

Barb McQuade:

Welcome back to hashtag sisters in law. I'm Barb McQuade. This week, we'll be talking about the Texas abortion law, SB 8, the trial of fairness, founder Elizabeth Holmes, and the potential release of RFK's assassin, Sirhan Sirhan. As always, we look forward to answering some of your questions at the end of the show.

This has been a long week. We have had some really, really heavy news, and we're going to get into that. But before we do that, I want to talk about a tweet that we got this week with asking some advice, and I want to hear your advice on that. But before we even get to that, I think we need to be fortified with something else, which is the amazing, upbeat news that Abba, the greatest band in pop music history, is recording a new album after 40 years. I'm so excited. We were talking about this yesterday and as a result, Kim has got a song popping in my head. I can't stop.

Kimberly Atkins Stohr:

Take a chance, take a chance, take a chance. It's a good song.

Barb McQuade:

Are you guys Abba fans?

Joyce Vance:

I'm going to scare y'all with me singing, Dancing Queen. Because I mean, you would run screaming away. But it's stuck in my head. Yeah.

I'm so excited about this new album.

Kimberly Atkins Stohr:

Me too.

Barb McQuade:

As a child of the seventies, Dancing Queen was the ultimate song when you had like your friends over, and you're hanging out in the basement, and you're playing records on the record player, that you sing into your hairbrush and kind of dance around in the basement. So I was listening to my college days.

Joyce Vance:

It is a great image and it is something even I who was a little before that, because I was already out of law school by the time they were popular, absolutely loved, especially Dancing Queen. That is a song of the ages for sure.

Barb McQuade:

And you know, we were corrected yesterday. They're actually called Abba. Here in the Midwest, we always call them Aaahba. That's three syllables. Aa-ah-ba. What about you, Kim? You're a Michigander.

Kimberly Atkins Stohr:

Yeah. That's part of that Michigan twang that I went to a speech therapist to help lose, but yeah. I used to go to the basketball game, it's Abba, Abba played before the basketball games.

Barb McQuade:

I guess it's Abba. I occasionally have the responsibility of making the playlist for my daughter's hockey team. You know like the hype music and the music between periods. And I include her requests and some pop music, hip hop music and things like that. But I always include two songs that I think these girls need to hear. One is Dancing Queen and the other is Respect by Aretha Franklin. Those are always on the playlist. Got to have those two, got to have the anthems.

Jill Wine-Banks:

Excellent. How about, I am woman hear me roar.

Barb McQuade:

I'll add that to the next one. All right. Well, let's talk about this tweet that we got. I think some of us responded to it. The tweet was from someone who said, she was considering going to law school, but it seemed that every lawyer she asked, advised her against it. And I just wanted to ask each of you, we all made this decision at some point and we now have these careers to look back on. What advice would you give to somebody who's considering law school?

Kim, let me start with you.

Kimberly Atkins Stohr:

Oh, well, so I get asked this a lot. And the standard answer that I give generally is if you know, if you're ready and you understand what law school is and what it isn't, and you know exactly what you want to get out of it, then God bless and good luck and go. If not, think very carefully about it. Law school is not like any other master's program. It's not like an MBA. It's not like nursing school or other specific professions. Or medical school where they teach you how to do the thing you're going to do. It's three years. It is obscenely expensive. There's no reason that it should cost as much as it does. And particularly if you're funding it yourself. And certainly, if you are going into debt for it, you need to think very carefully.

Law school, now I will start off by saying I'm glad I have my JD. Certainly, I've had a great career. And I think the JD has played a part of it. I don't know what my life would have looked like had I not gone. And I wanted to be an attorney. I thought I really knew what I was going there for. But I didn't understand how competitive it would be, that it was sort of set up, at least when I went, blah, blah, blah years ago. It was sort of set up that it was really difficult to get to the top. It was also difficult to be at the bottom. It's sort of set up, it was graded on a curve to kind of make most people B, B plus students essentially, in the way that it was graded. But because you were literally graded against your classmates, and it created a very hyper competitive environment that wasn't great for me.

I was there to learn. I wasn't there to compete. That was difficult. And that was three years of my life. Thank goodness. I found a very good therapist. And my school Boston University actually had really good mental health services there. Because I was depressed, I needed to go on antidepressants during that time and that helped get me through it. It was very difficult for me. Also for me personally, unlike a lot of my classmates, the result of law school is what has been so far, a lifetime of debt. I still have student loans. I'm in my forties and I'm still paying them off. So that is quite a commitment that stays with you for a very long time. Another attorney, who's a friend of mine, who's fairly prominent, just tweeted this week that he paid his student loans, just paid his student loans off, he's about the same age as me. So that's decades of debt. That's one reason why I don't own a home yet. So it's a lot. It's not a place to go while you figure things out. It's not a place to go just to make somebody else happy,

because your parents want you to go or something like that. Just know what you want to get out of it. What about you, Joyce?

Joyce Vance:

You know, it's funny that you mentioned student loans. I finished paying mine off the year before we sent our oldest child to college. And so it is important that you think about finances. But I had a very different experience in law school. I absolutely loved it. Part of that may have been because the University of Virginia, where I went to law school, seemed to foster a lot more cooperation than it did competition. In fact, I will out my entire small section now, I'm not going to say how many years down the road, with the confession that before one of our first semester final exams, we made an agreement that nobody would study and we would all watch the basketball playoff games together. It wasn't playoffs actually, it was during the season. It was the Ralph Sampson era. And I remember it was the Georgetown game, and we all watched because grading was on a curve, it was a B mean.

And so our theory was that if nobody studied, we'd all get the same grades anyhow, but we get to watch this great matchup of Ralph Sampson. And it was Ewing who is then at Georgetown. And it was a really good game. I have found, and I loved studying the law. I continue to be fascinated by the law as an exercise in thinking about why we're fortunate to live in the country that we're in, what works, what doesn't work, what we can do better and what our basic values are. But I loved the people so much. The relationships are sustaining. I married one of my law school classmates. I talk with others of our classmates every day, and we have supported each other throughout the years.

But the reason that I would give, and I think it's a personal decision, as Kim says, you should be thoughtful about why you're going to law school and what you hope to accomplish. A law degree will let you go to a big practice on Wall Street, if that's what you desire, and if that's the sort of ability you have. But there is so much more you can do. And because this has been a tough week for women in particular, I actually made a list of women who I admire who've used their law degrees in ways that I think would inspire me if I was making the decision right now to go to law school. And the person at the top of my list was Dahlia Lithwick at Slate with her articulate analysis of what goes on in the Supreme court, and especially her thoughtful way of looking at the Texas abortion decision that we're about to discuss.

But I also thought about Barbs and my former colleague, Vanita Gupta, who's at DOJ, taking on a tremendous amount of responsibility for getting the rule of law right. Of course, Justices Kagan and Sotomayor, and pretty much every woman lawyer who went to the border when Trump was in the grip of the family separation policy, and who thought that policy, but also the women who've stayed engaged up until today on that and other important issues. To me, that's what getting your law degree lets you do. Yes, it lets you practice law, but it gives you the tools to engage in really important activism. And from this perspective on my career, that's what I value. That I was well-educated about how to help people. And whether that's in a big way or in a small way, every client that you help as a lawyer you're important to them. And that's really a gift that we can give to our community. So I'm sorry to wax on for so long, but I'm very affirmative on going to law school, especially right now.

Barb McQuade:

How about you Jill, what's your advice?

Jill Wine-Banks:

My advice is go. And yes, you need to take into account what you want to do with it. But even if you don't want to practice law, which is, I went to law school not wanting to be a lawyer. And by the way,

Joyce, I too married someone from Columbia Law School. Mine didn't work out quite so well as yours, but I don't hold it against Columbia Law School, which I thought gave me a great education in critical thinking skills, in problem solving, and in activism. It taught me how to solve and do. And I went because I wanted to be a journalist, and thought that the law school training would help me to be able to convince an editor that I had the skills to report on important news events at a time when women in journalism were consigned to the woman's page. And it worked.

It definitely was good background for that. Although I ended up practicing law for most of my career. And I just think that the skills you learn are something that is helpful whether you decide to be a journalist or to go into business. The ways that we learn to think and negotiate and to put together a persuasive case. Whether you want to be a lobbyist, it's great training for that. So I think it is a terrific way to be a better thinker and that it's definitely worth doing. And of course, if you go into public service, you can get your loans forgiven. And that's something that wasn't available, even though I did go into public service right out of law school, that wasn't the case then. Now it is. That's one way to help with your student loans. And I think it's just the right thing to do. I highly recommend it.

Kimberly Atkins Stohr:

Not necessarily all, but some of them.

Jill Wine-Banks:

The other thing is I do know I've mentored a number of young people, and one of them who I thought for sure was going to be a lawyer ended up being a paralegal and getting his master's in paralegal studies. And he in working in a law firm said, I really don't want to work the hours that it requires in a law firm. And I can enjoy the intellectual challenge through being a paralegal. So there are other options to be helpful and involved in the law without finishing law school.

Barb McQuade:

Yeah. I agree that as everybody here has said, it's something to think carefully about. You just don't want to go on a whim just because the investment is substantial, not only the money, but the attention, the effort that you need to put into it. But like all of you, I have found it life-changing. It has opened doors to do incredibly impactful work. And I think all of us deserve to do work that is interesting and challenging and important to us. And for every person, those qualities are going to be met in different ways. But for me, being a lawyer has been so interesting and so challenging, and has allowed me to do work that I consider important. And that makes for a very satisfying work life. So I've loved every minute of being a lawyer. I like studying the law.

I know not everybody loves law school, but like you Joyce, I enjoyed law school as well. So I think it can be a wonderful opportunity for many people, but it's not for everybody. And so something to think about as you go through that. But there are ways to learn about whether it's for you. You can read law books and see if that's something that you think appeals to you. You can look at the kinds of careers that you think you might want to do, and see if that's for you. You can get a tour or sit in on a law school class to get a feel for what it's like. So there are a lot of ways to kind of explore the law. Talk to people in the law. Talk to us, we'd be happy to, all four of us I'm sure, we'd be happy to help people in their consideration of law school. But I know sometimes-

Kimberly Atkins Stohr:

Sorry, I just wanted to add one thing. Because I know some of them are listening too. I made the best friends of my life. I'm part of a group of eight women, all of us graduates from Boston University Law School. And we've been getting together, once a year for the past 20 years, since our graduation. And they are my sisters and I am so glad. That's really worth every bit of every penny that I've paid to the department of education since I graduated, meeting them. So it will certainly change your life. I didn't find my spouse there, but I found, I married a Harvard Law grad, so law school does produce good husbands.

Jill Wine-Banks:

So I hated law school. I totally hated it. And I was completely unprepared for the competitiveness. I came from a Big 10 school. Most of my classmates were Ivy league. I felt completely out of my depth and paralyzed with fear every single day that I'd be called on and wouldn't be able to answer the Socratic questions. But even with all of that, I am so glad I went to law school, and I know I wouldn't have had the life I have if I hadn't. And I still think it was worth every ounce of energy it took to get through it.

Barb McQuade:

All right. So let's see who our first sponsor is today. Oh, it's Third Love. Well, you know I make it a practice not to talk about my undergarments. So Kim, what do you think about Third Love?

Kimberly Atkins Stohr:

I will say, I don't love talking about underwear as a general rule, but one thing that I do like about Third Love, as somebody who on the side I do fashion design, and I think one thing that makes your clothes look nice is when your foundational garments fit you properly and they're the right ones for you. And I find certainly when I'm wearing Third Love, my clothing looks great. I don't have to worry about it bunching in weird places or having unsightly lines. And that's really important for one's overall look. So I really appreciate that about it. What about you Joyce?

Joyce Vance:

Well, you know after having four children, I think I've lost most of my sense of privacy and I am happy to talk about my underwear. I actually really love Third Love's bras in a way that I'm not used to thinking I love bras. I ordered one earlier this week. I didn't realize we had them as an advertiser this week, or I would have waited and used the code, which I hope all of our listeners will use. But I like this T-shirt bra so much because I forget that it's on. It's really comfortable. And like you say, Kim, it makes all the difference in how you look. The half cup sizes are genius for somebody like me. Jill, what about you?

Jill Wine-Banks:

So I'm in the camp of, I would prefer not talking about my undergarments, except that as I age, I've lost all inhibitions about saying hello to people, strangers in elevators, that I wouldn't have done before.

Joyce Vance:

Are you telling people about your bra on elevators?

Jill Wine-Banks:

No, not the bra on elevators, but I'm willing to tell all of our listeners about how comfortable Third Love is. And I got very early on, months ago, I got the T-shirt bra, which you just mentioned. And it is a fabulous look. And it is totally like at the end of the day, it's not like the first thing I want to get off. I can't wait to get my bra off. It's perfectly wonderful. I think it is a very, very wonderful product.

Joyce Vance:

That's a lot about bras.

Kimberly Atkins Stohr:

And third love creates high quality underwear, sleep and lounge wear, with cup sizes from AA to I, including exclusive half cups and lounge and sleepwear in sizes extra small to 3X. Get ready to feel good. Just take the easy fitting room quiz, and Third Love does the rest. Focusing your fit on size, shape, current issues and your personal style to deliver bras and underwear that are perfect for you. They even have stylists on standby.

Joyce Vance:

As y'all know now, I love their number one best selling 24/7 classic T-shirt bra. It provides all the comfort and support you need in more than 80 sizes. Third Love gives gently used returned bras to women in need, and they've donated over \$40 million in bras so far.

Jill Wine-Banks:

Third Love knows you deserve to feel comfortable and confident 24/7. So right now they are offering our listeners 20% off the first order. So you should do another order again, Joyce, and use our coupon. Go to thirdlove.com/sistersinlaw to find your perfect fitting bra, and get 20% off your first purchase. That's thirdlove.com/sistersinlaw for 20% off today. Look for the link in our show notes.

Barb McQuade:

Let's move on to our first topic of the day. And it is one that is a doozy. It has been in the news, and it is the SB eight. And what's going on this week in the Fifth Circuit and then in the Supreme Court. And I think Kim, you're going to take us through that discussion.

Kimberly Atkins Stohr:

Yes. So this is the week where I think the question on everyone's mind is what is the future of Roe V. Wade, the precedent that we've all known to protect reproductive rights and access to reproductive healthcare in this country. So before I ask all y'all some questions, I just want to sort of set this up by talking about Roe itself and what has happened since and what led us to this point. So January 22nd, 1973, that's when the US Supreme court made its decision in Roe vs. Wade. That case involved a Texas statute, Texas is quite the state, that made it a crime to perform abortions unless a woman's life was at stake. And the Supreme court held in that case for the first time that there was a constitutional right of privacy. That quote is broad enough to encompass a woman's decision, whether or not to terminate her pregnancy.

And that was huge. So some years later, 1992, in a case called Planned Parenthood V. Casey, the court reaffirmed Roe and clarified exactly what this right meant. Some people said that it sort of restricted it a little bit. But it held that in order to succeed on a constitutional challenge to a law that the law must be shown to have the purpose or effect of placing a substantial obstacle, and sometimes the

term substantial burden is used, in the path of a woman seeking an abortion. So these are the bedrock cases that really created this. I remember in 2007, it was the first day as a journalist that I covered the US Supreme court. I covered the court for almost a decade. And the first time I showed up there to go to an argument, it happened to be the day that the decision in a case called *Carhartt V Gonzales* was handed down.

That was when the court was considering the federal so-called partial birth abortion law. It's a terrible term. But it meant to apply to abortions that took place later in the term. And in that case, the Supreme court upheld this law, even though it did not provide an exception for the life or health of the mother. And that day, Ruth Bader Ginsburg gave a dissent from the bench. It was not the first time she'd given a bench descent, but it was the first in what would be a string of dissents that she would give from the bench during that period of time when the court handed down decisions, where she called out what the court was doing and even called for change, and sometimes Congress would listen to her. But in this case, she pointed out very pointedly that on that day in 2007 was the first time that *Roe* was significantly rolled back, because a law was approved that did not provide the very protection for the life of the mother that had been protected by *Roe* and *Casey*.

So fast forward, a little bit more 2014, there was a case called *June Medical*, which dealt with one of many laws during that time that we saw being passed, which puts so many restrictions on the providers of abortion services that it led to an essential ban. It required things like people who performed abortion had to be admitted or associated with a hospital, because if something goes wrong, if a woman needs to go to a hospital, they need to be able... well a woman can go to a hospital, whether or not the provider is a member of that hospital or not. It provided that the facilities had to have doors big enough to roll a gurney through. Just all kinds of things that had nothing to do with the actual performing of the services. And the Supreme court struck down that law, saying that whatever benefits these laws we're trying to put in place, they played no comparison to the burden that it was putting on women.

But that is also a case where Chief Justice John Roberts laid down one important marker signaling that the benefit part shouldn't even be a part of this equation. It was a plurality decision, not a majority, where it wasn't five votes for the reasoning that Justice Briar gave in that decision. It was five votes that it was struck down. Robert joined by saying that it was too much of a significant burden on women. But it was kind of the first time, at least certainly for me as a watcher of the Supreme court, that said, you know what, there could be a shift of foot here. And that brings us to this week. But before we get to what happened this week, I want to turn to Jill because I know for a lot of our listeners they're folks like me. For my entire lifetime, *Roe V. Wade* has been the law.

PART 1 OF 4 ENDS [00:24:04]

Kimberly Atkins Stohr:

There are folks like me, for my entire lifetime *Roe v. Wade* has been the law of the land, and I want to get a sense for people to understand what life was like before the right to full reproductive rights, accessing that, was constitutionally protected by the US Supreme Court. So Jill, why don't you tell us about the pre-*Roe* landscape? What was it like? Did women and physicians face legal jeopardy? Was abortion safe and accessible?

Jill Wine-Banks:

It was a very different time, and I think this is an important thing for our listeners to pay attention to, because it is time for Kim's generation and the younger generation to take charge of this fight. It's no

longer should be my fight. I have been fighting this for more than 50 years, and it's time for someone else to take.

But back then, the differences were rich and poor, which it will be again if we see... and let's not forget that Mississippi's law is the one that's going to probably be the real death knell for Roe. But if you had money, you could go out of state to a state that had it legal. But for most people in most states, it was illegal. If I had gotten pregnant and wanted to terminate the pregnancy while I was in law school, I would not have been able to in New York. And New York was one of the first to liberalize its laws, but that didn't happen until after I was out of law school. California preceded it. I might've been able to fly to California, but other than those states, there were very few choices.

And the procedures were dangerous, and I have to say for Joyce's benefit at least, knitting needles were one of the tools of committing abortion. Hangers were used to try to perforate the uterus to abort the child. Pregnancy tests and even birth control really were not readily available back then, and so you had a problem of, you didn't know you were pregnant because you couldn't get a pregnancy test except by going to a doctor and doing a urine test. There was a patchwork of laws. There were states as I said, California in the '60s allowed abortion, New York in '70, and then Roe in '73. There was legal jeopardy if you did it, and if you were a doctor definitely legal jeopardy. It wasn't safe so your life was at risk.

You are now 14 times more likely to die from childbirth than from an abortion. Abortion is now of course safe, and we now know we can do home pregnancy tests to know that you're pregnant and need an abortion. Not at six weeks, but sooner than not. And so we all celebrated when Roe said that it was viability was the standard, and I just have to mention that that standard came from a law clerk, a Supreme Court law clerk named Larry Hammond who was a Watergate colleague of mine, and he was a clerk for Powell. And he is the one who came up with, well let's not make it first trimester, let's make it viability. Then of course you had even Ruth Bader Ginsburg saying, "That's not the right test. We're pushing it too far. We should let it evolve socially. Let states gradually make these changes." So now the Mississippi law is going back to first trimester.

And the other thing that has changed a lot in the time is the language. I mean, the language of what was called choice is now not called pro-choice. It's called pro-reproductive liberty, or pro-women's health, pro-life of the mother. Which as you mentioned Kim, there were no exceptions for the life of the mother, even physical life, as opposed to, and certainly not mental life. So, and nowadays we also need to be careful to say the laws should protect anyone with a uterus, because trans men could become pregnant. And so we have to be careful in the words we use. But basically back then it was a very different world. And I had a college friend who had to drop out because she got pregnant, and because she couldn't get an abortion. Her life was changed dramatically. She didn't graduate college, she had the child. And I mean, she loves her children and she's a happy person, but I think how would her life be if she hadn't dropped out of college?

Kimberly Atkins Stohr:

Yeah, just this week alone I've gotten messages or seen Twitter notes from people who have had medical conditions, anything from severe type one diabetes to having been diagnosed prenatally, the child, with a really terrible condition that would've either ended the life, made it end in a stillbirth that would've threatened the mother's life, or just really horrible, awful decisions that you have to make in the first place. And to have a choice taken away, that gives real meaning when people say abortion is healthcare. It really gives real meaning to that. So Barb, I want to turn to you now to talk about what happened this week now that we set up what I think is really important context for this, and talk about

what the Supreme Court's order means for Roe. It didn't overrule it, you can't overrule precedent on the shadow docket. But why do we know that Roe is in trouble?

Barb McQuade:

Well the statute in Texas, this SB-8, it completely contradicts Roe versus Wade. Which as Jill just said, the [marcation 00:30:33] is viability. So the state cannot prohibit a woman, or a person with a uterus, from obtaining an abortion anytime that is before that 22 to 24 week period. The viability of the fetus has been the law of the land with Roe versus Wade. And then Kim, as you said, there's the Casey case, Planned Parenthood versus Casey, that has also said that a state cannot put an undue burden on a person seeking an abortion. So in the face of that case law, Texas passes this statute that says it will prohibit the abortion of any fetus where a heartbeat can be detected, and that occurs at about six weeks. So now we've got this huge gap between what the constitution and what the Supreme Court has said is protected, and what this Texas law provides.

The tricky part of their statute is that it's got a little bit of a litigation trap in it, in that it doesn't say that it is the state that will punish people who will perform abortions after a heartbeat is detected. It says that any person may file a lawsuit against anyone who is assisting a person in obtaining an abortion. A doctor, a healthcare provider, anyone who aids or abets is the language, a person in getting an abortion, and that \$10,000 may be the reward for such conduct.

So as a matter of public policy, this is a very troubling law. Someone asked me, are there other statutes that have this formula where essentially bounty hunters are created by it, and the only one I'm aware of is the Fugitive Slave Act, where they deputized private citizens to arrest runaway slaves so that they could crowdsource the job of capturing people who had fled for freedom. And so what makes it tricky is that ordinarily, you would file a lawsuit against the state actor who is assigned to enforce this law, whether it's the attorney general of the state or whoever that might be. Be instead, because this deputizes individuals, there are a lot of questions about standing and about whether these parties have sued the right defendants.

So a lawsuit was filed to challenge this statute in July, and the defendants, who are a judge representing a class of all judges who would be enforcing this law, and clerks of the court who would be enforcing this law were the defendants who were sued in this case, as well as a private individual who advocates against reproductive rights. And the judge in that case denied their motion to dismiss. By the way Joyce, do you know who the district court judge is in this case?

Joyce Vance:

I do, that would be Judge Robert Pittman, the former United States Attorney in that part of Texas, and a righteous, strong straight arrow.

Barb McQuade:

Yeah, our old friend from the US Attorney community days, during the Obama administration, he served as the US Attorney there and is now a federal judge there. And a motion was filed to dismiss that case by those defendants. He denied that motion, and he very diligently set a hearing for earlier this week before the law would go into effect on September 1st and was going to sort it out. Now in the meantime, those litigants appealed that decision to the 5th Circuit court of appeals, and they said, "We are staying all proceedings in the district court, because we have to work through these issues on appeal." But of course that order meant that in the meantime, while they work through these difficult issues about immunity and other things, whether the right defendants are sued, on September 1st that

law's going to go into effect. So they didn't do what is expected I think in a case like this, which is to stay their order, stay the law, so that you can preserve the status quo while the courts figure things out.

So in the face of that, an emergency petition was filed with the US Supreme Court, and I think most people thought they would do what they have done in other instances. We've talked about, just last week we talked about the so called shadow docket of the court where they're making a really important substantive decisions on their summer recess in these very short, brief, unsigned opinions. And they did that in this instance. They did nothing when September 1st came and went, and then on September 2nd, they issued an opinion. And the majority said, "We think that there are a lot of procedural complexities in this case, and so we're not going to intervene at this time to have full briefing and to have the parties work through the district court and the Court of Appeals so that we can decide this case." That makes sense.

What doesn't make any sense at all was the position that was articulated by the four dissenting justices, including Chief Justice John Roberts, who said, "Yes it is procedurally complex and it does make sense for us to spend more time on this. But in light of the fact that there is a constitutional right at stake here, the normal course would be to stay the implementation of this statute so that we can preserve the status quo while we work it out." Instead, because the court has essentially done nothing and said, "We're going to let this lawsuit run its course," that law became, went on the books on September 1st. So there are women in Texas who could get an abortion on August 31st who now can't, who may lack the resources to go out of state.

And I think as Jill was saying yesterday, this law does not mean there will be no abortions in Texas. This law means there will be no legal abortions in Texas. And I think one of the things to point out, I think not only is this an attack on reproductive rights, but it is also an attack on the rule of law.

The test is typically if there is a likelihood of success on the merits, in light of Roe versus Wade it seems that would be true under any good faith review of this case and this statute. And whether the parties would suffer irreparable harm if the court were not to enter an injunction to stay the proceedings. That was the basis of the John Roberts dissent, and it seems that in light of the court's willingness to ignore the rule of law in this case, I think it does not bode well for what they think the future of Roe versus Wade is, and I also don't think it bodes well for the future of the rule of law in this country. Whatever your view is on abortion, a justice of the Supreme Court owes a fidelity to the law, and I think that has been violated in this instance.

Kimberly Atkins Stohr:

I agree, I agree.

Jill Wine-Banks:

I completely agree with you and am horrified that the primary decision about a stay is almost always, what is the likelihood of success? And how can anyone look at this and not say that this law violates and burdens the exercise of the right of women and trans with a uterus? And it has created mob rule against women. I mean, it's more than just the rule of law. It is mob rule. But the one thing I just want to point out, you mentioned this heartbeat, and there is much medical evidence, and I can attach some articles to our show notes that talk about this, that at six weeks there is no heart and there is no heartbeat. There is an electrical impulse where there will be a heartbeat eventually. So calling this a heartbeat goes back to what I was saying about language, and the far right has got great language. And calling this a heartbeat makes it very sympathetic, but it's not really a legitimate heartbeat. And I think we need to pay attention to that.

I also want to mention something you also said. There is a movie called Birthright: A War Story, and it talks about all the consequences of the anti-abortion movement, and the fact that for example, your life could be at risk and you couldn't find someone in your state who knows how to help you by doing an abortion. And I think it's a movie that everyone who's interested in this issue should see. It's available widely on streaming, and I'll post that as well as part of our show notes.

Kimberly Atkins Stohr:

I want to get Joyce into this, but I also just want to point out when it comes to the stays it also, the harm that it can do is a factor. And these women have six weeks. Most women don't know they're pregnant six weeks in, and if they only have in reality a week, two tops, and this law has been allowed to go into place, I just don't understand why the Supreme Court didn't just say, "Halt it for now. Maybe we'll uphold it later." But my goodness, it's really, that's what signals to me. I really believe that Roe is gone. But I want to get to Joyce to chime in on this, and also lead us into our discussion about what happens in the future. What might this law mean, not just for abortion rights, but for other constitutional rights too.

Joyce Vance:

Well I have to say, this has been a tough week for all of us. I think we get that sense that we're all angry and have a lot we want to get off our chests. And I'm trying to find humor where I can this week, so I'm tickled that while we've been sitting here taping, one of my neighbors just texted all of the women on our street and said, "Texas made me want to drink. Are y'all around at 5:30? My porch." And I suspect that there are women all across America who are sort of feeling that way right now, and that in many ways this transcends partisan politics. I hope it does so that we can fix it. But Kim, it's a good question to ask, right? What happens next.

And so while the Supreme Court's decision here, and we've said and it's important to note, this is not a substantive merits decision about whether the statute is constitutional. This is a shadow docket decision, which means it's a procedural decision on an emergency appeal trying to keep the law from going into effect while litigation over its constitutionality is ongoing. That's sort of where we are in the middle of the legal roadmap. But what the Supreme Court did by permitting this Texas law to go into effect and refusing to enjoin it is they've created a roadmap for every like-minded state. Every conservative state out there can adopt a Texas-style law. I spoke with Alabama legislators this morning and I asked them, "Are we going to get a Texas law?" They all agreed that we would. And one of them when I asked them that question, his immediate response was, "Is water wet?" Like, "Girl why are you even asking me? Of course we're going to have a statute like Texas, the Supreme Court has now shown us the way to ban abortion."

Even if these are only temporary bans, even if ultimately the issues are considered, and by the grace of God parts of Roe survive, and I should say that there's a cynical part of me that thinks that the republicans don't want to do away with Roe completely, right? It's a great fundraising device for the republican party. So maybe they'll gut Roe but somehow let it remain in place when the Mississippi case, Dobbs, is in the court next year.

But that said, even if this Texas law doesn't stay in effect long-term, it creates the sort of fear and uncertainty that chills access to abortion rights, because there will always be this... We watch this stuff every day. We stay on top of it. But if you're just a person who's living your life, who doesn't have the time to devote to it or formal legal training, this knowledge in the back of your mind that there's a \$20,000 bounty on your head if you drive your friend or neighbor to get an abortion, that may stick around and could chill these rights in a very real way long-term.

So there's that direct sort of roadmap that the court creates for other states to ban abortion, but there's also a second roadmap I think that is a little bit even more concerning frankly, or as concerning, about what the court is doing with the shadow docket here. We've discussed the fact that the shadow docket itself is not sinister. It's a great name that it was given. But in reality, it's just a case management tool that the court uses while it's deciding what cases it will hear. It sort of permits them to manage and enter stays in some of these cases. But as Justice Kagan points out in her dissent in this situation, she says that the court has an alarming record of inconsistency in what she calls a recent spate of late night emergency orders, and that's what gives states like Texas this sort of go ahead to do more damage to our rights.

The court's hands off approach on abortion here, it's a sharp contrast to its willingness to intervene in some of the religious liberty and keep statutes. For instance in the COVID context, right? Statutes that were designed for public health but that prevented religious exercise if you viewed it that way, well the court has permitted those statutes to be blocked while permitting this one to go into effect, and I think that signals a willingness on the court's behalf to reward these sort of evil genius moves by legislatures. Texas does something unprecedented here by creating private bounty hunters who can enforce against abortion. Well who knows where that might lead? And as Barb points out, the legal technicality is this. In order to stay a statute from going into effect, the court has to find that the plaintiff has a substantial chance of success on the merits if they'll enter an injunction.

And so this incredible hand wringing, it's worthy of Susan Collins that the Supreme Court engages in. "Oh, the Texas legislature, they found this unprecedented way of doing this, and we just don't know. What are we to do? There's nothing that we can do here to review the Texas statute." Well that's just a bunch of hooey. So by showing a willingness to let the abortion ban go into effect but not to block statutes that frankly present less of an issue regarding the plaintiff's chance of success on the merits, the public health statutes, I think the message that the court is sending to states is that if you use this private enforcement mechanism, you can do whatever you want. Or if you come up with another sort of an approach, you can do that.

So I think ultimately, because all of this happens without an order. We're on the shadow docket, so there's no thoughtful order that details the court's legal reasoning that future litigants can use to decide whether or not they want to in similar practices, and it lets the court get away with a level of inconsistency here that's really not in anybody's best interest. To your point Barb, this is not a good development in the law. It's sort of like the Supreme Court has said to the states, "Come on boys, do whatever you want, and if we agree with your policy aims we'll help you out, but not so much if you're from a blue state." I think ultimately this diminishes our rights and simultaneously our respect for the court, and this is a real lose/lose for the rule of law here.

Kimberly Atkins Stohr:

Yeah. I would agree with that. And I just want to end by pointing out that one of the most important and stinging dissents that was written in response to this order was by Justice Sonia Sotomayor, which I point out, she's a woman of color. The only woman of color on the bench right now. She grew up knowing what the opposite of privilege is. She grew up knowing what poverty looks like, and I think that's important in this context. Because make no mistake, abortion is inaccessible in Texas for those who can't access it. If you are privileged, if you have money, if you have connections, you can still get abortion care in Texas but others can't. And she called this, "A breathtaking act of defiance of the constitution of this court's precedents, and of the rights of women seeking abortions throughout Texas."

Barb McQuade:

Well I don't know about you folks, but I have found HelloFresh to be a breath of fresh air. I am eating so much better in terms of fresh fish and fresh chicken dishes, fresh vegetables, all by using HelloFresh. And I'm not the greatest cook in the world and I don't like to devote too much time to it, but I find that the pre-apportioned ingredients makes it very easy and even a little fun to cook for the family. How about you Jill, are you still using HelloFresh?

Joyce Vance:

I am, and I thought at first that I would use it only for during COVID when I couldn't go to a grocery store. But what I found is, I'm making restaurant-class meals that-

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Jill Wine-Banks:

... making restaurant-class meals that look beautiful because it shows you how to display it, as well as how to cook it. There's no waste because they give you exactly what you need for the recipe, so you don't have to buy a whole head of lettuce, if you need one piece of lettuce. It's tasty, it's easy, and it is so much fun to cook. It's a great break in the day, and it doesn't take very long. It says that it only takes maybe 10 to 30 minutes, but usually it takes me, honestly, an hour from start to finish, before I can put it on a table, and my husband loves it. We're really enjoying it, so I'm definitely going to keep on using it.

Kim, what about you?

Kimberly Atkins Stohr:

Yeah, I really like HelloFresh, too. You know, sometimes when things get very busy and in my household with two journalists in it, especially after a week like we've had this week, it can be very busy. Knowing that you have dinner, that you can prepare quickly, you have all the things that you need right there at your fingertips and you know that it's going to be really good is so, so very helpful. That is one of the best things about HelloFresh, and the fresh part of it. The ingredients are always really top-notch.

Joyce Vance:

You know, my husband just texted me that we have to order takeout tonight because we're out of HelloFresh. It has really become his go-to for cooking because, like Kim, we both work. My husband's a judge. He often comes in late without time to plan and having HelloFresh there has been a godsend for him when it's his night to cook. He makes great meals, and he doesn't have to think about what he's going to make once he's done ordering, so I know he won't make that mistake of letting us run out again.

Barb McQuade:

With HelloFresh, you get fresh pre-measured ingredients and mouthwatering seasonal recipes delivered right to your door. Skip the grocery store, and sign up with HelloFresh to make home cooking easy, fun and affordable.

Jill Wine-Banks:

We're always busy, but HelloFresh recipes save time you'd otherwise spend meal planning and shopping. Since HelloFresh offers 50 menu and market items to choose from every week, from

vegetarian meals and calorie-smart choices, something that all of us are, I'm sure, ordering their calorie-smart ones, to extra-special gourmet options, you'll find something you love.

Kimberly Atkins Stohr:

There's something for everyone to enjoy, all tested by professional chefs and nutritional experts to ensure deliciousness and simplicity. HelloFresh gives you the flexibility you need to easily customize your order on the app within minutes. So don't wait to get started. It's so good.

Joyce Vance:

Go to hellofresh.com/sisters14, and use code Sisters14, and get up to 14 free meals, plus free shipping. That's hellofresh.com/sisters14, that Sisters14, and use code Sisters14 to get up to 14 free meals, plus free shipping. That's a great deal.

Barb McQuade:

Well, we want to move and talk about a different topic. This week we saw the beginning of the trial of Elizabeth Holmes, who was the former CEO and founder of the Theranos organization in Silicon Valley. Interesting story.

Joyce, will you take us through that one?

Joyce Vance:

Sure. On Tuesday this long-awaited trial kicked off with jury selection. Elizabeth Holmes, the CEO of Theranos, as Barb has indicated, was indicted in 2018 after her high-flying blood-testing company, Theranos, turned out to be a fraudulent operation. The trial has been delayed first because of COVID, and then by the birth of her first child. This trial is going to take a while, but today let's at least set the table and talk about what she's been charged with, why it's important and what we might learn in the course of it.

Kim, can you start by laying out who the defendants, Elizabeth Holmes and Ramesh Balwani, are and what they allegedly did?

Kimberly Atkins Stohr:

Yeah. I want to start off by saying for those who have not seen the HBO documentary, *The Inventor*, you must. Stop, pause this podcast, watch that, and then come back to it because it's so very good. The story is-

Joyce Vance:

That is such good advice. Absolutely.

Kimberly Atkins Stohr:

This story is bonkers.

Elizabeth Holmes is someone who came up with the idea of Theranos when she was a student at Princeton. She got this idea that perhaps we can run blood tests and come up with all kind of diagnoses by just using a very small amount of blood and running tests that wouldn't just point to one specific thing, but could discover all, a host of ailments. A really great idea. Of course, she takes it to one of her professors, and the professor tells her, "No, this isn't how science works. This isn't going to work." But,

undaunted, Elizabeth Holmes dropped out. If Stanford professors weren't going to tell her what she wanted to know, she dropped out.

During the time, she and her then-boyfriend, Ramesh "Sunny" Balwani, who is 20 years her senior, she was 19 at the time that she started this company, and I think they met while she was at a abroad program in China somehow, but they were dating, and he would go on to become the COO of Theranos. She began this company to put this together and immediately started seeking out investors in order to push this forward. She was, eventually, able with just an idea, land a lot of big investors, folks like the DeVos family, Betsy DeVos's family are the family who owns Walmart, Rupert Murdoch, that part will be a kick in the pants for a reason I will explain later, and really generating a lot of buzz about this idea that she could transform healthcare with this simple idea.

She was also super secretive about the technology so no one outside ever vetted it. She was just putting it forward to these inventors. She sort of took that idea from Steve Jobs, was very notoriously secretive about Apple technology and who was her idol. In fact, she was called the female Steve Jobs for a while. So she was developing this technology and also developing partnerships with big companies. I mean, Walgreens and Safeway were agreeing to partnerships in order to have this technology in their pharmacies so that people could go in, just get a simple pinprick on their finger, use it in this machine that was onsite, and they would be able to be diagnosed with everything from diabetes to cancer to other health ailments, all kinds of things. Really remarkable.

The problem is it wasn't working within the company. Some folks were finding that these machines, they were called Edison machines, they were supposed to take these little tiny bits of blood and simultaneously test a whole bunch of them at the same time. If you watched this documentary, it was this little machine that has all these glass parts inside, and they were literally shattering, like blood splurting all over the place. It's a mess. Even when the machine itself didn't break, this test that they were running were wrong. They were diagnosing people with diseases that they didn't have, they were missing diseases that they did have. It was a nightmare.

One of my biggest questions is why wasn't the FDA all up and through this from the beginning? I don't understand how they were able to sidestep that regulation, but they were not, but they would be later.

Meanwhile, she's still raking in all this money, Forbes names her a billionaire, she's doing panel discussions with Bill Clinton. But then things started to fall apart when a Wall Street Journal article came out based, in part, on whistle-blowing from inside the company. Now Wall Street Journal, Rupert Murdoch owns the Wall Street Journal. That's the kick in the pants. He invested in this company, and one of his own, one of the reporters in the publications that he owns, really blew the lid off of it and reported on the problems with the technology that led a whole bunch of federal agencies from the FDA to the Centers for Medicare and Medicaid Services to the SEC and the DOJ to quickly get involved.

In 2018, Theranos, Holmes and Balwani, who she had kicked out of the company, he was ousted from the company by this point, but they were all charged with "massive fraud" by the SEC, and the DOJ charged them all with felonies.

Joyce Vance:

So it's really interesting. I think any time you've got a celebrity board and a highly-charismatic CEO, that's sort of a red flag to look a little bit deeper. But like you say, Kim, that didn't happen here until pretty late in the game. They do finally get charged.

Jill, can you talk a little bit more about the charges against them? Of course, we know that she will go to trial now, he will go to trial after the first of the year. How do you think that all plays out?

Jill Wine-Banks:

Well, first of all, there was an SEC action against them that resulted in her divesting all of her equity in the company and basically the end of the company. But right now, the federal charges are in the US District Court in the Northern District of California, San Jose, and the counts are numerous, and they are basically fraud and conspiracy. So it's wire fraud, as well as just defrauding people by lying about the economic value, how well the company was doing, and also about the product itself.

The separation of the defendants is quite interesting because it's based on this super-powered woman, who was one of the first women billionaires saying, "Oh, but it was poor, old me. I was really abused, and I was controlled by this older man, who was my boyfriend, and I just couldn't help myself. And so it's really not my fault. It's him." Because there are separate trials, both of them can point to the empty chair and say, "Oh, I'm innocent. It's the missing person." So it makes it harder for prosecutors to get a conviction in a situation like that.

The motion for the separate trial is really a ringing endorsement of, I don't know exactly what, to me, it's horrifying. I cannot believe that she would be willing to say, "I'm not competent at all. I'll never lead another company," although given what the prosecutors say, which is they have irrefutable proof of her guilt, she probably will never lead another company. But this certainly hurts all women if she gets away with this defense, and there is an issue about whether they will. The jury has been selected, the jury and five alternates are now ready to start the trial. The opening statements are set for next week, September 8th.

So I think this is going to be one we're going to want to follow what the actual evidence shows, and I think we'll be particularly interested in following whether her defense of "Poor old me, I was abused and controlled and manipulated by this other person," will succeed while she's the one who was out front selling this and bringing in millions and billions of dollars to get the company up and running. Whatever he did, she certainly knew that her product didn't work, and that's basically the fundamental heart of this case.

Joyce Vance:

Yeah, I think that's right. This is a very complicated indictment, but it's really the whole case is about this idea that there's a difference between having a cutting-edge idea and having a made-up idea, and that'll be the origin of the fraud.

But I'm intrigued by what you say about the defense and her role as a woman and, Barb, I'm sure that you have thoughts about this. I mean, Holmes is a high-powered CEO, one of the high, the most high-powered in the country at some points in her career, and she's working in a man's world. How does that play into this case, and how does that impact what will happen, and the defense that we hear she's going to offer?

Barb McQuade:

I think it is going to be a real disconnect between the Elizabeth Holmes that led with a lot of swagger at the Silicon Valley company, she dressed like Steve Jobs in the black turtleneck, and she is described as speaking with a distinctively low voice. I read the Bad Blood book by the Wall Street Journal reporter, which is very good.

Joyce Vance:

It's a great book.

Barb McQuade:

It's very good, and that book claims that it was an affect, that it was a put-on, that people who were with her in unguarded, private moments, she had a much higher voice, and so it was kind of a persona she took on to impress people or intimidate people. So that persona doesn't really square with the persona that it sounds like she wants to present at trial, which is she was just browbeaten by her boyfriend, and she did all these things because she was under his spell, and he was pushing her to do all these things.

I think even if it is true that he was an abusive boyfriend, it may very well be true, I don't know that that absolves her of her criminality in this case. I think the way it needs to be presented legally is to say it doesn't excuse her, but to say because of what she was enduring, this post-traumatic stress disorder, whatever she was enduring, it made her mentally incapable of forming the intent to defraud, and it is the government's burden to prove intent to defraud as part of its case here.

What I really think is going on is it gives a chance for the jury to feel some sympathy for her and nullify the verdict. Instead of saying, "We find all the elements are met here," if she can present herself as a sympathetic figure and the jury feels sorry for her, you really only need one to be a holdout juror and say, "You know, I just don't think that the government proved the intent to defraud. I think her will was overborne by Sunny Balwani, who was browbeating her, and, therefore, I'm going to find her not guilty, or I'm going to vote not guilty." All you need is one to get a hung jury, and so it seems to me that that might be the most likely scenario that we'll see. But, you know, it just doesn't square with the Elizabeth Holmes that's described in Bad Blood.

Joyce Vance:

It'll be interesting to see how it plays in cases like this with defendants who have a lot of money to throw at the problem, and one presumes she still has some. She's newly remarried to the heir to a chain of motels or hotels. But one thinks that she would be using a jury consultant and that they would be testing strategies. Like you say, Barb, this will not be an effort to obtain an acquittal because she didn't do the crime. It'll be an effort to get the jury to nullify. Even if the government has evidence to feel sympathy for her, you know the legitimate use for that sort of a defense might be at sentencing as an effort to reduce her sentence. But I'm very interested to watch how this case plays out to see how all of this detail comes in.

Kimberly Atkins Stohr:

Hey, Joyce, have you been using Olive & June nail products?

Joyce Vance:

You know, I have. I went for so long without a manicure and a pedicure during the pandemic, and I finally decided I just had to sit down and do it myself. I'm not the biggest of girly girls. I'm not really very good at it. But I did it, and I wanted to paint everything at the end, and so I used my new supplies from Olive & June. I've got blue toes and pale brown fingers, and everything looks great. It was actually really easy to use, even with my non-dominant hand. Because of their pedal system with the polish, I had an easy time getting it on.

What about you, Jill?

Jill Wine-Banks:

Well, I'm using the blue on my toes, too, so we have matching toes, I guess. I love the colors, and I love how shiny the nail polish is. I am someone who has, for a long time, had pedicures and manicures and weekly manicures, partly because my father used to go... He felt that as a professional man, his clients needed to see clean hands and well-done nails. But this makes it easy to do at home. I love their whole system. It's really, really, really helpful.

I know, Kim, you love some of the colors too, don't you?

Kimberly Atkins Stohr:

I do love the colors a lot. It's funny that you guys talked about your blue toes. Blue toenail polish is what I had on my wedding day as my something blue.

Barb McQuade:

Oh, I love that.

Kimberly Atkins Stohr:

So right now, I have a pinkish color called Hibiscus for my pedicure and a nice soft pink called Pink Sands on my fingers, which I get a ton of compliments on. And I agree with you, Joyce, it's really foolproof. It's really great, especially if you're not quite ready to go back into the salon yet. I'm certainly not. The colors are beautiful, and they last a really long time.

With Olive & June's Mani System, you can have the showstopping, salon-perfect nails at an affordable price. Their Mani System is the secret for getting amazing nails at home without the salon price tag and without having to wear a mask for 90 minutes while you sit in the salon. Everything you need comes right there in the box.

Jill Wine-Banks:

It's so easy to use, especially with the Poppy, a patented brush handle that makes it so easy to paint with both of your hands. Their nail polishes last seven days or more and do not chip, and that is true.

Barb McQuade:

Olive & June is a game-changer. If you want your nails to look professionally done much more affordably, then Olive & June is for you. Even if you've never imagined yourself doing a home manicure, give Olive & June a try.

Joyce Vance:

Getting beautiful salon-perfect nails at home is now a dream come true. With Olive & June, your new nail life is here. Let me tell you, these are 10-day nails, they still look perfect. And I go out and deal with chickens every morning, so you know this stuff is good.

Visit oliveandjune.com/sisters, and use code Sisters for 20% off your first Mani System. This is an exclusive offer you can only get here. That's all oliveandjune.com/sisters and use the code Sisters for 20% off your first Mani System. You'll be happy that you did.

Barb McQuade:

All right. Our final topic is the potential release of Sirhan Sirhan. Jill, I think you were going to take us through that one.

Jill Wine-Banks:

Yeah, because I lived through the assassination. The phone rang at about 7:00 AM on June 5, 1968, which was the morning of my graduation from Columbia Law School. And through sobbing on the other end, I heard my classmate, Rena, say, "Bobby Kennedy is dead." Even now, I can remember how I felt then, the chills, the disbelief. Bobby Kennedy had just won the California Presidential Primary and four others before that, and was on his way to being the Democratic nominee for the president. For me, and for much of my generation, this was the end of an era and of our hope to end the Vietnam War and to improve criminal justice and racial equity.

Assassinated by Sirhan Sirhan in front of a large crowd in a hotel after he had given an acceptance speech for the California Primary, Kennedy died the next day, and Sirhan Sirhan was convicted by a jury after the judge refused to change his not guilty plea to guilty, and he was sentenced to death. That was despite the fact that Bobby Kennedy's brother, Senator Ted Kennedy, had asked that he get only life. California then abolished the death penalty before he was executed, and his sentence was changed to life. He's been up for parole as a result, a number of times, and he's been denied.

But this week, a two-member board, parole board, recommended that he be released. Emotions are still high among those of us who remember the promises of Bobby Kennedy and the damage to democracy that resulted with the election of Richard Nixon over Hubert Humphrey.

I want to delve into what's next in terms of procedural [inaudible 01:10:12] of Sirhan Sirhan, what is the morally and legally correct outcome, and will the politics of Governor Newsom's recall election play a role in the final outcome?

I want to start with you, Barb, talking about what the law and the procedures are. There's already been a parole hearing and a recommendation that he be released. What happened at the hearing, and what will happen with a recommendation? Where does it go, and how fast will there be a final decision?

Barb McQuade:

Yes. The parole hearing is done by a panel, and so the panel's decision in this case was that he be released. There are still some steps that have to go before that can be final. Over the next 120 days, the ruling gets reviewed by the board's legal staff for a legal or a factual error or new evidence, and that is actually fairly unlikely scenario. It's really just whether they made a mistake, not to second-guess their judgment. Were there anything about the law they overlooked? Was there any fact that they overlooked? Is there new evidence that the person was not guilty or something like that? I don't expect that we'll see anything like that. As long as there are no errors in the record, then that order will become final.

It is then sent to the governor, Governor Newsom, who can grant the decision. He can reverse it, or he can modify it. He gets 30 days to review it. In that time, the other thing he can do is sort of punt, and that is he can refer the decision to the full parole board for review. Remember, this was just a panel of three, two of whom voted in favor of release. So the full panel, kind of like an en banc decision of a court of appeals, that...

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Barb McQuade:

Unbanked decision of a court of appeals. That full board could affirm or reverse that initial panel's decision. And if it is reversed, then the inmate, Sirhan Sirhan, would get a new parole hearing 18 months

after his last one. And with regard to the September 14th recall, I think that Governor Newsom most likely will be able to just evade that. I think that with 120 days before for the board's legal staff to look at it, it seems likely that it won't even land on his desk before then. And because he gets 30 days, he can at least avoid a decision until after the recall vote ends on September 14th.

Jill Wine-Banks:

So Kim, two of Bobby Kennedy's children and one aide who was also shot that night, because there were five other people actually injured that evening, supported Sirhan's release. And six of his children opposed it. One of those wrote a very emotional op-ed for the New York Times saying why they were opposing it. And so I'd like you to talk about some of the reasons and we will post the op-eds that were written so that our audience can read the full opinion. But if you could maybe summarize what the two sides are for why he should be released or why he should continue to remain in jail.

Kimberly Atkins Stohr:

Yes, so I think it's important to point out that there has been this division among the family for years. This isn't something that just came up now. There have been, for years, some members of the family and others, as you pointed out, led sort of, I will say led by Robert F. Kennedy Jr, who for years have claimed that they believe that Sirhan Sirhan is innocent and that is why they want him to be released. I think it's really important to note that Sirhan Sirhan admitted to killing Robert Kennedy. He did it in a ballroom after Kennedy gave his acceptance speech. There were witnesses, he was tackled by people including Rosey Grier in real time. And he said in court that not only did he do it but the reason that he did it was because he was angered by Robert F. Kennedy's stance on Israel.

So, innocence is really not a defense. It's also important to note that when it comes to parole, a claim of innocence actually works against you. In a parole hearing you're supposed to state how you have accepted responsibility for what you've done, how you have changed, how you've rehabilitated yourself, how you are no longer the person that you used to be. And for reasons that we can get into later that are not always great for administering justice, claiming innocence actually works against you. So, legally speaking, I don't want to speak about what the folks who in the family who want him to be released actually feel or believe. But from a legal perspective we have the record from Sirhan Sirhan himself who gave the admission and who has not himself made a claim of innocence. There are other members of the family led by former Congressman Joe Kennedy who believe otherwise.

And I think it's also important to note just as an aside what the family feels is not a factor for the parole board to consider in California. So this is important, it's heart-wrenching to hear, but it's technically not something that should sway the parole board's reasoning one way or another. But Joe Kennedy pointed out something that should, which is, this was not an ordinary murder. This is someone who thought that they could make their political disagreement, their objection to someone's policy texts, that they could solve that with a gun. And in our democracy, that cannot stand. We cannot allow that. I wrote in my column, which is in the show notes, that there's such a small class of people who I believe should never see the light of day. I don't believe in capital punishment, I don't believe that a just society, should support state sanctioned killings. But there are some folks who should just never be released. And I think there are folks like the Boston Marathon bomber, certainly folks like Sirhan Sirhan fit in that. And so that is the case that the other side of the family made.

Barb McQuade:

Can I just interject for a second? And I do want to talk about that Kim, because I agree with you on that point. But did you say Rosey Grier tackled Sirhan Sirhan?

Kimberly Atkins Stohr:

Yes, Rosey Grier tackled [crosstalk 01:16:49] Sirhan Sirhan. Yes he did.

Barb McQuade:

Didn't Rosey Grier also take the confession of OJ Simpson?

Kimberly Atkins Stohr:

Did he? I don't think I knew that.

Jill Wine-Banks:

I don't know about that.

Barb McQuade:

He was like ministering to him in prison.

Kimberly Atkins Stohr:

Wow!

Jill Wine-Banks:

Wow!

Barb McQuade:

And there was some rumor that he asserted privilege, like a priest or clergyman penitent privilege to not testify about it at OJ Simpson's trial.

Jill Wine-Banks:

Yeah Rosey Grier-

Barb McQuade:

Rosey Grier is like...

Kimberly Atkins Stohr:

He's like the Forrest Gump of-

Joyce Vance:

This was so long ago that candidates didn't have secret service protection. And so Rosie Greer was actually sort of private security on Kennedy swing.

Jill Wine-Banks:

It was not only Rosey Grier, but Jimmy Breslin and George Plimpton were also part of that, which are names that I remember. I hope all of you do if not Google it because you should know their names, but let's get more into that issue, which is sort of following up on what Kim was saying about the legal and the moral issues involved here. And Joyce, I want you to talk about the basic principles for sentencing

and then for parole decisions, talk about retribution versus deterrence and looking at whether someone's likely to re-offend and how do the facts play out here in your opinion? And then I want everyone to weigh in on this as well.

Joyce Vance:

So, I've just finished teaching a segment on this in my first year criminal law class, and I think Barb is in the middle of it right now. This is this important conversation we have with our students about what are the principles that animate the criminal justice system? What are we trying to accomplish? If we're going to lock people up and take away their Liberty, we ought to have very good reasons for doing that, that we're able to articulate. And the commonly accepted principles in sentencing include retribution or punishment. This notion that someone has done something horrible and we're going to punish them for it. Also, deterrence. And that could be deterring this individual from committing future crimes or just general deterrence in the community. Let's deter other people from doing this sort of criminal conduct by imposing sentences that are serious and significant. There is also a sentencing principle that thinks about incapacitation of someone who is dangerous.

So they can't harm folks in the community. And then also this notion of rehabilitation, how can we help this person make amends for what they've done? How can we prepare them to return to their community and live a productive life? And often among people who are interested in criminal justice reform, there's really a tendency to relegate the role of retribution, relegate the role that punishment plays and think about a society that should be better than that. Let's focus on things like rehabilitation. This is a case that really makes us think about the role that retribution should play. I mean, Kim talks about the notion that this is just one of those cases where she never wants to see Sirhan come out of prison because of the kind of conduct that he's engaged in. So, I teach Barb, I don't know if you use this case or not, but a 1972 case called *Furman vs Georgia*, it's about capital punishment.

And it's a very unusual case. There's not a majority opinion, it's unanimous or actually it's not unanimous, but it is a decision where each of the justices writes a separate opinion, both in the concurrence and the dissent talking about whether or not capital punishment is appropriate, and they have wildly varying rationales, and they're having a conversation amongst themselves about the role that retribution should play in the criminal justice system. Some of them believe that we should be better than that, that we should never use capital punishment, that it's cruel and unusual. And there's an interesting nuance in some of the dissent arguments that I think matters here for Sirhan where some of the justices talk about the importance of having retribution both because it's fair to punish for bad conduct, but also because we'll have vigilante justice in our society. If people don't believe that the criminal justice system is working and delivering an appropriate measure of punishment. The fact that every justice wrote separately tells you that this can be a difficult and a devious sort of an issue.

I'd encourage people to actually go and read *Furman vs Georgia*. It's actually very accessible for folks without a legal background, but the issue it spotlights here is very interesting. It's this notion of whether there is some class of crimes or criminals that are so horrible that those people should never come out of prison unless it's in a pine box and in an era where we increasingly have a legal system that wants to give people a second chance. The question is whether Sirhan is in a very narrow range of people who should never get one. The moment that we're living through, I think gives this issue additional poignancy, right? We've lived through January 6th. We understand all too well the threat that violence can issue towards our system of government. This could be a terrible moment to deliver the message that Sirhan has somehow entitled to be released from prison at this point in time.

And so while in California, the factors that are considered for parole, they center on this notion of whether or not this defendant still presents a risk to the community. That sort of hearkens back to

this notion of incapacitation, right? We need to incapacitate dangerous people. California in parole really asks the question. Does this person still pose a danger to the community and whether or not Sirhan Sirhan does, the issue is whether he needs to stay in prison for other reasons. When we talked about this, I suggested that deterrence was important. That by not letting him get out, it sends a message to others who might use violence to achieve political initiatives that they should think very carefully about whether they want to spend the rest of their life in prison. And I think that y'all were not as compelled by that notion of deterrence and thought that there might be other reasons. So, I'm interested to hear where everyone has ended up on this.

Barb McQuade:

Well, I too teach these theories of punishment, Joyce, and we've been talking about it right now in class. So it's very timely. And I think in most instances, I consider myself a utilitarian, focusing on things like, public safety and deterrences, purposes for taking away someone's Liberty. But I think I agree with Kim that- and you, that retribution is a legitimate purpose of sentencing. It's right there in the federal statute, the need for just punishment. And that's this idea that you have so harmed society, and you have so breached the social contract that you are deserving of substantial punishment. And I believe, in a case like this, punishment for the rest of one's life. That's not true of most offenders, but what is so egregious about what Sirhan Sirhan did is, he attacked the very foundation of our government. He successfully assassinated someone who was very likely to be the next president of the United States. In that way he altered the history of the United States.

If Kennedy becomes president, perhaps we have no Nixon. If we don't have Nixon, we don't have Watergate. Without Watergate, we don't have the erosion of public trust in our institutions of government. I mean, I really believe he altered the course of history. And so, I think that when someone does that, so egregiously attacks the United States of America, that there is no penalty that is too harsh. We've talked about the death penalty and that is one that I think has a lot of downsides and is certainly not an option in California. So, the harshest penalty available under California law is a life sentence. And it seems to me that is appropriate here but, Jill you tend to be the resident lib, what do you think?

Jill Wine-Banks:

I am the resident lib, I think, but this one is so personal to me because I was a big supporter of Bobby Kennedy, and it really did change American history. I believe exactly what you just said and what I tried to convey in my opening remarks about how personal this was to me, that it's hard for me to see how someone who could have done that could ever be let out. But there's another reason why in this particular case, even though I tend to be the one who would say, "well, forgive and forget" is that he hasn't really shown remorse. If you look closely at what he's saying, he's not saying I did it and I'm sorry, and I think he poses a continuing danger. I actually had a case when I was solicitor general of Illinois, where Bill Friedkin, the director, was supporting the release of the longest serving prisoner in Illinois, a man named Crump, who had basically a conspiracy murderer when he was quite young.

I believe he was maybe a teenager and he'd been in prison for 50 years or something like that at the time, but he was mentally ill and needed to be on medicine. And if he were to be released, he even at this elderly age that he was might've stopped taking his medicine and could have been a danger to society. So I had to, and it was nothing like killing the future president of the United States, Bobby Kennedy, it was- any murder is horrible. And any person who commits a murder deserves to be punished for that. But I had to argue that he should stay in forever because of his mental health and unless it improved. And I feel quite comfortable in this case in Sir Hans or Han that he should not be released. And I also was moved by Rory Kennedy's op-ed. And as to why, I mean, she was actually born

her- her mother was pregnant with her at the time her father was assassinated. And so she never knew her father, but she knows what her father was and could have been. And I think all of that says to me, absolutely, Sirhan Sirhan should not be released and he should definitely stay.

Joyce Vance:

Wow, sisters, all in agreement on this one.

Barb McQuade:

All right, we have a question today. In light of the time, we'll just take one. It's from Mary in the San Francisco Bay area of California, and she asked whether we're aware of any concerted efforts to ask Stephen Breyer to retire in the near future. Let me just ask each of you sisters, do you think Stephen Breyer should retire in the near future?

Kimberly Atkins Stohr:

Well, I was just going to say, I don't know if there is a concerted effort to get him to. I know he has eyes and ears. I know he subscribes to the paper that I write for, in which I wrote a column explaining all the reasons why he should. Look, I understand his principle that the law should be above politics and that he's written a whole book about it. He also is a former, a Senate judiciary committee attorney. He worked for Ted Kennedy. He is well aware of what politics are. He's well aware of what has happened to this court. And I think at this point, it is clear that what is good for the court in terms of balance in terms of being forward thinking and bringing diversity onto this court, that that is the least that he could do. He has had a long and distinguished career. We thank him for his service. And I think that it is time for him to go.

Barb McQuade:

Joyce, what about you?

Joyce Vance:

I'm going to answer by saying that I have evolved to believe in term limits for federal judges.

Kimberly Atkins Stohr:

Agreed.

Joyce Vance:

We're a different society than we were when the constitution was adopted, in the sense that people live an awful lot longer. And I think imposing lengthy, but appropriate term limits would maybe shift back the age at which federal judges were confirmed. And we wouldn't have any more of these unqualified 34 year olds who were put on the bench in hopes that they can rule against abortion for the remainder of their natural lives. I apologize. I think my anger is showing a little bit, but on a serious note, putting term limits in place would resolve some of this and it could be done in a fair way that create more balance between presidents of different administrations putting folks on the bench. So, that's my answer.

Barb McQuade:

That's a good point Joyce, the lifespan of people- in my former office, we used to say "welcome to federal court, where the judges serve for life", and it seems longer. Oh yeah. Jill, what's your view?

Jill Wine-Banks:

So, I'm going to recuse myself from this answer because Justice Breyer was a colleague of mine during Watergate, and his brother is a very dear friend, he is a federal judge in San Francisco, in the federal courts in California, so I'm recusing myself-

Kimberly Atkins Stohr:

But he has senior status, right?

Jill Wine-Banks:

Don't rub it in! What do you-

Kimberly Atkins Stohr:

No! But, the point is, if you have a system like that- so, for people that don't know, senior status means that they're still members of the bench and they can sit in cases sometime, and they rotate out. Retired justice, David Souter, sits on the first circuit. It doesn't have to be the end of your career.

Barb McQuade:

Yeah, [crosstalk 01:30:51] but they get replaced when they take senior status-

Jill Wine-Banks:

Hold on! I am not-

Barb McQuade:

That's what's important.

Jill Wine-Banks:

You didn't let me finish. I agree with Joyce about term limits. I'm fine with that. But in terms of advising Justice Breyer, I am recusing myself from advising him, I think that [crosstalk 01:31:08] leave it up to Kim.

Joyce Vance:

All right, fair enough.

Barb McQuade:

All right, fair enough. But I'm going to give my view, and it is this, this week has really hit home that Ruth Bader Ginsburg made a mistake in not retiring when she had a chance so that she could be replaced. And I think that every day that Justice Breyer stays on the court inches us just a little bit closer to the midterms and a little bit closer to a time when Mitch McConnell has shown that he is willing to hold candidates hostage, to exercise raw power, to get the makeup he wants on the court. And so I think Justice Breyer should retire-

Joyce Vance:

Barb I've got to ask, do you think Mitch McConnell would have let a replacement for RBG be confirmed? I mean, this is a man who has simultaneously argued that you can't confirm a candidate in the election year and has also confirmed a candidate after voting has already started in a presidential election year. His hypocrisy knows no bounds. I think he would have found a way to make even that difficult.

Barb McQuade:

Maybe you're right. But I think the lesson we've learned from that situation is, while the Senate is still controlled by Democrats, it's time to get out of Dodge.

Thanks for listening to hashtag sisters-in-law with Jill Wine-Banks, Kimberly Atkins Stohr, Joyce Vance and, me Barb McQuade. Don't forget to send in your questions by email to sisters-in-law at [politicon.com](mailto:sisters-in-law@politicon.com) or tweet them for next week's show using hashtag sisters-in-law. This week's sponsors are ThirdLove, HelloFresh, and Olive & June. You can find their links in the show notes. Please support them as they really help make this show happen. To keep up with us every week, follow hashtag sisters-in-law on Apple Podcasts 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. Hashtag sisters-in-law.

Kimberly Atkins Stohr:

Thank you.

Jill Wine-Banks:

And when you mentioned your chickens, we have a new pet in our house. My husband said he was having a midlife crisis and he had to get a fish.

Joyce Vance:

What kind is it, a beta? What is it? A beta? They're great!

Barb McQuade:

It's a beta.

Jill Wine-Banks:

It's a beta. Yeah. And, I mean he's talking to this fish. He's named the fish. He's watching it eat, to make sure it eats every pellet he puts in. It's hysterical.

Kimberly Atkins Stohr:

How big is it?

Joyce Vance:

Y'all the

Jill Wine-Banks:

And so far-

Joyce Vance:

When I went up to DC for my US attorney interview, the big one with holder, I stayed in a hotel that's the old post office, the Monaco.

Kimberly Atkins Stohr:

Mm-hmm (affirmative).

Jill Wine-Banks:

Yes.

Joyce Vance:

So I go into my room and I hadn't really stayed in hotels that were that nice the whole lot. And there were two beta fish in the room in separate bowls. And one was Dwight D Eisenhower and one was Iris. And so, it was great. I had something to make myself less nervous, but in the middle of the night, they got very agitated. And I finally put their- you know betas, you're supposed to keep them apart or they fight, but I finally decided maybe they want company. So I put them together, the two fish bowls, and they calmed down and I was able to finally go back to sleep and get a good night's sleep. But I have wanted betas every, since that they're so cool.

Jill Wine-Banks:

Well, I'll let you know how it goes in our household. So far Brisby has not noticed Noodles, is our beta's-

Kimberly Atkins Stohr:

Noodles!

Jill Wine-Banks:

Name. You might ask "why noodles?" Because Thai noodles, it's a Siamese fighting fish. Okay. Anyway, my husband planned the name before he bought the fish. I mean, he's-

Kimberly Atkins Stohr:

Oh my gosh. That's fantastic.

Jill Wine-Banks:

Its ridiculous. I'm glad he's found something to make him happy. That's great.

Kimberly Atkins Stohr:

Me too.

Jill Wine-Banks:

Yes. Yes.

Kimberly Atkins Stohr:

And Joyce, I hope that fish that you saw were taken care of before the next proprietor of that hotel space came in.

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Joyce Vance:

Oh man, I know, one really hopes, right? They were so cute. They had like those little name cards, like you would put out at a dinner party and it was like, "hi, my name is Dwight D Eisenhower." It was so cute.

Barb McQuade:

When I stayed at that hotel, I declined the fish.

Joyce Vance:

Why am I so not surprised?

PART 4 OF 4 ENDS [01:35:26]