

Joyce Vance:

Welcome back to #SistersInLaw. I'm Joyce Vance. This week, we'll be talking about how DOJ bridges the policy positions of past and future administrations, whether Texas is considering ultra conservative legislation just to test the new majority on the Supreme Court, and how the crime of obstruction of justice works, because Florida representative Matt Gaetz is back in the news with allegations he may have obstructed justice on a phone call with an ex-girlfriend and another witness. As always, we'll be answering some of your questions at the end of the show.

Kim, it is so nice to have you back. We loved having Mimi with us last week, but we really missed you a whole lot.

Barb McQuade:

Welcome back, Kim.

Joyce Vance:

Your wedding batteries were gorgeous. It's just amazing. It was lovely to see you and your extremely lucky husband together looking so happy.

Kimberly Atkins Stohr:

Well, thank you so much. It was a really lovely wedding. We did it outside. The rain held off just long enough. We had a lovely weekend before we had to come back to work on Monday. I missed hanging out with y'all. I listened to the show, and it was great. I'm so grateful to Mimi for pinch hitting for me. We have a great day. I come back now with a brand new name. I hope you guys get used to saying it when we introduce each other.

Joyce Vance:

You made a really interesting decision to take your husband's name, and you wrote a fantastic piece about it. There's a link in the show notes, but talk with us about what motivated your decision to become Kimberly Atkins Stohr, and also, you have a fascinating explanation for why it's peak feminism to have made the decision that you made. Let's talk about that for a minute.

Kimberly Atkins Stohr:

I had thought for my whole life that if I were to get married, of course, I wouldn't change my name. All of my degrees say Kimberly Atkins. My byline has been Kimberly Atkins for 20 years. When I was a litigator, I signed every pleading, Kimberly Atkins. Of course, I'm going to be Kimberly Atkins forever, right? That's how I've lived most of my life. During my engagement, I just felt much to my own surprise that I really wanted to do it. I really wanted to add my husband Greg Stohr's last name to mine, and be Kimberly Atkins Stohr. It just felt right for a host of reasons.

After the wedding, and I changed my name publicly, a couple of people expressed some surprise that I did that. I am in my 40s. It just seemed like an unusual thing for somebody who is... especially someone who espouses feminists ideals to do, and so I thought about it and said, "You know what, a, I think feminism is about doing what you want and having agency in your own decisions." For me, among a host of reasons, just the fact that my name now reflects my life. My life has expanded, and so my name should expand. My life has expanded in a way to include a wonderful family.

That includes the man of my dreams, his two wonderful children who make me a step mom, his extended family who have been wonderful to me. Putting my last name next to his last name reflects the fact that my family loves him so much, and it just felt right for so many reasons. To me, that felt very feminist because I was making that decision he didn't expect me to. He didn't ask me to. I also thought, "You know what, if it was good enough for Ruth Bader Ginsburg, it's good enough for me. If it's good enough for Jill Wine-Banks to have three names, I'm in good company."

Jill Wine-Banks:

Back when I made that choice, it was really something that nobody had much done before. I kept my middle name... my maiden name, Wine, because I was still in law school, and I wanted the teachers to know that Jill Wine from first year was the same person as Jill Wine Volner the second year. Then I had to do a second decision when I got divorced. Was I going to keep the name Volner? I decided that I was not, but by the time the divorce became final, I had already met Michael Banks, and I had decided that I was going to include his name because, much like you felt, I felt I wanted to merge the two, but I chose to hyphenate it, which you didn't.

There are complications. When you go to get a credit card, they don't always accept hyphens, and so your name comes out garbled, and it does complicate things. But fortunately, it's two short names, Wine and Banks, close together, and people sometimes think it's one word. I decided to hyphenate my name when I became general counsel of the army when I was still Volner before the divorce. I hyphenated it because when the press referred to me the first time, it would be Jill Wine Volner, but the second time was Mrs. Volner. I never felt like Mrs. Volner. I always felt like I was an independent person, and I wanted Wine to be part of it.

The press release for the Pentagon said Wine-Volner, and then it was very easy to go from Wine-Volner to Wine-Banks. Not my goddaughter, my niece wrote a law review article about the rights of women to change their names. She and her husband actually share a name. They added each other's last name after theirs. She's Berger White, and he's White Berger. I think that's another interesting approach. What about you, Joyce, what do you think?

Joyce Vance:

I'm a lot like you and Kim. I'm Joyce White Vance. The name I grew up with was Joyce Alene White. I missed my Alene to be honest. I was often called Joyce Alene by my closest friends, but Joyce White Vance made sense to me for the same reason that you talked about, Kim. I won the lottery when I got married. My husband is a great guy, but I adore his family. My mother-in-law, who I still miss, was incredibly warm and welcoming. She was so happy to finally be getting a daughter. She had two boys. I felt like they were becoming a part of my life.

I had never thought about changing my name. It was a pretty last minute decision, and Bob was very surprised, I think. I mean, he was really almost befuddled by it, because I had been practicing law. It meant changing my name professionally, and getting judges used to it. But fortunately for me, Birmingham was a small town. It worked really well. Now, I'm really glad that I have the commingled names. It's worked out great. Barb, what about you?

Barb McQuade:

Well, I am I guess the outlier here. I have kept my maiden name. McQuade is the name I was born with. I'd like to say that I've got as thoughtful decisions as you folks do, but really, it comes down to that's why I've always thought of myself. When I got married, it never even really occurred to me to change my

name. My husband said he wouldn't expect me to, and so I didn't. It does create some obstacles in life, especially when you have kids. Certainly, I've been called Mrs. Hurley many times, especially by friends of my children, other kids. Sometimes, my husband gets called Mr. McQuade, but we both try to handle it graciously, and just roll with it.

We're fortunate enough to live in a university town where there are lots of parents with different last names, lots of families with two moms and two dads. My decision to keep my name is not too unusual in my community, but I know it's different depending on where you live, but I agree with Kim. I thought her piece was very thoughtful, which is it's about respecting an individual's choice, and there are a lot of ways to do that. In fact, my own name, McQuade, is really a relic of the patriarchy as well, because it's my dad's name, and it's the name that my mother took.

There's no real good, one correct answer here, so I think you have to make a decision that works for you.

Kimberly Atkins Stohr:

That's what I think. At the end of the day, it's about choice. It's about choosing what is right for you. I also think that it shouldn't be so administratively difficult to either have different names or to change your name, and that those administrative difficulties tend to... Women bear the brunt of them. I know I'm prepared for a big fight with the Social Security Administration who doesn't understand people who want to have four names. I'm ready to take on that fight. It shouldn't...

One benefit of taking my husband's name is that I won't have to walk around with my marriage license in my purse just in case one of us ends up in the hospital or something, because we are an interracial couple. Frequently, people don't realize that we're a couple, and I fear that if something happens to one of us, it will be difficult for the other to get into the hospital if we had different names, if we couldn't prove that we're a spouse, things that-

Barb McQuade:

Well, that's so interesting. In a future episode, I'd love to talk about just the implicit biases you encounter as an interracial couple.

Kimberly Atkins Stohr:

No, we should definitely get into that, but sharing a name makes it a little easier.

Joyce Vance:

I went to law school in Virginia, the home state for loving versus Virginia, which we have talked about on a past episode in which makes your marriage legal. It's interesting to think how recent that decision is. As I hear y'all talking about these small impediments that fall more heavily on women, it makes me think that one of the biggest gifts we can give to the next generation is deliberately breaking down these barriers, even ones that might seem really small like difficulties with Social Security changing a name. In that spirit, we take up today's topics for the podcast.

Kim, I think you're going to tee up a conversation that will help us understand some of the strategic decisions that are being made at DOJ. They haven't been exactly what folks have been expecting from Merrick Garland's DOJ.

Kimberly Atkins Stohr:

The Biden administration and his DOJ have been making some institutional moves that I think have confused some folks, because they seem to align with the position that the Trump administration had taken previously. For example, Trump's former White House Counsel, Don McGahn, testified before the House Judiciary Committee Friday in a probe of whether Trump's White House obstructed Robert Mueller's Russia inquiry. We don't know much about what he said, because under the terms of the deal, McGahn struck with lawmakers and the Biden administration. That testimony was behind closed doors. He will have a week to review it, that is McGahn will have a week to review it before anything is made public.

In the end, we may not get any new information. Meanwhile, the Justice Department has asked a judge to throw out a lawsuit against Trump, former Attorney General Bill Barr, and others for their roles in ordering federal law enforcement to clear Lafayette Square using tear gas so that they could have a photo op with the President. This, of course, follows the decision by the Biden administration to appeal a judge's order that memos detailing Barr's efforts to give Trump cover from the Mueller probe be released.

What's going on? Just how strong is the desire by the Biden administration to uphold institutional rules getting in the way of holding Trump accountable? Jill, the agreement that McGahn struck ins a long running legal battle that began when Trump really tried to prevent him from testifying at all before Congress, but the Biden administration by large measure was on the same side as Trump's White House. They argued in that case that Congress's power to call executive officials to testimony is limited. What do you think of this? Does that seem odd to you? I know it seems odd to many of our listeners to think that Biden may be making the same case that Trump did.

Jill Wine-Banks:

I think we have to put it in the context of the word you use, which is the institutional approach, and it is otherwise inexplicable that they would be on the same side. I understand the concerns of the many comments I've gotten on Twitter, and I'm sure we all have. It is something that is a legitimate protection that the Department of Justice needs to continue, and that the Biden administration needs to continue. There are legitimate uses for all of these things as to why, in all the cases you mentioned, basically, the Biden administration is following what the Trump administration did, because going forward, they may need to use the same things, hopefully not to conceal crimes, which is unfortunately, I think, how it's being used in this case.

I think there are some where we're going to see a difference, and where, number one, Biden would not use these claims, and would allow things to go forward, but it simply is an institutional protection that is driving them to do this. In some ways, I can't stress enough how important I think congressional oversight is, but the courts have made it very clear, for example, that subpoenas from the courts, subpoenas that are court ordered, that have to do with criminal investigations have been enforced. That's what Watergate was. It was our subpoena as prosecutors, whereas the congressional subpoena was not enforced.

At some point, there does have to be a decision that allows congressional subpoenas to be enforced because otherwise, the congressional oversight, which I consider a very fundamental basis of the tripartite sense of government and the independence of each branch, needs to be enforced, because if they cannot call witnesses and if they can't get the administration to explain policies, then their oversight is a hollow one indeed. That would be dangerous, I think, and give way too much power to the executive branch.

Kimberly Atkins Stohr:

Joyce, in the lawsuit against Trump and other former officials over the forcible clearing of nonviolent protesters in Lafayette Square, the Biden administration argues that Trump and the then Trump administration officials are immune from civil lawsuits over police actions taken to protect the president and secure his movements. What do you think about that? Is there that blanket immunity?

Joyce Vance:

There is very well established precedent forgiving immunity from suit to people who were involved in protecting the president's security and his movement. It's going to be tough for the plaintiffs in this case to overcome that heavy grant of immunity, but the problem here is the context, right? I mean, the reason that this is not just normal course of business is because there's a peaceful protest going on in Lafayette Square outside of the White House of protest following George Floyd's murder. The square is cleared by people using tear gas and rubber bullets so that the then President of the United States can trod across Lafayette Square with his attorney general next to him so he can have a photo opportunity outside of a church.

In other words, it's an unnecessary and an inflammatory act. It doesn't comport with my normal understanding of the notion of protecting a president, and it's interesting that the White House originally tried to pass this off as an effort to enforce the 7:00 PM curfew that was in place at this point in time. They only later stumbled onto this much better immunity argument, so the abnormality of the Trump administration seems to have put the Biden administration, the Biden DOJ, into this box, where they're forced to predict conduct that I'm sure that they know is unconscionable.

Yet, at the same time, they need to make these legal arguments in order to preserve the safety of future presidents. It seems to me... I don't want to get too far into this, but they may have set up a little bit of a false dichotomy here. It seems to me that you don't have to have this binary choice, where either you can hold the Trump administration accountable for misconduct, or you can protect democratic institutions. I think that there has to be something of a balancing act.

I think that this new administration is capable of nuance, and we should give them a little bit of a breathing space, because one of the ironic positions that they take here is that the lawsuit should be dismissed because Trump is out of office, so we don't have to fear a repetition of this kind of misconduct. I mean, it's possible that the former guy could return or that somebody like him could return to office, and we are going to have to find a better way of balancing the rights of peaceful protesters against someone who just wants to have a photo op in front of a church.

Kimberly Atkins Stohr:

Just to be clear, he may be reelected if there is a fair election. He can't just show up, regardless of what he said. Barb, CNN has reporting that one of the reasons the Biden administration may choose not to be so quick to release information like the Barr memo, the fact that they're appealing the order to release the Barr memo, or Trump's tax returns, for example, is a desire among Biden administration officials to return to normalcy after four years of Trump. What do you think about that concern?

Barb McQuade:

I think this idea of normalcy for the sake of normalcy is not likely what's going on at the Justice Department. You can imagine Justice Department lawyers sitting around the table, deciding what position that ought to be taken on particular questions. I don't think normalcy is something that comes into the conversation when they're discussing the pros and cons of a decision. I do think that they are thinking about things like protecting the rule of law and protecting institutional interests, even if those

interests might tend to favor the Trump administration. I think they have to consider that when they take a position, that position will be used as precedent in future cases, and so they are likely wary of taking a position now that comes back to bite this administration later.

As Jill was discussing, executive privilege, that's a legitimate privilege. There's an institutional interest in protecting executive privilege. It promotes candor from aides giving advice. If people did not think that their conversations were protected, they might feel a chilling effect on giving unfettered advice, and so there are some important interest there. The one thing that has bothered me about the position they've taken on some of these things, especially that Barr memo that they continue to protect, is, of course, there's an exception to the privilege when it is used to shield a crime or a fraud.

To the extent the Trump administration is hiding behind the privilege to conceal misconduct, then the privileged should [inaudible 00:20:35]. That's the institutional interest here, and DOJ should acknowledge that. Your question about whether DOJ is trying to promote normalcy, I doubt that's the goal, but I do think they are likely wanting to promote that traditional role of independence at the Justice Department that the DOJ makes legal decisions free from politics. Maybe there is some political value in exposing the dirty laundry of the Trump administration, and there may be some of the democratic party who would love to see Trump's secrets exposed.

DOJ does have an interest in making decisions without regard to party politics, even if that means frustrating the party of the president who appointed them, because what you don't want is to set a precedent that in every administration, the new president reveals all of the privilege conversations of his predecessor for the sake of scoring political points.

Jill Wine-Banks:

Hey Kim, I am so excited. I used Headspace last night to help me fall asleep in a sleep lab where it is almost impossible to fall asleep, and it worked. I was wired up with all kinds of wires, and Headspace just put me in the right place to fall asleep. What about you? Have you been using it?

Kimberly Atkins Stohr:

Wow, that's really impressive. Yes, I have been using it. There are some stressful things happening in the world, reentry. Post COVID is a little stressful for me. The days leading up to my wedding got a little stressful, and I used Headspace also at night just to help me unwind, help me reconnect and refocus myself. I think that it helped a lot. I'm really glad that I have that resource at my fingertips. Headspace makes it easy to build a life-changing meditation practice with mindfulness that works for you anytime, anywhere, to give you a daily dose of guided mindfulness meditation, and an easy to use app.

Jill Wine-Banks:

It's not just for falling asleep. You can use it to take a stress break during the day, if you're overwhelmed, if you have trouble falling asleep, but even during the day. What about your wild kids? Headspace has a three-minute SOS meditation just for you. Their approach can reduce stress, improve sleep, boost focus and increase your overall sense of well being.

Kimberly Atkins Stohr:

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Jill Wine-Banks:

That's [headspace.com/sisters](https://www.headspace.com/sisters) for a free one-month trial with access to Headspace's full library of meditation for every situation. This is the best deal offered right now, so head to [headspace.com/sisters](https://www.headspace.com/sisters).

Joyce Vance:

Jill, let's talk about Texas. What's going on there?

Jill Wine-Banks:

Well, Texas is a very special issue. Lately, I'm growing more concerned about government in America, because of states like Texas that are enacting laws that I think violate the constitution, and diminish the foundations of our democracy. Only the supreme court now stands between these laws that, for example, threaten the loss of voting rights, particularly for voters of color, transgender rights, and a woman's right to control her own body among other issues. Using Texas as an example to explore whether there is a new era of conservatism, and whether these two issues are intended to test the new composition of the Supreme Court, I want to start with Kim and say what do you think are some of the most important, maybe the three most important laws from Texas that may reach the Supreme Court, and test this new court composition?

Kimberly Atkins Stohr:

I think you highlighted them, Jill. There's one law that's in place and two that could be passed. I'll start with the abortion ban, which passed in Texas, which bans abortion at six weeks, and makes no exception for pregnancies that result from rape or incest. It also categorizes abortion as a civil violation, which is unusual. It literally gives private citizens the power to bring lawsuits against abortion providers or people who have had abortions. It's really an unprecedentedly application of abortion restrictions. In that case, the fate of it really hangs on what the Supreme Court will do in a case that they've already agreed to here next year involving a Mississippi law that bans most abortions after 15 weeks.

I mean, that case, is essentially a full frontal attack on *Roe v. Wade*. I'm sure that this Texas law will be challenged, if it hasn't been already. I'm sure that it probably has been. I've been away getting married, so I may not be on top of exactly where the litigation on that stands. But I'm sure if it hasn't been challenged, it will be. What will likely happen is the challenges to that, whatever the lower court may do, will be put on hold while they wait for the Supreme Court to decide whether or not they're going to take up the decision of whether to potentially overturn *Roe v. Wade*, and depending on what the outcome of that case would be.

That's probably not going to happen until about a year from now when that decision will come out, and we'll know whether *Rose* still lives in this new 6-3 Supreme Court. I've been talking to a lot of legal experts over the last month or so about *Roe*, whether it's in danger, whether it'll just be chipped away, whether the court will wait or really go after it now, and there are differing opinions. I think that it is quite possible that with the 6-3 majority and with the chief justice having made his own views about *Roe v. Wade* clear, and not having that same concern that he has expressed in the past over things like *Obamacare*, and not wanting the court to seem like it is a political tool to overturn certain legislation, I think, with this, it's different.

I think if you have a strong majority of people who think that *Roe v. Wade* was wrongly decided in the first place, it is a very real possibility that it may fall. What will happen is you will have some states like Texas and Mississippi who will pass really broad restrictions, and you'll have other states like Massachusetts, where my paper is, and other places who passed strong protections for abortion. That

creates a two-tiered system of reproductive rights in this country, which I personally think would be a tragedy. Another law that we're looking out for is a law that was thwarted by democratic state lawmakers, at least for now.

That would ban transgender girls from participating in team sports. I know Texas Governor Abbott vowed to sign that, but I can't just off the top of my head. I would love to hear what y'all think later. I can't imagine how that is constitutional. That just seems patently unconstitutional on its face, the fact that it bans transgender students from doing anything after the Supreme Court in a case that involved employment discrimination, which is a different statute, but still dealt with texts that made gender discrimination illegal.

After that case and the fact that it targets transgender girls, specifically, if that's the law that passes, I just think that that is a clear case of gender discrimination under state and federal constitution, and I just don't see how that would pass. I would hope that lawmakers in Texas and across the country would instead really focus on young people to teach them the importance of really embracing anti hate policies, and really remembering that among all Americans, that transgender people, particularly transgender women, are so much more likely to be victims of hate crimes, that hate crimes against transgender Americans skyrocketed in 2020, and the vast majority of assaults and murders were committed against transgender women.

That's what I hope that young people are taught, taught that that is the danger that transgender girls face as they enter womanhood, and taught that that is something that they should fight against instead of buying into the stereotypes that help perpetuate that kind of biases. Of course, there are also voting restrictions that Texas is trying to pass. If they do pass these really severe restrictions on voting that we've seen in a number of states, that would also depend on a pending Supreme Court case that will be decided by the end of the month, that will set a standard by which challengers to such laws would have to prove that they're racially discriminatory.

It will be harder after the Shelby County case from eight years ago to make that case if the Supreme Court sets too high a standard for plaintiffs to prove in order to throw these kinds of laws out after they're adopted. Shelby County gave the Department of Justice an opportunity to review these laws before they were adopted, and prevent them from going into place if they were discriminatory. That is harder now. It could be even harder after these cases. A lot of this depends, Jill, on what the supreme court does this month, what the Supreme Court does a year from now, but I don't think that it looks good.

I don't think that the Supreme Court is necessarily a body that can push against these laws if they do pass.

Jill Wine-Banks:

That was a great answer, Kim. Before I turn to Joyce, who is our appellate expert, I want to point out that Texas is advancing a bill that would block access to gender affirming health care, which is another way they are aiming at the transgender community. You mentioned young people, and we have to give a shout out to a Dallas high school student, the valedictorian of her class, Paxton Smith, who substituted her originally planned valedictory speech to speak out against the abortion bill in Texas. I think it's time now that the younger generation takes over that issue.

Joyce, I wanted to ask you about what impact you think the new makeup of the court will have on the outcome of these three laws or four Laws, because we've mentioned at least four, and other challenges, and whether you think that this is a test, but really, what do you think the outcome is going to be under this new court?



Joyce Vance:

Something that I learned as an appellate lawyer is that my crystal ball is really, really bad, but I'm going to go out on a limb here because there's no denying that this is a new Supreme Court. Trump got the ability to put three new justices on the court. They are all deeply conservative, and that changes everything. Among other issues, there's this clear erosion of support for choice. In Roe versus Wade, Kim said something that really interested me, and I'd love to know what y'all think about this. I am concerned about losing Roe versus Wade. It goes back to our conversation about having the right to choose your name as women. This is about our agency over our own bodies.

My concern is that there's a move in this country to do something that I think is even worse than eroding Roe, or reversing Roe outright, and that's criminalizing abortion. Whether it's rules that would criminalize the doctor that performs it or criminalize the woman who obtains one, I am beginning to develop an enormous concern that that might be where this court is actually headed. States used to do really crazy things. For instance, Alabama, in 2018, passed a personhood bill that gives a fetus from the point of conception the same rights as a human being. But even Alabama's super majority, uber conservative folks weren't crazy enough to tee that bill up as a challenge to Roe in 2018.

Instead, they put in language that said, "When the Supreme Court reverses Roe, then this bill will immediately go into effect." I think that's today, and we've now got a lot of states, red states, with super majorities or with strong conservative majorities. They're going to become laboratories for bills that are designed to take away rights from people who aren't in line with their so called values. Jill, that takes us right back to the bill that you tee up this bill that denies gender affirming care. There was a similar bill in Alabama that fortunately, I think that there's some hold up to putting that in place, but the problem is, and Texas is the paradigm, there will be special sessions called this summer.

Governor Abbott will bring the Texas Legislature back into session, and they will take up these bills that they haven't gotten across the finish line yet. They will all be lined up, and the Supreme Court will be able to, if it's inclined to decide these issues, they will be able to revisit them, taking their pick of states that present the best bill and the worst facts so that they can go ahead and implement the conservative agenda that they were put in place to commit to.

Jill Wine-Banks:

Which, of course, would be completely inconsistent with what the conservative view is, which is that the court shouldn't be making laws. I think what you're suggesting is that they will indeed try to implement and effectuate the policies of the conservative Republicans who are passing these bills. Barb, let's talk a little bit about whether you think other states are going to start passing laws exactly like this to push the limits of the conservative's goals. What is the pipeline of those laws, and how worried should we be about this?

Barb McQuade:

I think one of the things that has emerged in recent years is this idea of model legislation. Now, these bills aren't coming up organically in each of these states by coincidence. There is a coordinated approach to attack abortion rights, transgender rights, and voting rights. A big part of it is to stake a claim in the culture wars, that conservatives believe it's in their political best interest to poke people on these issues about abortion rights and transgender. Back in the '90s, they used to talk about God, guns and gays, were the trigger issues to get the attention of conservative voters.

That's what's happening here is like, "What are the things that will agitate people, and get them riled up and get them to show up at the polls?" That, I believe, is what is going on there. I think the one

that is the most dangerous is the one that attacks voting rights, because if you can control voting rights, then you can control everything else. Legislation has been passed in a number of states. I think, six states now have passed these kinds of bills that put severe limits that will result in voter suppression, that will no doubt have the effect of making it harder for people to vote who tend to be aligned with Democratic Party voters.

There's a great election law lawyer named Marc Elias. He's a great follow on Twitter if you don't follow him already. He has filed lawsuits in Arkansas, Florida, Georgia, Iowa, Kansas and Montana to challenge some of these laws. In a number of other states, there are bills pending, including here in Michigan. It's all under the guise of protecting against voter fraud, which we know from the failed legal challenges of the Trump campaign is an absolute pretext to try to create cures for that non-existent problem, but will have the effect of limiting the vote of likely Democratic voters. I think that is something of grave concern.

Jill Wine-Banks:

Everybody else share Barb's concern about what we may be facing at the Supreme Court? Joyce, what do you think, and Kim?

Joyce Vance:

I think Barb's absolutely right. I'm sure y'all know that Shelby County versus Holder came out of the district that I represented. Voting rights are always uppermost in our thoughts here. I think Barb is dead on the money that that's the most important issue and the issue that's most vulnerable to have a really bad outcome with this court.

Kimberly Atkins Stohr:

I agree completely. That gets to the heart of all of these other issues, and gets to the heart of democracy.

Barb McQuade:

Hey, Joyce, is your husband's still cooking up all of those HelloFresh meals?

Joyce Vance:

He is. Last night, we had HelloFresh's Gorgeous Greens Farro Bowls. The amazing thing is all three of our boys were here. Everybody ate them. Everybody loved them. It's so rare that we all agree on a meal. This tasted great, and you could just tell it was good for you.

Jill Wine-Banks:

I actually ordered two of the same meal so that I could serve it for company, because the finished product just looks so impressive. When you put it on the plate, you look like you've created a culinary delight, and it was wonderful and everybody loved it.

Kimberly Atkins Stohr:

I love it in part because when you're busy, one of the things that you can forget to do is grocery shopping, and you find that you don't have all the things you need to put together your own meals, or as Jill said, somebody can come by. With HelloFresh, all of the ingredients are right there for you. It's all made so easy. It takes less than an hour, and it creates a really delicious meal. It's so convenient.

Barb McQuade:

Well, I really like it because it's got me eating my vegetables and eating a lot healthier. I live in a university town, and so the temptation to get takeout is very great. It's just so easy and convenient. But with HelloFresh, I've got all the ingredients I need right there, and it's healthy and delicious. HelloFresh offers 27 plus recipes to choose from each week from vegetarian meals and calorie smart choices to craft burgers and extra special gourmet options. We've actually been leaning toward ordering a lot of fish dishes.

They're created and tested by professional chefs and nutritional experts to ensure taste and simplicity. HelloFresh is 28% cheaper than shopping at your local grocery store, and 72% cheaper than a restaurant meal without sacrificing any quality.

Joyce Vance:

The meals are ready in 20 minutes or less. That means super fast prep and quick breakfasts and lunches. It's perfect for anyone with a busy schedule like all of us. Go to [hellofresh.com/sisters12](https://hellofresh.com/sisters12), and use code sisters12 for 12 free meals. It includes free shipping.

Barb McQuade:

That's [hellofresh.com/sisters12](https://hellofresh.com/sisters12). That's sisters12. Use code sisters12 for 12 free meals, including free shipping. HelloFresh is America's number one meal kit. Look for the link in our show notes.

Joyce Vance:

Matt Gaetz has been cropping up in the news like clockwork recently, and he's back again, right, Barb?

Barb McQuade:

He's back. A few weeks ago, he was in the news because there was this reported investigation into sex trafficking. But this time, the news reports that Matt Gaetz may have obstructed justice. The reporting says that during a phone call between his former girlfriend and a witness, Gaetz was patched into the call, and may have engaged in witness tampering. Of course, he is a congressman from Florida, which puts him in the news, but these are the kinds of crimes that nobody is above.

Let me start with you, Jill. You're an expert in obstruction of justice. What is obstruction of justice, and is witness tampering the same thing?

Jill Wine-Banks:

Great questions because obstruction of justice does actually include witness tampering. In fact, at one point, it was part of that bill. It became, at the federal level, a separate crime much more recently, but obstruction of justice is basically anything that you do to either use threats or force or any kind of communication to influence or obstruct or impede any investigation in the DOJ administration of justice. Now, of course, you can see how that could include calling a witness and threatening them to lie, forcing them to lie or to misstate something or to withhold information. Obstruction is a broader term than the witness tampering.

I'm usually willing to go further out than I think some of you who are more cautious. But in this case, I would have to say we don't know exactly what happened in that conversation. We do know that Matt Gaetz's girlfriend was one of the caller's along with a witness. We're not exactly sure who it was, but it seems to be one of the underage girls that may have been trafficked. If the conversation included

anything about refreshing her recollection, for example, and using any way to intimidate her, that would be witness tampering, but because there is an ongoing investigation, it would also be obstruction of justice.

For obstruction of justice, there has to be a specific intent to obstruct and to interfere with a judicial proceeding that actually exists. It can't be something that is forward things, so during Watergate, if Donald Trump... I'm sorry, guys. If Richard Nixon, I guess I see a parallel there. If Richard Nixon had burned the tapes before we subpoenaed them, he might have gotten away with it. It wouldn't have been obstruction of justice, but the minute we subpoenaed them, if he destroyed them, it was obstruction of justice.

That's one of the things you have to keep in mind is there has to be some active investigation that would call for the evidence when it is an obstruction case, whereas witness tampering doesn't necessarily have to be a case. It could be something that you're thinking about, and you're trying to get the witness to go the way you want them to go. That's the difference. It could be included, or it could be two separate crimes. It's not clear whether it would be duplicitous, duplicative indictment if you indicted for the same exact conduct for both of those crimes. That hasn't quite been decided that I was able to find and looking for it today.

Barb McQuade:

Well, of course, the facts will matter there. Kim, just talking about the significance of obstruction of justice, we sometimes hear those who are under investigation for obstruction dismiss it as a "mere process crime." What's your reaction to that characterization?

Kimberly Atkins Stohr:

We have heard people who are either facing obstruction charges or potentially facing them, people like Rudy Giuliani saying, "Oh, it's a process crime," trying to downplay it to make it seem like, "Oh, this is just a technical thing, and it's not really important." Well, first of all, let's start with the fact that it is a crime. It is a criminal offense, and it's really important because, yes, it is a process crime, meaning that it is a crime against the judicial process itself. It is meant to stop people once there is any judicial process, any investigation by prosecutors, once that's underway to stop people from purposely and intentionally getting in the way of that, which is really important.

Just as Jill said, it's about preventing people from impeding or influencing or obstructing the ability for the process of justice to take place. It is illegal both federally and in all 50 states in the District of Columbia, and includes things like witness, victim or informant tampering or intimidation. It includes things like altering or destroying or falsifying records, and it includes misleading conduct. Also, it doesn't require that a person be involved, much less guilty of whatever the underlying crime that's being investigated, which is really important, which shows why this is so important.

The investigation can have nothing to do with you, but you can step in and still create an illegal act by trying to obstruct that investigation. I think a good example of that is Donald Trump and the Mueller investigation. There was no actual evidence at the time that he began doing the 10 things that Robert Mueller detailed in part two of the Mueller report that indicated instances that he very well could have illegally obstructed justice. At that time, there was no official statement that he was the subject of that investigation into Russian interference into that election.

Certainly, the senate declined to convict an impeachment article based on that, but it doesn't mean that it wasn't illegal. That's something that I think our listeners can understand that you can still... Sometimes, it's not the crime. It's the cover up.

Barb McQuade:

Absolutely.

Jill Wine-Banks:

Barb, if I could just add to that, because I think to me, the prime example, of course, is Watergate, where exactly as Kim said, it is the cover up, not the crime. There's no evidence that Richard Nixon knew about the break-in at the DNC before it happened, but he found out that soon as it happened, and he got involved in the cover up, and the case became one of the cover up and obstruction of justice, which included witness tampering, payment of hush money and all sorts of things like that. It isn't the underlying crime that he was guilty of. He was guilty of abusing his power as president to stop an investigation.

Barb McQuade:

It's interfering with that quest for the truth. That is the crime, and so well put. Joyce, what about the consequences? What are the possible consequences of charges for obstruction of justice?

Joyce Vance:

They're serious, and they should be. I always think that Bob Mueller got this exactly right when he was talking in the wake of presenting the Mueller report to then Attorney General Bill Barr, and he said this about obstruction, he said, "It strikes at the core of the government's effort to find the truth, and hold wrongdoers accountable." That's why these efforts to pass it off and dismiss it as though the words process crime don't mean anything, that's why it rings so hollow. Congress takes this crime seriously, and so the prosecutors, and it has serious consequences for a defendant who's convicted of it.

For instance, the portion of the obstruction statutes that are specific for witness intimidation carry a heavy penalty. There's a 20-year statutory maximum in one of these statutes. Usually, we talk about statutory maximums, and we're careful to remind our listeners that there's also something in federal sentencing called the guidelines, which is a calculation that's done that actually gets closer to the actual sentence. That's often lower than these very high statutory maximums, but I tried to do... Look, I was doing it blind, because as y'all have pointed out, we don't know precisely what the conduct is here.

This phone call is still opaque, so I did a very rough calculation, but Gaetz, if he were convicted of obstruction based on trying to get a witness to massage his or her story, could be looking at 10 years in prison. There's an underlying sexual misconduct defense. There are a lot of enhancements here, so this is serious stuff for defendants. But even beyond that... Barb, this is a conversation that you and I have had in the past. Obstruction can be really helpful to prosecutors in building their case against a defendant, because people don't tend to obstruct justice or to try to obstruct justice, unless they've got something to hide, and it helps prosecutors establish consciousness of guilt.

If Gaetz ultimately does get indicted on substantive charges and on obstruction, he has made his own life a lot more difficult. I think the statement that he's issued... I'm sure you guys saw this, right? His spokesman comes out and says, "Congressman Gaetz pursues justice. He doesn't obstruct it." Well, Gaetz may live to really regret having issued that statement, because if I'm the federal prosecutor trying this case, in closing argument, I'm going to cram that down his throat, and every effort that he makes to present himself as a purveyor of justice is going out the window on this charge of obstruction.

Barb McQuade:

One other thing I learned to observe during the time William Barr was the attorney general, he was the master of this, is when you see a statement like that, look not only at what it says, but what it doesn't say. Obstruction of justice is a legal conclusion. He's not denying the underlying facts. He is just saying it doesn't amount to obstruction of justice, and so I think this is an interesting one to see the facts as they shake out. As you say, Joyce, not only are there significant criminal penalties, but this idea of consciousness of guilt that the motivation for telling somebody to change their story or to remember things differently is because the truth will be damning for them. That's an interesting point.

Joyce Vance:

Have y'all been using Noom like I have?

Jill Wine-Banks:

I certainly have, and it starts out feeling like it's a little weird to be talking to a computer, but it's a real person. The advice, if you read through what they say, is really sound and solid advice. I feel like I'm, for the first time in my life, changing my bad habits, and getting really good, healthy habits. What about you?

Joyce Vance:

I'm down 15 pounds, but it's not really the weight loss that I'm so excited about. I mean, you guys, that's two months, but what I'm really happy about is what you're talking about, Jill. I'm making better decisions. The food that I'm eating is more healthy. I feel better, and I'm really pleased about it. I feel like this is something I can stick with.

Jill Wine-Banks:

Me too. I know that these are lifetime habits I'm picking up. I'm not eating a bunch of calories after 10:00 PM, because I'm a late night person. When I'm working till 1:00 in the morning, I eat a lot of calories between 10:00 and 1:00. I no longer have those cravings. I really feel like the lessons of Noom are terrific.

Kimberly Atkins Stohr:

I have been using Noom, and it certainly has made me think about what I'm eating and why I'm eating it. As you guys know, I made my wedding dress, and the week before my wedding, I found that I had to take the dress in two and a half inches, which is a lot. Certainly, it was having an effect. What about you, Barb?

Barb McQuade:

I've lost 12 pounds. I'm no Joyce fans, but it's impressive numbers. I have to say there's nothing magical about Noom. There's no gimmick to Noom. It really is just all of those same things that we've all always known about eating well, more vegetables, eat protein, exercise, drink water, all of those kinds of things, but I think what Noom does is forces me at least to be very mindful about what I'm eating. You plan your meals ahead. Think about it. Avoid things like what they call storm eating like late night snacking and those kinds of things. It's really worked, and I agree that I think it's changed some bad habits, which is really, I think, the key to not only losing weight, but maintaining a healthy weight.

Joyce Vance:

With Noom, it's not about what you eat, but how you eat. Noom teaches you about eating, your cravings, and how to build new habits. It's based in psychology, so Noom teaches you why you make the choices you do, and gives you the tools to replace your old habits with healthier ones.

Jill Wine-Banks:

I'm looking forward to catching up with all three of you in terms of my weight loss, but we know everyone is busy, and that's why Noom doesn't demand much of your time. They only ask for 10 minutes a day. The cool part is over 80% of Noomers end up finishing the program, and over 60% have stuck with their goals for at least one year. That means real results.

Joyce Vance:

There's a science to getting healthier, and it's called Noom. Sign up for your trial today at Noom, N-O-O-M.com/sistersinlaw. Learn how to eat again with Noom. Sign up for your trial today at Noom. That's N-O-O-M.com/sistersinlaw. Ready to learn how to live healthier? Sign up for Noom today at noom.com/sistersinlaw. We'll see you at your goal line.

As always, we've received some great listener questions this week. If you have a question for us, please email us at sistersinlaw@politican.com, or tweet using the hashtag SistersInLaw. If we don't get to your question during the show, keep an eye on our Twitter feeds throughout the week, where we'll answer as many of your questions as we can, or they may even show up as a segment in a future episode. Our first question today comes from @DDStasa on Twitter. She asks for our reaction to Paxton Smith's valedictorian speech, and the implication for these state laws assaulting Roe vs. Wade.

Jill Wine-Banks:

Well, I'll start because I'm one who has been encouraging young people to get involved in this issue. It's one that I have been involved in for more years than I care to mention, and that I think it's now time to hand off to a younger generation. I'm glad that she was willing to take it on and to speak honestly, and to express how she felt as a young woman facing the possible loss of the right to control her own body.

Kimberly Atkins Stohr:

I agree. I think we were just talking at the top of the show about women having their own agency and making their own choices about what they do, even when conventional rules tell them otherwise. She worked hard. She earned that honor as valedictorian, and the fact that she used that platform in a way that was important to her, I think, was brave, and I support her in that decision.

Barb McQuade:

All right, I'm going to dissent here from the group. My friend Mojo, who is an avid listener says we agree with each other too much, but I disagree with both of you in this instance, although I do agree with the substance of her message. It is good to see young people taking up the mantle of reproductive rights. I just think this is the wrong forum. I mean, what if you ask someone to do a reading at your wedding, and you all agree that it would be a particular poem or a particular Bible verse? Then the moment comes, you've got 200 guests at the church ready to go, and instead, the reader starts talking about their views on gun control as an intrusion on our Second Amendment rights to bear arms, or is an opportunity to share her views about denouncing transgender rights.

I'd say, "Could you please take your message elsewhere? You're entitled to your opinion," but I think there's just a little bit of arrogance and selfishness to hijacking an event to say what you want to

say, what's on your mind. I mean, write an op ed. Post it on Twitter. Put it on YouTube, whatever you want, but... I know she had this captive audience, and it got people's attention, but it did because it was so rude. That's my old fashioned view, I suppose. I'm all in favor of her on the substance but not the process here.

Joyce Vance:

I'm going to respectfully disagree with you, Barb. I think she earned the right, and I appreciated that she actually took time to explain why she was doing it. There's an element here of a woman being told what she can and can't do. She could not have gotten the abortion speech approved past these folks at the school, and that I think is part of what's going on here. This is speaking truth to power in a situation where it might be uncomfortable, where a lot of people may not have agreed with her on the substance, and she nonetheless had the courage.

I think Kim says it just right, she was brave. She seized the moment, and she expressed her views. That I think is what we all have to encourage people to do. I'm aware of your comment about time and place, but so many valedictory speakers take on difficult sorts of topics. They express views that maybe the entire audience doesn't agree with. What makes this situation stand out to me is that she could not have gotten the speech that she gave approved, and she saw that as a fundamental wrong, and that's why she handled it the way she did.

Barb McQuade:

Would your opinion change if she had instead talked about why transgender rights should not be respected, or why we should not control gun possession in certain circumstances, or assault weapons?

Joyce Vance:

It's a really good question, because I think what you're asking is do I only agree with her conduct, because I agree with her views? My answer is going to be had she taken, let's just say, an anti-trans position, I would have disagreed with her in substance. I still would have applauded her willingness to express views. It's why we protect the rights of the Nazis to parade through Skokie. It's why the ACLU files lawsuits. We should be able to express views in this country if we have earned the platform, whether our views are popular and whether I share them or not. I mean, that's what this country is all about is that marketplace of ideas.

Kimberly Atkins Stohr:

I agree. I mean, I think this is different than what we've been talking about for the past few years about discussions on college campuses, for example, and who is allowed to speak and who is not. I think there has been way too much in terms of just denying people the ability to engage into that discussion. I think in education, part of it is hearing people challenging your views and what you think to make you challenge yourself, and find greater support for why you believe in what you do. Sometimes that involves listening to people with whom you disagree, so I think that is very important.

Jill Wine-Banks:

As always, I'm the middle of the road person. That's why I ran as a Biden delegate, because I am a middle of the road person. I certainly agree with... I understand Barbara's position completely, and I recognize that Paxton Smith violated the rules that she was given this platform under, which was she had submitted a piece on something else that is an important issue which is on the media and First



Amendment. I don't know what she was planning to say, whether it was controversial or not, but she did violate the rules of the school in doing that. They let her talk, and so maybe there is something to be said that there's a middle position.

But in the question that Joyce answered about, whether we only are saying this because we agree with her substantive position, is an interesting one that I have to think about. I can't answer it right now.

Joyce Vance:

Y'all, we have never had so much discussion over a question. I think that's because these important First Amendment or quazi First Amendment issues always are really provocative. I hope we'll have more questions like this from our listeners. I've got one last question for y'all. I suspect that the answer will be somewhat shorter. Here we go. Also from Twitter, Maxine Brown Roberts asks, "How can Trump be reinstated?"

Jill Wine-Banks:

Should we all say it unanimous?

Kimberly Atkins Stohr:

The answer is he can't.

Jill Wine-Banks:

That's what I was going to say. Should we all say in one, two, three.

Barb McQuade:

On the count of one, two, three. He can't.

Kimberly Atkins Stohr:

He can't.

Jill Wine-Banks:

He can't.

Kimberly Atkins Stohr:

There is absolutely no mechanism in American democracy that would allow someone who lost an election to be "reinstated." If he actually believes that, which I'm not... I know there was reporting that he does. Honestly, I was just coming back again from my honeymoon, and I saw the headline that he believed that he could be reinstated by August. I thought he meant Twitter. It's just absurd. It's so absurd.

Joyce Vance:

He might rather be reinstated on Twitter than have the presidency back if you gave him his druthers.

Kimberly Atkins Stohr:

I mean, he has the right to run for election again in 2024, of course, but there's no way that he can just be put back in the office.

Jill Wine-Banks:

The only way it could happen is if I was wearing my Alice in Wonderland pin, and he fell down the rabbit hole. Otherwise, it's not going to happen.

Joyce Vance:

I think that's all of the answer that that question deserves. Thank you all for listening to #SistersInLaw with me, Joyce Vance, Barb McQuade, Jill Wine-Banks and Kimberly Atkins Stohr. Don't forget to send in your questions by email to [sistersinlaw@politican.com](mailto:sistersinlaw@politican.com), or tweet them for next week's show using #SistersInLaw. Please support this week's sponsors, Headspace, HelloFresh and Noom. We hope you'll love them all as much as we do. You can find their links in the 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 love to read your comments. See you next week with another episode, #SistersInLaw.

I don't even know.

Barb McQuade:

Do you know the Obamas? Do you know the Obamas? Do you know Oprah?

Jill Wine-Banks:

Well, Oprah emceed an event for me when she was just starting out. I don't think... I mean, I knew [crosstalk 01:06:28].

Joyce Vance:

Oh my gosh.

Jill Wine-Banks:

My best friend was married to a member of the Senate, the State Senate when Obama was in it, so we used to have dinner together. Obama, I never really connected with, but the first time that I met Michelle, which was before that was when I was at CPS. She came over because we were trying to do a partnership with the University of Chicago, where she was at the time. I had never heard of her. This is a long time ago, guys. I had never heard of her, and I found my notes when I retired from CPS of that meeting, which was my first week in the office. I spelled her name O'B-A-M-A.

Kimberly Atkins Stohr:

[inaudible 01:07:07] Irish.

Barb McQuade:

[crosstalk 01:07:12]. That's classic. Sure. Why not? Of course, it makes perfect sense.

Jill Wine-Banks:

I thought [crosstalk 01:07:16]. I saved the notebook because it was so classic.

Barb McQuade:

That's hilarious.

Jill Wine-Banks:

I did it. I [crosstalk 01:07:22].

Joyce Vance:

[crosstalk 01:07:22].

Jill Wine-Banks:

I did it with... Well, Barbara, you're the one who knows sports. Franco Harris who was a football player for the Cleveland Browns, I think, and I worked for-

Barb McQuade:

Pittsburgh Steelers, Franco Harris.

Jill Wine-Banks:

[crosstalk 01:07:37] Pittsburgh... Franco Harris, exactly. I thought it was Frank O. Harris.

Kimberly Atkins Stohr:

That's great. I could totally-

Jill Wine-Banks:

He was coming to meet me, and I said to my secretary, "After I say hello, Mr. O'harris, what do I say to him? I don't know anything about football." She said, "Stop. You don't call him Mr. O'Harris. His name is Franco Harris."

Joyce Vance:

That's so funny.

Kimberly Atkins Stohr:

I would have done the same thing.

Jill Wine-Banks:

An Irish thing in Chicago.