

Kimberly Atkins Stohr:

Welcome back to #SistersInLaw with Joyce Vance, Barb McQuade, and me Kimberly Atkins Stohr. Jill is away this week on a much deserved break. And since the holiday season is approaching, it's time for you to order your #SistersInLaw merch, go to politicon.com/merch, where you can get SistersInLaw t-shirts, tote bags, water bottles, hoodies. I can't wait to gift hood. I probably shouldn't have said that on the podcast. Forget that, forget that. Nobody's getting that as a gift, wink, wink.

But today on the show, we'll look at where the abortion challenges are in the courts and where they go next. And what the ramifications are of reversing Roe v. Wade. Then we'll take on the Supreme Court case, challenging public carry gun laws, and we'll discuss the term pushy women and how female leaders are spoken to and covered in the media. And as always, we look forward to answering some of your questions at the end of the show.

But first, you know it is November. To me the morning I wake up, the morning after Halloween, November 1st, immediately, the first thing that is in my head is Mariah Carey's All I Want for Christmas. The season is upon us. I'm super excited about it. Less excited? My husband. He does not like Thanksgiving getting all stepped over and he doesn't even want to think about Christmas until all the Thanksgiving leftovers are done.

So I wanted to ask you guys, when does the holiday season start in your household? And also who's right, me or Greg? Joyce, what do you think?

Joyce Vance:

I think you're always right is between you and Greg. That's just my standard default position there. Look, we are all about holidays and we celebrate holidays, whether they belong to one of our faith traditions or our country of origin or not. My husband is Episcopalian, I'm Jewish, that means we get the best of most worlds. But we're also huge fans for instance of Diwali and other holidays that crop up throughout the calendar.

Thanksgiving is a big deal here, we celebrate with our family of choice with some really close friends from law school and their children. And that's just the kick in to nonstop holiday December. What about you, Barb?

Barb McQuade:

I love the holidays too. And Kim, I think I'm in your camp that holiday should start early. Because as you get older, time goes so quickly, and so if you don't start early, they're over before you blink. And I also make it a tradition in my household not to take down the Christmas tree until at least Superbowl Sunday, mostly cause I'm lazy. But because you go to all that effort to put it off, I want to keep it up there for a while and I love it. I love the way it in the house.

So our tree isn't up just yet. I don't know if you guys heard Clint Watts says his up like July 4th or something. He put it up on Twitter and people were tweeting back like, "Much respect." But I really like the holiday season, so Kim, you are correct, the holiday season begins, I think, I don't know, September 1st seems like a good enough day.

Kimberly Atkins Stohr:

I would agree with that. I would agree with that. And also winter is just hard for me when the leaves fall off the trees and it's cold, at least if you have good shear, and decorations, and lights, it just helps get you through at least part of the winter. So I am all for that. But now-

Joyce Vance:

Barb, I want to see pictures when your tree goes up. Okay? Will you share pictures?

Barb McQuade:

All right. I'll share them with you. I don't know if I'm going to share them publicly.

Kimberly Atkins Stohr:

Ooh. Now we turn to the big issues of the week. I want to start out with the abortion challenges and the ramifications of reversing Roe.

Joyce Vance:

We have had to talk so much about abortion in the last few episodes and that's because there's so much going on. There are cases in Texas and Mississippi and they portend an awful lot about what the future is going to look like in this country, maybe for more than just women who seek abortion rights. So all eyes were on the Supreme Court this past argument on Monday when they heard the Texas abortion case.

And while two conservative justices, Amy Coney Barrett and Brett Kavanaugh may have had a little change of heart when it comes to whether to enjoin Texas' vigilante enforcement mechanism while its constitutionality is being litigated. There seems to be little doubt that their anti-abortion views will prevail when the court considers, Dobbs the Mississippi case in December. And you would have to be asleep, and we know that our listeners are not to have failed to understand that the rights guaranteed for almost 50 years by Roe vs Wade are at serious risk.

So today we're going to take, I think, an additional step in this conversation and talk about some of the collateral consequences of losing Roe and abortion rights, as well as what's going on in the cases themselves. Some of the direct consequences are already evident. Changes would be very swift following a reversal of Roe. There are 22 states that have laws that could make abortion illegal to the full extent permitted by the court following a decision in Dobbs, the Mississippi case.

Including currently unenforced pre-Roe bans on abortion, trigger laws that would go into effect once the court reverses Roe. I live under one of those here in Alabama. And currently unconstitutional bans that have been blocked by the courts, but that could go into effect shortly after an adverse decision in Dobbs. So the risk is real and it's serious, but let's start by looking at some of the collateral consequences of losing Roe, impacts that go beyond "just making abortion unavailable in broad stretches of the country."

Barb, why don't you start by telling us about this Oklahoma prosecution, the Poolaw case, and talk about the risk of miscarrying in a post Roe vs. Wade Roe.

Barb McQuade:

There was a case last week in Oklahoma, where a defendant was sentenced after being convicted at trial. She was sentenced to four years in prison after she suffered a miscarriage when she had a 17-week-old fetus that was miscarried, and the fetus tested positive for methamphetamine. And so in that case, she was charged with manslaughter for the death of the fetus. Manslaughter is a law that says typically, it varies by state exactly how it's defined, but an unintentional killing with a reckless state of mind.

And so if there are not protections for abortion rights, you could imagine cases like this getting prosecuted around the country. There's also something, Joyce, you and I spoke about something called misdemeanor manslaughter, which is even if you weren't acting with a particular level of recklessness, if you are committing a misdemeanor and a death occurs as a result, you can be liable for that death. So if, for example, the possession of methamphetamine or the use of methamphetamine by the mother that is now in the fetuses system could make the mother liable for that death.

And so you've got a mother who is already suffering from the consequences of a miscarriage, and now she's being criminally charged. It's not the only place, we've seen similar cases in Alabama and California.

Joyce Vance:

This Oklahoma cases particularly shocking to me because there's a report by the medical examiner, and he declines to say that the methamphetamine is the reason that the woman miscarried. And so of course, Barb, you and I both teach first year criminal law, and one of the elements that you have to prove as the prosecution beyond a reasonable doubt in these cases is cause of death. And here, this woman gets convicted, even though the government can't prove beyond a reasonable doubt that the misdemeanor she's involved in, the possession case is the cause of death.

Which sort of boggles the mind and this case, I think perhaps gets reversed on appeal. But I think you're right-

Barb McQuade:

Yeah, I'm going to keep an eye on this one on appeal. It really should because it does not sound like they proved that element beyond a reasonable doubt.

Joyce Vance:

It doesn't, but the risk this opens up to women who miscarry and maybe somebody who just is upset with them goes to a district attorney. It's a really predatory environment.

Kim, talk a little bit about just how bad the criminalization of pregnancy can get. One case we've looked at involves prosecuting women who use drugs even legally during pregnancy. Would it get worse if abortion was no longer legal?

Kimberly Atkins Stohr:

I think it absolutely would. And there's a case out of Alabama that I think demonstrates that how women can be criminally prosecuted even when a fetus isn't harmed, even when there's not a miscarriage or the other case. And in this case, there was a woman who was pregnant, I believe with her sixth child. And she has long suffered from really debilitating back pain. She did not take any sort of medication for the majority of her pregnancy, but very close to when she got very close to birth, her back pain just became excruciating.

And she had previously been prescribed pain medication for it. She asked her doctor for a refill, got it, and took it to get through. And so when she was giving birth, she actually told the people in the hospital that she had been taking this drug. They tested the baby who from the report that I've seen was born healthy, but tested the baby for opioids and the baby tested positive. And so she, as a result was reported and then ultimately charged with prescription fraud.

The prosecutor say that she failed to disclose to her doctor that she was pregnant when she asked for this refill, and that put a child in danger. And I think that's part of this really slippery slope. I

normally don't like using that term because it's usually never true, but in this case, I think it really is a slippery slope of what could happen if abortion is criminalized. If essentially as with a lot of these trigger laws that are waiting that you talked about, some of them include personhood.

If laws are passed, which basically treat any pregnancy, the unborn child as a person from the point of conception, from the point that we know that they are there. That has so many unintended consequences that tend to, and this is important, either put the mother or the childbearing parent in legal jeopardy or reduce that person's liberty for the sake of expanding the liberty of the fetus. Whether or not the fetus really is at a point where they can live after birth.

And that's really terrifying, not just because it's counter indicated by all medical professionals, the American Medical Association has strongly rejected this approach because particularly in cases involving drugs, for example, what the mother really needs is treatment. And the mother doesn't need to be prosecuted and face jail time. If she is facing an addiction and certainly not, if she is not addicted and is using legally prescribed drugs as in this Alabama case, but it can go even farther than that.

Think about it. If unborn children are essentially treated as people, what does that do to custody disputes? What does that do to child support disputes? What does that do to tax evaluations? It would be so broad and so punitive in so many ways, both criminally and civilly in ways that I just don't think that the legal system has fully grasped yet.

Joyce Vance:

I think that's exactly right. The issue is unintended consequences and what happens, and in the Alabama case, it's opioids. But maybe what if you're taking antibiotics and they harm the fetus, are you now somehow liable? What if you're in a minor car wreck and you miscarry, is whoever hits you, are they now going to be charged with manslaughter? There are all of these crazy possible consequences. Barb, what would a post Roe United States look like? Would abortion become completely unavailable to people who were seeking them?

Barb McQuade:

Well, I imagine it would revert to a state by state decision. In certain states, I imagine the laws would stay just as they are and there would be a right to an abortion at least during pre viability. But certainly in other states we would see a ban, states like Texas and Louisiana, Mississippi have endeavored to make abortion illegal. And in fact, there are some laws ready to go. There are 11 states that have what are called trigger laws that says, "If a Roe gets reversed, immediately abortion is illegal in our state. We don't have to take any further action. So we won't have to go through the legislative process, the rules are on the books."

The second Roe is reversed, abortion is illegal in 11 states. There are nine other states, including Michigan, where there are pre-Roe statutes already on the books that got mooted out, became illegal when Roe was decided in 1973. But because they're still on the books, if Roe gets overturned, those laws are now legal again. And so in those nine states, abortion will be banned. Now we're up to 20. There are at least three states where the legislatures have made it clear that they would seek to make abortion illegal.

So it sounds like about half the states would prohibit it, and then I imagine that for women seeking abortions in other states, they would either need to travel to states where it's lawful or I think would see a return to what we saw before 1973; back-alley abortions, a lot of dangerous in home abortion. Infection and other kinds of things where people try to take the law into their own hands, which is certainly not a safe scenario.

And then I think it also... It's been a political issue for decades, but I have to believe that the politics of it will really be interesting. I think since 1973, we have seen the rise of the progressive suburban woman voter. And I wonder, abortion is favored by, I think Joyce, I heard you say the other day, 70% of the population?

Joyce Vance:

That's right.

Barb McQuade:

And so I wonder... What was the number? Was it 70?

Joyce Vance:

70, and that poll, the exit poll numbers out of Virginia. I forget, but it was high even in Virginia. It was 59%, I think.

Barb McQuade:

And so if the majority of the voters actually prefer reproductive rights, I wonder what that does to our politics. Does it actually cause... Could this have a backfiring effect, for example, on conservatives and Republicans if it empowers other blocks of voters who find this to be a motivating factor to get to the polls?

Joyce Vance:

What do you think about that, Kim? And I wonder if it'll impact the Supreme Court too. As much as a majority of the court seems to be in favor of ending Roe, do you think that they might make a political calculation and avoid outright reversing Roe?

Kimberly Atkins Stohr:

I think there are two things happening here. On the point about the public generally favoring, being in support of abortion being legal in the country. I think there's a difference between that and just straight politically than the voting electorate. Because we have already seen, and in part because these laws, let's be clear, these laws do not put abortion out of the reach of everyone. It puts abortion out of the reach of people, except for the people who are privileged enough and wealthy enough and just have the means to obtain it elsewhere, even if it's banned in their state.

And I think possibly because of that, we've already seen a lot of laws, really restrictive abortion laws be passed and the lawmakers who pass them in those states not be punished. Places like Missouri. We're right now only in St. Louis are abortions performed, so anybody outside of St. Louis who does not have the means to travel is not accessible to them. And there are a lot of other states like this that don't get quite the attention of Texas because that law is so broad.

But there's been a chipping away at abortion rights for the better part of a decade and there has not been a political electoral backlash to that. And so I'm not expecting one moving forward, maybe I'll be proven wrong, but I'm just not. But as for those Supreme Court, yes, the Supreme Court is aware of its place in history. It's aware, we've seen it just in how it's responded in the Texas case, having this full hearing after making the docket, the shadow docket ruling, which they got a lot of heat for, and suddenly they expedite arguments in that Texas case.

I think that's in part in response to public outcry, so they're aware of what the public thinks. So what the court could do, first, they have this Mississippi case before they decide the Texas case on the merits. That deals with the 15-week ban. They could find a way to say, "You know what, a 15-week ban does not violate Roe or Casey. You can set, "It's not an undue burden to ban abortions after 15 weeks." And sort of a sensibly bless that law without reversing Roe, so they don't get that headline, "Roe v. Wade is reversed."

That's going to be a short-term solution because this Texas law is coming and it's so violative of Roe, either it violates it or it doesn't, or Roe has to go. So at least they have a moment where they can try to couch this to avoid the full political blow back. But I just don't have a lot of confidence. I think there are enough justices on the court who substantively disagree with the holding of Roe that it is imperil. And even if it isn't struck down by this Mississippi case that's challenged, it will happen soon after.

Joyce Vance:

Well, welcome to Giliard. I guess we'll have to wait and see what the court does.

Kimberly Atkins Stohr:

You know, Joyce, I have been doing yoga a lot. In fact, I am on a kick where I am doing 30 days straight of yoga. And I'm really thankful as tough as it is sometimes that I have at least very comfortable clothing on when I wear my Girlfriend Collective leggings and top. It makes me think about the yoga, think about my namaste and not think about my clothes pinching or pulling uncomfortably. What about you? What do you think about it?

Joyce Vance:

It's so important. It seems like in yoga, where you're going upside down or twisting yourself into pretzel poses, you really need to not be worrying about your clothes. Same here, I've told you before, I have this problem, my daughter steals my Girlfriend Collective, but I do have one pair of shorts here and they're perfect for doing yoga. I really like them, and Barb I know you love girlfriend collective too.

Barb McQuade:

Well, you know what I like about Girlfriend Collective.

Joyce Vance:

I do.

Barb McQuade:

It's the pockets.

Kimberly Atkins Stohr:

The pockets.

Joyce Vance:

The pockets.

Barb McQuade:

Pockets. The tyranny of women's clothing is so few items have pockets, but it's what I like about girlfriend collective. The squirts, I use it to play tennis. It's got nice big pockets, I can put some tennis balls in there. And when your game is as weak as mine, you need lots of tennis balls so that when the ball goes into the net or out, you've got another ready to go. So, yeah, I'm a big fan of Girlfriend Collective.

Kimberly Atkins Stohr:

And Girlfriend Collective is sustainable and ethically made and offers inclusive sizing from extra, extra small to 6XL on their selection of incredible bras, leggings, shorts, skirts, tanks, tees, and swimsuits. Whether you're working out, running errands or doing nothing at all, Girlfriend Collective has functional fabrics, colors and styles for any activity. And all their clothes and packaging are recyclable and consciously crafted.

This season, we're in love with their best selling squat-proof leggings. It's what we're talking about when you're doing that downward dog, that comes with pockets and have different levels of support. So you know you'll find the perfect fit.

Joyce Vance:

Join us in joining the collective today. You can have pockets too. For listeners of the show, Girlfriend Collective is offering \$25 off your purchase of \$100 or more when you go to girlfriend.com/sisters. That's \$25 off 100 or more when you go to girlfriend.com/sisters.

Kimberly Atkins Stohr:

The U.S. Supreme Court is taking on The Second Amendment again, more than a decade after establishing an individual constitutional right to keep firearms in the home. And they could extend that right even further. Joyce, tell us about the law being challenged here and what might happen.

Joyce Vance:

The Supreme Court here is considering a New York law. It requires people to show a special need for protection to get a license to carry a handgun. The law requires that people seeking a license to carry in public have to show "proper cause." And a majority of the justices seemed prepared to say that that law imposes an intolerable burden on rights that are guaranteed by The Second Amendment. I think that at least to me, and Kim, you might disagree or bar by no, you both listened to the argument, seems very likely to me that this law is not going to be in existence anymore after the Supreme Court rules.

But the question here is what's the court prepared to do about that law, not liking that law? And how is that going to affect us? There are a lot of states that have New York style laws. Other states have laws that essentially required a local sheriff or whoever the official is to issue a permit upon an application. I go in and I say, "I'd like a permit." And as long as I'm not disqualified because I'm a felon or for some other reason, the sheriff is required to give me my permit to carry.

So this is another one of those areas like abortion, where each state is entitled to have its own law. And the question is going to end up being whether there are constitutionally compelled limits on what kind of laws the states can have. A decade ago in Heller, the court decided that there is an individual right to keep arms in the home for self-defense. And that's an interesting ruling because here's the text of The Second Amendment.

It says, "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." So the open question after Heller, which is about keeping arms, the question that the court addresses here is whether The Second Amendment permits people to bear guns in public. Here's the deal if the court, as likely as I think it will reject the notion that a state can limit permit issuance, the question is, are we going to have guns everywhere?

And interesting developments in oral argument was this notion that came to us from several of the justices that they seemed open to allowing the state to exclude guns from crowded public settings or other what's deemed sensitive places. And we could see a new rule that will not permit states to restrict who can get a permit, but might in something akin to the [inaudible 00:24:05] and place restrictions, The First Amendment [inaudible 00:24:08] speech, it's upward of regulation for where you can keep guns. It's a very interesting new environment that we're going to see when this decision is handed down.

Kimberly Atkins Stohr:

Joyce, you correctly pointed out that a good part of this argument had to do with wrangling over just how far that Heller holding went. And as you said, it said that people have the individual right to own guns based on The First Amendment in their homes for self-defense. But Barb, I don't remember seeing or hearing the word self-defense in The Second Amendment as Joyce just read it. But it looks like that's being read into the actual constitutional analysis here.

What's going on? And what happened to the well-regulated militia? Have we just forgotten about the militia? What's happening?

Barb McQuade:

There's a group of justices in the Supreme Court who refer to themselves as originalists or textualists, except when they're not. As in these scenarios, they say, "Well, we should use the language of the constitution and not look beyond that, about the text, the words themselves as they were meant and interpreted at the time they were written." Except when it's not convenient. And so now the conversation seems to be all about, I'm really scared to walk through New York city without my gun. And that was the focus of the argument the other day.

Justice Thomas also has referred to The Second Amendment as a second-class right. That we're requiring licenses to be able to exercise this right. What other right requires a license before we may exercise it? Well, what other right brings with it a deadly weapon? But like all of the rights, The Second Amendment is not unrestricted. I think you hear this a lot from members of the public who don't know much about the law and they'll say, "I have a First Amendment right to say anything I want or do whatever I want. I have a liberty interest and you can't make me take a vaccine."

That's just not true, the government can take away your property, can take away your liberty, can even take away your life as long as there is due process. And so no constitutional right is absolute. But when you do look at the language of this Second Amendment, as you say, Kim, it says that the right to keep and bear arms has this preface that says, "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

in that Heller case that was decided in 2008, Justice Scalia, again, this big textualist says, "Well, it says that, but it also says the people. And in other constitutional provisions, when they say the people, they mean all the people. They don't limit it to just some people. And so therefore we should assume the people in The Second Amendment also means all people." But they just completely erased out of that amendment, the words are well-regulated militia.

The other thing that drives me crazy about these originalists, what was a firearm? What was an arm when The Second Amendment was written in the late 1700s? It was a musket, one ball. It wasn't an AK-47. And so I feel like the textualist and originalist use that language when it's convenient to preserve a conservative viewpoint. And yet are willing to just throw it out the window when it is not consistent.

There is some language in Heller that I think is important that still exists. And in Heller, what they did say is that the right to keep and bear arms is not a right to keep and carry any weapon whatsoever in any manner whatsoever, and for whatever purpose. And it talked a little bit about protecting sensitive places. You can prohibit felons, for example, from carrying firearms or people who are mentally infirm from carrying firearms. And so I am hopeful that even this court will try to decide this case in a narrow manner that will say less discretion for the gun boards who are giving out these permits, but still requiring some permitting.

But it really is a great lesson and be careful who you elect president, because it really matters who is on the Supreme Court, because deciding these cases is far more art than science, and they bring with them their worldview when they decide these cases.

Kimberly Atkins Stohr:

And that's absolutely true, and that limiting language in Heller, Barb, that you talked about was crucial for Justice Kennedy to join, be the fifth vote in that case. He did not want to sign on to the broadening of that Second Amendment right without that limiting principle, but he is no longer on the court, so they don't have to listen to him anymore. And so we will see, I think that this will be very telling about the view of this court.

One thing that I thought was interesting in this discussion about the court and its reputation and how it seen, is during the oral arguments. Look, we know that none of the justices leave their personal views at the door when they come to work, nobody does. And so it would be silly to believe that they do too. But I thought it was particularly interesting, Justice Alito, who seemed just to be very, and this is my view, at times, almost giving NRA talking points during the oral argument in a way that felt very...

That's new, that's unusual to me. And so at one passage, I just want to read a little bit of what he said. And he said, "Could I explore what it means for ordinary law-abiding citizens, who feel they need to carry a firearm for self-defense?" So I want to think about people like this, people who work late at night in Manhattan, it might be somebody who cleans offices, it might be a doorman at an apartment. It might be a nurse or an elderly, it might be somebody who washes dishes. None of these people has a criminal record, they're all law-abiding citizens.

They get off work around midnight, maybe even after midnight. They have to commute at home by subway, maybe by bus. And they arrive at the subway station or bus stop and they have to walk a distance through a high crime area. And they apply for a license and they say, "Look, nobody has said, 'I'm going to mug you next Thursday.' However, there've been a lot of muggings in this area and I'm scared to death." They do not get a license, is that right? And the New York Attorney general said, "Yes, in general, that is right."

Now, high crime area, law-abiding citizens, these are such loaded. Really political phrases that he was using in this oral argument, and I just want to point out that the Service Employees International Union, who represents people like janitors issued a statement. The President Kyle Bragg of the Local 32BJ said, "Justice Alito knows nothing about the lives of doormen and janitors in New York City or anything about the lives and struggles of our members.

I condemn his self-serving use of our members to advance ignorant uninformed, offensive stereotypes about New York city and the subway system." He ended by saying, "Justice Alito should

keep our name at his mouth." Normally, we wouldn't get into this political answering to this, but in this case, Justice Alito put himself in that. He took that role and I just thought that was really fascinating.

Joyce Vance:

Well, he deserved every bit of that, but even beyond how offensive it was, what I was thinking about when [inaudible 00:31:32] that was, if I'm the employer, I don't want all of my employees to be armed at work. In fact, I probably have a legitimate rule that says, "You can't bring your gun to work," I guess, in Justice Alito's vision of New York city, if you're a hotel maid or if you're a whatever people he thought he was talking about. We don't want to live in a world where everybody at work is armed, and I am sure employers did not agree appreciate either.

Barb McQuade:

Or on the bus or on the subway.

Kimberly Atkins Stohr:

Yes.

Joyce Vance:

Absolutely.

Barb McQuade:

And I think one of the things is what the judges or justices are doing here, which I think is inappropriate and so often you see this with conservatives, making the argument that the federal government should not be the nanny state in telling states what to do. If states have it in their view that this is in the best interest of the people of our state, we know our state best. We think our state is best when we live in a... We have dense populations in New York, we have New York city. We don't really want a lot of people walking around with guns, we think it's safer this way.

And then Idaho or Wyoming can say, "You know what, in our state, we don't have population density. And so in our state, we want everybody to have the right to have a gun because they're more often living in a rural area and a coyote might be coming by. So we would like for them to have guns and we don't have any restrictions on them." And that's great. That's the reason we have this federalism system, where we have state governments and federal governments.

And so permitting states to make their own decisions about what's in the best interest of the public safety of their citizens seems to me the way to go. We don't need Justice Alito sitting up there on his bench in Washington D.C., telling New York what is and isn't safe at midnight in New York city.

Kimberly Atkins Stohr:

I think the fact that he's from New Jersey doesn't help in that whole analysis, but I think you're absolutely right. And it's important to know that this law, it's not just a New York law, there are similar laws that would also be struck down in places like Massachusetts, we're talking city like Boston, California. We're talking San Francisco, Los Angeles, a lot of densely populated places would be affected by this law.

Barb McQuade:

That's why we need more guns.

Joyce Vance:

Can we just take a moment to say what an amazing job New York Solicitor General Barbara Underwood, a former DOJ employee did in this argument. She had to walk such a careful line and I thought she was brilliant. Always credible, always honest, immaculately well-prepared, was very, very persistent.

Barb McQuade:

Yeah. It was a great week for women oral advocates. We had her and we also had Elizabeth Prelogar in the Supreme Court in the abortion case on Monday. So some very good effective women advocates before the Supreme Court this week.

Kimberly Atkins Stohr:

Yes, indeed.

Joyce Vance:

Kim, how have you been sleeping lately?

Kimberly Atkins Stohr:

I've been sleeping better since I have been using the OOLER from ChiliSleep. The worst thing is to wake up in the middle of the night and feel so hot, and that happens to me so often. But there's just this little pad that I put on the bed that keeps the temperature much cooler and I sleep much better. What about you, Barb?

Barb McQuade:

Nothing is as important as a good night's sleep. I sleep like a baby and ChiliSleep is a big part of that.

Joyce Vance:

ChiliSleep makes customizable climate-controlled sleep solutions that help you improve your entire well-being like the OOLER and Cube Sleep Systems. They're hydro-powered and temperature-controlled mattress toppers that fit over your existing mattress to provide your perfect sleep temperature.

Barb McQuade:

Whether you sleep hot or cold, these luxury mattress pads keep your bed at the perfect temperature for deep sleep. And they're designed to help you fall asleep, stay asleep, and fire you up for your day. And for an extra layer of comfort, they also make the chiliBLANKET, the only weighted blanket that can also be paired with a control unit for the ultimate sweat free sleep. Can you imagine waking up and not feeling tired? ChiliSleep can help make that happen.

Joyce Vance:

Head over to chilisleep.com/sisters to learn more and save 20% off the purchase of any new sleep system. This offer is available exclusively for SistersInLaw listeners, and only for a limited time. That's chili, C-H-I-L-Sleep.com/sisters to take advantage of our exclusive discount and wake up refreshed every day.

Barb McQuade:

Well, this week, did you folks see that video from a speech by Mayor Muriel Bowser of D.C.? This has been going around on Twitter. I think she said something like, "Retweet if you've ever been described as pushy." In a speech, she was criticizing the chairman of the D.C. City Council for opposing a candidate for the city's Arts and Humanities Commission. But Mayor Bowser said that the chairman gave us his reason for opposing this candidate was because she was pushy.

The chairman has denied making that statement and later in the week the candidate was confirmed. But I just thought it was a great opportunity to talk about this idea of pushy women. Have either of you ever been described as pushy? Where's Jill when we need her? How about you Kim, ever been called pushy?

Kimberly Atkins Stohr:

Yeah. Listen, I think for me, I'm certainly aware of the fact that women who are assertive, and strong, and who stand up for themselves, and just do their jobs in their profession are often called disparaging comments like pushy. Whereas a man would be assertive, a man would be a go-getter, but a woman is pushy. I think there is that. So I've certainly experienced that, but at the same time, I have also experienced another phenomenon that when women of color, black women speak out, or assertive, or do the same things that their colleagues do, they can be labeled angry, angry black woman and overly...

And so we walk this line where you're trying not to be saddled with that angry label, but at the same time occupying the space that you feel fully, because, not only do you have the right to do that, but it's necessary for you to do that. And so it leaves you in this middle ground. It took me a long, long time to dismiss all of that and say, "Look, if I have a job to do, if somebody wants to label me in a disparaging way, that says more about them than it says about me. I need to do the job that I do." And it can come from a lot of forms.

I'm sure for all of us, from practicing law, we've experienced negative feedback from judges. We've experienced negative feedback from our opposing counsel or other folks. And it takes a lot to really get to a point where you have to dismiss that, leave all that behind, and do your job, and be assertive, and not be afraid of how you'll be labeled after that.

Barb McQuade:

That was really good, Kim, except you should smile more. How about you, Joyce? Have you been described as a pushy woman?

Joyce Vance:

I have never been called pushy to my face. I feel certain I've been called pushy behind my back. But the way that I think that criticism comes out, we're a PG-rated podcast. It's the whole issue of calling a woman a bitch, where you would call a man as Kim says, aggressive or assertive." And I remember with clarity the first time that became an issue in my world. I was 16 years old, I was involved in high school debate. My debate partner was also a woman and we were beginning to have some success in the extremely competitive California debate world.

And I think pushy would be a fair description of us. We were assertive, we were aggressive, we were engaged. We enjoyed what we were doing, and it was for God's sake debate. If you're not pushy in debate, then why are you even in this space? And I remember our debate coach, who I adored took us aside and he said to us, "People are going to think that you're pushy, people are going to accuse you of

being unladylike. Just ignore them and keep going." And that early, really positive affirmation that it was okay for us to be ourselves is something that has stuck around with me my whole life.

Barb McQuade:

Yeah. I, too Joyce, remember as a student, being a law student in a class on trial advocacy, where I was advocating on behalf of my client, we were doing a mock trial. And then the grownups who are actual practitioners would give us feedback. And I can remember a lawyer telling me that I needed to tone it down because jurors wouldn't like me, because I would be perceived as too pushy. And I remember really feeling crushed by that and doing a lot of self-reflection like, "Gosh, maybe I come on too strong, maybe I'm too aggressive."

And in years past, I have in retrospect concluded, not at all, I think I was being appropriately zealous in my advocacy on behalf of my client. And as Kim said, it said more about him than it said by me. And I think-

Joyce Vance:

But it's stuck around, Barb. I can hear in your voice that there's still a part of you that's hurt by that. And I think-

Barb McQuade:

I really do.

Joyce Vance:

... there's a really important takeaway for men as well as for women. We should just learn to ignore this sort of junk, but I think men need to be hypercritical of themselves in this space, and other women [inaudible 00:41:08]. And make sure that they're not doing... This guy could have crushed your spirit and look what you accomplished in your career.

Barb McQuade:

Yeah, hey. So there, so there. Thank you. But I want to ask you guys about something I see to this day. That was from years ago, so things have changed, but have they? Now, Joyce and I both teach and I have brilliant students, men and women in our classroom. And yet I very often will hear, and this is not always true by gender, but it is largely true by gender, that men will ask a question and they will simply assert the question and ask it.

And very, very often, I will hear women as the same type of question, but it'll begin with, seems like, "This may be a dumb question," or, "I probably should already know this," or, "Maybe you already covered this, but," and then they'll ask the question. And I have sometimes corrected such students and said, "You really should... Don't apologize for asking a question. Just get in there and ask it." But it also comes from a place I think of humility, which is not such a bad thing.

That a student who's in law school and is new, is expressing. That maybe I don't know all the answers, maybe I'm asking this from a place of... And I'm demonstrating my humility in asking this question. And I wonder, are we sometimes pushing women to be more like men, when in fact, we should be doing just the opposite and pushing men to be more like women? Is it so bad to show some humility and show, I don't have all the answers, and I defer to others who may have... I don't know. What do you guys think about that?

Kimberly Atkins Stohr:

I take that point about humility because that is an underutilized quality. And I think that certainly, there are a lot of people, particularly a lot of men who could use more of that. For me, I think it's more, and this is just my opinion. I think it's more an example of how women, again, as I was saying, we are often not allowed to occupy our full space, and I feel like it's more apologetic. It's us saying, "Okay, in this moment, I'm going to be assertive and I'm going to make a good point, but I recognize that that's going to make some people uncomfortable. So I'm going to apologize for it ahead of time, because I want everyone to feel comfortable.

Joyce Vance:

Yeah, that's-

Kimberly Atkins Stohr:

I didn't realize the extent to which I apologize until my husband pointed it out to me and was... He occasionally says, "You don't have to apologize for that." And I didn't even realize I had made the apology.

Barb McQuade:

That's super interesting.

Kimberly Atkins Stohr:

That's how deeply rooted that gets in us. And I consider myself a fairly confident person. And I'm certainly not afraid to be pushy, but even for me, it's been ingrained that you're supposed to smooth things over. You want people to like you, you want all that. And so that's the approach that women take and I think that it harms us.

Barb McQuade:

I read some statistic once it says something like, "When applying for jobs, women will apply for a job only when they believe that they meet all of the 100% of the qualifications. Only 25% of women will apply for a job if they don't meet every one of the qualifications. Whereas for men, even if they don't meet all of the qualifications, 75% of them will apply for the job. And I tell that to women and women laugh, and I think the men have it right. Because you never know what it may be that the employer is looking for.

You may have whatever is that one elusive quality that they're looking for. But I think that does speak to this idea of, whatever you call it, assertiveness or pushiness or whatever it is, you need to get out there and get in the arena. And I think that sometimes we hold ourselves back because other people are trying to keep us in our place.

Joyce Vance:

Well, yay, for pushy women.

Barb McQuade:

I think we need, Kim does channel her inner Roy Orbison and serenade us with a rendition of-

Kimberly Atkins Stohr:

(singing)

Barb McQuade:

Excellent.

Hey, Kim, how are you digging that Magic Spoon these days?

Kimberly Atkins Stohr:

You know what, I really like it. Lately, my favorite flavor is Maple Waffle. It's perfect for autumn and those nicer fall flavors. And as usual, I like it with yogurt. You can eat it any way that you want to and you know that it has a nice dose of protein in there, so it's better than your average cereal. What about you, Joyce?

Joyce Vance:

Well, I had to call limits on any more Halloween Candy in our house, but I still want a little bit of a snack after dinner. So I've been following up on the advice that y'all have been giving and have been putting a little bit like it's granola on top of yogurt. Really a wonderful snack, I like it a lot.

Barb McQuade:

Magic Spoon has zero grams of sugar, 13 to 14 grams of protein, four net grams of carbs, and is only 140 calories, a serving. It's keto-friendly, gluten-free, grain-free, soy-free, and low carb. You can build your own box and customize it with Magic Spoon's delicious cocoa, fruity, frosted, peanut butter, blueberry, or cinnamon flavors. And is that all, Kim?

Kimberly Atkins Stohr:

That is not all. Magic Spoon is bringing back to fan favorite flavors, cookies, and cream, and my favorite maple waffle permanently. They're delicious, indulgent, and healthy. You've got to try them. Go to magicspoon.com/sister to grab a custom bundle of cereal and try it today. Be sure to use our promo code, sister at checkout to save \$5 off your order.

Barb McQuade:

Magic Spoon is so confident in their product, it's backed with a 100% happiness guarantee. So if you don't like it for any reason, they'll refund your money, no questions asked. Remember, get your next delicious bowl of Guilt-Free Cereal at magicspoon.com/sister, and use the code sister to save \$5 off.

Kimberly Atkins Stohr:

One of our favorite parts of each episode is answering questions from our listeners. If you have a question for us, please email us at sistersinlaw@politicon.com or tweet using #SistersInLaw. If we don't get to your question during the show, keep an eye on your Twitter feeds throughout the week. We try to answer as many of your questions there, as we can. So I want to start with our first question from Leftie in Boston which says, "I have heard from a Wall Street Journal report and also from tweets from Ted Cruz about \$450,000 being offered to immigrants from the Biden administration. Can you explain what that's all about?" What about you, Joyce?

Joyce Vance:

Well, Leftie, shame on you for reading Ted Cruz tweets. You get what you deserve. What's happening here is this, The Wall Street Journal is reporting on apparent leaks from government lawyers that there are settlement talks underway in lawsuits that were filed against the United States, by families that were separated at the border during the height of the Trump administration's family separation policy. This is three months in 2018, where kids are being ripped from their parents and sent off without information being collected that's needed to reunite the families. And there are close to 1,000 cases or complaints that have been filed.

And so the discussion here has been about settling those cases without the need to go all the way through trials. Those trials would be devastating to the United States. The evidence is just terrible, there is relatively clear liability. In fact, the first four cases that have now gone through motion to dismiss proceedings have gone really poorly for the United States. The cases have been permitted to go forward, judges of reference, terrible facts, including families that were kept in conditions that were like refrigerator cold without space to lie down and sleep overnight.

Children that were sexually abused while they were in the custody of the United States. There is nothing that gets better here for the government if these cases proceed into discovery. So my hope is that despite the bad publicity this week, everyone will realize that these are cases that need to be settled. It's in the best interests of the United States, but it's also the right thing to do. We, in the sense that we're responsible for anything that the Trump administration did, but we as a government are responsible to these people for the harms they suffered, and it's time to do the right thing.

Kimberly Atkins Stohr:

All right. Our next question is from Michael Bender and he says, "I have a question you may be able to help me with. Why was the Texas attorney general there today?" I believe he meant the Texas solicitor general, who argued the case in the Texas abortion law. "Why was he there today if the state can not be sued?" Now that he has made Texas a party to the case, can SCOTUS use this fact to stay SBA?" So I think the question regards to the fact that Texas is essentially asserting that they are the wrong people to be sued.

That Texas should not be sued because no Texas official carries out this case, or enforces this law. This law is enforced through private civil actions of its citizens. That question is what we call a procedural question. This hearing before the U.S. Supreme Court only dealt with that matter. It did not deal with the substance of the challenge. And so anytime there is a question about who is the proper party? Who can or cannot be sued? That is settled in a procedural stance that allows the person who is arguing that they are not the proper person to make that argument.

And by making that argument that does not serve as an admission to the thing that you're arguing again. So, just think, if the justice system worked that way, if somebody sued you for something that had nothing to do with you. If by defending yourself, you made an admission that you were the right party to be sued, then that just wouldn't work. So that doesn't work in this case either.

And finally, we have a question from Rich. He says, "Could you explain for the audience a couple of terms used recently, that I think may not be well understood by the public. One is misprision and the other is voir dire. PS, we love your podcasts, and when are the pins going to be available?" They're available now, Rich. You can go to politicon.com/merch and order your pins now and they will be shipping soon. So what about these terms, misprision and voir dire?

Barb McQuade:

I'll take a stab at that. I thought you were calling me misprision. Well, you see that in store, we tell you.

Joyce Vance:

You guys, we see misprision in Alabama. What are you saying, misprision?

Kimberly Atkins Stohr:

There's an I in there.

Joyce Vance:

We say misprison.

Barb McQuade:

How do you say the second term there, Joyce?

Joyce Vance:

Voir dire.

Barb McQuade:

Well, I rest my case, so. Misprision is how we say it here in the Eastern District of Michigan, but these terms do get pronounced differently around the country. Like Giglio is a doctrine under criminal law. And I know in the Eastern District of New York in Brooklyn, they call it like Iglio or something like that, so it is very regional. But to answer Rich's question, and thank you, Rich for being so patient as we mock each other here. Misprision is a crime and it is a crime to actively conceal another crime.

And so sometimes, you'll see people get charged with this crime if they were aware of a crime and they helped hide the evidence, lied to the police, concealed someone who was a fugitive from justice. Any of those things can be considered misprision of a felony, so it's not enough that you knew a crime was committed, that's part of it, but you have to do something to actively conceal it. I will say this is a charge that often gets used as perhaps a charge to obtain leverage over somebody, that you want to talk and share some more information, because they know more than they're letting on.

Or sometimes it is a compromised charge because it's usually a lesser penalized charge than something that's greater. So that's why you don't hear about it a lot. It is more of a prosecutor's tool, I think, than one that's used frequently. Did you use it frequently, Joyce, in your district? We used it pretty [crosstalk 00:53:52]

Joyce Vance:

No, it's used very infrequently. There's a big case in the 11th Circuit, my circuit out of Florida, where a police officer was killed and the girlfriend of the trigger man is prosecuted for voir dire, for sort of backing the car in to conceal the license plate, so the police can't track her and the boyfriend down. It's for that sort of a situation where the underlying crime is so egregious, but you don't want to overcharge the girlfriend.

Barb McQuade:

All right. So that's misprision, as we say here in the Northern parts. And then there's also this concept of voir dire, which is how we say it here. And I know, Kim, you even said it differently. You said it more-

Joyce Vance:

Voir dire.

Kimberly Atkins Stohr:

I said, "Voir dire." It is based in-

Joyce Vance:

Great French-sounded.

Kimberly Atkins Stohr:

Yeah, it's French.

Joyce Vance:

It is.

Kimberly Atkins Stohr:

It means to see and to hear.

Barb McQuade:

And I think it is used in, it's a process for jury selection. So it means, we've summoned all you people here today, and this is the point in the trial when you are going to be speaking, and when you're in the spotlight, and you're in the hot seat. We're going to ask you a number of questions, prospective jurors, and you have to tell us the truthful answers under oath. And we're going to use those to assess your suitability to serve on this jury.

And so there are a number of people who may be challenged for cause, that is, I know the defendant or I know the victim, in which case people believe that you are not able to be fair or unbiased in this case. And then there are also peremptory challenges, which are these discretionary challenges that both parties can exercise for any reason, except for one that is a discriminatory reason. So it might simply be, "I'm worried that ministers on my jury will be too forgiving of defendants and want to give them a second chance, so I am going to a peremptory excuse them."

Or, "I thought that woman was really hostile to me when I asked her some questions, and about her thoughts, about Girlfriend Collective. And so she doesn't seem to wear pockets, she's given me a bad vibe, I'm not going to pick her." So that's what voir dire means, it's a jury selection process.

Kimberly Atkins Stohr:

And I misspoke. I took seven years of French, you would think that I would know better what voir dire means, to see and to speak, not to hear [crosstalk 00:56:02]

Joyce Vance:

And doesn't it have a connotation of speaking the truth? That's what you're-

Kimberly Atkins Stohr:

Yes.

Joyce Vance:

... always trying to get the jurors-

Kimberly Atkins Stohr:

Yes.

Joyce Vance:

... to do when you're selecting them.

Kimberly Atkins Stohr:

Yes, that's the effect of it, but voir is to see and dire is to say. Though there are a lot of Latin words in the law, that's one of the few French ones that we have to deal with.

Thank you all for listening to #SistersInLaw with Joyce Vance, Barb McQuade, and me, Kimberly Atkins Stohr. We can't wait for Jill Wine-Banks to be back with us. Don't forget to send in your questions by email to sistersinlaw@politicon.com or tweet them for next week's show, using #SistersInLaw. Also, don't forget to go to politicon.com/merch for all our amazing t-shirts, hoodies, bags, buttons, and pins, and much, much more.

This week sponsors are Girlfriend Collective, ChiliSleep, and Magic Spoon. You can find their links in the show notes. Please support them because we are so grateful to them, because they really help make the show happen. And to keep up with us every week, follow #SistersInLaw on apple podcasts or wherever you listen. And please give us a five-star review, we'd love to read your comments. See you next week with another episode, #SistersInLaw.

Okay, what do you want to talk [crosstalk 00:57:25]

Joyce Vance:

Well, I will tell you something interesting. 10 years ago, I started this tradition of getting a fresh farm-raised turkey for Thanksgiving. And so my husband and his two best friends, one is a businessman for a bank I won't mention and the other is the head of pediatric neurology at children's hospital here. So this is like three geeky, professional guys and they make this pilgrimage about an hour and a half north to a farm.

And they come home with these beautiful turkeys and then they compete over who's going to make the best turkey every year for Thanksgiving. And I absolutely love that. And I love turkey, my husband hates turkey, so he's decided spatchcocking is the only way to make it even edible-

Kimberly Atkins Stohr:

Oh, yes.

Joyce Vance:

... but he really does make a good turkey.

Kimberly Atkins Stohr:

Oh my goodness, spatchcocking is the way... My brother spatchcocked a turkey one year when I went to have Thanksgiving with him in Boston. I had never heard of this, this is the best [crosstalk 00:58:22]

Barb McQuade:

What is it? I've never heard it.

Kimberly Atkins Stohr:

You essentially split the bird down the middle so that it lays flat. Just imagine like it's split down the rib cage through the middle. And it's flat, and in that way, it cooks evenly. So the problem with the turkey when it's whole is that it cooks like the breast will be done before the rest of the body, so the breast is dried out. This way, it cooks faster and more evenly, and you get a crispy skin, you get like beautiful brown outside, and all of the meat is juicy.

Barb McQuade:

So I think I'd enjoy eating that. I think I would not enjoy preparing that because it is too much of a stark reminder that this was once a living thing. It reminds me of when my daughter was about five years old. One day she was eating at the table and she said, "Hey, mom, I just thought of something funny. There's a word, it's the same word for two different things. There's chicken like the animal and chicken like you eat." And I said, "I am not going to correct her."

Joyce Vance:

That's always the issue at our house. At the dinner table, you can't mention the origins of meat. Because I have a very limited relationship with meat as it is and that's enough to ruin my appetite.

Barb McQuade:

Especially when chickens are your friends, Joyce.

Joyce Vance:

Oh, we don't-

Kimberly Atkins Stohr:

Chicken is regular at the [crosstalk 00:59:30]

Joyce Vance:

... eat chicken in our house. There is no eating of the chicken, no. Chickens are our friends.

Kimberly Atkins Stohr:

Oh my goodness.