecting now. The Department of Justice is requesting transcripts of interviews that have been conducted by the January 6 Committee, but in a surprise move, at least to me, the committee said, "Not so fast."

So let's break this down. Barb, what does the DOJ want? And why on earth wouldn't the members of the January 6 Committee say, "Yes, please. Here it is," and let us put a bow on top?

Barb McQuade:

Yeah. So this is such an interesting story. The Department of Justice has asked the January 6 Committee for transcripts of the testimony of almost a 1,000 witnesses now who have testified before the committee. And so this is the surest sign yet that DOJ is looking at the much bigger picture here, not just the physical attack on the capital on January 6, but the whole enchilada, everything about the planning of the coup and everything else, which I think is very reassuring.

And what it says to me is this isn't like they've entered a new phase. What it says to me is they've been looking at this all along. Lisa Monaco gave a great talk about this last week, where she kind of repeated some of the things that Merrick Garland had said on January 5th, which is, "We investigate crimes, not people. And so we take what's in front of us and we build from there and we let the facts dictate where we go." And they've reached a point now, no doubt in the early stages, they were doing things that are covert like using grand jury subpoenas to get records and using sealed search warrants to get the content of email and text messages, but they've now reached a phase where they're ready to go overt.

And as long as the committee has accumulated these 1,000 transcripts, well, why not look at them and make your investigation shorter? It may be, they read some of these and decide to discard. "We don't need to talk to this person. We don't need to talk to this person," but they may find some very good sworn testimony. And rather than reinvent the wheel or lock someone into a story and have them possibly contradict themselves on minor details in a way that could be used against them later on cross examination, just take these at face value and then decide among these handful of people that they want to talk to again, maybe to ask different questions, they can use that.

So it's a huge time saver. And I agree, Kim, you would think that the January 6 Committee, if their goal is to hold accountable people responsible for the attacks on the capital, that they would be only too eager to hand over all of these transcripts. So what gives? Why not? Well, one of the things I heard Chairman Bennie Thompson say was, "We're not prepared to turn them over yet."

And so I think this is more of a timing issue than anything. They have really hyped these January... sorry, June 9th hearings that are going to begin televised in prime time, where they're going to have the big reveal. Congressman Jamie Raskin has talked about, "We're going to blow the roof off this place. They've really hyped it." And I think one thing they might be trying to avoid is kind of what we saw in the Robert Mueller investigation. As the little facts dripped out over many months, I think the impact of them lost some of their power by the time we heard the whole picture, and it was a little bit of a whimper.

I think that the committee has been strategically holding back some details because they do want to blow the lid off the roof in June, and people will tune in and they will be appalled by what they see. And I think that the concern is if they turn it over to the Justice Department, it may be that some of this information gets out and they lose control over it. In the same way, if they give it to DOJ, do they also have to give it to Georgia where they're doing an investigation, or any other place?

So I think it's really more of a timing thing, but this is that whole typical dance of negotiation and accommodation. Maybe they want to extract a promise like, "Maybe you ought to charge Mark Meadows for not complying with our subpoena if you want these things." I doubt DOJ will agree to any of those conditions, but I think they're going to get them, but maybe not until after the hearings in June.

Kimberly Atkins Stohr:

So Joyce, can this be a two-way street in some other ways, besides what Barb was talking about? For example, could Chairman Thompson work out a deal with DOJ that gives the committee certain evidence that the DOJ has in exchange for providing access to their transcripts to the DOJ?

Joyce Vance:

I think that's really unlikely because most of the evidence that the committee would want from DOJ would've been obtained using a grand jury subpoena or other restricted collection mechanisms, and DOJ is prohibited from turning that sort of evidence over. There actually is an exception to that. You can get a court order that permits you to turn over grand jury information. I think it's unlikely here because DOJ is pre-charge presumably if they're considering charging probably pre-prosecutive decision-making, and it would be very compromising for their case to do it now.

So I don't see that happening, and to this larger environmental question of what the heck is going on with the, you'll forgive me, pissing match between the committee and DOJ? I think it really is just that, DOJ, for reasons that make sense if you're inside of DOJ, is not always forthcoming with people on the outside. That's because they operate under a lot of ethical restrictions, but it can come off as a little bit hardy when you're on the other side.

I think the committee probably took umbrage at some of the early failure to communicate, and so they'll air this little grievance for another 48 hours, and then everybody will get on the same team and line up.

Kimberly Atkins Stohr:

Interesting, interesting. Well, Jill, if Chairman Thompson remains cagey, can the DOJ subpoena the committee for what it wants?

Jill Wine-Banks:

Well, remember that they sent a letter that says, "You may have evidence of crimes that we are investigating." So that would certainly give them some grounds for going ahead but I want to add a few other points. One is during Watergate, we were very successful in coordinating with the ongoing Senate Committee hearings, and ultimately with the House Judiciary Committee, which was the impeachment committee, and we did get court permission to turn over evidence. On the day that we returned indictments, we, at that same exact time asked for permission to turn over a roadmap to impeachment to the House Judiciary Committee.

And so all this coordination helped all three entities, the Senate, the House, and the prosecutors. And I think it certainly could, in this case. We didn't want the House to have to reinvent the wheel or redo things. We also didn't want them getting inconsistent information at the Senate that was preceding us as we were getting. So we wanted to make sure we followed what they were doing. It really helps in the prosecution. It helps in the purpose of the Senate and the impeachment committee in terms of passing post-Watergate legislation, all of that coordination really paid off.

And I think Barb is right that this is a question of timing, that this isn't, "We're never going to give it to you, that we don't want you to have it." Of course, they want them to have it. I think it's right that I guess I have to ask, why did justice wait until a month before, less than a month before the hearings are starting, when they could have waited a few more weeks? Once the information is public, I can't imagine that there'd be any reason why they wouldn't give the full transcripts.

And Barb was also correct in stating why those transcripts are important, why they will be helpful, and how much harm they can avoid by the prosecutors having them in advance. So I think this will ultimately work out, but in the meantime, it's really not a good look for either the Department of Justice or for the committee. And I wish it had not been done this way so that it wouldn't look bad, but ultimately it will work out fine.

Kimberly Atkins Stohr:

So, Barb, you mentioned that last week, Lisa Monaco talked about how the Department of Justice does its work and how it works outside of political influence. What's really remarkable about it is that when you mentioned this to us before the show, I hadn't heard about it. It didn't get a lot of media coverage and I had to actually go find it.

So I'll start with you, Barbara. What do you think our listeners should take away from her words about the way the DOJ works?

Barb McQuade:

Yeah. I think she was trying to explain to the public the way the Justice Department does its work. It's frustrating I think, for people who don't understand, "Why aren't they investigating Trump?" Why haven't they said they're investigating Trump?" Of course, we can all see right before us that he's committed all of these crimes, and I think what she said is, "We don't talk about investigations because we don't want to tip off targets, that we're looking at them. They might destroy evidence. They might work with others to get their stories straight, and it also puts a cloud over a person who may ultimately not be charged, or it could taint their rights to a fair trial, which could actually screw up the prosecution if you've talked about it before they've been charged."

So there are a lot of reasons that that's the DOJ policy to neither confirm nor deny the existence of an investigation. But when something happens right before your eyes, as it did on January 6, she did mention, "We prosecute crimes, not people." And so of course, we're prosecuting that situation, we're investigating and we've promised to hold accountable anybody at any level, whether they're at the Capitol or not, and hold them accountable to the highest possible crime under the law.

I don't know what more you can say to telegraph to people that, look, we get it. We realize this is a big deal. We understand the frustration. We understand people get frustrated when you say, "Be patient," but we get it, but we are not going to say, "You know what? We're going to look at so and so, and see if the evidence can prove that they committed a crime." That's just not how it works.

And so I am confident that this group, when you've got Lisa Monaco, a tremendous public servant, Vanita Gupta there, fantastic public servant, Merrick Garland, fantastic public servant. On the day, when they do unveil the charges at the highest levels, I think it's going to be all the more credible because they did things by the book. So I think she was just trying to assure the public that, "This is how we do things and we get it, and we're on it."

Kimberly Atkins Stohr:

Joyce, Jill, anything to add to that?

Joyce Vance:

I would just say this was Lisa Monaco's, "We don't talk about Bruno," speech, right? "We don't say that we're investigating Trump or that we're prosecuting Trump," but I think if you listen, they're saying all the right things. They're saying, "We follow the evidence wherever it goes." Merrick Garland said that on

January 5th, both he and Lisa Monaco have repeatedly said that since then. I think that they're trying to send as clear of a signal as DOJ is capable of sending.

Where I sort of vary from Barb on this is I do think that there is room in the regulations and sound policy that suggests that there are some situations where you can go a little bit further. When the public is aware of a situation, when it will do great public good to confirm the fact that there's some investigation ongoing. I think it makes sense. DOJ did that in Ferguson. It often happens in that civil rights context, but I am constantly stunned by how much more we know about the investigation into Hunter Biden's laptop, than we know about the investigation into an effort to overthrow an election.

Jill Wine-Banks:

And doesn't that say it all? I think that Joyce, you've captured it exactly, although I would be on the side of this might be the situation that requires more forthcomingness. And I do think that the latest statement from Lisa was definitely a step beyond what Merrick Garland had said, and that it's a good step and should be reassuring even to me, who, as you know, has been I think the most skeptical of all of us in terms of what's going on and why is it taking so long? And there's low hanging fruit that they could act on and I'm feeling reassured. So I think that everyone in our audience should.

Kimberly Atkins Stohr:

All right. If you all say so. I think I'm the most skeptical actually, but if you all say so, I'll believe it.

Jill Wine-Banks:

You're you're right up there.

Barb McQuade:

I have faith, I have faith.

Kimberly Atkins Stohr:

So last question, let's do it in a lightning round. This month, we've also learned that members of the Oath Keepers have been making plea deals and cooperating both with the FBI and with the January 6 Committee. What do you think might come of this? And is this big news? Jill, I'll start with you.

Jill Wine-Banks:

The quick answer in a lightning round is yes, it's big news and it's good news. I think that these are people who clearly have been... Or I shouldn't say clearly, who it appears have been in touch with top level politicians-

Kimberly Atkins Stohr:

Allegedly.

Jill Wine-Banks:

Allegedly. From what I read in the press, in the reliable mainstream press that checks its sources, I think that there is enough evidence there to suggest that they can be helpful in linking the planning of the event, the violence of the event, and the broader part of the event, because I don't think that the January 6th invasion of the Capitol is really the whole important part of this. What's important is they

try to overturn the election outcome through many, many sources. And this is one part of it that will have influence and should be indicted, and I think this is big news, good news.

Kimberly Atkins Stohr:

Joyce and Barb?

Joyce Vance:

So I have always thought that the meetings that we read so much about in the press for a while, these Willard Hotel war room meetings that were being conducted by Trump allies are one of the best vehicles if you're a prosecutor, to get into the White House and figure out what's going on there. With these Oath Keeper and Proud Boy cases, there is a link to Roger Stone. Everybody knows Roger Stone doesn't want to spend even one night in prison, right? He made that really clear when he was negotiating with Trump for a pardon.

And so I suspect that if the Oath Keepers who were... I get confused whether it was the Oath Keepers or the Proud Boys who were protecting Roger Stone, but one of them was, it was Oath Keepers, right? And I think if there are witnesses there who can get close to Roger Stone, close enough to get DOJ into prosecution territory with him, he could become the witness that goes then into the Willard war room and on into the White House. I think this is a huge development.

Kimberly Atkins Stohr:

It was Roger Stone who was flanked by Oath Keepers. I'm sorry, Barb.

Barb McQuade:

Yeah. I agree that I think this is exactly the kind of thing that Lisa Monaco and Merrick Garland have described, the way the Justice Department builds cases. They look at people who've committed crimes in plain sight. They charge them and they squeeze them. They use them as leverage. "If you are willing to plead guilty and cooperate, we will make a recommendation to the judge to give you a reduced sentence."

And so, sometimes there's honor among thieves, but most of the time not. They sing like canaries and although you don't want to rely completely on the word of a defendant who is looking out for his own neck when he's providing information, they can provide a lot of really important leads. They can tell you the when and the where, and the who, and the why, of what happened. And then what investigators can do is go shore that up with records and find phone records and bank records, and text messages and other things that can corroborate what they said.

So I think the cooperation of the Oath Keepers, these are the only people so far charged with seditious conspiracy, by the way, I think if they're looking for people at the next level up, that can only be these planners like the Willard Hotel crowd. And so I do think this is a good development.

Hey Kim, I was watching the movie Double Indemnity recently and I was thinking, hypothetically, what would I want to do if I wanted to take out an insurance policy on my husband?

Kimberly Atkins Stohr:

Well, Barb, if that's really what you want to do, you could go to Policygenius. Everybody needs life insurance in some form or another, and by making it easy to compare your options from top companies-

Barb McQuade:

Go on.

Kimberly Atkins Stohr:

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Jill Wine-Banks:

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Jill Wine-Banks:

An 18-year old White racist, radicalized by the Great Replacement Theory is accused of driving nearly 200 miles, killing 10 people and wounding three others at a Tops supermarket in a predominantly Black neighborhood of Buffalo, New York. Of the 13 victims shot, 11 were Black. Evidence suggests he selected this area by looking for the place nearest his home with the highest concentration of Black residents. He surrendered to police and was quickly arraigned, and then indicted by a grand jury on murder charges. Authorities are continuing to investigate the shooting as a hate crime and an act of racially motivated, violent extremism.

I want to start with you Joyce and ask a couple of real quick questions about what's the penalty in New York state for murder? And what's the penalty for hate crimes, New York versus federal law? And why does a three hour drive become important and why the quick arraignment?

Joyce Vance:

So lots of really important questions here. First off, the big difference between New York state charges and federal charges is that federal charges are death eligible. There could be capital punishment, and that matters a lot to some people. So that's something that I think we should focus on. The three hour drive is relevant in large part because it shows premeditation. There's no way that you can argue that you didn't premeditate a homicide, that you drove three hours to commit after a year of this very verbose planning on his social media and sending notes to himself.

So this is at a minimum, first degree murder, and it's important to get him arraigned quickly. It means that you can hold him in custody. You can continue to gather evidence and sort out which jurisdiction will take the lead in the prosecution, but he's in custody from this point on. New York doesn't have a death penalty. Technically they do, but it hasn't been used since the early 1960s, and it's been held unconstitutional under state law.

So that means the only death penalty option would be 18 US code section 245, which prohibits killing someone when they're engaging in federally protected activities, which going to the grocery store and driving on the roads, and all of that sort of activity has been used under that standard. However, I think it's important to have the death penalty conversation here.

Merrick Garland has been reviewing some of the regs that were put in place while Trump was in office. I think it's not entirely clear to me that there's appetite at DOJ to bring new capital cases. And to be honest, whether you're a supporter of the death penalty or not, and just to state my bias, I'm not, I don't think that we should use it. I don't want to be on a list with North Korea and Saudi Arabia, but in past cases where DOJ has charged the death penalty in jurisdictions that had rejected having a death penalty, and I'm thinking of New York's neighbor, Vermont, those cases don't always go very well.

There was a case right before Barb and I became US attorneys in Vermont, that was actually a capital conviction. The jury convicted, the case got commuted. There is a case that was ongoing while we were US attorneys, and ultimately that case was pled to a sentence of life in prison. Of course, there are cases in Massachusetts involving the marathon bombing that had a different outcome, but it's really tough to be a federal prosecutor going into a state that doesn't have the death penalty and telling a jury in that state that they should execute the defendant.

So a lot of reasons, federal hate crimes prosecutions, always good, lots of resources. It's an important charge. I'm not sure the death penalty is the right reason to get there.

Jill Wine-Banks:

I think we should have a future episode that discusses the pros and cons of the death penalty.

Kimberly Atkins Stohr:

Agreed.

Jill Wine-Banks:

That's a great topic, but for now I want to move on to Kim and ask you about his motivation which Joyce has correctly pointed out. There was clearly premeditation in his three hour drive and the planning documents that have now been discovered, but tell me a little bit more, if you can, about what the racist... The Replacement Theory is?

Kimberly Atkins Stohr:

Yes. I want to get into that. Before I do, I just want to note one of the things that I thought was really dramatic about this case, and maybe we can talk about that in a future episode too, is the fact that this person went in, conducted a mass shooting, a massacre inside of a grocery store, came out, was aiming his gun at himself and others, and somehow the Buffalo Police were able to apprehend him alive.

So what I would like is for police departments around the country to take this as a case study in how to... if you can apprehend an armed, crazy person, or hateful person alive, maybe we can figure out how we can apprehend everyone, including unarmed people alive, but that's an aside.

Jill Wine-Banks:

No, it's not. That's a bravo to Kimberly Atkins Stohr, and I agree with you that, that is something that we need to discuss more in our police reform efforts.

Kimberly Atkins Stohr:

Yes, I think that's absolutely true.

Jill Wine-Banks:

But now answer my question.

Kimberly Atkins Stohr:

So now this shooter, allegedly, in this manifesto that was found, talked about something called The Great Replacement Theory, and we have to understand what this is. A lot of people attribute it to 20th century European thought that comes up with this. No, no, no. The Great Replacement Theory is as American as apple pie, is as American as our founding, because it is something that has been a part of our foundation from the beginning.

It basically is this idea, a conspiracy theory really, that people of color, either those who are here or those who are coming here through immigration, there is some grand scheme to try to increase their numbers so that it decreases the numbers of Americans of European heritage, and that that is a great threat to White people, and this is apparently something that this shooter ascribed to. He was radicalized, apparently, allegedly, using various social media platforms.

I'm not sure it took the social media platforms because obviously The Great Replacement theory has existed in our history from the beginning, long before there was social media. So maybe that was just the means that he got there but there has been this idea about that, that has permeated our society from the beginning, that is really problematic. It is terrible, but that's allegedly what he was motivated by. It is hateful. It is aimed not only at Black and Brown folks, but also Jewish people too.

If you remember in Charlottesville, the night before that horrible deadly event, there were people marching in their button downs and chinos saying, "Jews will not replace us." That's what The Replacement theory is. So it is dangerous. It is alive and well. One in three people, according to one study agrees that this is actually true. It's frightening and it's terrible, and it's a lie.

Jill Wine-Banks:

It certainly is, and New York Attorney General Letitia James says that she is going to be investigating Twitch, Discord, and some other platforms that were used by the shooter. And by the way, you notice, we are not naming him because we do not want to give him any recognition at all because clearly when he videotaped, FaceTimed himself and showed himself, that was part of his goal. So he should not get that.

But let's talk about whether she can actually do this? Can she do anything? Because the Communications Decency Act section 230 says, "Platforms are not responsible for the content." And what do you think?

Kimberly Atkins Stohr:

Yeah. It's tough. Anytime you're going after social media platforms, the law is so unclear that it's difficult for any prosecutor to sort of rely on that. She was careful in her language. She said she's investigating and didn't make any promises about what would come out of that. I think that is part of the reason why.

Now, let's be clear. Section 230 is not a get out of jail free card for social media platforms if they engage in any sort of crime, federal crime that is excluded from 230, if they knowingly help someone else engage in a crime that's excluded from 230. But even then, I think First Amendment principles make this a very murky category. I think the better way to go about this, and we'll talk about this more in a moment, is with robust federal investigation and prosecution of domestic terrorism, in the same vein that we have seen for international terrorism.

We still can't take more than three ounces of liquids on a plane 20 years after the specific threat that was meant to address has been all but eliminated. So why can't we bring that same energy to domestic terrorism? I think that's the goal.

Jill Wine-Banks:

Absolutely. And Barb, I want to turn to you as our national security and terrorism expert, and have you talk about how do we stop the radicalization and the resulting conduct, and whether we need a domestic terrorism statute that would allow investigation before, as you would say, left of boom and deal with it as we do with foreign terrorism?

Barb McQuade:

Yeah. You know what, Jill? I can see that I've been talking to you the way I talk to my kids. I was about to say, have I ever told you about left of boom? And apparently you know all about it. I tell my kids this all the time, "Have I ever told you the story of...?" "Yes mom, seven times," and then they'll tell me how the story came out. "Oh yeah. I guess I have told you the story."

Yeah. I like to say it very dramatically, left of boom, but that is, Jill, you've been paying attention. Good job. Left of boom is this concept that is used within the FBI and the concept is you want to stop a terrorist somewhere on the timeline before the moment of attack. So if boom, the bombing, the shooting, whatever it is, is the moment on a timeline, any spot left of that on the timeline predates the moment of the attack. And so that's what you really want to do. Anybody can prosecute this shooter after the fact. He can be charged with murder in the state. He can be charged with a hate crime by the feds, and that's great, but it's not going to prevent this attack that killed 10 people, and that's what you really want to do.

And so, because there is not a federal domestic terrorism statute, the FBI does not have a predication, which is a reasonable belief that a federal offense has been committed to open an investigation and kind of just troll around on social media the way it does for international terrorism cases. So if you believe that there is somebody... they troll around on social media and if they find somebody talking about ISIS or Al Qaeda, they can then initiate an investigation and then send an undercover in and talk to him and say, "Hey buddy, you have some interesting ideas here. Tell me more, how can I help?"

And in that way, they can get them off in an off-ramp and engage them in a sting operation and defeat whatever this plot there is by learning about it and trying to introduce somebody that will stop it before it happens. Without a domestic terrorism statute, they can't open that kind of investigation. And the reason we don't have one is a laudable one. In the 1960s and 70s, there was a lot of abuse by the FBI. They had a program called COINTELPRO, Counter Intelligence Program, where they targeted people

who were Vietnam protestors and civil rights organizers under the guise of national security, and they did all kinds of things to disrupt their work.

And so it was after all of those scandals that they implemented a number of protections, one of which is this thing called the DIOG, Domestic Investigations Operations guide for the FBI. It's like the size of a phone book. For those of our listeners not young enough, not old enough to know what a phone book is, I'm holding my fingers about four inches apart. It's a thick manual and now it's all electronic, but it describes the necessary predication because it puts a lot of obstacles in place to protect First Amendment protected activity, free speech, free assembly, the kinds of things that might be unpopular with a particular administration.

So imagine if president Trump wanted to go after online and look for Antifa targets and go after them. You can sense the discomfort with having the FBI looking for this stuff, but I think that they could do one of two things. One is if they were to enact a domestic terrorism statute focused on conduct, violent conduct designed to achieve a political motive or intimidate a civilian population, that could be a federal offense.

We already have one for international terrorism and we're focusing on conduct, not speech, and I think that would be just fine. Because it's been controversial, the other thing that could happen is the FBI could change its DIOG. And that might be easier because that's not an act of Congress. It's so difficult to get Congress to change anything these days, but that would just require DOJ to change these regulations, to allow the FBI to investigate cases where there is conversation about domestic terrorism.

It's a little dicey. I think you'd want to make sure that you're putting enough safeguards in there to prevent investigation from people just for expressing ideas, but I [inaudible 00:50:00].

Kimberly Atkins Stohr:

Barb, can I ask you a question?

Barb McQuade:

Yeah.

Kimberly Atkins Stohr:

Can I ask you a question?

Barb McQuade:

Yeah.

Kimberly Atkins Stohr:

Because not just Christopher Ray, but going back for several FBI directors, when they give their annual report, they have been saying to us that the number one threat to Americans, terrorism threat is domestic, that this is the biggest threat, yet the entire apparatus, investigatory apparatus is still set up to prioritize international terrorism. So why is that not enough to make them re-examine their internal policies?

Barb McQuade:

Yeah. Well, so two things. One is, I think the FBI would advocate for a domestic terrorism statute in a heartbeat. I think the thing that has caused them some hesitation is this worry about going back to the

way things were pre-COINTELPRO, having all these things in place that allow them to, or prevent them from opening investigations. Even if there is people talking about The Great Replacement Theory, for example, those are things they can't just start poking around about and pushing people to share their views because they're protected by First Amendment rights.

But I agree with you, Kim. I think the easier fix would be to adjust the DIOG as opposed to waiting for a new statute that Congress is never going to pass.

Jill Wine-Banks:

It would be certainly the best protection for the FBI if a statute were to be passed, but in the absence of bipartisanship and the absence of the possibility of them passing such a statute. I think that maybe that is something they have to look at. And when you're talking about how they could proceed and getting involved in chatting with potential criminals, we have to look at what happened in the Governor Whitmer kidnapping case.

Barb McQuade:

Yes.

Jill Wine-Banks:

Where the possibility of conviction didn't happen because there was this entrapment argument. So they have to be very careful, and I was prosecuting cases far enough back that the FBI in one of my cases deliberately let the suspects know that they were onto them because they wanted to stop a killing. And some killers had... mafia killers had come from Boston, flown to California, and they knew they had weapons with them. And so they actually entered their hotel room illegally and messed it up enough that the killers knew that they were caught. And so they fled town before killing anybody, then got called into a grand jury and indicted for perjury about lying about it. But that was a way of being left of boom, to go to your point, Barb. And so something needs to be done and I think a statute is one of those things that should be a high priority for Congress.

Hey, Kim. I'm just wondering, have you found a way to avoid razor burn and other damage in the shower?

Barb McQuade:

Oh God, thank you for not making me do this.

Kimberly Atkins Stohr:

Jill, it's funny that you ask because I went to a beach recently and I have found that the magic starts with the Athena Club razor blades. They are surrounded by water-activated serum with shea butter and hyaluronic acid, so you get a silky smooth shave that actually leaves skin soft and hydrated, and not strip dry. The blades are even placed out to let the hair shave cream pass through it easily. So you don't have to take a ton of passes over your skin over and over again. Fewer passes means less irritation, if you know what I mean.

So it cuts down on razor burn and ingrown hairs. We don't want any of those things, but the best part is the razor kits are only \$9 with free shipping. And they come with two blade cartridges, a magnetic hook for shower storage, which is really convenient, and your choice of handle color. Mine is like a nice mint green, and there's many colors for you to choose from, from chic black, to white, to even neon and other past cells. And I had silky smooth skin. I can't complain.

Joyce Vance:

I never thought I would get excited about shaving my legs, but just listening to you, Kim, it sort of makes me want to run upstairs and pull my razor out. And I really do. I'm stunned by how much I love my Athena Club razor. I like some of their other products too. They have some great wipes that I use almost every day, but the great thing about the razors is that you'll never have to worry about dull blades because you'll get refills sent on your schedule. All you have to do is choose how often you need fresh blades and Athena Club will send them automatically with free shipping. So you always have the best blades for the best shave.

I would suggest getting their cloud shave foam too. It's insanely thick and actually stays on while you change, right? How many times the foam just slips away? This is an entirely different sort of thing. You don't have to constantly reapply it and it leaves your skin nourished and moisturized. It's truly amazing.

Kimberly Atkins Stohr:

See, this is how we like to spend our weekends people. [inaudible 00:55:25]

Joyce Vance:

This is too much information.

Kimberly Atkins Stohr:

This is what we do for kicks. Why deal with razor burn and wasteful disposable razors when you could be getting the best shave of your life with the Athena Club razor kit? Honestly, I really do love it. And you can get 20% off your first order at athenaclub.com with promo code SISTERS. That's A-T-H-E-N-A C-L-U-B.com with promo code SISTERS for 20% off, or look for the link in the show notes.

Joyce Vance:

Losing Roe in abortion rights, which now seems inevitable, is going to be devastating. It's not alarmist. It's not excessive to say women will no longer be full participants in our democracy because we will no longer have the right to make decisions about our own bodies. And beyond that direct sort of situation that we're all having to confront, there are collateral consequences to ending Roe.

It's important that we factor those into our understanding of what the world will look like without the protections that Roe has kept in place, and we need to focus on that and I think we will over several episodes of the podcast because we need to make sure that the focus stays squarely where it belongs on this issue about reversing Roe. It's so easy to get pulled off onto other issues. There's so much going on. The news cycle is insane, but this loss of rights by women is fundamental.

So today we thought we would take a look at some of these collateral consequences. And Jill, I'll start with you, our resident expert on the military, since you were once the Army's General Council. Can you talk about how Roe will impact the military and our combat readiness?

Jill Wine-Banks:

It may not seem like it would, but it is a direct impact on combat readiness. Women are now a significant percentage of the military and perform amazing jobs within the service. They are stationed all around the world and all around the US, and that means that if they are stationed in one of the red states that is now going to be completely barring abortions, they will not be able to take care of a

problem pregnancy. They will not be able to take care of an unplanned pregnancy without first going to their commander and asking for permission to leave the state because they won't be able to have an abortion within the state, and they will have to take time off. It could hurt their careers and the hurting careers by the way, is a much broader thing than just within the military. It is an economic harm to all women, if they cannot control the timing of their pregnancies and births.

So it is a very serious problem. It's unfair to the women in the service who are doing a great job for America, to have this happen, but that is going to be a consequence when all of the trigger laws go into effect as soon as Roe is overturned, which although it hasn't happened yet, we only have seen a draft, it does, as you said, seem inevitable. And I hope that the military will find a way, but because of the Hyde Amendment, the military does not pay for this service and no military doctor can perform it on base.

There may have to be some exception made to allow a federal base to be a place where federal laws govern. This may be something that we could deal with in a federal abortion rights action. There are so many unforeseen consequences of this role being overturned, and this is one of them. So think about combat readiness and the loss of the rights of Roe, and think about what it means for women who are raped, because many of these laws do not have a rape or incest exception, and think about whether that's the state that you want to ever serve in. It will impact recruitment and assignments.

Joyce Vance:

I had not thought about military implications at all until I read this incredibly moving opinion piece in the Washington Post that Allison Gill at the Mueller, She Wrote podcast wrote. We should put that in our show notes because she talks about being raped while she was in the military and filters that into how that will play out for women who find themselves in that situation, not an uncommon problem in the military where sexual assault is something that it's been difficult to address over the years, and she writes very movingly about that particular problem.

Barb, you raised a completely different issue-

Jill Wine-Banks:

Could I just interrupt for a second, Joyce?

Joyce Vance:

Yeah, please.

Jill Wine-Banks:

Because I read Allison's piece and I was deeply moved by it and I am glad. I think it should definitely be in our show notes so that everyone can read it, but I do want to say that since her time of service, things have improved and the military has gotten much better about women reporting rapes. It's still not a 100% of rapes are not reported. It is still a problem as part of the chain of command but the current Secretary of Defense, Austin is making progress along that line and I think that there is very good reason to be hopeful.

I was on a commission looking at sexual assault in the military, and I know how much the Generals, even in the chain of command are sensitive to this and are maybe even over-prosecuting now because they're so afraid of saying no, that they're saying yes to even cases that are not winnable, that are not... it's a, "He said, she said," but I think there is some progress being made in the military. So I do want to say that things are better than when she served, but they aren't good enough.

Joyce Vance:

Yeah, that seems fair. Moving from the military to public institutions, Barb, you had flagged earlier this week that there have been some issues at the University of Michigan, which is a research medical facility. And interestingly enough, I had a similar experience here at the University of Alabama, Birmingham, where a doctor who's older and politically and religiously conservative shared with me how deeply concerned he was that they would be forced to stop teaching the abortion procedure in medical school, which is the same procedure that they use for an incomplete miscarriage.

And he said, "What are we going to do? Well, we won't be able to provide care for our patients. Our patients in essence, will be left to die, will have inadequate care." So Barb, how do you see this issue sort of writ large of major medical institutions?

Barb McQuade:

Yeah. I think this is one of those collateral consequences that people don't really think through when they talk about ending abortion. You've got all of these major research universities that perform abortions. They do research on abortions and they attract students who want to go into obstetrics and gynecology and I think all of those things are going to suffer if it suddenly becomes illegal in a state. In Michigan, there's a 1931 law on the books that if Roe versus Wade is overturned, would revert to life.

Joyce you've used the phrase, "Zombie laws." It's one of these zombie laws. We have just had a lawsuit successfully enjoin that statute. So I think there'll be more litigation as to whether that comes to pass or not, but in all these states where abortion is going to be banned, if they've got major research universities, they're going to have to deal with this issue.

The Michigan statute does have an exception if necessary to save the life of the pregnant person, but what's interesting, the University of Michigan just put an article out, kind of a trade publication to other research universities, just some of the things you're going to have to be start thinking about as we await this Dobbs decision. And one of the things they talk about in here is like, what does that really mean to be lifesaving?

Currently, they perform a lot of abortions when there is a problem in the mother, but it might be something like there's a 50% risk to their life because of severe high blood pressure. And so the best medical decision would be to terminate the pregnancy, but do you have to have a 100% certainty that the mother would die without intervention? Or oftentimes they discover cervical cancer during pregnancies because of the intense examinations that go on. Oftentimes those pregnancies are aborted so that the mother can go through radiation and chemotherapy, but if they're carrying a fetus, they would decline those treatments. Is that to save the life of a mother?

So they're all kinds of complicating things that they're beginning to work through about this, but the bottom line is going to be that if abortions are illegal in states like Michigan or other states with these major research universities, people aren't going to want to study here. People aren't going to want to teach here, and they're going to lose a big part of what they are accomplishing in terms of research and care. So it is one of those very large by-products of this myopic focus on ending abortion rights.

Jill Wine-Banks:

I want to add to what you'd mentioned about collateral damage, Barb. There's a movie called Birthright: A War Story. It's the product of Civia Tamarkin, who is a wonderful producer, director. And it points to all of the collateral damage, including the fact that even now, many doctors do not know how to do an

abortion to save the life of the mother. Ectopic pregnancies, there are doctors who aren't trained in this anymore because of these laws.

And so I would like to add to our show notes, a link to Birthright, A War Story. I think it's one of those movies that will put in stark contrast all of the unforeseen consequences of Roe being tossed out.

Joyce Vance:

So one last collateral consequence for today because this I know is getting pretty grim, but unfortunately I just don't think that there's a saving grace on this topic. And so, one of our jobs will be to help you consider these collateral consequences that perhaps have not gotten as much attention in the media spotlight as they could. But the final one, Kim, is something that we have talked about. This notion that there are states where criminalizing abortion is on the table, and legalizing or rather delegating abortion by reversing Roe results in making abortion a criminal act, a criminal act for the doctor, a criminal act for the woman who's pregnant, perhaps for other people. Really, to use RBGs metaphor for abortion, it's putting the state's boot back on women's neck.

So what are the risks here as we enter this era where instead of having rights, we're engaging in criminal conduct when women seek medical care that's an abortion?

Kimberly Atkins Stohr:

Well, the one thing I want to highlight in addition to what we've already talked about is that, that could essentially criminalize pregnancy and criminalize healthcare in a way that can be very detrimental. A lot of the responses that I've gotten, I'm sure you've gotten over this entire debate is talking about, "Well, if people wouldn't get pregnant or if they would wait till they were married, or this," these really antiquated ideas as to what abortion is about.

But what I want to talk about are the women and men, people of all gender who are looking forward to expanding their families, who want to have children, who willingly plan, very much plan their pregnancies and may come to a point where they have a complication as you talked about, particularly Black and Brown women. Black women are four times more likely to face a life-threatening complication during their pregnancy. Hispanic women are two to three times more likely to face a life-threatening complication during their pregnancy as compared to White women. So what are you going to say? They have to say, "We have to forego our life because to save our lives would be to commit a crime."

And it's not just that. It's people who miscarry a horrific traumatic experience with the procedure that is needed in order to remove that miscarried fetus from the woman's body be criminalized. Would they have to again, put their life in danger, potentially their health in danger? And then think about, there are some folks who believe that, for example, IUDs are essentially abortion machines, that they cause an abortion every month. This might be TMI. I have an IUD. I have never used it as a method of birth control.

I have used it. It was prescribed to me to deal with three very debilitating health conditions that it helped me with tremendously, my migraines, my polycystic ovarian syndrome, and depression. These are the things that helped me be a functioning human being. But having that in some states, if you read them to their... if some folks have their way, IUDs would also be criminalized. So it would literally be potentially criminalizing healthcare. So these are the consequences that we have to think about.

One more that I'll add is the last time I was on Meet The Press, one of the people Chuck Todd interviewed was the Governor of Mississippi where this Dobbs case is based, and he was giving the talking point that, well, these laws are not about punishing women. They're about protecting children and providing resources to children, when asked what these resources would be for these women and

families. He talked about things like expanding the foster system in Mississippi so that they can handle the additional children that would be put into it, and also expanding resources for child protective services. You don't have to believe me. Go back and look at the transcripts of Meet The Press. This is what he said.

So it is more important that children be born in order to be put in foster care or child protective services than to save women's life. I don't know what to say to that.

Joyce Vance:

It's really mind boggling and hey Kim, thank you for sharing your personal story and making the connection between contraception and healthcare because I think for a lot of people who have had that experience that you've had, it's uncomfortable to talk about. It's not something that's come to the forefront. I think one of the unfortunate fallouts from reversing Roe is that we're going to all, including Barb, have to get comfortable talking about things that we don't really want to share.

This is very private sort of experiences and yet to advance policy, to get people to focus on all of the problems created, it's really forcing women to tell their personal stories. And I perhaps resent that as much as I resent anything else that's going on in this space.

Barb McQuade:

Yeah. Kim, let me say thank you for sharing that personal detail because I think it is really enlightening to people who think about contraception solely for the purpose of birth control.

Jill Wine-Banks:

And it's shocking that that could become illegal if Roe was tossed out, and I want to share two other things that I heard recently that are equally shocking. One is that a woman was ordered to bedrest during her pregnancy because it was an at risk pregnancy. Now, talk about the state getting involved beyond belief. That means that she can't take care of her existing family. She can't work. She's ordered to bedrest.

And another is Arizona just allowed a lawsuit by the estranged spouse of a woman who aborted at eight weeks, totally legal, even in Arizona. And he sued for his deprivation of his parental rights to have a loving relationship with the future child, and that case has been allowed to proceed. That's the kind of things that are the collateral damage, and I heard these stories as part of a teaching with Civia Tamarkin, the same person as the Birthright movie. And it's just shocking to me to hear the doctor who has been sued as part of this estate of the fetus. Imagine that the eight week old fetus's estate is suing this doctor.

So I think we are in serious trouble beyond just losing the right to choose when and if we become parents, and not just a living incubator for a fetus by being ordered to continue the pregnancy.

Barb McQuade:

Today's episode is sponsored by Honey.

Jill Wine-Banks:

And I'm glad it is because I have been using Honey for a long time and it has saved me tons of money. We all shop online and when you get to that box, aren't you glad to have Honey intervene on your behalf? And I know Joyce, you shop a lot online. Have you been a beneficiary of Honey?

Joyce Vance:

Oh, no. I would never shop online. No, because I know my husband is probably listening. I adore Honey. I'm always so glad when Honey, the little coin drops up on my screen and I know I'm going to save some money. It's wonderful. How about you, Barb?

Barb McQuade:

We all shop online and we can't help feeling it when the promo code box taunts us at checkout, but thanks to Honey, manually searching for coupon codes is a thing of the past. I just bought some running shoes for my son, overpriced as always, but when I clicked into the checkout, suddenly Honey appeared and started knocking off dollars and it was music to my virtual ears.

Honey is the free shopping tool that scours the internet for promo codes and applies the one that's best for your cart. They support over 30,000 stores online with everything from tech to popular fashion brands, and even food delivery. And so far, Honey has saved its more than 17 million members more than \$2 billion. Can you tell us how it works, Kim?

Kimberly Atkins Stohr:

Yes. So imagine you're shopping on one of your favorite sites. For me, it probably has to do with shoes, and then you get to the checkout and the Honey button drops down and all you have to do is click, "Apply coupons." Then you wait a few seconds as Honey searches for any coupons for that site. And if Honey finds a working coupon, you'll watch the prices drop. It's so easy.

Barb McQuade:

If you don't already have Honey, you could be straight up missing out. It's literally free and installs in a few seconds. And by getting it, you'll be doing yourself a solid and supporting this podcast, would never recommend something we don't use. Get Honey for free at joinhoney.com/sisters. That's joinhoney.com/sisters, or look for the link in our show notes.

Well, you know our favorite part of the show is always the listener questions. If you have a question for us, please email us at sisters-in-law@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, where we'll answer as many of your questions as we can, and we always get so many. One of the most fun parts of our conversation is choosing which of the questions we're going to discuss. And so we've got three good ones to discuss this week.

Let me start with this one. It is from Mary in Woodbury, Minnesota. And she says, "What is your take on recently released books containing significant developments involving Donald Trump that went unreported for more than a year? Is it a crime that these details are held back?" Jill, you're the political memoir author. What do you think?

Jill Wine-Banks:

Well, let me just say, I won't be buying any of those books and I would advise other people not to buy them. In terms of whether it's a crime, could be misprision of a felony if you know about it and don't report it. It also could be dereliction of your duty if you're a cabinet member and have an obligation under the 25th Amendment to take action when someone is committing crimes in your presence. I think it's awful and I know Kim will want to weigh in on reporters' obligations to report things, which is maybe different than a Cabinet Officer or someone in a position to really do something about what's going on.

But I personally would not let someone make money by withholding information that could have made a difference in impeachment, could have made a difference in the 25th Amendment being applied. And so that's my answer to Mary.

Kimberly Atkins Stohr:

Yeah. The only thing I'd add is something you already alluded to, is that obviously if you are someone who was taken an oath of office or is a public official, whose job it is to put the American people first and you hold back on relevant information that would do just that in order to sell a book for profit later, that, that is a dereliction of that duty, and there should be some consequence to that. There is a difference between that and journalists who do not take that oath.

And often, what could happen is journalists are given some of this information only on the condition that they cannot immediately release it or some other constraints that are put on their ability to publish this information. Again, you can think... you are perfectly within your right to think that it isn't right and vote with your pocketbook and not buy those books, but yeah, I think that it's a terrible thing, especially depending on what it is. When democracy is at stake, when the security of the American people is at stake, when the integrity of an election is at stake, when you're talking about doing things like ordering protestors to be gassed or shot or whatever, those are really horrific things that I think if they come out in your book, you really should be ashamed of yourself.

Barb McQuade:

That's a really good point about getting information that's sort of embargoed. I've always been sort of looking with great disdain at these journalists who are holding back to sell their books at a profit, but you raise a good point, which it may be they were only given that information under the condition that they hold it and don't report it until later. So, all right, I will hold back some of my spite.

Kimberly Atkins Stohr:

You don't have to buy the book.

Barb McQuade:

Our next question comes to us from @Gina294, who asks, "Why do you suppose the judge did not dismiss the Sussman case for lack of materiality?" Joyce, do you have thoughts on that?

Joyce Vance:

I do. This is a really great question and I'm going to answer it with my appellate lawyer hat on, and say that not only is the judge protecting the record, but secretly, the lawyers for Mr. Sussman were probably happy to let this go a little bit further than to dismiss the case flat out before trial. Maybe not all that happy because they don't have to worry about an appeal, but in reality, what the judge is doing here is he's giving the government the opportunity to air its evidence.

The government will put on the evidence that it would have to support materiality, and the judge can actually reconsider that motion to dismiss, can take it up. I suspect that the defendant's lawyers will make it at the close of the government's evidence to dismiss for failure to establish a material element of the charge of lying to federal agents. So we could see it happen there, but there is this bias that judges have in favor of letting the parties put on their evidence before they make a full ruling in some cases like this, and I think that's what we saw happen here.

Barb McQuade:

Yeah. It's very different from a civil case where you see these motions for summary judgment and that's because in civil cases, there are usually depositions of all the key witnesses. And so before trial, you know what it is they're going to say. That doesn't happen in criminal cases. So you have to let the trial play out to actually know what the record is.

Our final question comes to us from @BarbGaleW. Well, I'll take this one since it's another Barb. A Barb to a Barb. She writes that, "Kathryn Kolbert said on PBS that stare decisis means one cannot overturn a decision simply because one does not like it. Please describe the rationales that can be used to overturn a decision?"

This is a great question because it is not simply because, as Justice Alito's draft opinion in *Dobbs* suggests because they believed it was, "Egregiously wrong." That's not enough. There is a famous quote by Justice Louis Brandeis that said, "It is better that the law be settled than that the law be settled right," and that's because we need to know what the law is for clarity and reliance in our own affairs, but sometimes a decision is so bad that it should be overturned, and that has happened.

Brown versus Board of Education overturned *Plessy versus Ferguson*, which had held about the separate but equal doctrine, but there are four factors that courts are supposed to consider. Not just that they don't like the outcome, but the factors are, has our understanding of the facts or law changed since that prior decision was rendered? Have people relied on that prior decision in their own lives, such that it would be disruptive to change it now? Has the rule proved unworkable in practice? It seemed like a good idea at the time, but now that we've applied it in the real world, it's really been very difficult. Or has it become inconsistent with other law that has developed around it since the time it has been considered?

And so those are the factors courts are supposed to look at, and what we're seeing now, I think is a disturbing trend. Clarence Thomas is a big advocate for this, of just saying we should be able to overturn anything we believe is egregiously wrong. And that of course, is not how it's supposed to work. It really substitutes just the opinions of the Justices who happen to be on the court at any one time in history, from this idea of developing precedent over time through legal doctrine.

Thank you for listening to #SistersInLaw with Jill Wine-Banks, Kimberly Atkins Stohr, Joyce Vance, and me, Barb McQuade. You can send in your questions by email to sistersinlaw@politicon.com or tweet them for next week's show using #SistersInLaw. Go to politicon.com/merch to buy our pale blue tee or other goodies. And please support this week's sponsors, HelloFresh, Pair Eyewear, Policygenius, Athena Club, and Honey. 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. It really helps others to find the show. See you next week with another episode, #SistersInLaw.

Joyce Vance:

I swear though, it's like we're at the point where we just have to laugh because everything is so farmischt.

Kimberly Atkins Stohr:

It is.

Barb McQuade:

It's so what? What was the word?

Jill Wine-Banks:

Farmischt.

Joyce Vance:

Farmischt. [inaudible 01:23:46]

Barb McQuade:

Is that Yiddish?

Joyce Vance:

Farmischt. I don't-

Barb McQuade:

I've heard Meshuga. What's that one?

Jill Wine-Banks:

Meshuga.

Barb McQuade:

What does that one mean? That's more like-

Joyce Vance:

Clamped is crazy.

Jill Wine-Banks:

Crazy.

Barb McQuade:

What's meshuga?

Joyce Vance:

Crazy.

Barb McQuade:

It's all crazy. And what's the one you just said? [inaudible 01:24:03]

Jill Wine-Banks:

Farmischt is messed up.

Joyce Vance:

Yeah.

Kimberly Atkins Stohr:

Farmischt, like with an F.

Jill Wine-Banks:

Yeah.

Joyce Vance:

F-A-R-M-I-S-C-H-T.

Jill Wine-Banks:

But it's farmischt.

Kimberly Atkins Stohr:

[inaudible 01:24:15] That's a new one. I like it. I say oy and stuff. So I feel like I need to broaden my vocabulary.

Jill Wine-Banks:

I have a mesuga pin and I have an oy vey pin, in case anybody wants to utter one.

Barb McQuade:

Oy vey, that's a good one.

Joyce Vance:

You have a mesuga pin?

Jill Wine-Banks:

I do. [inaudible 01:24:32] Someone sent it to me. It's just a crazy person, crazy looking person.

Kimberly Atkins Stohr:

Oh, that's a good [inaudible 01:24:37].

Jill Wine-Banks:

Oy vey says oy vey. When I went to see the Yiddish version of Fiddler On The Roof, they were selling oy vey pins.

Kimberly Atkins Stohr:

That's really good.

Jill Wine-Banks:

They were also selling mirrors that say... Oh, Joyce, what's the right word for a beautiful face?

Joyce Vance:

Shayna punim.

This transcript was exported on May 21, 2022 - view latest version [here](#).

Jill Wine-Banks:

Shayna punim, yes. That's what it says.

Kimberly Atkins Stohr:

So I have to say, when I was in a college band in Michigan, we giggled events. We played weddings and other events to make money, and so we had to do both weddings and Bar and Bat Mitzvahs. So we learned how to do [foreign language 01:25:13].

Barb McQuade:

Oh, that's fantastic. Can you say [inaudible 01:25:18]?

Kimberly Atkins Stohr:

And we would attach it... Not right now, but we had this... it's set up that we would attach it to September by Earth, Wind & Fire. We could go from September, Earth, Wind & Fire, right into having... So because everybody's up dancing to that song and they love it, and then we go right into it and then the chair goes up and it was making money.

Barb McQuade:

Oh, that's so great.

Joyce Vance:

Okay. This is for when we all get together in Chicago, Kim's going to have to sing it.

Kimberly Atkins Stohr:

[inaudible 01:25:45].