

Jennifer Palmieri:

Hi, I'm Jennifer Palmieri.

Claire McCaskill:

And I'm Claire McCaskill. We're the hosts of the MSNBC Podcast, How to Win 2024.

Jennifer Palmieri:

We both know firsthand that winning an election is hard, and having been in and around tough races for most of our adult lives, we have some unique insights into what it will take to win this 2024 election.

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Kimberly Atkins Stohr:

Welcome back to #SistersInLaw with Barb McQuade, Joyce Vance, Jill Wine-Banks and me, Kimberly Atkins Stohr. This week we will be talking about all the latest from Legal Trump Land, including him facing some accountability in court for his reckless taunts. Also, a Georgia gerrymandering ruling and how map rigging is impacting democracy more broadly than you think. And also, yellow flag laws. We've been thinking a lot about that since the horrific events in and around Lewiston, Maine. We're going to get into that and as always, we will look forward to answering your questions at the end of the show, which is our favorite part of the show.

First, I want to kick off a little bit. The other day, I really felt like it was autumn because I cooked collard greens and sweet potatoes. Listen, collards and yams, and I do know that there's a difference between yams and sweet potatoes, but that flavor combination to me says autumn. The savory bitterness of the collard greens mixed with the aromatic sweetness of sweet potatoes. There's nothing like it, and you can't eat that in August. You can't eat that in March. That is an October meal, right? And it was such comfort food in Autumn, and it made me want to ask you guys, now that it's fully autumn, the leaves are changing.

Well, the temperatures are cooler a little bit. It's still in the 80s here in DC, but what comfort foods do you like this time of year? What about you, Barb?

Barb McQuade:

Well, I know it's fall when Panera Bread start serving their butternut squash soup, which I love.

Kimberly Atkins Stohr:

I love that.

Barb McQuade:

Isn't that so good? I love butternut squash-

Kimberly Atkins Stohr:

It's so good.

Barb McQuade:

Yeah, I'm such a sucker for that. If it's on the menu anywhere, I'll always order it. It's such a fall flavor and it's so delicious. And when it comes to cooking something, I don't cook any other time of year, but I make chili in the fall, and last weekend my husband said, "You know what? It's cold enough for? Chili." I said, "You're right." So we made chili and that was delicious, but same thing, it's definitely ... it feels like fall, the leaves are turning, time for chili.

Kimberly Atkins Stohr:

What about you, Jill?

Jill Wine-Banks:

Well, first of all, I have to say I agree with both things that Barb said. For me, fall is definitely time for making soup and chili and casseroles or the Shepherd's Pie from HelloFresh. I mean, it's really an amazing thing to do the soup, but I have to disagree with you because I love garnet sweet potatoes, and they're not available everywhere, but they are amazingly tasty and sweet, and I eat them. I just bake them in the microwave and I eat them all year. They are the best. I recommend everyone try garnet sweet potatoes.

Kimberly Atkins Stohr:

I like sweet potatoes all year too, but the combination of collard greens and sweet potatoes for me are a very full meal, right?

Joyce Vance:

Sounds fall to me.

Kimberly Atkins Stohr:

What do you think, Joyce?

Joyce Vance:

I guess, I'm the sister who loves to bake, but in summer it's really too hot to run my oven down here. So the thing for me about fall is it's time to start baking again. I made this really wonderful cardamon cake to celebrate the start of fall and now, I'm thinking about all of the things that I can bake using pumpkin. I grabbed some sugar pumpkins and I'm getting ready to cook them, and I will be planning on doing a lot of baking for the next few weeks. We can all use a little bit of comfort from our kitchens right now.

Kimberly Atkins Stohr:

Absolutely. Joyce, you look luminous. What is your secret?

Joyce Vance:

Kim, my secret is OneSkin, and we're so happy that support for today's episode comes from them, like us. You probably had a little too much fun in the sun this summer, and it's no secret that UV rays can take a toll on our skin, leaving it dry, tired and less vibrant. So if you want to hit the undue button on UV induced aging, say hello to OneSkin, your secret weapon against the leftover summary toll on your skin. I am really glad that I've started using it.

Jill Wine-Banks:

It's an amazing product and anyone who grew up in my era when we sat in the sun with Johnson's Baby Oil mixed with iodine, definitely had sun damage. And we by the way, used a cardboard thing wrapped in tinfoil to reflect the rays.

Joyce Vance:

Totally the same. I can't believe you did that too.

Jill Wine-Banks:

I did. My God. It was the worst thing you could have ever done. But OneSkin products are all powered by the revolutionary OS-01 Peptide. This proprietary peptide is scientifically proven to reduce senescent cells. And by the way, that word means aged cells and they are a central source of skin aging. Their scientists have shown that OS-01 can actually reverse the biological age of skin by several years in their groundbreaking research, healthier, more youthful looking skin doesn't just look great, which of course, we all want, but it's good for overall wellness too.

Kimberly Atkins Stohr:

And it's not just for women. I just want to underscore that everybody should be taking good care of their skin. So regardless of your gender, it's something that is important for you to do. So head over to [oneskin.co](https://oneskin.co), and explore how their products can become your skin's new savior. For a limited time, our listeners can get 15% off OneSkin with our code Sisters at [oneskin.co](https://oneskin.co). Since we've been using it, we've been looking and feeling great. It's amazing to apply. It feels great, especially on my face. I do like the moisturizer, and so I feel so fresh each time. It's like a massage at the fountain of youth.

Barb McQuade:

I'm no scientist like Jill. That must've been one of your other jobs, Jill, in your long career, but I do know that OneSkin is the world's first skin longevity company. OneSkin addresses skin health at the molecular level, targeting the root causes of aging, so skin behaves, feels and appears younger. It's time to get started with your new face, eye and body routine at a discounted rate today. Get 15% off with the code sisters at [oneskin.co](https://oneskin.co). That's 15% off [oneskin.co](https://oneskin.co) with code, sisters. You can also find the link in our show notes. We saw a lot of developments this week in the various cases involving Donald Trump. I think the most significant development was probably the guilty plea by lawyer Jenna Ellis in Georgia.

She's the fourth defendant to plead guilty in that 19 defendant RICO case. Jenna Ellis, of course, was one of the lawyers on Trump's so-called Elite Strike Force that went around the country challenging election results. She was there at the Four Seasons Landscaping Press Conference with Rudy Giuliani and Sidney Powell and others. So Kim, I want to ask you about this plea deal. One of the things she agreed to do as part of her plea deal is to testify against co-defendants. How do you think her testimony can be useful to Fani Willis and her team?

Kimberly Atkins Stohr:

Yeah, I think it could be very useful, and I know a lot of our listeners ask questions about this, this week. So I think it could be very useful. Of course, Jenna Ellis was a part of the legal team that was actively pushing these bogus, I am using air quotes when I say legal theories, trying to support the overturning of election results, not just in Georgia, but in multiple states in at least a half dozen states, trying to urge lawmakers to reject the results of the popular vote in those states and try to instead overturn the

election by urging them to cast their electoral votes in favor of Donald Trump in states that Joe Biden won.

She was a key part of this post-election legal team that was crafted to do that. So I think the fact that she was working closely with people like Rudolph Giuliani is terrible news for him in this because she was writing a memorandum, she was in ... as you said, she was present for a lot of this spewing of the misinformation that led to this. She also ... it's pretty clear that she used purely, I don't know, just the theories pulled out of thin air, false statements about even her own background to create enough fog to create enough noise of misinformation and then, use that as the basis of more information to create enough uncertainty to make people distrust the election results.

And I think that Fani Willis will do a better job of putting that to jurors than just about anybody. Now, while I think that her testimony is going to be most damaging to all of the other co-defendants, including Rudy Giuliani, I think that it's bad for Trump too. She may have been a little more removed from Donald Trump himself, but the one thing that she definitely did was service someone who he listened to when it came to these, I don't know, kooky, forgive the legal ... is that a new legal term?

Barb McQuade:

Yeah.

Kimberly Atkins Stohr:

These kooky legal theories,

Barb McQuade:

Black law dictionary, correct.

Kimberly Atkins Stohr:

Kooky legal theories that she came up with. He relied on that. And in part in her statement, it seemed that she was hedging a little bit like even she herself was trying to say I relied on attorneys who were more-

Barb McQuade:

That was so weeny. I wouldn't have worked with that as prosecutor.

Joyce Vance:

More experienced than me. I'm just a little girl.

Kimberly Atkins Stohr:

Exactly.

Barb McQuade:

Yeah, she's crying.

Kimberly Atkins Stohr:

I should have done my due diligence. Listen, the standard is recklessness. So if fee was reckless, it doesn't matter if she was relying on other people in keeping her head in the sand, that still makes her

liable, and if she was being reckless at the same time that there were other attorneys such as the Attorney General of the United States that told Donald Trump that this was not a real legal theory. White House counsel who told Donald Trump that there was no there-there. If she was still being reckless, that does not absolve her from liability, but more importantly, it really blows a big hole in Donald Trump's biggest defense, which is, "I was just listening to the advice of attorneys."

The more attorneys specifically among the co-defendants who plead and say they lied, which at the end of the day, she could have couched it however she did in open court in her apology, but at the end of the day, she lied. She admitted to lying and she's now convicted of doing so. That's terrible news for Donald Trump too.

Barb McQuade:

Yeah, I think that's right. Jill, what do you think of these plea deals? Now, Jenna Ellis pled to a felony but not RICO. She was allowed to plead guilty to conspiracy to commit false statements. So far, these four defendants who are charged with RICO are pleading to either misdemeanors or felonies with no prison time. Does that make sense to you?

Jill Wine-Banks:

It does. And before I give a fuller answer to that, I just want to say that Donald Trump has also eviscerated his argument about relying on lawyer's advice because his first reaction to Jenna Ellis was, "She was never my lawyer." Well, okay, if she wasn't your lawyer, you cannot say you relied on her legal advice. And to the extent that she was present at meetings with Rudy Giuliani that waives the attorney-client privilege because an outsider, not your lawyer, was also there. So I think that does a lot of damage to him. In terms of the plea deal, I do think it's fair.

I do think it's a very good deal for the defendants. During Watergate, we insisted on even our biggest witnesses, John Dean and Jeb Magruder pleading to a felony and serving jail time.

Barb McQuade:

Yep.

Jill Wine-Banks:

So I think that would've been better, but there's a lot of advantages. A plea deal is after all, a compromise, it's a negotiation. It's something that you have to do to get something. It's a trade-off. And here, first of all, you didn't have to reveal any evidence in the early trial, the two who had requested a speedy trial. You would've had to put out all the evidence and shown it and shown your hand before you tried all the others. You also are getting witnesses who will testify against other people and however good your documents are, it's not the same as having someone tell a narrative. So I think that the trade-off here justifies the easier plea deals and also, it's a guaranteed conviction.

Whereas if you go to trial, although we think from what we know, this is a slam dunk case, there is no such thing as a slam dunk case. It only takes one juror to mean a mistrial and then, you have to retry it. And that's a big expense for the government in terms of time and money, so I think these are acceptable plea deals.

Barb McQuade:

Yeah, I think I disagree. I don't think I would offer these deals, and I'm probably just biased from my experience at the Justice Department like you, Jill, it was the practice in our district to require people to

plead guilty to the crime they committed and then, ask the judge for leniency, but usually, half of their sentencing guidelines range. So a defendant in federal court charged with RICO pleads to RICO. So these strike me as quite lenient, but I agree with you, they are getting big value for it and maybe that's why they're getting these deep discounts. Joyce, was your practice any different?

Joyce Vance:

I mean, my practice with jurors, I'm not so sure. I want to see exactly what Fani Willis is getting for these deals before I think we can evaluate them, but I will say something that I've learned, I spent a lot of time working with local folks here. I also worked with local folks in Georgia doing Dixie Mafia cases, and their practices are different than ours at DOJ were. Their resources are very different and I have enormous respect for state and local law enforcement folks and prosecutors. I think that they do a lot with what they have, and I think Fani Willis is a smart and an experienced prosecutor, so I'm willing to move forward on the assumption that she knows stuff about her case that I don't, and that she really is doing justice in the best tradition of prosecutors everywhere.

Barb McQuade:

Yeah. Joyce, I want to ask you about a different aspect of the guilty plea by Jenna Ellis. Do you think it was all influenced by the discipline proceedings in Colorado where she's licensed there in this disciplinary proceeding, she admitted to making false statements about a stolen election there back in March. Did that sort of force her hand here, you think?

Joyce Vance:

Yeah, I think this is such a good question, Barb. It's sort of a nuanced inside baseball question, and I think what happened is that Ellis got really good legal advice. The evidence against her was solid, based on that concession, which she had to make if she didn't want to commit perjury, Colorado was going to yank her license to practice law no matter what. So she now has a deal in Georgia that spares her both prison and the additional expense of having a lawyer fight it out for her at trial. I think it was sort of a no-brainer for her to do this, and that's why it seemed pretty likely to me that she would go ahead and do it quickly rather than waiting for more motions practice and a trial setting in the case, and she in fact did it.

Barb McQuade:

Yeah. Well, I want to turn to another topic. There was another report this week that Mark Meadows, former chief of staff to Donald Trump, gave immunized testimony to a federal grand jury earlier this year. Joyce, you wrote an interesting piece in your Substack newsletter about this, pointing out that immunity deals and plea deals are two very different things. Can you explain that?

Joyce Vance:

Yeah, sure. I mean, I love ... Barb, this is something we've talked about a lot, right? America is getting a law degree in the process of this. It's sort of the silver lining of the Trump era. People get to understand how it works. And the difference between Ellis and Meadows really actually illustrates this distinction perfectly. I'm going to start using this when I teach because it's a great way of looking at it. So Jenna Ellis gets indicted, she agrees to cooperate in exchange for her plea deal if she backs out of that deal, if she doesn't continue to talk with investigators or if she lies when she testifies, she loses her deal.

She's on the hook again for the full indictment, and that's a pretty good circumstantial guarantee that she'll be truthful when she testifies because if she doesn't, the remaining defendants will know she's lying and she'll get eviscerated on cross-examination, she'll lose her deal. She is now in a box. She has to tell the truth and she has to tell what she knows. Mark Meadows, on the other hand, never got indicted, and that's not essential to being a cooperating co-defendant. You can actually cut a deal before you get indicted, but that's not what happened with Meadows. He was compelled to testify by a grant of immunity, no deal with the government.

He doesn't know if they plan to indict him or not. There are two kinds of immunity that federal prosecutors can offer you and Meadows' immunity comes in the course of Jack Smith's prosecution in Washington DC. The government can either offer you use immunity, which in essence means that the government still can technically indict you, it just can't use your testimony or any evidence it derives from your testimony to prosecute you. Then, there's transactional immunity, which means you won't be indicted for any charges related to the topic that you've testified about. We don't know which kind Meadows got, but by giving him immunity, the government forced him to testify by removing his ability to say that he had a Fifth Amendment privilege against self-incrimination.

So he's not a cooperating witness. He is far from being a cooperating witness. In fact, this signals that the government couldn't obtain his cooperation voluntarily, although they probably would've really liked to have had it, given what Meadows knows and what his access was like. I think in any event, Smith had to know before he went ahead and indicted Trump, he had to know what Meadows was going to say. Was he a witness for Trump? Was he a witness against Trump? Locking him down was critical, and they appear to have gotten it the only way that they could. So that's sort of, Jenna Ellis cooperating witness. Mark Meadows compelled to testify with immunity.

Barb McQuade:

Well, it's interesting and he so holds the keys to the kingdom, doesn't he. He seems like such an important witness. Jill, let me ask you your views on that. In your organized crime days, you likely squeezed henchmen and sidekicks for information about the mob boss. What testimony do you think Meadows could provide that would make him a valuable witness for Jack Smith?

Jill Wine-Banks:

There's nothing as good as someone who was in the room. If I could quote from Hamilton, and he is someone who was in the room at crucial times. He was part of the call to Georgia. He went to Georgia. He was in the White House on January 6th, adjacent to or with Donald Trump. That testimony is essential and as Joyce just said, you want to know before the trial whether he's going to end up being a defense witness or a prosecution witness. So it may be that he dipped his toe in the water by giving documents, crucial documents, very important documents, but then he backed away from cooperation. I'm not sure why. It actually doesn't make a lot of sense to me.

On the other hand, he didn't get indicted, so at least not at the federal level. He is indicted, of course in Georgia, and unless he pleads in Georgia and gets a federal deal, depending on the kind of immunity he has, he could still get indicted at the federal level. And I think he is really a key witness. I think he is someone who just knows a lot of details of Donald Trump's actions and his motives, his mindset, his knowledge. Those are the kind of things that make a trial come to life. So I think he will be a terrific witness, and even if he's a hostile witness, which means you get to cross examine him, even though you sponsor him by putting him on the stand because he is fighting, answering questions, you get to lead him.

And I still think the answers he gives are going to be very, very damning to Donald Trump.

Barb McQuade:

Yeah. Just trying to get your head in Mark Meadow's space and if you're his lawyer, he's an interesting character. As Jill said, he went down this road of cooperation with the January 6th House Select Committee for a little bit, and then he stopped. He was a member of Congress before he was chief of staff. Kim, what do you think is his calculus as he navigates these cases? Is it loyalty to Donald Trump? Is it avoiding a conviction? Is he concerned about protecting his own political future? I mean, what do you think is the driving motivation for him?

Kimberly Atkins Stohr:

Yeah, that's a good question. I have to believe it's some sort of CYA, which I may not even fully understand. So here's my concern, and maybe you guys can talk me off the ledge, right? I'm very concerned about Mark Meadow's credibility. I am thinking about the fact that he sort of cooperated with the January 6th committee until he didn't. He put out this book that said some stuff, but not others. Remember when Donald Trump was in the hospital with COVID and he was up with all of those doctors who, I don't know what all their deal was, but Mark Meadows was just like, "Yeah, it's going to be fine," whatever and then he went around the corner and told reporters that he was on death's door.

I am very concerned about Mark Meadow's credibility when it comes to this, and maybe you prosecutors can shed some light on that. I'm not sure how helpful this testimony will be. I hope everything you all just said is true, but Mark Meadows, one thing we do know about him is that he is a liar. He is a bold-faced liar. Will he do it under oath? I hope not, but what does that do to his testimony here? I don't know.

Jill Wine-Banks:

Well, he lied in his book and there is no telling what he will do, but I can just tell you that in organized crime cases and political corruption cases, you don't find innocent victims who happen to be depositing a check at the bank when it gets robbed, who can be a totally neutral good witness? All of the people who you have testifying are criminals. They're bad people and juries believe them for whatever reason. So I think that with the support of documentary evidence that the government has in this case, that he will be believed, I think that you have to bring it out on direct examination. Something that it seems the prosecutor failed to do in questioning Michael Cohen in the New York case.

It's much better if you have the person admit to lying and deal with it upfront in direct examination rather than hiding it and letting it come out on cross examination, so that would be my advice to the prosecutors. Get it out on direct.

Kimberly Atkins Stohr:

I'll take that. That is good advice.

Joyce Vance:

Yeah, I've sponsored the testimony of lying liars and horrible people. What you really have to do is corroborate it with the testimony of other witnesses or documents and other things, but they can still be valuable, because they can kind of explain the motivation and what was going on at the time and connect the dots and more serve as a narrator than someone you need to rely on to establish facts, but we'll see. I one time had a judge laugh at me in chambers because I had my own witness on the stand

and just listening to all the lies he told before he got to the truth was sort of disgusting. So I finally said to him, and now tell me about the next lie that you told to the FBI agents.

The judge was like, I could not believe you did that, but the jury loved it. And it is true, right? I mean, you have to be candid about who people are and what their problems are as witnesses.

Barb McQuade:

Yeah, and you make it clear they're not my friend. I don't like this guy, but the facts are what they are, and here he is and he is telling you what really happened. I want to turn now to something I think is super interesting. That's these gag orders that have been imposed against Donald Trump in both the New York case and one of the federal cases. So Judge Engoron in the New York civil trial over the financial misrepresentations with the Attorney General's case and Judge Tanya Chutkan in the federal election interference cases have both entered gag orders of varying degrees.

And Jill, I want to ask you about first, Judge Engoron fined Donald Trump \$10,000 this week for making yet another disparaging comment about his clerk. What did you think about that judge's order?

Jill Wine-Banks:

So let me start by, he had fined him \$5,000 just before that,

Barb McQuade:

Yeah.

Jill Wine-Banks:

The \$5,000 didn't get him to even take the bad posting down from his website, so he doubled it. Unfortunately, I believe he can quadruple it, and it's still not going to stop Donald Trump because he's not paying those fines. His supporters are giving him small dollar donations to pay them. So that won't stop him. I think eventually he's going to have to do ... move the trial date up even faster. I mean, this is an ongoing case right now, so I don't know how you can do that, but eventually, he may have to really issue a gag order that has real teeth where Donald Trump is prevented from using social media about the trial.

He can campaign all he wants because otherwise there's going to be a big problem. I wouldn't want to be in any of these judges' positions because it is really hard with a candidate for president to actually put them in jail, even though I know that all of our listeners are going to say, "Of course he belongs in jail. Why is he out playing golf and campaigning?" I know I've heard that from a million of my followers, and I agree with them. Why is he free to do this when any of our clients would have been jailed for this kind of horrible obstruction and it's contempt of court? It's really bad and normally, you would go to jail for that. Unfortunately, I do think we have to take into account that he's a candidate for president.

That he is a former president. I don't think he gets any legal benefits from being the former president or a candidate, but the reality is it's hard to do. I think he's going to up his ... Judge Engoron is going to have to up his game quite substantially. If 10 doesn't do it, then he's got to go to 50, then 150, then 500. And another comparison is in the E. Jean Carroll case. There was a huge verdict against Donald Trump, and as soon as that case was over, he redefamed her. So the penalty this time is going to have to be ... because the penalty is to stop him from doing it. And if millions didn't do it, then it's going to have to go to hundreds of millions.

So I think the jury in the E. Jean Carroll case is going to be justified in penalizing him a huge, huge amount of dollars, and I think eventually Judge Engoron is going to have to do the same thing.

Barb McQuade:

Well, Joyce, I want to ask you about the dynamics of this proceeding because Judge Engoron actually put Donald Trump on the witness stand and questioned him and Trump denied it. He said, "When I said that the person sitting next to the judge is partisan, I met Michael Cohen who's on the witness stand, not the clerk." And the judge found Trump's denial to not be credible. What is the significance of that finding, a finding of lack of credibility. Can that be used against him in any way? And if you were Trump's lawyer, would you have allowed him to take the stand?

Joyce Vance:

Yeah, so this is so interesting. I think the judge really has Trump's ticket and he started punching it repeatedly, right? This trial is going to get more and more fun to watch. It's very interesting. And to be honest, Barb, I'm not 100% certain that I'm right about this, but the way I've been thinking about it, I think in this kind of a proceeding with a gag order violation, which is not criminal, the judge could have in essence, forced Trump to take the witness stand to question him before he imposed a penalty, but Trump made it really easy for him here, right? I mean, Trump continues to think he's the smartest guy in the room and he can brazen it out by lying.

And it was very clear that this is a lie because Trump is someone who has never hesitated to criticize Michael Cohen by name. So when he refers to the person that is sitting next to the judge, it's clearly a reference to the clerk because Alina Habba has already been talking with the judge, "Could you please restrict your comments that you're making to your clerk and the rolling of your eyes?" Absolutely no doubt who Trump is talking about. So he really makes it easy for the judge to make this finding. I think that the more nuanced question that you ask here is, could it be used down the road? And I think not, you typically can't use even a court ruling to show somebody has bad character. That's I think is really the use that this would be put to for the most part.

Although there could be something that happens down the road where it becomes material to show that Trump has lied in court on the witness stand in past, and then who knows, maybe this could become relevant down the road. Certainly, it is a bad look for a former president, right?

Barb McQuade:

Well, let's shift over to the federal case. Kim, in that case, Judge Chutkan has put a hold on her gag order while the parties file supplemental briefs as to whether the order should be stayed, pending appeal, and of course, Trump ever, the opportunist, jumped right on that opportunity with more posts in this interim period about special counsel Jack Smith and about Mark Meadows. One really interesting thing is that the ACLU has joined the fight in favor of Trump arguing that the order is too vague and not narrowly tailored. What do you make of that argument?

Kimberly Atkins Stohr:

Yeah, it's really interesting, and I think sort of breaking this down, it helps me explain why I think that Donald Trump should be held in contempt, and if he continues to make these statements, should be put in jail, but let's back up a little bit. I really appreciate the work of the ACLU, which doggedly protects the First Amendment rights of all of us, and it's in the name of the First Amendment that they filed this motion, not to say that Donald Trump should be doing what he's doing. Let's be really, really clear. They say nothing about Donald Trump's ... it's not, they say nothing, but this is not about Donald Trump's behavior. It's about the language of the order and the precedent that it can set, right?

And so when it comes to protecting First Amendment rights in general, but particularly to Jill's point, somebody who is a public figure, someone who is a candidate for office, courts have to be very careful in the way that they craft gag orders. The two areas that the ACLU brings up is the fact that in their view that the gag order is vague, overly vague and also, overly broad. These are legal terms that have very specific meaning. Gag orders need to be ... in terms of vagueness, they need to be precisely defined and narrowly tailored to protect the judicial process. That's the standard, and what the ACLU is arguing here is that the fact that this gag order prevents Donald Trump from making certain statements that "target" certain individuals.

They take issue with the word target. What does that mean? Does it mean just mentioning them? Does it mean just saying something about them in passing? A lot of these individuals are people that he would normally talk about in the course of the campaign. Does that mean just talking about them is targeting them? They're saying that that is too vague in this order to be constitutional. They also say it's overly broad. They said that a gag order has to be the least restrictive means to accomplish the compelling interest of protecting the judicial system and the process here, and they're not sure that that is the case.

There's a difference of standard here. There's actually a circuit split, which makes me think that this is going to go up the ... this appeal is going to go up the legal chain. We're going to hear from the circuits on this, and it could even go up to the Supreme Court here because what is the standard that you use? Is it that there is a reasonable likelihood that his statements could interfere with the judicial process, or is there a substantial likelihood that his comments will tamper with the legal process? And it's unclear what the actual standard here. So while I know in my gut, and I'm happy that the judges are issuing this gag orders, I wish that they will issue more.

I think that it is important that the ACLU is pointing out an important unsettled piece of law here, which is what exactly is the standard to determine if a gag order is overly broad? And this might be the one that could, I think, get all the way to the SCOTUS.

Barb McQuade:

I discussed this with a colleague at the law school who's a First Amendment scholar, and his view is that a gag order does not need to meet those ordinary standards for a crime would have to.

Kimberly Atkins Stohr:

Interesting.

Barb McQuade:

The ACLU position in a normal criminal statute certainly has to be, vagueness is a problem, over breadth is a problem. He said that's different. Those general First Amendment principles don't apply when it comes to a gag order. The judge could completely gag the parties if she wanted to because she has an obligation to protect the integrity of the case. He can file anything he wants in the court, by the way.

Kimberly Atkins Stohr:

Right.

Barb McQuade:

I mean, if he thinks somebody is doing something wrong, he can file it in a judicial pleading. He just can't make extra judicial statements about any of these witnesses. I still think, though, Kim, to your point,

there's always this difference when you're a government actor of what you can do versus what you should do.

Kimberly Atkins Stohr:

Yes.

Barb McQuade:

So even though it may be perfectly legal for her to keep the order just as it is, she could certainly appease critics and instill more confidence in the process if she does just do what the ACLU asks, which is just more precisely define the word target and be easy enough to do. They even offer a suggestion. It could be judge, for example, if you might want to do this.

Kimberly Atkins Stohr:

If you might want to copy and paste this.

Claire McCaskill:

Yeah, exactly.

Kimberly Atkins Stohr:

Here's some language.

Claire McCaskill:

To single out an individual for scorn or derision or ridicule or harassment. I think they say something like that, like easy enough. It's easy enough to do that.

Kimberly Atkins Stohr:

It's clearly not a pro-Trump objection. It is an objection to uphold the principles of the First Amendment, which again, I really appreciate.

Barb McQuade:

Yep. Yep. Same.

Jill Wine-Banks:

Joyce, I love Thrive Causemetics. I have been using their mascara for years, and I'm so glad that all of you have gotten to love it as much as I do. Tell me about what you're using.

Joyce Vance:

I really do like Thrive and one of my favorite things about it is it's competitive with much more highly priced cosmetic items, wears well, it looks great, and my skin doesn't feel really bad when I wear Thrive. I've actually been using one of their SPF-laden skin preparations when I put my makeup on. What I'm really hooked on, Jill, it's the eye pencils. They're fabulous. I use the white one under my eyebrows. I use the colored ones on my lid. This is probably too much information for our listeners, but I really do love this makeup. So whether you like a fresh face, full glam, or somewhere in between look, you've probably

seen Thrive Causemetics' viral tubing, mascara, you know the one in the Turquoise tube all over your socials.

Thrive Causemetics' beauty products are certified 100% vegan and cruelty-free. They're made with clean skin loving ingredients, high performance and trademark formulas and uncompromising standards. It's easy to see why their bestsellers have thousands of five star reviews.

Kimberly Atkins Stohr:

We love how their products are certified 100% vegan and cruelty-free. Cause is in the name for a reason. Every purchase supports organizations that help communities thrive from education to cancer research, to fighting to end homelessness, along with many more. You'll feel great and look great with Thrive. The mascara has really made my eyes stand out on camera. I have left the falsies behind because you really don't need them. They just enhance what you've got in a way that looks great. It really is a game changer.

Jill Wine-Banks:

It is. I've used it for years and love how it lasts and how easy it is to wash off, but I also love and highly recommend Thrive's brilliant eye brightener pencils that Joyce mentioned. I use them both as an eyeshadow in some of the lighter colors or when you want your eyes to pop on camera or at a party, you can use the light white highlighter. If you use it on your tear line. It really makes your eyes look bigger. It's a highlighter stick made to brighten and open your eyes, giving you an instant eye lift. All you have to do is apply it to the inner corner of your eyes and on the waterline, and you'll look like you've had plenty of restful sleep, even though you haven't or if you were up until 2:00 AM like I frequently am.

Joyce Vance:

Well, I always go full glam. So now Thrive Causemetics is luxury beauty that gives back. Right now, you can get an exclusive 20% off your first order at [thrivecausemetics.com/sisters](https://thrivecausemetics.com/sisters). That's [thrivecausemetics.com/sisters](https://thrivecausemetics.com/sisters) for 20% off your first order. You can also get your glam on with Thrive in the show notes. Seriously, Barb, you make fun of yourself and say that you don't do full glam. You have been looking great lately. I have noticed on TV. What you've been doing?

Barb McQuade:

Well, thanks, Joyce. I was just born glam. This is all me.

Joyce Vance:

I think it's Thrive.

Kimberly Atkins Stohr:

She woke up like this.

Joyce Vance:

Well, gerrymandering is back in the news, but there's a little bit of, I think, interesting and maybe even good news here because Barb, on Thursday, a court in Georgia ruled that the state legislature had drawn gerrymandered maps that violated the Voting Rights Act. Georgia now joins Alabama and South Carolina as states where this has happened recently, although Alabama's legislature refused to draw new maps that complied what the Supreme Courts dictates forcing that case back into court. South Carolina was

just argued before the Supreme Court, and that appeared to go well for the state and poorly for people who were interested in protecting voting rights.

Can you start us out by talking a little bit about the basis for the ruling in Georgia and whether it's similar to these other two cases or different?

Barb McQuade:

Yeah. So in Georgia, the challenge was brought to the redrawing of these district lines that the allegation was discriminated against Black voters and the test under the law, it would be a violation of section two of the Voting Rights Act, this case called Thornburg versus Gingles, one of my favorite case names, and it lists out a number of factors that the court should consider to decide whether that's the case. Looking at all those factors, what the court found is that they did something that's known as packing and cracking. So, in one district, for example, they packed together all the Black voters and drew the line around there so that there'd be just this one district with Black voters.

And then, they cracked the other communities that had Black voters and spread them around in a bunch of different districts to dilute their voting power. So in that way, even though the population of Georgia in the past 10 years has gone up by half a million Black voters, the districts hadn't changed as a result of that. So the judge found that this did violate the Voting Right Acts by discriminating against voters on the basis of race. Kim wrote an interesting piece in her column in the Boston Globe about this, about how gerrymandering is in this very curious position where it's permissible, if it is based on political reasons. We want to just dilute all the Democrats. That's okay under the law because the Supreme Court has said that's a political question that courts can't handle.

Boy, that's an odd one, but it is still legally prohibited to gerrymander on the basis of race. As Kim pointed out, the tricky part of all of this is if you look at the Venn Diagram based on racial gerrymandering and political gerrymandering in Georgia, it's a perfect circle because those Venn Diagrams perfectly overlap. Here the state was arguing that this was all political gerrymandering, but the court found it was racial gerrymandering and for that reason, struck down these maps and said they have to redraw them by December 8th.

Joyce Vance:

So I have a fun inside baseball fact here because this was something that bothered me about this opinion last night when I was looking it over. I don't know if you noticed this. This is an opinion that's signed off by only one judge, and ironically, it's Judge Steve Jones, the same judge who had been considering the Trump removal issues, but typically, when you see these gerrymandering cases, they go to a three judge panel for a decision and then straight up to the Supreme Court. This case was only in front of Judge Jones. And here's the reason, this is hyper-technical legal stuff, possibly only interesting to me.

So I apologize for being unduly nerdy, but because typically you get a three judge panel by statute when you bring constitutional claims in a gerrymandering case, that's why we almost always see these going to three judge panels. Here, there are only Voting Rights Act claims that are brought in, sort of unique to the nature of this case. So it does just go to that one judge and sort of changes how this case works from what we've seen in both South Carolina and Alabama. We'll see if that makes any difference down the road, but I thought it was sort of a fun flag and now, we're all better educated. Speaking of that, Jill, what happens next?

We've got this ruling from Judge Jones that Barb has explained. Is there any urgency to proceeding further in drawing new maps?

Jill Wine-Banks:

There definitely is, and he has given them a deadline to do it, which I hope is enough time. One concern is that the legislature is not returning until the week before the deadline. So although they've had plenty of warning and knew this was coming, it's still a short time period, and the urgency is that in the past, people have gotten away, or legislatures have gotten away with using old maps because it's too close to the election to draw a new map. If they postpone this any, then the qualifying deadlines are going to be passed and they're going to be stuck using a map that clearly denies Black voters, the representation that their numbers have earned them.

The White population has diminished. The Black population has increased. And so it should be reflected as the judge said by adding a large number of districts for US congressional maps and for the state legislative Senate and House maps. So the urgency is simply that the elections are coming and it has to be drawn before we can have a free and fair election.

Joyce Vance:

Yeah, I mean, that's the problem, right? In Alabama in the last House of Representatives race, the old illegal maps were used because of this timing issue. Right now, it's very clear based on census data that there should be an additional district in each of Alabama, South Carolina and Georgia, where black voters have an opportunity to elect the candidates of their choice, that probably means Democrats. So with a slender majority in the House of Representatives right now, I think it's five votes. Kim, am I close, five vote majority?

Kimberly Atkins Stohr:

Yeah, five.

Joyce Vance:

Those three seats start to look really, really important as 2024 looms, which to that point, Kim, these gerrymandered maps have a real impact. You pointed out to me earlier this week that the new speaker of the house is the product of a gerrymandered district. What's the impact of this and of the other rulings?

Kimberly Atkins Stohr:

Yes, gerrymandering is a big issue when it comes to the new speaker and a lot of other districts, and really when it comes to the makeup of the entire House of Representatives, because the margins are so close. So Mike Johnson is from Louisiana that is one of the states who had districts that had been deemed illegal due to gerrymandering, racial gerrymandering, but that they were by courts ordered to stay in place for the 2022 election because as Jill said, they were deemed ... even though they were drawn after the 2020 census, that it wasn't enough time to do redistricting or whatever reason, one way or the other.

At the end of the day, they were found to be improper gerrymanders, but they were still in place. In Louisiana in particular where our current speaker hails from, a court found that there are enough Black people in Louisiana, and if you've ever been to Louisiana, you could see this anecdotally to constitute, to be able to have two of the five districts, as districts that are opportunity districts, which means that Black people have the opportunity to elect the candidate of their choice, but instead, the Black people are packed into one district so that there can only be one district where they have the opportunity to elect the candidate of their choice.

What does a candidate of their choice mean? Well, according to Pew, while Black people have very, very high voter turnout, Black people, Black Americans are the only demographic that regularly have over 50% voter turnout. They tend to vote Republican about 6% of the time. So that's that point that we're making about the difference between a racial gerrymander and a racial one, when it comes to Black people, it's a Venn diagram that's a circle and map drawers know this, so they pack them all into one district. What do you have as a result? Five districts, four of them are White Republican men, including Mike Johnson, and one is a Democrat who was Black in Louisiana.

The court said, "Okay, come on, you need to redraw those districts." And the way that they were drawn in Louisiana, it would have endangered perhaps multiple candidates including Speaker Johnson in that sense. So the reason that we have the speaker that we have is brought to you in part by gerrymandering. The same would've been true for Jim Jordan in Ohio, that his old district was gerrymandered and it stayed in place through 2022. It's since been redrawn, but that's another one of the "chaos agents" that I said, it's the reason that the speaker, the last speaker was ousted in the first place, Nancy Mace in South Carolina. Her case is before the Supreme Court right now.

It was ruled an illegal gerrymandered. The Supreme Court is likely to rule in her favor and in the favor of the Republican map drawer. So this is big. It doesn't just affect people in the South. It affects everybody in the whole country. We have minority rule, and that's part of the reason why we saw the chaos of the last several weeks where we didn't have a speaker at all.

Barb McQuade:

There it is the end of democracy, brought to you by the letter G. Kim, I know the stress of the world and the day can get down on you. What strategies are you using to manage stress?

Kimberly Atkins Stohr:

Yeah, Barb, I realize I have to do a better job at it. I'm currently in pain because I realize that I have been clenching my teeth and grinding my teeth in my sleep from stress. So I really need to get back into a regular routine, but the good news is I know exactly what to do and it's right on my phone. It is using Calm. Between stressful deadlines, long hours, the pressure of juggling family and social life, not to mention all of the things happening in the world. It all takes a toll on your mental health. Not to mention constant app notifications, breaking your concentration. It can be really hard to feel present and in charge, but with Calm, you can practice exercises that help immerse you in the life around you, fall asleep easier and have a deeper connection with the people you love.

Barb McQuade:

I think you're onto something with the app notification thing. It makes me feel scattered. I get messages from all these different sources, and I always have this feeling that there's something hanging over my head. There's someone I forgot to get back to, and usually, I'm right. I just can't remember who it is. Calm is the number one app for sleep and meditation, giving you the power to calm your mind and change your life. That's because Calm recognizes that everyone faces unique challenges in their daily lives, that mental health needs differ from person to person, and that time for meditation may vary. Since self practices are so deeply personal, Calm strive to provide meditations that cater to your preferences and needs.

From focuses on anxiety and stress to relaxation and focus and building habits and taking care of your physical wellbeing.

Joyce Vance:

Calm also has sleep stories with hundreds of titles to choose from, including sleep meditations and calming music that has you drifting off to sleep very quickly. Plus, they even have expert led talks on overcoming stress and anxiety, handling grief, improving self-esteem, caring for relationships, and many more. Kim is absolutely right. I mean, I think we're all under a lot of stress right now. There's a lot going on in the world. I've had trouble drifting off to sleep, and usually that's not a problem for me. So I've been using Calm Sleep Stories and I really like them. They knock me straight out.

Barb McQuade:

I think Joyce should be the reader of the sleep stories.

Joyce Vance:

Are you saying that I have a voice that puts you to sleep?

Barb McQuade:

No, it's just so lovely.

Kimberly Atkins Stohr:

Calming, soothing effect.

Barb McQuade:

Exactly. So lovely.

Joyce Vance:

If only.

Jill Wine-Banks:

The Calm app puts the tools you need to feel better in your back pocket or your purse, if you go to [calm.com/sisters](https://calm.com/sisters), you'll get a special offer of 40% off a Calm premium subscription. New content is added every week. So join all of us in stressing less, sleeping more, and living better with Calm. And as I said, for listeners of the show, Calm is offering an exclusive offer of 40% off a Calm premium subscription at [calm.com/sisters](https://calm.com/sisters). So go to [calm.com/sisters](https://calm.com/sisters) for 40% off unlimited access to Calm's entire library. That's [calm.com/sisters](https://calm.com/sisters) or you can find the link in our show notes. Well, let's turn to another tragedy. A 40-year-old reservist with a history of mental health issues killed 18 people in Lewiston, Maine and injured 13 others in shootings at a bowling alley and a bar.

The attacks stunned a state of only 1.3 million people that has one of the country's lowest homicide rates, 29 killings in all of 2022. Our hearts go out to the people of Lewiston, but we don't think that's enough, and we want to look at what can be done. Those people are still under a shelter in place order as we are recording this, while the shooter remains at large. There are a lot of unknown details like the type of gun that he used, the magazine he used. We now think we know where he got it and when, which was before his mental health issues. The shooter made no effort to conceal his identity, so we know who he is, and that he underwent mental health evaluation in mid-July after he began acting erratically, while with his reserve regiment and saying he heard voices telling him to shoot up the National Guard base.

Why wasn't Maine's Yellow Flag Law invoked when he got treatment for those mental health issues? What is that law and how does it differ from Red Flag Laws that I think are a little more common that we've heard of more? So, Barb, let's start with what is Maine's Yellow Flag Law and what does it do, and how does it differ from the more common Red Flag Laws?

Barb McQuade:

Well, a Yellow Flag order is a restriction on the ability to possess guns by somebody who has a mental health issue that causes concern, and it requires a court order, but before you can get the court order, it requires some extra steps. I think part of the reason for it comes from Maine's strong history of gun rights, but it requires a finding by a medical professional, and the petition has to be filed by a police officer and the person gets a hearing. So the medical professional says in their professional opinion, "This person is dangerous and should not possess a gun." So it's called yellow because it comes a little bit short of the Red Flag Laws.

It definitely has a few more extra steps in there before a person can be dispossessed of their weapons.

Jill Wine-Banks:

Joyce, let's move from Yellow Flag Laws and what the limits are on that to the broader and more common Red Flag Law. Talk about what that law allows, and whether all of these laws require due process and are they constitutional, what evidence is needed?

Joyce Vance:

Yeah, so like Barb was saying, the Red Flag Law is sort of a step-down from the Yellow Flag Law in this sense. Under Red Flag Laws, people are allowed to petition a judge for the temporary confiscation of someone's guns if they're deemed to be either a danger to themselves or a danger to the community. The laws work different in different states. They used to really only exist in a handful of states, but after the 2018 shooting at Marjory Stoneman Douglas in Florida, they've really proliferated across the country. States vary. Is it a family member who can seek confiscation? Does it have to be law enforcement?

You've got to know exactly how it works in every state, but there are two constitutional issues that are raised in connection with these laws. The first is just a pure violation of Second Amendment rights. Although this argument has been used in a couple of different cases, so far, it has been a loser in the lower courts, but of course, with this Supreme Court, there's no telling how that might play out if the issue in the wrong case reaches the court because we know that they value guns more than they value people. If you've learned nothing about the Supreme Court from this podcast, that's your clear takeaway. So I am nervous about that.

And then there are also possible due process charges. Normally, when your property is taken away from you, you're entitled to notice in a hearing, and perhaps there's a sense that that doesn't always happen as fully as it should when Red Flag Laws are used. So we can expect that those laws will be challenged on that basis. Look, the reality is that both of those constitutional concerns can be overcome with smart laws. These are public health, public safety issues, and so routinely states are capable of doing more in these situations than they can do when that justification doesn't exist. And if there's any small modest step that we can take to curtail gun violence, we should. This is a small, modest but effective step.

Jill Wine-Banks:

Kim, Jared Golden, who is the US representative from Lewiston now says he regrets his vote against banning assault weapons and he now supports it. Of course, it makes me wonder why he didn't feel that

way after all the previous mass shootings, why it took something in his hometown. In any event, I'd love you to share your expertise covering gun control measures. Talk about what proponents and opponents of Yellow and Red Flag Laws say and why even Red Flag Laws have not been as effective as they could or should be. And maybe also address specifically what you think would make a real difference in terms of what kinds of specific things like controlling the magazine size, waiting periods, all of those kinds of things. If you could address all of those, that would be a great analysis.

Kimberly Atkins Stohr:

Yeah, it's always good when someone has a change of heart in the right direction. So I'm going to applaud Golden for that, but at the same time, it's a reminder that in this country we once had a Congress that on a bipartisan basis, passed an assault weapons ban. Now, it was allowed to expire and now, the way that the political winds have changed, that prevent Republicans from thinking they can even consider the most common sense kind of gun reform, and that's somehow blasphemous to their Second Amendment loving voter base is really, really sad because it has proven to have deadly consequences. I have written a lot about gun control laws as they go up before the Supreme Court or as they're been implemented around the country.

One thing about, well, I will say one thing first, about Yellow Flag Laws, which as Barb correctly pointed out, require a medical mental health professional to okay, and a police official to implement. It's very, very limited, but I want to be very, very careful here in the way we talk about this because research shows that mental health is a very poor predictor of violence. We do not want this turned into a mental health discussion. The very folks who feel beholden or afraid of their voter base because they're afraid that anything you say about gun control will cost them an election, will be the first person saying, "Oh, this is a mental health issue."

No, it's not. You know what? Mental health issues happen all across the globe. These kind of mass shootings only happen in the United States. That in itself proves ... I also just threaded a piece that explain why people who have mental health issues are actually less likely to harm others. They may be more likely to harm themselves, which is tragic enough and enough reason to impose greater gun restrictions and why these Yellow Flag Laws are important. Red Flag Laws that we talked about, even the more liberal laws, the reason that they don't work is people don't know about them or they don't know what to do.

They require education, if there is someone who you know, who has threatened people, who has done things, that is shown a violent tendency and there is a red flag law in places like Massachusetts. People don't know that they can call their police department, that they can call their doctors, that they can call someone else and report that person and have a hearing that can determine whether that person can be relieved of their firearms for a period of time. I don't know anything about what happened with the shooter in Maine, but I do know that he was a gun instructor. He was somebody for whom guns was a regular part of his life.

Did the people in his life even know that this thing was available to ... or did they think that taking his guns away was even an option? I don't know, and that's the biggest problem in terms of what's effective. What we do know from the research that exists is that gun control measures do work, but the ones that are most effective are focused on who has the guns as opposed to what guns are available. So we need to talk about people who have demonstrated violent tendencies, people who have, for example, domestic violence, protective orders against them. That's the case before the Supreme Court right now, which isn't looking good for the people who want to protect domestic abusers.

The number one, in households where there are guns, those guns are most likely used against the people in that household. So that is something that is common sense in every jurisdiction that should be

available. Forgive me if I sound emotional because I have dealt with this a lot in terms of the law, in terms of what works, but in terms of what our officials refuse to pass. That we know what the solutions are, but it's a matter of will and I don't know when we'll get that will. We have talked about these shootings so many times just in the nearly three years that we've had this podcast. It feels like it's countless and still nothing happened.

I thought if nothing changed after Sandy Hook, little babies, little babies in Connecticut, I wasn't sure anything ever would. We've gotten a couple reforms since then, but not many. So I would hate to be proven right.

Jill Wine-Banks:

Joyce, is there something you want to add on what might be helpful, what might solve the problem?

Joyce Vance:

I think we know what will solve the problem. The data shows what will solve the problem. I was a prosecutor when the ban on assault rifles was in place. We know that it worked. It's a matter of political will and if the court won't protect people, I mean, we've talked ad nauseum about how ridiculous the Supreme Court's gun jurisprudence is. They've decided that the language in the Second Amendment that talks about, well-organized militias applies to individuals like Robert Card, the shooter in Lewiston. There's no reason that it should, and we've talked about the fact that the court is protecting all sorts of advanced weaponry, including these high capacity magazines.

Assault style, military grade weapons, like they are the muskets that the founding fathers were familiar with. We have this whole line of court cases where this conservative Supreme Court says, "We have to go back and think about the intent of the founding fathers and what they were looking at and what they were concerned with." They definitely were not thinking about taking assault style rifles with magazines that held 50 or 100 rounds at one time and unleashing them on civilian populations. If the court won't change its jurisprudence, then it's up to Congress to reinstate these kind of bans, and I think to that point, Jared Golden, his change of heart in Maine, I think could be important. He is, I think, the most moderate Democrat in Congress and perhaps he can bring others along with him.

Jill Wine-Banks:

Yeah, I mean, I personally think controlling the magazine size and making people have to use muskets with what the powder that they put in, would certainly do a lot to stop mass shootings and waiting periods with real meaningful background checks, going back to a ban on assault weapons, mental health checks certainly would make a difference. And let's look at Illinois' Red Flag Law, which is pretty representative of Red Flag Laws, but it didn't stop the Highland Park shooter at last year's July 4th parade. I think it's worth weighing in on why that didn't work because he had an encounter with the police and was known to be dangerous.

Nobody invoked the red flag. So you mentioned that maybe it was because people don't even know about their rights with Red Flag Laws and because it imposes something on a family member that could be awkward for the family member to impose. What do both of you think?

Joyce Vance:

Yeah, I think education about these laws, to Kim's point about just the lack of awareness, perhaps something positive that people can do, that shouldn't be very controversial would be publicizing the red

flag laws and making sure in every state that has them, that people know how to use them and that they get support for using them.

Kimberly Atkins Stohr:

And I think we need to be very careful again, in the way we talk about mental health. There is not a connection between mental health and violence. There is actually the evidence that does exist, suggests that people with serious mental health issues tend to be less violent toward others, but there is a higher threat of violence against themselves. Again, that's very tragic, but what the standard is, is dangerousness somebody who has expressed violence, a violent tendency, which is different than mental health. That's often done through a mental health professional, because they're the ones that are hearing it.

Yes, I think that knowing this, it could be ... it depends on the state, the way the law is written, but it could be a family member, it could be someone who knows them. It can be a domestic partner, whether they are married to them or not. Again, it depends on the statute. I would love a uniform law in this to make it not so state by state.

Jill Wine-Banks:

Yeah, all of these are such good suggestions and I think we need to take this really seriously. I hope people have learned something from our discussing Red Flag and Yellow Flag Laws. One of my favorite things is to take a break and prepare what looks like a gourmet meal, just like the recipe picture looks like. And that's because I'm using HelloFresh and Barb, I know you've tried it. What have you made lately?

Barb McQuade:

Yeah, I just made a Louisiana style tilapia and I can't even cook, but it tasted good. It looked good, and everybody enjoyed it. With HelloFresh, you get farm fresh, pre-portioned ingredients and seasonal recipes delivered right to your doorstep. No trips to the grocery store, and no time planning menus in a grocery list and no wasted ingredients. Count on HelloFresh to make home cooking easy, fun and affordable. That's why it's America's number one meal kit.

Joyce Vance:

We all know how the busy fall season can make it easy to fall back into your dinnertime recipe rut, not to mention trap you with expensive takeout. So keep mealtime exciting with HelloFresh, with over 40 recipes to choose from every week. There's always something delicious to discover,

Jill Wine-Banks:

And it is different every week, which is one of the things I love. And each week you can pick three totally different cuisines. I made a Shepherd's Pie last night and my husband said it's one of his favorites. And we've been using HelloFresh now for several years. HelloFresh definitely takes the hassle out of mealtime and gives you really tasty filling and healthy meals. Did you know, it can also save you money? HelloFresh is 25% less expensive than takeout, so that means you get an easy home-cooked meal on the table with more money back in your pocket. It's the most delicious way to fight inflation. Apple cider cake with caramel sauce was offered this week, and it's yummy.

Kimberly Atkins Stohr:

HelloFresh even works with your schedule. Their plans are flexible and you can change your meal preferences, update your delivery day and change your address with a few taps on the HelloFresh app. Imagine getting fresh quality produce from the farm to your kitchen in less than a week, so you can enjoy the flavors of the season right from home. Go to [hellofresh.com/50sisters](https://hellofresh.com/50sisters) and use Code 50 Sisters for 50% off plus free shipping. Again, go to [hellofresh.com/50sisters](https://hellofresh.com/50sisters) and use code 50 sisters for 50% off plus free shipping. Everyone can also look for the link to HelloFresh, America's number one meal kit in our show notes.

And now, we've come to our favorite part of the podcast, which is answering your questions. If you have a question, you can send them to us via email at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com). You can send us your questions on Thread by tagging any one of us sisters or by tagging [sistersinlaw.podcasts](#) there, or use the #SistersInLaw on Twitter, X, whatever we're calling it these days. So our first question is from EZ who asks, when would Trump have been read his Miranda rights in all of the various legal procedures and cases currently ongoing, giving him the Miranda notice in one case covered the other cases. Barb, what do you think of that?

Barb McQuade:

Yeah, this is a great question. So it's important to understand what Miranda is. Miranda warnings are given when someone is taken into custody and it covers only custodial interrogation. So if someone is in custody and they're going to be questioned, they're entitled to Miranda warnings. It may be that Trump did not get any Miranda warnings at all because you may recall that he self-surrendered. He was with a lawyer during that time and he was processed, but I don't know that he was ever taken into custody and it was certainly never contemplated that he would be questioned. So it's quite possible that he never received his Miranda warnings.

Now, I suppose if he did, if it's a matter of routine booking procedure, it might've happened when he came in to give his fingerprints and to be booked, but it's not necessarily the case because there was never a custodial interrogation. And then your question about whether one case would cover the others, I would say no. If any police entity wanted to question him while he was in custody, they would need to give him their own Miranda warnings, but as I said, I'd be surprised if he got Miranda warnings at all.

Kimberly Atkins Stohr:

Our next question comes from Bill, who asks, what does it mean when an attorney for one side asks the judge for permission to treat a witness as a hostile witness and what makes a witness hostile? This is very Perry Mason for those who watch Perry Mason. What do you think, Joyce?

Joyce Vance:

It's sort of a fun question though, and I'm going to refer back to something we talked about earlier in the podcast when we talked about Mark Meadows who only testified for the special counsel because he was forced to by a grant of immunity. So let's just imagine, I'm going to make this up. Let's imagine that there's a trial and the prosecution calls Mark Meadows to the witness stand and on direct prosecutors have to ask open-ended questions, "Who did you see? What happened? Where did you go?" You can't lead the witness. You have to let them tell their story. Well, let's say that Mark Meadows is not happy about being there to testify.

So he tries to hedge his bets and not really answer the questions or just answer yes or nos when explanation is called for. This is the Perry Mason moment where the prosecutor can turn to the judge

and say, "Your Honor, may I have permission to treat Mr. Meadows as a hostile witness?" And the judge will say, yes. That means that Meadows isn't answering the questions and now, the prosecution can treat him like he's a witness who has been called by the defense and they can cross-examine him. So instead of asking open-ended questions, now they can say, "Mr. Meadows, isn't it true that ..." and he's forced to answer those sorts of questions.

It's a fabulous technique that really anyone but primarily prosecutors end up using with a very difficult witness who's trying to obstruct the process.

Kimberly Atkins Stohr:

Excellent. I love that. Just like I object. I have to say ... in my short time practicing law, I never got to say I object in open court, and I was able to say it in depositions, but it's not the same.

Joyce Vance:

It's such a fun thing to do when you can stand up and indignantly smack the desk and say, "Your Honor, I object."

Kimberly Atkins Stohr:

I object. All right, so our last question-

Jill Wine-Banks:

Definitely not the same in a deposition.

Kimberly Atkins Stohr:

No, it's not. You're just sitting there like, "Objection. You can answer. Objection, you can answer."

Jill Wine-Banks:

Exactly.

Kimberly Atkins Stohr:

All right, our last question is from Susan who says, I love legal fiction, literary or thrillers, who are your favorite authors? I have to admit, Susan, I don't read a lot of legal fiction and I should. Jill, what do you think? Do you read some legal fiction?

Jill Wine-Banks:

Unfortunately, nowadays, I read mostly stuff that I need to read for this podcast and appearing on MSNBC. In the past I have ... and I have three authors that I would recommend. Two of whom are currently Chicago residents and one was, but I think she might've moved to Kansas City. Scott Turow, who reinvented legal fiction is definitely top of my list, of people that I would say you should go out and get all of his legal fiction. Sara Paretsky is another one who writes about a woman character and she's terrific. These are easy reads and wonderful. The third is Gillian Flynn, who did used to live in Chicago and may still, but I'm just not sure about that.

She wrote Gone Girl, and I think all of them have really well-written literary styles that Scott Turow really is the one who invented. So definitely start with him.

Kimberly Atkins Stohr:

All right, I will also download all of those as soon as I am done with Brittany's book and deleting all of Justin Timberlake songs from the playlist. It's so good. It's so good. Well, thank you for listening the #SistersInLaw with Barb McQuade, Joyce Vance, Jill Wine-Banks, and me Kimberly Atkins Stohr. Remember, you can send in your questions by email to sistersinlaw@politicon.com or X them using #SistersInLaw, or send them to us via Threads by tagging us or sistersinlaw.podcast. And please support this week's sponsors OneSkin, Thrive Causemetics, Calm and HelloFresh. You can find their links in our show notes. Please support them because they're not only great products, but they help make this show happen.

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Barb McQuade:

Before we move on, can we please take note? I see that Jill is Brisbee Servant in her name on the Zoom and that Joyce is Rejoice, but I have to give it up for Kim this Halloween weekend with Kim Booley Batkins Gore. Pretty nice, all three names with the Halloween theme. Very good.

Joyce Vance:

Well done.

Jill Wine-Banks:

Okay.

Joyce Vance:

Although I confessed, when I first looked at it really quickly, I saw Kim Booty and thought in my mind, I'm not going to call [inaudible 01:20:51].

Kimberly Atkins Stohr:

My goodness. That's funny.