

Barb McQuade:

Welcome back to #SistersInLaw. I'm Barbara McQuade. This week we'll be talking about campaigning for public office, how to affect change as a prosecutor and explain grand jury law in New York with Mimi Rocah, a very special sister filling in for Kimberly Atkins while she gets married. And we all want to take a moment to wish Kim and Greg every happiness on their wedding day.

Jill Wine-Banks:

I feel like we're there with them in our spirit. And I'm thinking of them at this very moment and wishing them a joyous day and a very long and happy marriage.

Joyce Vance:

[foreign language 00:00:46] Kim and Greg. We're really looking forward to seeing the pictures.

Barb McQuade:

And one of these days, Kim, we're actually going to sit down and have cake with you. We know you were resisting it for your wedding, but we want to celebrate with you as well. We miss you. We love you and congratulations. But now I want to introduce Mimi Rocah. She's a former assistant US attorney, former professor at Pace University and a former legal analyst for MSNBC, where she was one of our original sisters in law. But now she is the elected district attorney for Westchester County, New York. Please welcome Mimi Rocah. Mimi, so glad to have you back. Tell us what you've been up to since we last saw you on MSNBC.

Mimi Rocah:

Oh, nothing, just hanging out, twiddling my thumbs. No, it's so, so good to be with you three. I miss you all so much. Even if it was only on TV, I feel like we got to talk and so I really miss. But I get my fill of you guys on my Saturday morning runs. I listen to this podcast, so I'm having a fan girl moment myself now. Especially now because I have a lot less time to be on top of the news and listen to podcasts. So I really do rely on you guys to fill me in on what's happened during the week and keep me up to date on the issues in the nuanced fair, balanced way that I think your listeners really appreciate.

And I'm just going to say this, as I said to you privately, I love the ads. I actually find the ads entertaining. I literally went out and bought that shampoo that you guys talked about. I've [crosstalk 00:02:25] gotten many a product recommendations from you. So I had to talk about that important fact first. But yeah. No, I've been the DA since January 1st officially. So it's been about five months, a little more. And it's been incredible in a lot of different ways already. And I'm excited to talk about those with you.

Barb McQuade:

Well, we're just thrilled that you're here. And I know we want to talk about a lot of things today but of them is what it's like to run a campaign. And I think Joyce is going to lead us in that conversation.

Joyce Vance:

Mimi, I bet you'll always have some really special memories as part of the COVID class of campaigners. I saw you almost spit your coffee out as I said that. And we're interested in that... As Jill and Barb and I talk about our great, good fortune in getting to spend time with you today, we were really interested in hearing from you about what it was like campaigning as a woman. And I remember talking with you

when you were in the process of making the decision about whether or not to run. You didn't take the decision lightly. I remember you thinking both about the job and also about your family in a very deliberate way. So can you share with us a little bit about how you made the decision to run and why you made the decision that you were the right person for the job?

Mimi Rocah:

Yeah. So as we did discuss, Joyce, it was in some ways a hard decision to make because I think we are... I felt that I was at a point in my life where, "Okay, I've done this federal prosecutor thing and did that really well. And now I'm doing this next thing." And even though being on MSNBC and was certainly a new thing to be doing, at that point, I felt pretty comfortable. And so now though, the idea of doing something way outside my comfort zone because the idea of running for office, I just had really never really seriously thought about doing it before. Just wasn't something that was in my plan. So I think to step outside your comfort zone like that, is hard for anyone.

I do think it's particularly hard for women because you really putting yourself out there when you run for office, You're very exposed and vulnerable and it's not... That part of it is not a great feeling, but I also felt that given my experience, given my point of view on things and what I wanted to try to achieve, which really is still what I want to try to achieve, which is reform and change and making the system more fair while balancing it with a good relationship with law enforcement, who I respect and I value. And trying to bring some of the polar opposing sides, seemingly a polar opposing sides together from the inside.

I felt kind of not the only person, but somewhat uniquely suited to do that. And I thought if I can't make this leap and do it... What is stopping me? Why wouldn't I? There isn't something to stop me other than my own self-consciousness and I'm glad I made that leap. I mean, I think it will be... It's like jumping into a cold pool and then you warm up.

Joyce Vance:

Were you approached about running by folks or did you make the decision on your own and then have to go out and sell it?

Mimi Rocah:

I mean, I would say a little bit of both. I definitely was floating the idea of running. And this I think plays into your question about women running in a more less obvious way. I ran in a primary. So I challenged the incumbent who was a Democrat himself, who I just did not... It wasn't so much quite honestly about him doing a bad job as much as just not doing the job in the way... Not being proactive, not being innovative, not pulling forward the system and the office in the way that it could. And frankly not serving our law enforcement partners in the way that they deserved.

I mean, one of the complaints that I heard from law enforcement people that I knew in this community from my past experience here, was that they felt that the office... They didn't have good communication with the current leadership and things like that, that I knew I would prioritize. And when you're running in a primary, it's different and that's something that is a barrier for women because for women and people of color to get into office now, it is often going to be through primary. So that's a whole new area that we could talk about.

Joyce Vance:

So I think you're being generous when you characterize your predecessor who you beat in the primary, which is not surprising because you tend to be an incredibly gracious person. Did you have to deal with people telling you this is not your time or you shouldn't do it this way? And do you think that that would have happened if you were a man, not a woman?

Mimi Rocah:

So I absolutely was told that. In fact, someone in the Westchester Democratic Party literally called me and said, "Wait your turn. There's only one more term here for him to serve and then you can run." Would that have happened with a man? I think not. But I will say in fairness, I think that, again, primaries are frowned upon here. And nobody seems to take into account or care or prioritize the fact that for women and people of color and a new generation of people to get into any elected office, they're going to come largely through primaries.

Eleanor's Legacy, which is a group that supports women had never supported a person before in a Democratic primary because they had this sort of rule, unofficial role of, "We don't support people in primaries because of the party issue." They changed that and endorsed me, and I was happy for myself, but I was also happy to know that going forward now, women would have that option of seeking their support and endorsement, which is so important in a primary. And I think that's a whole mindset that needs to change in order to help women get into office.

Joyce Vance:

I know that that's often an issue, the desire to not get involved in a primary. And I suspect that you had some of the experience that women candidates have had in Alabama. We now have an emerge organization down here. It's a bootcamp program that prepares women to run. And one of the realities of running for office in this country, whether you're running for literally for city council or for president of the United States, is the need to raise money to campaign effectively. And that can be difficult for some women. Apparently not all women are as good as I am at going to my husband and saying, "Give me all of your money." And that's an important skill when you're campaigning. How did that work for you? Was that a hard part of the campaign?

Mimi Rocah:

I mean, I hated asking for money for many different reasons. And to go back to your initial statement, remember I was running... Our primary was in June and the COVID hit in March. So asking people for money when the pandemic hit and people were losing their jobs, I mean, we literally stopped. There was no way that you could do that. I did end up without being... My campaign team was on me a lot, "Come on, you got to make the calls, you got to be aggressive," but it just isn't what interests me.

I'm interested in the policy and talking about the issues. And so it didn't come naturally to me. I don't like it, but we did raise a good amount of money here in Westchester. And I was very lucky to have the support of so many of my former colleagues from the US attorney office who are lawyers and who are all over the country, but we support each other. That not only helped financially, but it was a good feeling to have their support in me, their faith in me.

Joyce Vance:

Your win felt so important to me. It came at a point in time in this country when we all needed a lot of hope. And so knowing essentially after the primary was over that you would be the next district attorney I personally found to be very uplifting, not just because I like you personally and because we're good

friends, but also because of everything that you brought to the table, your expertise, your commitment. And really, I mean, Mimi, I'll just probably embarrass you and say in some ways your sense of humor and your ability to find a way to get people who don't always agree to work together, I thought was really encouraging.

I strongly believe that we need more women in office, but we're far from gender parity in this country among elected officials. What do you think it would take to get a Barb McQuade or a Jill Wine-Banks to run for office? Why don't we have more of these highly qualified women in elective office?

Mimi Rocah:

Yeah. And again, that was one of the... Thank you for all those kind words, by the way. I'm pretending I didn't hear them.

Joyce Vance:

Only the truth.

Mimi Rocah:

But I saw a statistic that about 75% of elected prosecutors around the country are men. And I forget the percentage, but a good portion of those are white men. And that bothered me for the reasons you're saying. We need more women in many elected offices and I feel in particular in prosecutorial positions where so much is about this balance between having safety and the law and order and the rule of law and respect for the law, but also compassion and thinking about victims and sex crimes victims and things that... And compromise because there is a lot of room for compromise to make an acknowledgement that you're not always getting it right.

So in that area in particular, but really everywhere. I mean, there are so many times that I read something about a male elected official and I say, "God, I wish we had more women in elected office." I mean, I do think this primary issue that we're talking about is a big part of that. I think having the parties, the reaching out to women and encouraging them to run in the first place and supporting them if they do decide to run and not thinking of primaries as this sort of evil thing that's going to disrupt the levers of power, because maybe that's a little bit what we need some times.

Joyce Vance:

That all makes a lot of sense to me. And I know you were on a panel, you and our good friend, Ken poli, who you trained in the southern district of New York, and he's been nominated to be the head of the criminal division and my former colleague Zane Memminger, who was the US attorney in Philadelphia. And it's no surprise to anyone that right now law students maybe come into law school and they're not all prosecutor, right? I mean, it used to be that everybody wanted to be a prosecutor. Now, maybe that's not quite as popular. And after hearing that panel with the three of you, a number of my students reached out to me and said, "I want to be a prosecutor. What do I need to do to get there? I want to be a prosecutor like Mimi."

And so I want to thank you for that. I mean, that's a wonderful gift to give to our students, to help them understand that prosecutors are and should be the good guys in the system. And I think that leads into our next conversation. We want to talk with you a little bit about what it means to be a reformer prosecutor.

Jill Wine-Banks:

Before we get to that, could I just say Mimi is being very demure on this because she resoundingly defeated the incumbent. It wasn't just a 50 percentage 0.5 vote in her favor. Tell us, Mimi, what was the amount by which you defeated him.

Mimi Rocah:

It's so long ago now. I think it was around 68%, yeah, close to 70%. Again, people in Westchester, which is a very diverse community... I mean, it's about a million people and there's no way describe it all in one way. It's rural, it's urban, it's suburban, it's big cities, small cities. I would say even within the Democratic Party here, it really runs the gamut. But people were excited, I think, to see someone who had a lot of ideas. At one point the DA who was running again said something about, "Well, it's easy to have ideas, but how are you going to put them into action?" And I said, "But if you don't have ideas, you can't put them into action."

Jill Wine-Banks:

You mentioned the difficulties women face and I'm just wondering if you encountered during your campaign any particularly offensive, sexually-related or gender-related, not sexually but gender-related issues.

Mimi Rocah:

I would say that there was a belittling that went on both because of my gender and I guess my age, though I'm not that young. But it was a belittling. It was a yes, yes, little girl. I felt like I was getting a little... I'm doing a little tap on the head. And it was offensive. And I will tell you very interestingly women who saw it, who we were talking to in groups, they noticed it. And they came up to me and I think it ended up in particular with women, but also some men helping me or working against my opponent, let's say, because it was condescending.

And there were some more specific things, but I would say overall if I had to categorize it, it was that attitude. There was a Donald Trump, Hillary Clinton moment where he stood behind me as I was answering a question. And yeah, the women who saw that really did not like that. And I think it's reflective of how women in the profession to some extent were being treated. So it wasn't just me. It was reflective of a bigger issue in my view.

Joyce Vance:

I'm not shy, so I'm going to share with you that I love my new ThirdLove bras. They're comfortable all day long and they feel great. Now you can take the fun and easy fitting room quiz just like I did and ThirdLove takes care of the rest, focusing your fit on size, shape, current issues, and your personal style to deliver bras and underwear that are perfect for you. With their custom-designed bras with half cups going from double A to I, amazing lounge wear and wireless styles, their number one rated 24/7 classic t-shirt bra and more, ThirdLove gives you the ultimate underwear shopping experience. They even give their gently used returned bras to women in need, donating over 40 million in bras so far.

Jill Wine-Banks:

I have to say I'm a little bit more shy about talking about this, but it's such a good product that I felt like I needed to say something. The sizing is unique and wonderful, and the way you get sized is also surprisingly accurate. ThirdLove knows your one true fit is out there. So right now they are offering listeners 20% off your first order. Go to thirdlove.com/sistersinlaw now to find your perfect fitting bra

and get 20% off in addition on your first purchase. That's thirdlove.com/sistersinlaw for 20% off today or look for the link in our show notes.

Barb McQuade:

Well, Mimi, we know that you ran for DA not because you want to be the DA, but because you want to do the work of the DA and that your vision for the office is about being a reform prosecutor. There's this progressive prosecutor movement across the country trying to reform our systems to make them more fair. What are some of the reforms you're trying to implement as the DA?

Mimi Rocah:

So I would say overall I just want to make the system in our office, I'll stick to our office, as fair as it can be. Right? I mean, I think that so much of the work of a prosecutor's office is about... As I know you know and we've all talked about so many times, whether it's a federal prosecutor or state prosecutor, it's about discretion and how that discretion gets used. So I can talk about some of the policies we're implementing and programs, and I will, but I think one of the most important things that most people out there, but I know you guys understand, but I hope your listeners take away, is it's really about the day-to-day decisions that are made. When we're reviewing a case and are we going to submit a lesser charge to the grand jury or only the chop charge?

Are we going to make a certain plea offer or sentencing recommendation? Are we going to try to find some alternative program that doesn't involve incarceration? Things like that. And those are the decisions that happen every day and I'm very involved in them. Probably some people in our office feel that I'm too involved, because we're very in the weeds every day. But it's also about just teaching, talking to the prosecutors in the office about that mindset and about... If you're ever hesitating about turning something over in terms of disclosure, turn it over. That is never the wrong answer. Because the worst that can happen is that you have a harder time at a trial or something, but not disclosing is a far worse option.

So I would say that's, to me, a big part of being a "reform prosecutor", which that's just a label. I think it's the way we've always been prosecutors and we were all raised as prosecutors, but it now goes in that label. In terms of programs and policies though, the ones that we focused on so far and we've accomplished a lot so far, we have a lot more to go. One of the first and biggest was working on conviction integrity, for all the reasons I've just explained. But instead of relying just on this individual, the good judgment and discretion of a prosecutor, that we have an actual unit and prosecutors in place, in this case, we were fortunate to hire a former federal defender, sorry, not federal defender, public defender who worked in exoneration.

She was head of the exoneration unit for the public defenders for over eight years. And she came in and is setting up the first truly independent conviction review unit in the office. I am 100% confident at this point that it is going to be a model for these kinds of units around the country. We're staffing it. She's brilliant and wonderful. And I learn from her every day. She's reasonable. She is not someone who... I had one law enforcement person ask me, "I heard you're setting up a unit to overturn all the past convictions of the office or review all the past conviction." And I said, "No, no, no." But look, you have to explain what we're doing because it may sound scary to them. And that is not what we're doing.

What we're doing obviously is trying to prevent anybody innocent for being in prison or having a conviction and also dealing with broader issues of the integrity of the process and perhaps extremely excessive sentences in some cases. So conviction integrity is a huge part I think of anyone calling

themselves a reform prosecutor. The alternatives to incarceration diversion programs, we brought in an expert, who we just got hired in the past couple of months. We're going to be announcing in a couple of months a big program on misdemeanor diversion program, which will be really the first of its kind in the county enhancing the programs that already exist and lowering the entry barriers to the programs that exist already for diversion, mental health programs. I mean, mental health, the confluence of mental health and criminal justice which we all know so well is an area that we are very focused on with our partners in our department of mental health.

We are enhancing immigration and worker safety and language capabilities so that the office is more accessible to people for whom English is not their first language. This is something we've been very focused on. And just generally really trying to be more proactive and interactive with communities and working on programs that are not just about prosecuting the cases, which is a hugely important part of what we do, especially when it comes to cases of violence, but also making sure that we're interacting with the community in positive ways and helping to bridge the gap and rebuild trust between law enforcement and the community. That was a long answer. I'm sorry.

Barb McQuade:

Yeah. No, and I know we've only scratched the surface, but those are all really exciting programs and really similar to a lot of the things we were trying to do in the US attorney's offices, Joyce and I during the Obama administration. I remember one of the things that was said about Sally Yates, for example, when she became the deputy attorney general, is that she had opened the window shades of the DAG's office. Right? And so that everybody could see inside. And that was so important, right? That you're part of the community in a democracy of buying for the people, we're not just this powerful group of elected officials or unelected officials doing our work without regard to what people think of it.

You have to listen to people to know how best to serve. And so it's great that you're reviewing the integrity of these convictions and that you're interacting with the community so that you can be responsive to their needs.

Mimi Rocah:

And I should mention-

Barb McQuade:

I wanted-

Mimi Rocah:

Sorry, you reminded me of one big area that I didn't mention, I think it's important though to go back to, which is transparency, which is a big area that we're focused on. And we actually just this week started the first ever chief data officer in our office. She's a PhD who is going to help us collect data both to help us in our crime strategies, but also in our, let's call them fairness and equity strategies. Like how are we doing, how are we going to measure whether we are making the system truly more fair. From arrest on through sentence, where are the points that we can do better? And we're going to try to do it with our law enforcement partners who I've been really, really keeping the lines of communication very much open and working with in many great ways. So I think transparency and data, data, data, data is such an important part of how to enhance the criminal justice system and make it more fair.

Joyce Vance:

Mimi, you know I'm such a huge fan of data-led best practices when it comes to criminal justice reform. So I think that's amazing and I'm really looking forward to watching what you're able to do. But I bet your job has been really difficult in the wake of George Floyd's murder and the now prosecution and conviction of Derek Chauvin, the pending prosecutions of other officers. How do you bring law enforcement along and convince them that this reform work is something that they should be involved in too, that's part of their best interests? I know that that's tough. And you noted in passing that sometimes people in law enforcement are concerned that what reformer prosecutors are doing is invalidating the entire works of prosecutions. So how are you bringing them along with you?

Mimi Rocah:

I'm trying. And look, I will say, at least... We have 42 police departments in Westchester, so is very different from other areas where you have a single large police department. And so it's hard to even talk about those 42 all in one breath, but I will say, I feel very lucky. I have very good partners. We have a chief's association here that... They have a group, an executive board who I'm meeting with regularly. And we just have a very open and honest dialogue. And the first day I went and spoke to them as a group, to the chief's association, I said, "I'm here to address the elephant in the room and to tell you I am not anti-cop. In fact, I am pro-law enforcement, pro good law enforcement."

And I told them why. And I told them about my parents being victims of violent crime. And I told them about the work I did with law enforcement, but I told them that I think we can do better. And by that, I mean, prosecutors and police everywhere, we have been... Westchester has not had the number of the police involved shootings, the number of them in any way, shape, or form that has happened elsewhere, even though we have big cities here. And we have very, I think, forward looking police chiefs and commissioners who I feel I'm able to have really honest conversations with.

Some of the things, they reject. They don't like. Some of the things they do and vice versa, but it's about having that dialogue and letting people be heard. I ask their opinion on things and I want to hear their opinion. It doesn't mean I'm always going to take it, but I want to hear it. And it has changed my view sometimes on things. And I hope the opposite is true. And I think that's the most important part, is having that dialogue.

Joyce Vance:

Mimi, how has your vision for the job been influenced by what you have seen over the years pertaining to racial justice?

Mimi Rocah:

I think it comes down to... I think it took too long, frankly, for those of us in law enforcement to acknowledge openly and explicitly and publicly that there is racial bias in the criminal justice system period. And for me, that's one of the most important things I can do. And that's where, again, this data person comes into play, the conviction integrity, because, okay, I can say that now, what am I going to do about it? And so some of it is in those day-to-day decisions. If someone comes to us and says, "We want to make this plea offer. It was a kid with a gun," and that person happens to be white, I would like to know did you make a similar offer to a kid who was black with a gun, if they're similar circumstances, right?

And so it's those kinds of things that I am more consciously, deliberately thinking about and asking people to think about. And then again, we'll be looking at the numbers and the data to try to figure out where we need to address it more explicitly than even that. So I would say that's how it's

impacted me personally in my work, in my job that I do. And also, and I know this is another area to talk about, trying to make sure we are... The violent crimes are the violent crimes and they are horrible. And I meet with crime victims. And that is absolutely where our focus should be with special victims, with murder victims, assault victims, but there's also white-collar crime and corruption that has gone unaddressed. And part of making the system more fair is addressing that kind of crime in a way that I don't think has really happened.

Barb McQuade:

Yeah. Well, let's talk about that because I know part of your agenda when you were running was to focus on public corruption and white-collar crime. Why do you think it's important to address it and how has that been going?

Mimi Rocah:

So I think it's hugely important to address both when we're talking about... And I'm going to say police and prosecutors. I haven't seen it yet with prosecutors, but if I did, I would give it the same seriousness, obviously. And with elected or people who have the public's trust because that at the end of the day... And it's been eroded I think even more over the past four years, but in general, I think people do not trust that elected officials are really working in their best interests. And that in and of itself is not a crime, but when it leads to something with intent or criminal behavior, it needs to be addressed to help people see that everybody is held accountable, that everybody has to follow the law.

And that is so much of what I felt personally and I know you did, and so many of your listeners felt was lost over the past four years. So to me, that is a big part of it. That just because you're powerful, just because you're wealthy doesn't mean you get to skirt the law. We restructured our... That was one of the first things we did, our public corruption bureaus. So we have a law enforcement integrity section now, and then a public corruption section, brought in some real experts and beefed up those units. And they report directly to me. And I do spend a lot of my time these days reviewing cases with them. I review every police complaint that comes into our office personally and I mean, in detail, watching video if there's video and et cetera. And these are some of the top priorities, I think in terms of having everyone in the community feel that we are there for them, to protect them.

Joyce Vance:

Hey, Jill, are you still eating that Magic Spoon cereal?

Jill Wine-Banks:

I am. I am so impressed with it. I cannot believe that it's a protein breakfast. It looks like a cereal. It tastes better than any cereal. It has no sugar. And I love it every day and my husband's eating it. We're all enjoying it a lot, both as cereal in the morning... I hate calling it cereal because there's no grain in it, but also as a snack. It's good to just have a couple of handfuls to taste.

Joyce Vance:

What about you, Barb?

Barb McQuade:

It's my favorite late night snack. Sometimes if life gets busy and I miss dinner and I end up eating late at night, I love a bowl of cereal before I go to bed. It's the perfect late night dinner for me. And Magic

Spoon is terrific. It has, as you said, zero grams of sugar, 13 to 14 grams of protein, and only four net grams of carbs in each serving and only 140 calories of serving. It's keto-friendly, gluten-free, grain-free, soy-free, low carb, and GMO-free.

Jill Wine-Banks:

And we can announce the launch of a delicious new flavor, birthday cake. Birthday Cake Magic Spoon will be available in a special five pack for a limited time only, so get it while you can.

Joyce Vance:

Do you my kids would be disappointed if I served them Magic Spoon Birthday Cake for their birthdays?

Barb McQuade:

I think they'd be thrilled. You can build your own box that you can customize with cocoa fruity frosted peanut butter and cinnamon. And don't forget if you're listening from Canada, Magic Spoon now ships there as well. So go to magicspoon.com/sister to grab the new limited edition birthday cake or a custom bundle of cereal to try it today. Be sure to use our promo code sister at checkout to save \$5 off your offer. This offer is good anywhere in the United States or Canada, but only when you use our code at checkout.

Jill Wine-Banks:

And Magic Spoon is so confident in its product. It's backed with a 100% happiness guarantee. So if you don't like it for any reason, which of course I know you won't, they'll refund your money and no questions asked. Remember, get your next delicious bowl of guilt-free cereal at magicspoon.com/sister, and use the promo code sister to save \$5 off.

Joyce Vance:

Mimi, I can hear the satisfaction in your voice, which is really terrific to see someone with your talents and dedication meeting a job that is a good fit for your talents. There's that old Theodore Roosevelt quote that says something like, "Far and away the greatest joy in life is the chance to do work that is worth doing." And I'm so grateful that you're doing this work. I know, Jill, wanted to get into a conversation about the work of grand juries in New York with the investigation of the Trump organization in the news. I think we're all curious about how that works. We know you can't talk about anything related to any particular investigation, but we want to ask you some questions about the process of how it works. Let me turn it over to Jill to talk about that.

Jill Wine-Banks:

Right. We've been talking sort of big picture and policy and reform, but this is a little more in the weeds, but I think of great interest to our audience right now. And so let's start with maybe a big picture of the differences between the New York grand jury practice and the federal practice. All of us of course, have been federal prosecutors. I had a brief time as a state prosecutor in the attorney general's office, but that was mostly civil cases. So not so much grand jury. So I'd love to hear about how the New York grand jury actually operates and what the differences are.

Mimi Rocah:

So it is quite different. I mean, obviously there are similarities, but I have been learning more and more about state grand jury process procedure over the past few months. And to put it really bluntly, it's much harder for a prosecutor to use the grand jury system, at least in New York State than a federal grand jury. And there's a couple of key, key reasons for that. Probably one of the biggest is in a federal grand jury as you guys well know, you can use hearsay evidence. So you don't have to put the first source, first-hand witnesses in. You can have a summary witness, a law enforcement witness go in and summarize as long as they themselves have heard it from the source or read it from the source.

You cannot do that in New York State grand jury, and that is in and of itself... It makes it more cumbersome. It makes it more time-consuming and it makes it... It's harder for witnesses. I mean, think about violence cases, right? That a person has to go in and testify even if they're scared in the grand jury. Whereas in the federal system, you can pump that down the road. "We know you're scared. You may never have to testify at trial. This will be secret." Possibly never get unsealed if the person pleads guilty, won't be public. You don't have that. There are reasons for it, that have to do with the civil rights, civil liberties of the accused in New York, but it's an issue.

It is a hurdle, I would say. It's just an additional factor. So that is one huge difference. The other difference is in terms of the immunity that someone gets when they come into the grand jury and do testify in federal court as you know, they only get a derivative use immunity for their testimony if compelled to come into the grand jury. Yeah, sorry, Joyce.

Joyce Vance:

Mimi, can I interrupt you? We are so used to these notions of immunity. Can you talk a little bit about derivative immunity and what that means for our listeners? I'm sorry to interrupt.

Mimi Rocah:

No, I was going to say it basically means that someone who testifies in the grand jury, or if you were outside the grand jury, that we cannot use their testimony, their words as evidence against them to prosecute them. But doesn't mean that they can never be prosecuted for that crime that we're investigating. So you don't give up the whole... It's less of a decision to give someone that kind of immunity and have them testify in the grand jury while you're building your case. You do it in good faith. You don't put them in, give them immunity thinking, "Okay, I'm going to charge them." But if they lie, that is the risk for them. And the incentive is if they don't, they're likely not going to be prosecuted.

But it's a much different calculus than in state grand jury where they get even greater immunity protection than what is provided by the fifth amendment, meaning unless they waive the immunity, which I'll talk about separately in a second, they get transactional immunity. They can never be prosecuted for this crime period, based on any evidence. So it is a much different calculus for the prosecutor when you're thinking about, "Do I put someone in the grand jury to rely on their testimony and then give them essentially a clean slate?" In certain cases, they can waive that immunity.

And in those cases, and I know this is a question that you all had asked, if they waive the immunity, they are allowed to have a lawyer present in the grand jury. And this happens often in actually cases involving police officers, where they will waive and testify. And in those cases, which is very unusual as you guys know, to have a lawyer in the grand jury, but in those limited circumstances that can happen.

Jill Wine-Banks:

It might help to explain in the federal system, a witness does not get to bring in a lawyer, but a witness can say, "I want a break," and go out and ask a lawyer who's outside the grand jury room, but never in the grand jury room. So that is a very big difference, I would say. There's also a lot of attention now on special grand juries. The fact that one has been brought to the public's attention now by Cy Vance. And I'm just wondering if you can talk a little bit about the difference between a regular grand jury and a special grand jury.

Mimi Rocah:

So a regular grand jury like in federal practice is a grand jury that sits for a specific length of time that is authorized by the impaneling order. They are usually four weeks with the option to extend. A special grand jury is one that usually is impaneled for a longer period of time. You would impanel it for say six months. But again, have the option to extend it. Now, in federal grand jury practice at least in New York, though even the special grand juries were only allowed to extend or live during the length of the life of a grand jury, which was usually 18 months, in New York State and there is no such limitation.

So you could conceivably extend the special grand jury for years. And I even checked that with our appellate chiefs to make sure that that was right, because I knew that would be a question, but I think it's kind of... I would say it's unusual to use special grand juries. We have not done impaneled one yet since I've been here, but remember this has been during COVID. But we have talked about it and we certainly have investigations where we would like to do it. It is harder to do right now, again, because of COVID. But it is something you can do obviously as we have seen in Manhattan. And my understanding is there is not a deadline on that if you will, they could continue to extend it.

Jill Wine-Banks:

So in my experience with a special grand jury, which Watergate was a special grand jury, it's not only the length of time, but that they are devoted to one case, whereas a regular grand jury, basically here's prosecutors from the entire office with every single case and makes decisions on dozens of cases. Is that the same in New York?

Mimi Rocah:

In other words, I think it can be, but it doesn't have to be. So you could have a special grand jury that is hearing more than one investigation at a time, but you could also impanel it for a specific investigation. Because I think they're more rarely used in the state actually than in the federal system. So at least in Westchester. So if you're impaneling it, it's probably because you have a particular investigation that you need that for.

Jill Wine-Banks:

Okay. So you mentioned something in your last answer that I want to follow up on, which is COVID and what that means to... Normally a grand jury is there in-person and listens to the witnesses. Have you been doing remote grand juries or are they actually impaneled in a socially distance masked room?

Mimi Rocah:

Yeah. No, grand juries have been, I would say on and off for the duration of COVID. Either stopped altogether during the height of COVID or meeting in-person, but limited because people... Essentially we had to literally physically expand our grand jury room so that it was big enough. I mean, this was before I got there, but they had to double the size of the grand jury room so that grand juries could sit socially

distanced. Now with the vaccines and things opening up, I mean, New York courts are opening up quite a bit with masks, but opening up. So all of this is just starting to really pick up where grand juries are starting to sit more frequently and we're having more impaneled. But it has been hard and there have been periods where literally no cases were going into the grand jury.

Jill Wine-Banks:

We answer questions from listeners and this week we got several questions about grand juries and how to become a grand juror. And so I thought that's a good question to ask you. In New York, how do you become a grand juror?

Mimi Rocah:

No, you cannot volunteer, though I know... I'm sure there are people in many different cases, let's say, who would like to, but I mean, you get called for jury service the same way you do for sitting on a jury in a trial. And you'll get a notice when your time is in the wheels, so to speak, is up and you are asked to report for grand jury service. Some people get called for grand jury. Some people will get called for trial juries, and it's just luck of the draw basically.

Jill Wine-Banks:

I just thought they'd want know. [crosstalk 00:49:44]. Yeah. Go ahead, Barb.

Barb McQuade:

I used to go greet our grand juries when I was the US attorney when they began, and then I would do a midterm check in with them and then thank them at the end. And I can remember on the first day... Most people when they get a jury summons, they think they're going to serve for a day or maybe a week or something. And when they find out that it's either six months or maybe 18 months, they look at you like, "You got to be kidding me." On their first day they are just like a deer in the headlights. But I will tell you that... I don't know, Mimi, if you've observed this, but what I observed is as they progress...

I'd go back at the midterm check-in and now they're hitting their stride and they're taking it very seriously and they're all business. And then by the last day, they're like kids on the last day of school, but they're very fond of each other and they're very fond of the work. And they're very grateful for the opportunity to see the inner workings of our government. They're so impressed with the work of the federal agents who come testify before them. And they say, "I have a really new appreciation for what so many public servants are doing in our own community."

Joyce Vance:

Every single time, right?

Barb McQuade:

Yeah. For sure.

Mimi Rocah:

It's a bonding experience, right? Because you really go through something together, same with child juries often. So yeah. I mean, again, we just impaneled our first two grand juries in the past month or so I would say. So that is actually a practice that I will now be able to do, of going and addressing the grand juries and getting to talk to them. And it will be interesting to see the evolution or transformation.

Jill Wine-Banks:

One additional question-

Barb McQuade:

Hey, Mimi.

Jill Wine-Banks:

Just go ahead.

Barb McQuade:

Mimi, can I ask you a question about how you use your grand juries? Because it's interesting your comments about how different New York is from the federal practice that we're used to. And I have used a special grand jury a time or two in my life there. Awfully convenient if you have a complicated drug or sex trafficking case or public corruption case where you know you're going to need to take long-term testimony before a decision is made about whether to prosecute or not. And the final stage of that sort of an investigative grand jury would often involve locking in witness testimony. You would bring a key witness into the grand jury. They would testify under oath. And then if they had either a bad memory or a change of heart at trial, they were locked in. But it sounds to me like your immunity rules in the State of New York prevent using a grand jury that way. Is that correct?

Mimi Rocah:

I mean, yes. And this is something that we've been thinking about or I'll say I've been thinking about, coming in with the perspective of how we use grand juries as an investigative tool, in a way that is much harder to do in the state system for I think specific reasons. I mean, I think these limitations in New York are put on the grand jury to curb if you will, the power of the prosecutor. And I understand that point of view, but it does. It does curb your ability to use the grand jury as an investigative tool in part for the reason you just said.

Jill Wine-Banks:

One last question, Mimi, having to do with New York's enterprise corruption law, which is considered a little RICO law, a federal Racketeer Influenced Corrupt Organization prosecution. Have you had any experience with presenting cases on that? And can you tell our audience about the pros and cons of using that law against a corporate entity?

Mimi Rocah:

So I'll answer that question in a really general way and having been a federal prosecutor who did organized crime work for eight years I think whether we're talking about a federal or a state enterprise law, right? The advantage, if you will, from a prosecutor's point of view is that you can get in all sorts of evidence in a single charging instrument trial case that otherwise if you were charging separately with just conspiracy law or other substantive crimes, you might not.

You get enterprise evidence. You get to talk about different players in the enterprise. You can put things under the umbrella of the enterprise that might not be to capture what is really going on. That it isn't just crime A, crime B, crime C, it's all one big crime when you put them all together. And that's when these types of statutes are most helpful to prosecutors. It's really a way of getting in more of the story if you will.

Jill Wine-Banks:

Yeah. And it also increases penalties, doesn't it?

Mimi Rocah:

It can. Yes. Yes. It can. I mean, it depends what you're comparing it to, right?

Jill Wine-Banks:

Yeah. Well, that answers my question. I really was curious about that because it's something that I've been thinking about recently and we're very honored that we had you with us to be able to answer these questions. And all of us are thinking about you and wishing you the very best in your years in office.

Mimi Rocah:

Thank you.

Joyce Vance:

Mimi, you'll always be a sister in law. Don't think you're ever getting away from us.

Mimi Rocah:

I don't want to. And I often think in my head, "What would Joyce, Barb, or Jill do in this situation?" Truly, I'm not even exaggerating. And I'm going to have fun listening though, every Saturday while you guys do the work and I'm jogging.

Barb McQuade:

Well, Mimi, unfortunately we're out of time, but we do have one last question for you. Usually at the end of our show, we ask listener questions, answer listener questions, but we have one question for you that's from us. And that is, what is the full first name of Mimi Rocah?

Mimi Rocah:

It is, drum roll, please, Miriam. Miriam Elizabeth. I'll even give you my middle name.

Barb McQuade:

Yeah. Beautiful.

Mimi Rocah:

Which I only used to use when I went into court as a prosecutor. I would say Miriam Rocah for the government. And now it's on my letterhead and it's on my signature, but I have told everyone in the office to call me Mimi. It just feels more natural. And can I just throw in... Because I know I'm here because Kim is not here and so I just want to add my congratulations to her. I'm so happy for her. She sounds so happy. I mean, it comes through on the podcast. So very excited for her and I loved your guys' marriage advice to her. I took it in.

Jill Wine-Banks:

We are all thinking of her because as we are talking right now, she is in her wedding dress that she made herself. She designed it.

Mimi Rocah:

Wow.

Jill Wine-Banks:

Yeah.

Mimi Rocah:

Oh my goodness.

Jill Wine-Banks:

So it's a very exciting day and-

Mimi Rocah:

Did Joyce knit gloves or anything to go with it?

Joyce Vance:

I knit wedding gown.

Mimi Rocah:

And Jill could give a pen and you guys can [crosstalk 00:57:21] up at her.

Barb McQuade:

Yeah. Well, Mimi, thank you so much for being with us. We're really proud of you. We're really grateful that you have made the sacrifices it takes to serve the public. So thank you.

Mimi Rocah:

Thank you, guys, ladies, sisters. Wonderful being with you.

Jill Wine-Banks:

Thank you, Mimi.

Barb McQuade:

Love you, Mimi.

Mimi Rocah:

You got it. All right. Bye.

Joyce Vance:

So Jill, I've been using Function of Beauty shampoos and conditioner now for almost two months and my hair feels great. It is so soft and I'm just crazy about the products. I think you've been using it too, right?

Jill Wine-Banks:

I have been, and I love a couple of things about it. One is that it's customized to do what I wanted it to do for my hair. I wanted my hair to be shiny and less frizzy. And so they put the ingredients in the do that. I also wanted the colors to be different for the conditioner and the shampoo so that I don't have to put my glasses on to be able to tell which bottle is the conditioner. This way I can see that the pink one is the shampoo and the white is the conditioner. And I love that about it.

Joyce Vance:

It's hard to shower with your glasses on. That's one of my favorite features too. So if you don't love your hair, then you should break up with your current hair care routine. Try Function of Beauty instead.

Jill Wine-Banks:

Every ingredient Function of Beauty uses is vegan and cruelty-free and they never use sulfates for parabens. You can also go completely silicone-free.

Joyce Vance:

Never buy off the shelf just to be disappointed ever again. Go to functionofbeauty.com/sisters to take your quiz and save 20% on your first order. That applies to their full range of customized hair skin and body products.

Jill Wine-Banks:

Go to functionofbeauty.com/sisters to let them know we sent you and get 20% off your order. That's functionofbeauty.com/sisters, or look for the link in the show notes.

Barb McQuade:

As always we've received some great listener questions this week. If you have a question for us, please email us at sistersinlaw@politicon.com or tweet using #SistersInLaw. If we don't get to your question during the show, keep an eye on our Twitter feeds throughout the week where we answer as many of your questions as we can. Our first question is one that has been asked by several listeners and it's about why did the Department of Justice appeal the order that was issued by Judge Amy Berman Jackson to disclose the memo regarding William Barr's decision about Robert Mueller's decisions in the Russia investigation. Joyce, you have any thoughts on that and what motivated that decision?

Joyce Vance:

I know a lot of people were really disappointed by DOJ's decision not to release the memo and to appeal Judge Jackson. So I think it's important that we flag for our listeners that this is a very nuanced sort of a situation. DOJ actually agreed to release portions of the memo, mostly the first section. They agreed that the judge's entire order could be unsealed and redactions removed from that, but the basis for their appeal appears to be in it. And it's important to say that we've not seen the appellate briefs yet. We'll know a lot more when we see them, but inside of DOJ there appears to be an emphasis on the importance of preserving the deliberative privilege that protects the ability of the attorney general to get the best possible objective advice, looking at a problem from lots of different angles before she or he makes a decision.

And that deliberative privilege is very important. It's an executive branch priority that impacts the White House as well. And so we do want to make sure that these sorts of concerns are properly

vetted. The last thing that I would say though, Barb, is that there's a really excellent piece in The Washington Post written by Greg Sargent. And he essentially makes the argument for full disclosure of the bar memo and says that if the memo shows that there was in fact a bogus analysis of why Barr didn't make the decision to prosecute Trump, that it was in order to facilitate a coverup, then that might actually stoke people up.

There are so many people who at this point are just past it. They want it to be ancient history. And in some sense Greg Sargent argues that the truth can set us free and make sure that justice is being done. So my answer is, I think DOJ has actually done a good job here of protecting institutional priorities. Ultimately though, we'll have to make sure that we are as important with preserving and protecting democracy as we are with democratic institutions.

Barb McQuade:

Yeah. And don't forget that nothing about this memo does anything to affect the ability of DOJ to charge Trump with obstruction of justice. That was the eventuality that Robert Mueller considered that when Trump was no longer president and no longer immune from prosecution, he thought it was important to collect this evidence while memories were fresh and documents were available for future prosecutors to decide whether charges should be filed. And we have now arrived at that moment.

Joyce Vance:

So no pressure on our friends at DOJ, but we're waiting to see what you-all do.

Jill Wine-Banks:

I would say, Barb, that's the most important point is that we'll give people some hope who have been very discouraged by this action. I think your explanation, Joyce and Barb, your comment about what could still happen is something to consider.

Barb McQuade:

All right. Our next question comes from Kashleen in Washington, D.C. She writes that the Trump administration secretly obtained CNN's Pentagon corresponded Barbara Star's cell phone, home phone, Pentagon phone booth, email, and home address. They spied on her, in Kathleen's words, during periods in 2017. "Is this not violating her constitutional rights, US laws or ethical issues? Can Trump or Barr have charges brought against them for this?" I'll take a stab at that one and say actually, no, it is permissible to obtain lawfully, through lawful process with search warrants and subpoenas and the like information pertaining to even reporters.

There is some case law that Jill I'm sure is familiar with that says essentially that the government is entitled to every man's evidence. And in this case of Barbara Starr, every woman's evidence, even reporters. Now there is however some tension there with the first amendment and our tradition of respecting the news gathering function of the media. And when Joyce and I were US attorneys during the Obama administration, there were a couple of these that were served, search warrants on reporters accounts. And as a result, Attorney general Eric Holder implemented a policy making this kind of process very rare. A lot of hurdles prosecutors had to get over before they could seek it, but not impossible.

And the reason is that you would not want reporters to be able to do an end run around the law and facilitate leaks. Just because they're reporters, they don't have any special immunity, any special get out of jail free card. And especially in the world of bloggers and alternative journalists, you could imagine someone saying, "Well, I'm a reporter and so you can't go after me, even though I'm the one

who was able to entice the government official to leak the information and then I published it." Imagine a WikiLeaks or something like that. If you were to say WikiLeaks, can't be prosecuted. But during the Obama administration Attorney General Holder required a number of things.

One is you had to make a showing to a high level justice department official that you absolutely needed this information in your investigation. That there was no reasonable alternative to getting the report information, to getting what you needed for your investigation and that you would notify the media outlet before getting that information. But nonetheless, it not completely prohibited. Now we don't know here whether the Trump administration did comply with those requirements or if that policy has been changed. But I think that the media is sometimes its own best advocate and has fought back against this notion very hard.

But I think those of us who have the perspective of prosecutors see this as something that should be rare, but permissible. All right. And then our last question comes to us from Yolinda in Tacoma, Washington. "Studies indicate that law enforcement unions have negotiated privileges for their members that even members of other unions don't enjoy like policies that offer a special legal protections or protection from questioning for up to several weeks after the use of force. It seems that some of these contracts may be contrary to public policy. Is there any movement to take these contracts to court?" Jill, what do you say about that?

Jill Wine-Banks:

The answer is yes. In Chicago we had a recent victory against the police union, which had a rule in the contract that said you could not keep records of police misconduct for more than four years. And it's very hard to make a pattern or practice case if you don't have a long-term history of the abuses by the police. So it was brought to court. The Better Government Association was one of the plaintiffs and full disclosure I'm on the board of that organization and it was successful. And that was deemed to be in violation of public policy and transparency that was required. And so it has been stricken from the contract. It is no longer in an enforceable part of the contract. And I think that's a model for something that will happen in other jurisdictions to make sure that the police union isn't getting special privileges that are against public policy.

Barb McQuade:

Thank you for listening to #SistersInLaw with me, Barb McQuade, Jill Wine-Banks, Joyce Vance, and our visiting sister, Mimi Rocah. And we all wish Kim the very best on her wedding day. Don't forget to send in your questions by email to sistersinlaw@politicon.com or tweet them for next week show using #SistersInLaw. And please support this week's sponsors, ThirdLove, Magic Spoon and Function of Beauty. You can find their links in our show notes. To keep up with us every week, follow #SistersInLaw on Apple Podcasts, Spotify, or wherever you listen. And please give us a five-star review. We'd love to read your comments. See you next week with another episode, #SistersInLaw.