

Joyce Vance:

Welcome back to #SistersInLaw with Jill Wine-Banks, Kimberly Atkins Stohr, Barb McQuade, and me, Joyce Vance. Before we start, I'd be remiss if I didn't remind all of our listeners that there's now Sisters In Law merch and with the holiday season approaching, you can go to politicon.com/merch and order Sisters In Law t-shirts, hoodies, water bottles, and much more for all of your favorite people. To order, go to politicon.com/merch and kit yourself out.

Well y'all, this has been one of the busiest weeks I can remember for a long time and that sang an awful lot after living through the four years of the Trump administration, but lots of serious considerations in play this week. Today, we'll look at the jury verdict in the Rittenhouse case and the racism hanging over the trials of Ahmaud Arbery's killers and Kyle Rittenhouse. And we'll also take a first look at the Ghislaine Maxwell case. And as always, we look forward to answering your questions at the end of the show. But, since this has been such a heavy and a difficult week in so many ways, I thought I'd start out by asking y'all about Thanksgiving, your favorite traditions or just what you're looking forward to. We need a little bit of hope and optimism this week. Barb, what about you? What's going on for your Thanksgiving?

Barb McQuade:

Well, a Thanksgiving tradition for those of us in the metro Detroit area is to watch the Detroit Lions on Thanksgiving Day. I have watched that game.

Kimberly Atkins Stohr:

Wait, can I just interrupt to specify, it's to watch the Detroit Lions lose.

Barb McQuade:

Oh, no. Oh, Kim, you would be wrong because many people thought that the Lions might be the first team in history to lose 17 games in an NFL... This is the first year they've extended the season by one game. The Lions actually went 0 and 16 a few years ago, but they tied last weekend.

Kimberly Atkins Stohr:

They did.

Barb McQuade:

So they will not be the first team to lose 17 games. There's always that. There's always possibility they might tie. That's part of our Thanksgiving tradition. And then of course, Michigan plays Ohio State in football on the Saturday after Thanksgiving. Lots of good football in our family. How about you, Jill? What's Thanksgiving like in your family?

Jill Wine-Banks:

Well, we celebrate it with our neighbors who are one wonderful, interesting people, but my family tradition, different than everybody else's is jello. We make jello molds for Thanksgiving and any other excuse.

Barb McQuade:

Awesome.

Jill Wine-Banks:

I bring to my neighbor's house a cranberry mold, which seems normal. And then I bring a lime pear cream cheese mold that is absolutely delicious and refreshing. I actually own two jello cookbooks. I bet none of you have one of those, but that is a big deal in my family. And unfortunately, with the passing of some of my aunts, the best jello mold recipes have disappeared. And what about you, Joyce?

Joyce Vance:

Jill, I learned so much from you. That is just endlessly fascinating. And I'm just going to put in a demand right now for pictures of the jello mold. My mother-in-law used to make that, the lime pear one, and I love it. Kim, what goes on in your house?

Kimberly Atkins Stohr:

Well, since I am not going to be in Michigan with my family there where we can watch the Lions lose together-

Barb McQuade:

Tie, Kim.

Kimberly Atkins Stohr:

It's actually a new... Sorry. It actually will be a new tradition for me. I will be now going and having Thanksgiving at the home of my new sister-in-law, my actual sister-in-law, not my legal sister-in-law and I will be making sweet potato pie. That will be my contribution. That's what I make every Thanksgiving. My husband is the dressing maker and I will be celebrating with my new extended family.

Joyce Vance:

That sounds wonderful. We do, we have family of choice. We have celebrated for over a decade now with our two best friends and with their families and three generations in those families. It's sort of a big, fun get together. I'm actually going to branch out this year. I'm trying one new recipe. I have stuff that I always make. I roast root vegetables and stuff like that, but I have a new dressing recipe. It's with chestnuts and the chestnuts just came in the mail today, so I'm really excited.

Kimberly Atkins Stohr:

As we begin this podcast, it's just hours after Kyle Rittenhouse was acquitted of killing two people and wounding a third during social justice demonstrations in Kenosha, Wisconsin. Those demonstrations came after the police shooting of Jacob Blake. And I just want to start with a quick reaction of you all of the... from you all about this acquittal. Just off the top, were you surprised Jill? We'll start with you.

Jill Wine-Banks:

I actually wasn't surprised. I am disappointed. I am scared more than anything else. I think being scared is a justified reaction to someone being acquitted who carried a long gun into a crowd and shot when I believe he was the provocation for anything that happened to him. But I wasn't surprised because I think the defense did a good job and that the prosecution made some serious mistakes and that the judge showed blatant bias toward the defense and against the prosecution. That's my general reaction, but I think it's a bad outcome for the future of demonstrations in America.

Kimberly Atkins Stohr:

And we're going to dig deeper in that, but I want to go to Barb and then Joyce, just to get your quick off the top reaction.

Barb McQuade:

This reminds me of a lot of these cases when we see police shootings. And the disconnect, I think, is that we all as observers look at this thing from the viewpoint of the victims and the viewpoint of larger society and say, "How can it be that a kid can go into a scene of civil unrest with a weapon of war and not expect that there's going to be some trouble and people end up dead predictably." But in a jury trial, the rights are very heavily stacked in favor of the defendant and rightly so, we, in this country, our criminal justice system is built on the notion that it's better that 10 guilty people go free than one innocent person be convicted. And so, it's a very uphill battle. And so, the jury is looking at this in a vacuum, in the minutia, in the details. And I think that's where the disconnect comes from. Not terribly surprised with the verdict, but I think it's awful because he will be used as a poster boy for vigilante justice.

Kimberly Atkins Stohr:

I think that's totally true. Joyce, your off the top impression.

Joyce Vance:

I agree with Barb and Jill, but I'll tell you, I had developed a moment where I thought that there would be a conviction on at least one count. And it was because during the charge conference, this is sort of a highly technical legal reason, but during the charge conference, the judge agreed to instruct the jury on provocation. And what that comes down to is that if you're the defendant, you can't have the advantage of self-defense if you provoke the incident in the first place. I thought the judge might just not... might say, "No, the facts don't warrant that I'm not going to give the instruction," but he did give it.

I thought that if the jury listened to that and looked at all of the evidence that they would've come back guilty on at least one of the counts. I will confess to being a little bit more surprised and perhaps a little bit more naive in my assessment than everybody else.

Kimberly Atkins Stohr:

I was not surprised. I was not surprised in part because I am well aware that when vigilantism in this country is carried out by white men, if history is a guide, that often is not only not punished, but it's often encouraged and relied upon by police and others. And so, even though it was difficult to see this result, I understood it. It's a part of... It's one of the foundational flaws of our justice system.

I don't think I don't fault the jury. I think in this case, we often say things like justice wasn't served. I think in this case, in the way that our justice system is set up, this was the exact outcome that was intended, but that was just my impression. Jill, let's talk about what actually happened. In the prosecution, the prosecution had the burden of not only making the case for each of the counts, but the burden was on the prosecution to disprove Kyle Rittenhouse's defense, which was self-defense. In your opinion, do you think they did that?

Jill Wine-Banks:

In my opinion, they did, but obviously, they didn't or the jury would not have acquitted. It's very hard to prove a negative in any case. And the bar for the defendant to raise the issue of self-defense is very low.

They met that burden and for the prosecution to disprove the self-defense is a tough hurdle. They didn't meet it. I think that they really hurt themselves when they had a witness who was supposed to help their case said, "Oh, no. Well, first, I pulled out my gun on him." That was a surprise. That wasn't what the testimony expected was. But once you have a victim who pulls a gun on the defendant, it's easy to see how a jury could say, "Yeah, well, that's not proving that there wasn't self-defense and they didn't disprove it by... beyond a reasonable doubt." And juries take very seriously the instructions and beyond a reasonable doubt became very important element of this. And that's where it fell apart, I think.

Kimberly Atkins Stohr:

And Joyce, one of the charges that Kyle Rittenhouse faced was an illegal gun charge, but that was dismissed by the judge in a move that I personally thought was legally incorrect. Do you think that had an impact on the case? I mean, certainly that would've been the easiest charge for the prosecution to prove.

Joyce Vance:

Sure. And I don't think that that dismissal had any impact on the overall outcome at the trial. The judge had to interpret a confusing law, a misdemeanor charge of possessing a firearm by a minor. And that law has some exceptions, a minor can have a firearm for hunting or military service or target practice. Rittenhouse's attorneys though had argued that one of the exceptions that permitted 16 to 17-year-olds to carry rifles and shotguns as long as they were not unlawfully short-barrelled applied here. And so, the prosecution argued that if you applied that exception, that that was a strained interpretation of the law, that that exception would've swallowed the entire rule.

Here's what happened. The judge said, "No, I'm going to allow it. That exception applies. And as long as this gun is not short-barrelled, I'll dismiss this charge." And the government was forced to concede that the gun was not short-barrelled. You can argue about whether what the judge did was correct or not. As a general principle though, statutes are narrowly construed. When they're ambiguous, we want judges to construe them in a way that ensures that people are on notice of what crimes are.

The real problem here, Kim, and I tend to agree with you, by the way, I think this was a bad interpretation, but it's legally tenable. The real problem is when the judge did it because the prosecution or the defense motion was filed months out, the prosecution wanted a ruling early, and the judge wouldn't give it. He resisted giving it. And giving it after the jury is then paneled and double jeopardy has attached, that's too late. It means that the government had no opportunity to appeal the judge's ruling. The government had no opportunity to get a higher court to say, "No, the judge is wrong and reinstate the charge." Ultimately, does it change things? This was a misdemeanor charge, the conviction, if there'd been a misdemeanor conviction and a string of acquittals on a felony charge, I'm not sure people would be any happier today than they are.

Kimberly Atkins Stohr:

Barb, one criticism that some conservative legal analysts have already started making was that this was a weak case. And that the job of a prosecutor isn't just to try every case, but that if a case is weak, then it's better not to bring it and suggested that this case was only brought for political purposes because of the political environment and the situation that it happened in. What do you say to that criticism?

Barb McQuade:

I say that is hogwash. Prosecutors, you're right, Kim, should I have to ask two... answer two questions. One is the can we charge this case question, which is, is the evidence sufficient such that it is probable that we can obtain and sustain a conviction? And then the second question is, should we bring this case? Does it advance some substantial societal interest? We all enter into the social contract together where we agree to abide by certain rules. And if somebody violates those rules, we want to punish them, to deter other people from similarly breaking the rules, to protect others from society, from someone who might be dangerous.

And so, [inaudible 00:14:17] pure retribution, revenge for taking of lives. And I think in this case, if I were a prosecutor assessing this case without the benefit of the 20/20 vision of hindsight, knowing how this case comes out, I think you have to bring this case. I don't think this is about politics at all. This is about a kid, a 17-year-old who thought it was okay to take an AR-15, a weapon of war that he... it is illegal for him to carry. The judge entered, as Joyce said, some tortured interpretation of reading two statutes together to say, when it says firearm, they don't really mean firearm. If you look at this other statute and firearm exclude certain things. And so, this one might have been okay.

He brought an AR-15, 17 years old, to a scene of civil unrest. What do you think is going to happen? People are going to think you're an active shooter. They're going to try to grab that gun from you. And then when they do, what are you going to do? I'm going to turn and shoot them because I am too cowardly to face them with my fists.

And so, I think you absolutely have to bring this case to send a message that this behavior is not okay, that we want to deter this kind of behavior. And I worry that now that there has been an acquittal, people will assume the message is just the opposite, that it does mean it's okay to do these things. I don't fault the prosecution for taking this case. I don't think it was a political case. I think they thought it was really important to protecting the rule of law and ordered society. And again, because the jury looks at these things so narrowly, the result was that he's not guilty in this case.

Kimberly Atkins Stohr:

I agree with you 100% and you're hitting at what I think is one of the greatest... one of the biggest dangers of this verdict. And again, I'm not faulting the jury, the jury followed their instructions and they were doing their civic duty and I don't fault them. What I fault is that we are in a society right now, a political environment where I think this will be seen. First of all, I think that Kyle Rittenhouse will be, or has already been hailed as a hero for one of the most extremist segments of our society.

And what I fear is that this is seen as an imprimatur of acceptance that you can take an arm gun if there are protests happening and you disagree with what those protestors are doing, you can take an arm gun and it will be okay. And certainly, if it's a situation where the protest has to do with race, and you are opposing those who are demanding civil justice, that will be seen as an okay thing to do.

Today, in the news coverage, one of the things that broke my heart was seeing the people of Kenosha, Wisconsin recounting that day and saying, there was a protest and there were all sorts of people, not just Kyle Rittenhouse. There were a lot of armed folks in our community who were there opposing people trying to exercise their First Amendment rights to protest something, to say we demand social justice. And there were these armed people all over the place standing by and we asked the police for help and they did nothing. And that's what reminded me of what I talked about at the top was this idea that this vigilantism is sort of seen as like a deputized police force since the beginning of our country's history, but just seeing that play out and knowing that that can happen again and again.

Kyle Rittenhouse's attorney afterwards said, he thought this was an isolated incident. You can't draw too much about what could happen beyond. This is not. Where has he been? This is not an isolated

incident. We have seen protests with counter-protests happening all over the country in Boston of places. There was a dramatic protest/counter-protest standoff just a few weeks ago. Of course, this will happen again. And I fear that there will be more arms instead of less.

Joyce Vance:

And let me just say, the context here really matters, because what we're talking about is conduct that intimidates people who are trying to exercise their First Amendment right to peacefully protest. And here's my fear. I live in an open carry state. I've had the experience of walking and to pay for gasoline or walking into the 7-Eleven and seeing somebody with a long gun slung over their back. And it's a little bit frightening because you don't know who they are and what they're going to do. And sometimes you really just want to remove yourself.

On December 1st, the Supreme Court is going to hear Dobbs, the case that might be the end of abortion rights in this country. There are already marches planned in many parts of the country, a big one in DC, marches other place. And now, if you're going to one of those marches, you have to worry that Kyle Rittenhouse or someone like him now emboldened by his acquittal here, that they're out there in the rally with a gun, looking for an excuse to shoot.

And I know I'm painting an extreme case. They're right, I understand that most people who carry guns are responsible and aren't going to do what Kyle Rittenhouse did, but you're always going to have that worry at the back of your mind. And to the extent that that tamps down on the exercise of our First Amendment rights, that's a real problem. It's a very one-sided problem. It's always people on one side of the spectrum using guns as a way to frighten, to intimidate people on another end of the spectrum. And I think it's a problem that we're going to have to address. We can't continue to ignore this.

Jill Wine-Banks:

Can I add that while I agree completely and the reason I said in the beginning that my first reaction was that I was scared, it's because I think it has unleashed vigilantism in a terrible way, but I just want to encourage all of our listeners to remember that this was a specific case, specific charges, in specific facts. And as a trial lawyer, we're always told, when the facts are in your favor, that's what you stress. When the law laws in your favor, that's what you stress. And when neither is in your favor, you ask for a writ of rachmanus, which only Joyce and I will understand. You ask for a plea of just mercy.

And in this case, the law and the facts were against the prosecution. And so, that while I'm surprised that there was total acquittal on all charges, it isn't actually that shocking because the law was what it was and the facts were what they were, and the trial didn't go as well as the prosecution would've liked. We should not take this as making him either a hero or a demon. We should just say he was a defendant who got lucky and we should not have any violence in response. And luckily, it seems like Kenosha is still pretty calm right now and I hope it stays that way.

Barb McQuade:

I agree with you, Jill, that one of the disconnects is that our juries look at cases in the minutia, the same thing that happens when decisions happen in like the case of Breonna Taylor. We look at the moment that the police officers fired the shots in her apartment, not at all of the context their horribly poor judgment in showing up there with weapons in the middle of the night using a no-knock warrant and pounding down the door, which kind of set the table for that incident to occur. And maybe it's time we did look bigger picture in these things, because I think you get this feeling of a grave injustice. I mean,

again and again and again, this happens when police officers are on trial and it leaves this unsettling feeling that there are certain groups in society that are above the law.

And so, I think it's really important to... I mean, I know that defendants are judged on a case by case basis and on the minutia, but I think we need to have a larger conversation about what is and is acceptable behavior in society even if there's not criminal judgment. One thing that I am hopeful for in the Rittenhouse case is that we will see civil lawsuits, that the estates of the deceased will bring civil lawsuits against Kyle Rittenhouse. And as in the O.J. Simpson trial, while there was not a criminal conviction where the burden of proof is beyond a reasonable doubt, the standard there only preponderance of the evidence, we may see in those cases some justice and will allow us to have that larger conversation and perhaps see some justice for the families of the victims.

Joyce Vance:

Technical legal issue, I was always taught about this concept of sui generis, the whole ball of wax. If you're talking about a criminal incident, you can talk about everything that's necessary to the context. And even to events that set things in motion, I feel like part of the problem here was that this judge was very restrictive about what he did and didn't permit the prosecution to offer. And Barb, I think your point is an important one. We actually talked about it a little bit last week in your absence. How far back can you go? Can you talk about Rittenhouse driving over to a community that he had only minimal ties to? Can you talk about other things that he did? And I think you're on to something. I think the right answer is perhaps to pass some changes to the rules of evidence that permit this more expansive understanding of the full context of a defendant's actions.

Barb McQuade:

Hey, Kim, I know you, like me, care a lot about a good night's sleep. What do you think about Helix mattresses?

Kimberly Atkins Stohr:

Having a good mattress is so important and I do like that Helix really puts good sleep in the hands of people. They can go on, take a quick quiz, figure out what works for them. Jill, I know you took the quiz. What'd you think about it?

Jill Wine-Banks:

Well, when I took the quiz, it matched me with the Helix Midnight Mattress and it was exactly what I wanted, something just right for me. You can buy anything you want, but why buy one made for someone else when you can get one made specifically for you. And Joyce, what about you?

Joyce Vance:

Helix does facilitate a good night's sleep and that's something we all need right now. Just go to helixsleep.com/sisters to take the same quiz that Jill took. It'll only take you two minutes and it'll match you with a customized mattress that will give you the best sleep leap of your life. From soft to firm, plus size, and cooling, they have it all, not to mention that it's gotten many doctor and chiropractor recommendations. Helix mattresses come with a 10-year warranty and you can try it out for 100 nights risk free. It gets delivered right to your door and they'll pick it up again if needed, so you have to go to a mattress store again.

Jill Wine-Banks:

Plus, Helix is offering up to \$200 off all mattress orders and two free pillows for our listeners at helixsleep.com/sisters. That's helixsleep.com/sisters for up to \$200 off and two free pillows. And look for the link in our show notes. Thanks to Helix for sponsoring this episode and we thank you, our listeners, for supporting Helix.

Kimberly Atkins Stohr:

Meanwhile, in another case, the defense rested in the trial of three men charged with killing Ahmaud Arbery in Georgia. Like in the Rittenhouse case, Travis McMichael took the stand this week in his own defense. I want to start with you, Barb. One thing that really struck me as when he was put on the stand, his attorney, the defense counsel went through this long questioning period that felt to me like he was treating Travis McMichael as if he were some sort of law enforcement expert witness on deescalation. I mean, this man is literally charged with lynching someone and going through because he had been in the Coast Guard, asking him all these questions about firearm use and when use of force is authorized and all these things based on his Coast Guard experience.

To be clear for our listeners, he was a machinery technician in the Coast Guard and he himself on cross-examination said he had never used his firearm while a member of the force, but sort of take us through that and do you think that that testimony was successful?

Barb McQuade:

I understand what the lawyer was trying to do. I guess we'll see whether the jury bought it and whether it was successful, but lawyers really were want to frame their clients in certain ways. And in this case, the defense here again is self defense, that they were engaging in a citizen's arrest, which was legal. It was a thing in Georgia at the time. That law has since been repealed, but that a citizen can actually make an arrest if they have, I don't know what they call it, reasonable cause I think is the Georgia standard, to believe that this person has committed a crime, they can arrest them and detain them until the police can come get them, an absolute relic of the fugitive slave days. I'm going to capture this slave and keep him until the police can get here. And if he should die in my custody, well, he shouldn't have been so uppity.

And that's what's going here, but what the lawyer here is trying to do is to paint in the jury's mind a view that, oh, he did have law enforcement training and what he did was perfectly reasonable. It's the same way in the Rittenhouse case, we heard the lawyer refer to the defendant as Kyle, not Mr. Rittenhouse, not the defendant, but Kyle. I want to portray him in a way that makes him relatable and sympathetic, but here, because they had this really damaging fact that McMichael points the gun at Arbery, how can you be the one claiming self-defense when you're the one who provoked this and pointed it. And he said, "I learned this technique in the Coast Guard. It's called coerced compliance. When you point a gun at most people, they surrender and that's what I wanted to do here."

Well, if I were cross-examining him, I'm going to say, "Tell me what your uniform looked like that day," because he wasn't wearing a uniform. What are the reasons it works when you have a gun and you point it in somebody, that somebody surrenders is because they believe you're a law enforcement officer. If the police put a gun on you and say, "Police, freeze," you stop because you recognize that they have the authority and that they have the ability to shoot you if you don't.

If it's just some guy who just pulled up on y'all on a truck with a big shotgun, I don't assume that this person has authority to make a lawful arrest. I think this is some creepy guy who's about to kill me. And so, the idea that Arbery fought back is very understandable. I don't know if this one's going to fly

with this jury, but I think that's what he was trying to accomplish there is that he had all this law enforcement training. And so, he was just doing what he was trained to do when he pointed the gun at Arbery when instead, I think that could be seen as a provoking act that made McMichael the aggressor, which means that he's not going to be able to take advantage of self-defense.

Kimberly Atkins Stohr:

Usually, we don't see defendants take the stand in their own defense because it could be very dangerous because it can open them up to cross-examination. And so, I want each of you having had cross-examine witnesses and including defendants assess the work of Assistant District Attorney Linda Dunikoski with her cross-examination of Travis McMichael. I'll start with you, Joyce.

Joyce Vance:

Well, I confess I was always had just a little moment of happiness when a defendant took the witness stand and testified because you always knew that in an entirely appropriate way, there would be something that would happen on that cross-examination that would make your case stronger. I mean, if you're a prosecutor and you have your pick of cases to indict, you're only going to indict THE cases where your evidence is strong and where you really believe the defendant is guilty. And in that kind of a scenario, there is something that will happen on that cross-examination that will trip up the defendant.

And in this particular case, I think that that was very true. I mean, this cross examination was disastrous for the defense and a big part of that was how good the work of this assistant district attorney was. She was first rate. She was all substance. She wasn't worried about having dramatic in the courtroom moments during cross-examination, these aha moments that you see on Matt Locke or something. That's not what this was about.

This was about eliciting testimony that she could use in closing argument and giving the jury a narrative, a story that made sense about the events that day. And so, she does this excellent job near the end of the cross-examination where she's just point blank going through it all. And he's forced to concede that as he's doing all of this and chasing Mr. Arbery, he never speaks to him. He never threatens him. He always runs away trying to escape. He never pulls a weapon and she will be able to argue that very effectively in closing argument that there was no threat, no imminent danger, and that should defeat the self-defense argument here. I thought she was fabulous.

Kimberly Atkins Stohr:

Jill, what about you?

Jill Wine-Banks:

I think Joyce has said everything I would have said and Brisby is joining me in now, but I do want to point out two things from what we were talking about before. One is that the law has been changed and there's no more citizen's arrest law. That's one thing that has been improved. The other is that there are civil cases already. The father of Anthony Huber has filed a federal civil lawsuit, not against Rittenhouse, but it names the city and the county of Kenosha, the sheriff and the acting and former police chiefs and unnamed officers for racial animus and allowing armed whites to remain among the protestors leading to the conditions that led to Huber's death. And that suit is pending.

And of course, Jacob Blake, who is the man who was paralyzed as a result of, and caused this demonstration, has filed a federal lawsuit against the officer who shot him and four protestors have sued the city as well. There are some civil cases still pending and I think that's important for us to note.

Barb McQuade:

Well, I thought the lawyer did a fine job on cross-examination. I think the only thing I would... and it's really easy to criticize people, armchair quarterback, when you're in the heat of a trial, the fog of war, whatever it is, you got to do what you think your instincts tell you to do. But I think like so many lawyers, she just spent too long. It seemed a bit meandering and I think one of the strategies you have to do is go in with a real plan. I am going to attack on these two or three things and that is it and I'm going to sit down. I think jurors are used to watching trials on television and in the movies where there's... it's really dramatic and they stand up, and I think the expectation is that this is going to be like a real dressing down. And instead, it's usually less of an exciting event. You got to be very surgical, get in and make the points you're going to want to use to argue in your closing argument to establish the elements of your offense.

I learned this lesson actually once. I was watching a trial. My husband, who is a prosecutor, was trying a case, a bank robbery case that I thought was the most interesting case I'd ever seen. It was a takeover style bank robbery where the robbers, four robbers jumped over the counter. They had a pipe bomb. It was unbelievable. And so, I brought his father to watch a cross-examination that my husband was doing, his son, I thought he'd love this thing. And so, we sat there for an hour. I thought it was amazing. I thought it was the most exciting cross-examination I'd ever seen. And then, we left the courtroom and I asked him, "So what do you think?" And he said, "Oh, so tedious! Oh, tell me about the date and time of this. And does this photo fairly and accurately depict the position you... Oh, so... Why can't they just say what happened and be done with it?"

I thought if my father-in-law listening to his own son thought the cross-examination was too tedious, I thought that was a good lesson about how we need to be really focused and brief so that the jury gets it about what you're trying to do there, get in and get out and sit down.

Kimberly Atkins Stohr:

Oh, my goodness. Just like thinking of a marriage with two prosecutors just gets me [inaudible 00:35:18] for a whole nother reason, so God bless you, but just quickly, Jill, again, the defense counsel in the case objected to the presence of known agents of chaos, Reverend Jesse Jackson and Reverend Al Sharpton and other Black pastors. What do you think that tells us?

Jill Wine-Banks:

Well, let me just take it from a defense lawyer's point of view because I'm, I think, the only one who's been both prosecutor and defense lawyer. In trying to defend your client, you do everything that you possibly can. Now, did this cross the line? It certainly was offensive to me, but it's out of the hearing of the jury. And if you think that the presence in the audience of prominent civil rights icons will adversely affect your client, then you may need to try to say something to prevent it in the same way that if you were defending a person of color and the jury saw members of the Ku Klux Klan and could identify them as such in the courtroom that they might be afraid to acquit.

And so, there is sort of a reason for it. This was ridiculous and the judge handled it properly. The judge said, "I'm not having any of this," basically, and they can stay. And the public right to a... The right to a public trial means that the public can come in and they get to be here just as much as anybody else. And that was the right decision in this case. And I doubt that, obviously, it didn't impact the jury at all. It didn't help. And they were trying to give comfort to the family of the victim. I think that's okay.

Kimberly Atkins Stohr:

I think that's an important point. I mean, my grandfather was a minister. I think the importance of pastors, particularly in the Black community in difficult times cannot be overstressed. That's who they go to, that's who provides them comfort. They become like family. And so, to me at the very least, it registered some tone deafness on the part of the defense there.

Joyce Vance:

And isn't it even more than that? I mean, at least in the deep south, the Black church signifies sort of the source of the cry for social justice. And I was reminded the other night, in Selma during the march for voting rights, that march both started and ended at Brown Chapel at the big church right by the bridge. And the church is just this source of support and inspiration. And I really, I was so taken aback by this defense lawyers. I don't want to call it tone deafness, because I thought it was just outright racism as though saying those people don't have a place in this courtroom. Well, you know what? That's precisely who belongs in this courtroom and his comment was offensive and I was glad the judge smacked him for it.

Jill Wine-Banks:

I agree. And I will point out also that had the prosecution done anything like that. Let's say that the defendant was from the African American community and had people supporting him there who were icons and the prosecution had said, "Get them out of here!" That would've clearly been illegal, improper and reversible error if it had been granted. I just want to point out that it's different in the defense. You have to try to defend your client as best you can. And so, again, I think this was more than tone deaf. I agree with you that it was outright racist and disgusting. And I'd be proud to have Jesse Jackson or Reverend Al sit in any courtroom where I was, but I'm not going to hold the defense lawyer to the same standard as a prosecutor.

Barb McQuade:

I think-

Kimberly Atkins Stohr:

And I just want to be clear, I think it was racist too. What I meant by tone deafness by the use of that is I have no reason to believe that this man has any understanding of the deep connection of pastors in Black communities. That's what I meant at the very least. Of course, he understands why they were there or why they're protest... every civil... Civil rights leaders, politicians from the Reverend Martin Luther King to Senator Rafael Warnock are members of the clergy. We understand that they are essential parts of this community. He should have understood that too. I was just saying just the depth of which, when you have someone, when you have a pastor sitting next to you, it's as much... it's like having a sister, a parent sitting next to you in the Black community. That's the only point I was making.

Barb McQuade:

And let me just add, because at one point the defense lawyer said something like, just how many pastors does this family have anyway, to suggest that the only reason a Black pastor would be in the courtroom is because they're the family pastor. It's a public court. Anybody's welcome to go in that room. The idea that I don't want too many Black pastors I think is racist. And I think, although, as Jill said, prosecutors get held to a higher standard than defense attorneys, he's still an officer of the court and I think it was highly inappropriate, racist, wrong. And I'm glad the judge ruled the way-

Joyce Vance:

And you saw it all over the face of the...

Barb McQuade:

Yes!

Joyce Vance:

I was going to say the same thing, the blonde woman-

Barb McQuade:

Two women sitting next... they were like, "What?"

Joyce Vance:

... sitting next to him. But it was... There was sort of like this great counterpoint. I mean, there's this... I won't say what I was going to say. There's this lawyer who behaves, I think unconscionably. The women who appear to be on his team who are both like, "Oh, I think bub has stepped into it when he said that." You see that look on their faces, but then there's this counter image. There's Jesse Jackson, the Reverend Jesse Jackson, who's been seriously ill with COVID and who rallies to show up to be there for the family. And I was super touched by that.

Kimberly Atkins Stohr:

You guys, I just gave myself a manicure with a drug store polish and within 24 hours, it's already chipped on four nails, which really bothers me, but I hear Olive & June is really good. Jill, have you tried it?

Jill Wine-Banks:

I have. And I love a good manicure. I just think it makes a complete outfit look even better. And Olive & June is really terrific product. It lasts and it looks good and it has so many colors. There's never one you can't find. Barb, I know you're not much on makeup, but what about nail polish?

Barb McQuade:

Nope, no time for it myself, but my daughter is a big fan of Olive & June. I got a big shipment and she grabbed it right away and has been enjoying all the colors. She loves it. She thinks the quality is fantastic. The colors are amazing. For those who care for such things, Olive & June is the way to go. How about you, Joyce? Are you enjoying it?

Joyce Vance:

I absolutely love Olive & June. Like you, I got the big box and I think it's just absolutely fantastic. I've tried all the colors. It stays on forever and it's really easy to use.

Barb McQuade:

With Olive & June's mani system, you can have show-stopping salon perfect nails at an affordable price. Their mani system is the secret for getting amazing nails at home without the salon price tag. Everything you need comes in one box.

Joyce Vance:

And it really is easy to use, especially with the Poppy, which is Olive & June's patented brush handle that makes it easy to paint with both of your hands. They promise their nail polishes last seven days, but for me, it lasts closer to 10 or 11 and it never chips. It really is my favorite polish.

Barb McQuade:

Olive & June is a game changer. Your nails will always look professionally done and much more affordably. Even if you could never see yourself doing a home manicure, you'll love it.

Joyce Vance:

Getting beautiful salon perfect nails at home is really a dream come true. And with Olive & June, you too can have a new nail life. Visit oliveandjune.com/sisters and use code SISTERS for 20% off your first mani system. This is an exclusive offer that you can only get here. That's oliveandjune.com/sisters. Use the code SISTERS for 20% off your first mani system.

Barb McQuade:

Well, another high profile trial is just getting underway with jury selection this week in the sex trafficking case involving Ghislaine Maxwell. She was, of course, a close associate of Jeffrey Epstein who had been charged with sex trafficking of teen girls before committing suicide while he was in jail awaiting trial. Let's unpack that a little bit. Jill, first, let's start with what is Ghislaine Maxwell charged with?

Jill Wine-Banks:

She is charged basically with sexual trafficking, sexual exploitation of numerous minor girls from 1994 through 2004 as well as with perjury as part of a cover up of what her role was. Basically, she is charged with assisting Jeffrey Epstein to abuse minors by recruiting them and grooming them for him, knowing that they were under 18 years of age and one as young as 14. Travel and interstate commerce is involved in most of the charges, but in the major top level charge, it's just the fact that it was sex with minors and no interstate commerce is required.

The facts that surround this are that she had a personal intimate relationship with Jeffrey Epstein. And she also was paid by him as an employee even though she is a wealthy socialite. Her father was a member of the British Parliament and a media magnet in Britain, but she got paid to manage his multiple properties, all of which were used as the scenes of sexual activity with minors. I mean, I can list the exact statutes, but I don't know that our audience cares what the statute numbers are. It is basically just sex with minors and that she facilitated it and trained them and recruited them.

Barb McQuade:

We had some of these cases in my office when I was in the US Attorney's Office. Joyce, we know that prosecuting sex trafficking cases can be very difficult. What are some of the challenges the prosecutors will face in this case?

Joyce Vance:

Well, I've got four that they'll face. You guys, I hear my husband playing with the dogs upstairs. I'm hoping that you're not hearing it, but if you are, somebody hollering, I'll yell loudly at him. I think that there are at least four challenges that prosecutors are going to face here. One of the biggest issues in this area is just dealing with societal bias. For years, women who were victims essentially were

prosecuted. We prosecuted women as prostitutes and in large part, the men who trafficked them or who pimped them out in this case, a woman, weren't prosecuted. And the women were characterized as prostitutes and they were considered to be at fault.

Sex trafficking laws in their modern form, they represent a commitment to focusing on the people who are really at fault, but it's tough to legislate morality. And one of the things that the prosecution has to look out for in a case like this is bias and people who are willing to condemn the victims in this case, and perhaps, use that as a basis for jury nullification. That's one.

Two is the empty chair in this case. Epstein is dead, so Maxwell will be able to point the finger and he won't be there to respond. That could potentially be a big issue here. The third one is that it's always hard for victims to testify and even more so in a case like this that will call on them to recount very painful, personal details, the defense may try to make them out as being conniving women who are self-promoters. And so, there's a lot of volatility in terms of putting the victims on the stand. And then finally, these are old events. Some of these events took place a very long time ago. Some of the witnesses were young when they occurred. Memories fade and they can be easier to challenge on cross-examination when they're talking about older events. This is a tough case. These kind of cases generally are difficult for prosecutors.

Barb McQuade:

Those witness issues come up in a lot of cases. Sometimes, the victims, survivors have aligned themselves with their trafficker and they've been, I don't want to use the word brainwashed, but groomed to believe that it's us against them and that they're on the side of the person who's on trial, so it can be really challenging. Well, so jury selection is where we are now. It's expected to last about two weeks. Kim, if you were selecting a jury here, what would you be looking for in jurors if you were either prosecuting or defending Maxwell? Who might be the ideal juror for each side?

Kimberly Atkins Stohr:

I don't know who an ideal juror is in a case like this. But one thing that occurred to me is in one way, I think both the prosecution and the defense are being very careful with respect to what previous media exposure to this story the jurors have had. I mean, this is a very high profile case. You know most... I think a lot of people know Jeffrey Epstein and know what he was accused of and what happened to him even if they don't know all of the details of it and even if they don't know who Ghislaine Maxwell is. It's one of those cases that I think qualifies as high profile. And I think about the pending Supreme Court case right now that deals with the issue of pretrial publicity. And that involves the case of the Boston Marathon bombing and the surviving Boston Marathon bomber.

One of the issues that he is appealing is how much pretrial publicity members of the jury had and what opinions they expressed about it and whether or not there was enough in the voir dire. I know we all say it differently, but that means in the questioning of the jurors as they are impaneled, how much they were questioned about specifically what kind of media they consumed about this. And so, I think for different reasons, the defense and the prosecution will be paying very careful attention to this, the prosecution because of this case, and that is pending, they want to protect themselves and make sure that they ask questions about the pretrial publicity, so that if they don't ask these questions and a juror is impaneled. And if they are found to have expressed some sort of opinion about Jeffrey Epstein or anything about this or anything related to this later that that could be grounds for some sort of appeal.

And, of course, for the defense, they want to know if these jurors have a preconceived conception of what... of this case and whether or not Ghislaine Maxwell is guilty and if they've said anything about her. I think on both sides, there will be a great deal of attention being paid. And remember, in this case, it's not just a high profile case, there have been documentaries. I mean, even people who don't casually consume news about this, there have been documentaries on various streaming services and elsewhere about this case. I've learned an awful lot about it just myself. I think that is going to be something that is key in the jury questioning and impaneling at this point.

Barb McQuade:

One other insight I've gained over the years about juries in high profile cases, especially where politics are involved, maybe this one is not quite that, but people talk about choosing the ideal juror. In the Rittenhouse case, there has been reporting that his team hired a really gold plated jury consultant, the same one who consulted the jury in the O.J. Simpson case to help them identify the ideal juror. They also focus group the case to a couple of different focus group juries and they were looking for the person they believed to be the ideal juror in this case, I have come to believe... Well, maybe... and maybe this is a prosecution perspective, but I was less concerned about the ideal juror and more interested in a jury that as a group could get along with each other, because I think if you have polarizing figures, even if they are figures who might stereotypically be inclined to be on your side, I think they can be polarizing in a way that turns off all the other people. And then you can result in a hung jury.

What you need instead are people who are willing to be open-minded to set aside any opinions they might form to listen to other people and to work together as a team. I was looking for people who work in teams at their workplace or maybe who had experience working on teams or who just demonstrate a willingness to kind of get along with others. And I think that is better from a prosecution perspective than just looking for individual jurors who might work, because if you have strong opinion leaders, they could really backfire when you're looking for unanimity.

Joyce Vance:

Well, Jill, Kim, in a week like this, I don't know about y'all, but I really need to drink wine. What do you guys think about Cameron Hughes? I've been hearing good things.

Kimberly Atkins Stohr:

I really like it. The other night, I tried the White Meritage, which I really like White Bordeaux ever since I went to France and had some. It's become one of my favorite white wines and I had some with dinner with my husband, and it really matched well with the fish dish that we made. What about you, Jill, do you like it?

Jill Wine-Banks:

Interesting that you mentioned that one because that's the same one I tried this week was the White Meritage and I don't drink a lot of anything ever, but occasionally during weeks like this, you need to just be able to relax and unwind at the end of the day and Cameron Hughes is a terrific wine. Every one of them that I have tasted has been terrific.

Kimberly Atkins Stohr:

Cameron Hughes sources top-rated luxury wines directly from the best wineries around the world. Cameron Hughes Wine is your personal sommelier, insider and wine buyer all delivered directly to your

door. You get the best wines at affordable prices. Exclusive wineries overproduce and keep official quantities low to keep prices high. Cameron Hughes gets these wines and sells them under the Cameron Hughes label for a fraction of the price. These wines are an amazing value. And today, you can get top-rated award-winning wines at incredible savings. They sell out quickly, so drink the best wine and save.

Jill Wine-Banks:

It's amazing because you do get them for about half of what they would cost anywhere else. Go to chwine.com today to get 20% off the already great prices and free shipping when you buy three or more bottles. Just enter our code SISTERS at checkout at chwine.com with the code SISTERS for your 20% off three bottles or more plus free shipping. Great wines, great prices delivered right to your door in the safety of your own home and the link is also in our show notes.

Joyce Vance:

Every week, we really look forward to answering your questions. We always have more than we have time for, but it's lots of fun to read all of them and pick out the ones we'll answer. Make sure you keep your eyes on our Twitter feeds during the week because we'll try to get more. And of course, please send in any questions that come up in the next week to us for next week's show. Let's start with this question from Kathleen. She says, "What I'm hearing from the defense attorneys in the Ahmaud Arbery case, questioning of witnesses appears to me to be leading questions. What is a leading question? What would be a guiding or seeking clarity question? Where is the line?" That's a great legal question.

Barb McQuade:

Well, I'll start with the answer. A leading question by definition is a question that suggests the answer. And so, for example, you might say, "Isn't it true, Joyce, that I'm the best looking sister on this call?" And then you could answer the question. It suggests an answer to that question. It is typically permitted when the witness is hostile. And so, if the defense is cross-examining the prosecution witnesses, then the defense is permitted to use leading questions. They're typically not permitted to use leading questions when they called the witness because we want the testimony to come out of the witness's mouth. And so, instead, you would say something like, "Joyce, tell us about the people you see on the screen now. Do you have an opinion as to which one might be the best looking and what is that opinion?" You would ask them in those open-ended ways.

Sometimes, we see people stray from that and it would be appropriate for the opposite lawyer to object if they see or hear a lawyer asking leading questions when it's a witness they called. Now, as a lawyer in the courtroom, you have to be strategic about when you're going to object. And so, oftentimes, when it's just preliminary questions, I would refrain from objecting like tell us your name and where you went to school. And then they might say a few things in the beginning that are leading like a... We're going to talk about this night in question and you were there, right? Technically that's a leading question, but I probably wouldn't object because it's just kind of a preliminary matter, but technically, once they get into the substance, only the opposing lawyer may ask leading questions.

Joyce Vance:

Barb, you are the best looking Sister In Law.

Barb McQuade:

Thank you.

Joyce Vance:

I can see you on my-

Kimberly Atkins Stohr:

What?

Joyce Vance:

... right now. You look-

Barb McQuade:

We're all beautiful. We're all beautiful. We're all beautiful.

Joyce Vance:

Our second question comes from empress of the multiverse on Twitter. Empress of the multiverse asks, "Please discuss the legality of the judge in Rittenhouse case saying he may decide on motions to dismiss after the verdict is read. In what states is this legal? Can he really do this and dismiss a guilty verdict without prejudice?" What do y'all think?

Jill Wine-Banks:

Well, in most states, it is possible for a judge to overrule a jury verdict if he believes there was absolutely no basis for it. That's in civil cases. I've never heard of it happening in a criminal case if a defendant is acquitted. They cannot say, "Oh, he was guilty." But if he was found guilty, I'm not sure that the judge couldn't do it. What do you think Barb?

Barb McQuade:

Yeah, I do. And you're right, Jill, that if the defendant is acquitted, a jury has made a finding and that's it. A judge can enter a judgment if he believes that the evidence did not support the verdict. And it's interesting, the timing of that. You might expect a judge to make that decision before the jury has made their decision, but it's not necessary. You could wait until after the jury has decided and then the judge could make it. And in fact, I think it is the better course to let the jury decide the case and then have the judge do it because if that's the case, if the jury convicts, and then the judge says, "No, I think I didn't see enough evidence and I want to overrule that verdict with my own judgment and to dismiss the case," that decision of the judge can then be appealed because it was the jury who found the defendant guilty. But once the jury acquits, there is no appeal.

I think it's the better course because it preserves the right of the prosecution to appeal the judge's decision and reinstate the finding of the jury whose job it is to be... is to be the finders of fact. But yeah, that's-

Kimberly Atkins Stohr:

And I think similarly with that one reason that the judge may have put this off is because if in the event, as what happened, an acquittal, he doesn't have to rule on it and if he could leave it up to the jury, if that's a possibility, then you would take that course.

Joyce Vance:

Our last question today comes from Janet. And I know when we discussed this one, Jill, you were really interested in wanting to even expand on the question, so I'm going to send one your way. [inaudible 01:00:56] with recognition of bias and traditional gender terms, the change or flexibility in gender roles and in marriage, would the gender neutral word spouse in lieu of wife and husband be more appropriate?

Jill Wine-Banks:

I think the answer is definitely yes. It would take into account the current realities of things. I wanted to expand it because my niece who was on Law Review at Northwestern wrote a Law Review article on name changes, and she and her husband agreed that they would each hyphenate their name and add at the end of their own name their spouse's name. And that's also an interesting thing and we've talked about this with Kim and her decision about her name and my decision about hyphenating mine. I think those are things that are really of interest as we look at the institution of marriage right now. And I think Kim, you were just saying that in your marriage certificate, it doesn't say husband and wife. And before I turn it over to Kim to talk about that, I just want to say anyone who's interested in getting married, friends of yours can get licensed.

I am now licensed to marry people. And I'm so sorry that Kim didn't ask me to marry her and Greg.

Kimberly Atkins Stohr:

I didn't know that.

Jill Wine-Banks:

So yes, it's very simple to get license-

Barb McQuade:

Jill, is there anything you can't do?

Jill Wine-Banks:

There is nothing I can't do. I am definitely licensed. I married my cousin and his new wife and we had a great wedding ceremony in Millennium Park, which I know you got to see last week, Barb.

Barb McQuade:

Beautiful.

Jill Wine-Banks:

And yeah, it's... I'm... All of us should get licensed to marry anybody we want to marry.

Barb McQuade:

Did you officiate as your own wedding, Jill?

Jill Wine-Banks:

I didn't. I had Ab Mikva was my-

Barb McQuade:

Next one.

Jill Wine-Banks:

Yeah. I am. He married Michael and me.

Joyce Vance:

The first judge that I ever got a chance to talk to when I was first practicing law in Washington was Abner Mikva who had a tie to my law firm, Arent Fox. He came in and spoke with the new young associate one day at lunch and I was so taken with him. That's sort of a wonderful small world connection.

Jill Wine-Banks:

He's wonderful. And he and I actually worked on some anti-gun legislation when I was General Counsel of the Army. The Army used to give excess weapons to the NRA, which I thought was not a good idea and he worked with me on that. And so, that's how I got to know him, but he also would have been my congressman had he not become a judge. He lived in Evanston. He's a wonderful... He was a wonderful person as was his wife.

Kimberly Atkins Stohr:

Well, Jill, I will say if I'd known that you were licensed to perform weddings, I would have flown you out in May to DC to do ours. Actually, a friend of mine did become licensed to do weddings in order to marry us.

Jill Wine-Banks:

Oh, so for-

Kimberly Atkins Stohr:

It was just the five of us there. It was her, Greg, me and my stepchildren. But back to the question, I'm looking at my marriage certificate since it's so new and there are no gender-specific pronouns at all. It just says the marriage between, and it lists our names. I think it's very easy for that to do that. It is a good idea. I know that this is binding. I do think that in most ways, both legal and colloquially, that's the way to go.

Jill Wine-Banks:

Kim, when you want to renew your vows for your 25th anniversary, or maybe for your first anniversary?

Kimberly Atkins Stohr:

Yes! Or the first!

Jill Wine-Banks:

How about for your first? I'll be there. I'll be there.

Kimberly Atkins Stohr:

Excellent!

Joyce Vance:

Thank you for listening to #SistersInLaw with Jill Wine-Banks, Kimberly Atkins Stohr, Barb McQuade, and me, Joyce Vance. Don't forget to send in your questions by email to sistersinlaw@politicon.com or tweet them for next week's show using #SistersInLaw. And don't forget to go to politicon.com/merch for all of our amazing t-shirts, hoodies, bags, buttons, water bottles, and more. You are going to want to have them. This week's sponsors are Helix, Olive & June, and Cameron Hughes Wine. You can find the links to get the coupon codes they've provided our listeners within the show note. To keep up with us every week, follow #SistersInLaw Apple Podcasts or wherever you listen. And please give us a five star review. We really love to read your comments. See you next week with another episode #SistersInLaw.

Barb McQuade:

You guys, I got to visit Jill at her home this past weekend. What a hoot! It was the greatest. And may I say, it really explains a lot. I got to see the whole scene. I got to meet Brisby. I rang the doorbell and he started barking like crazy. And she let me in and I got to see the beautiful red room. And I met her delightful husband, Michael, who is wonderful. They finished each other's sentences. They told stories. They kept moving on to one topic after another. It was such a delight to be with them. I didn't want to leave, but we had a great time. We got a selfie in the red room and Jill, what a pleasure to be with you. It was really fun.

Jill Wine-Banks:

It was my joy and Michael loved you. And it was a joyous week for me because earlier, I got to meet Kim in person. We were together in Washington DC.

Kimberly Atkins Stohr:

Yes! We had lunch.

Jill Wine-Banks:

It was fabulous, fabulous. I mean, what a great week.

Kimberly Atkins Stohr:

It was really fabulous.

Joyce Vance:

Feel a little bit left out here.

Barb McQuade:

We'll come see you in Birmingham one of these days, Joyce.

Jill Wine-Banks:

We are.

Barb McQuade:

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We'll all be down there.

Joyce Vance:

That's a date.