

Barb McQuade:

Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Joyce Vance, Jill Wine-Banks, and me, Barb McQuade. Hope you've all seen us in our amazing Sisters-In-Law merch. It's time to order. You can go to politicon.com/merch, where you can get yourself a #SistersInLaw t-shirt, hoodie and much, much more. You may have seen, I think all of the sisters have been wearing their Jill Wine-Banks style Sisters-In-Law pin on television appearances lately, so you too can be just like Jill with your own Sisters-In-Law pin.

Now, today we will be discussing a number of important topics. The request to interview representative Jim Jordan by the January 6th committee, the verdict against police officer Kim Potter, and the Supreme Court steps out of the shadows in the vaccine mandate cases. And as always, we look forward to answering your questions at the end of the show.

Well, it's Christmas morning, and I hope all of you have enjoyed whatever it is are your holiday traditions on Christmas day. My family opens gifts around the tree, and then we have a big brunch with eggs and cinnamon toast, and things like that. How about the rest of you? You guys have any good holiday traditions?

Joyce Vance:

Chinese food, of course. The Jewish girl in the room. We will get takeout this year for Christmas day.

Jill Wine-Banks:

Well, one of two Jewish girls in the room who does. We're doing dim sum, but this year, we're actually, we're doing takeout dim sum, because we felt that this year was not the time, even though dim sum, half the fun is being in the restaurant and picking your choice from a cart, and not knowing when you start how much you're going to eat. Seems like a buffet, but this year we're going to have to decide how many to order, so that we don't go into the restaurant.

Kimberly Atkins Stohr:

Well, now you have more time to pace yourself, so in a way, it's a-

Participant:

Can eat all day.

Kimberly Atkins Stohr:

Benefit. We normally host Christmas dinner, which we will do again. Everybody, all of our family who will come to join us will test beforehand, of course. We have new traditions to add to our old ones, but one tradition that I am adding to my new blended family is my family growing up, we always celebrated on Christmas Eve. We had a big party on Christmas Eve, and one of the things that we cooked at the Christmas Eve party is fried chicken. And one of my Christmas memories is on Christmas morning, as you're opening the presents or after you open the presents, cold fried chicken is amazing. It's a really good snack and that's what we would eat there, so I made fried chicken on Christmas Eve, so that we can enjoy it on Christmas morning, and so it's nice to blend tradition together. I make fried chicken, Christmas Eve. My husband makes Cornish hen on Christmas evening for dinner, and so it's a nice new tradition.

Barb McQuade:

Yeah, that's great. I love holiday traditions. That's terrific. Well, we have a lot to talk about today, but before we get into it, I wanted to ask you guys about an article I read about Lake Superior State University, which is in Michigan, has this annual tradition where they gather up all the words from the year, and they publish their list of what they thought were the most overused or misused words of the year, to retire them. They actually call it banishing, so some of the words that they had for 2021 on their year end list were pivot, unprecedented, and Karen as words that ought to be banished or retired. I have to support Karen. I find Karen to be both sexist and ageist, and as someone who identifies as a bit of a Karen herself, I think that's a good one to retire.

Kimberly Atkins Stohr:

You're not a Karen.

Barb McQuade:

I'm not a Karen, but I Karen. The verb, to Karen, I definitely Karen. I can Karen like a boss, but I think Karen is not a word. We don't have a male equivalent, because nobody criticizes men who are assertive. It's only women who are assertive, but anyway, that's their list, and I thought, I wanted to ask you guys, if you had any thoughts about words or phrases that you've heard in the past year that have become either tired or overused or misused. A couple of my pet peeves are nothing burger. That's the worst. It was bad the first time anyone ever said it, that's a total nothing burger, and it has been so used and overused. That one, it should be banished forever.

There's another one. It's a vivid visual, but it's one that's just so overused, and that is pearl clutching. Oh, the Republicans need to stop their pearl clutching over X, the foe outrage. Clever, I think, but after you've heard it for the 1,000th time, it's like, come on, you got to come up with a new one. How about you guys? Do you have any thoughts about any words or phrases that you think need to be retired?

Jill Wine-Banks:

Well, certainly, I did a survey on Twitter and asked people to tell me what words they thought fit that category, and the number one winner, unprecedented. No question about it, and which is interesting, because in today's discussion, I think we have some unprecedented issues-

Kimberly Atkins Stohr:

Literally unprecedented.

Jill Wine-Banks:

Well, and literally was another one, by the way.

Kimberly Atkins Stohr:

But I met both of those things in the correct way.

Jill Wine-Banks:

I know. In this case, it's true.

Participant:

Banished. Banished. Can't use them anymore.

Jill Wine-Banks:

No. I think unprecedented can be used when it is appropriate, but I got so many interesting answers. I couldn't believe it. It was things like, of course, breaking news was another one. It's used when it isn't breaking news, and they also added to that Fox News, because Fox is not news. It's entertainment or opinion, but there were some also that fell into my category of something I've tried to develop on Twitter, which is a hashtag for say this, not that, and there were a lot of things, like don't say that it was misleading, when it's an out and out blatant lie. Call it a lie. Riot. It wasn't a riot. It was an insurrection. It was an attempted coup. Call it what it is, so there were a lot.

Election fraud was another one that people didn't want to hear ever again, because there was no election fraud, and so that was a big winner. Stolen election, stop the steel. That was, that fell into that category. CRT. People didn't want to hear that one anymore, because it's used inappropriately almost every time, so that was some of the interesting ones I got in response. I hope people will keep sending me their suggestions for things that should be banished.

Barb McQuade:

Yeah. I saw that tweet, Jill, and you got over 1,000 responses, and I enjoyed looking there, so I hope our listeners will add their contributions to your tweet by replying to your tweet. Go ahead, Kim.

Kimberly Atkins Stohr:

In the vein of say this and not that, I think for mine, it's not just this year. It's been for the past few years now. One phrase or set of phrases that I really dislike are racially charged, racially tinged. You see this a lot, hear this a lot, read this a lot in media reports, and also Twitter and other places, and I think what happens is, for a lot of journalists, when whatever they're writing about involves race, A, it's a shorthand, because it's two words, and B, it allows a writer, when they know race is involved, but they don't really want to get into it or they're uncomfortable with it from really dealing with it, they can just say, oh, it's racially charged, but no, that doesn't mean anything. What does racially charge ...

If I plug my phone into it, will it give my phone power? It's not racially charged. What is that? What is racially tinged? We might as well say sprinkled with racism, finished with a racial reduction sauce, topped with a racial foam. If something is racist, say that it is. If something squarely involves race, say that it does and explain how. Just say the thing correctly, and I know there is a tendency to back away from that, but I think the last several years should have taught us that we need to talk about race and racism clearly, plainly, and directly, and we can't tiptoe around it, so whenever I hear that phrase, it really bothers me.

Barb McQuade:

That's such a good one, and how about this one? I don't have a racist bone in my body.

Kimberly Atkins Stohr:

The racist bone.

Barb McQuade:

The racist bone, right? Right next to the misogynist bone or connected to the misogynist bone. That is-

Kimberly Atkins Stohr:

We need to do some surgical removal of the racial bone.

Barb McQuade:

Yeah. It needs to be banished. The reason that, that phrase bothers me so much is because it suggests that it's about you and it's not about you. It's about the impact on others. That's this whole idea that, as long as I have good intentions, I can't possibly be racist. That's what critical race theory is all about, frankly. You don't have to intend to discriminate against people if there's a systemic effect of it on others, and so that's why this, I don't have a racist bone in my body, strikes me as by the people who say it likely untrue, but even if it were true, missing the bigger picture. How about you, Joyce? Do you have any words that needs to be banished or retired?

Joyce Vance:

Well, I think I'm the contrarian here, although I do agree with everything you say, and Kim, I especially love what you said. I think that those are just words to listen to and live by in the coming year. It's so easy for people to assume that racism exists and keep on going, and I think this is a great year for us to all actually understand what critical race theory means and do what we can do to take down structural racism, but what I don't like is this notion that we need to cancel the word unprecedented, because, and maybe we're going to get a lot of listener email saying Joyce needs to stop this, but I do think we're living in unprecedented times.

We are going to in the next year learn whether or not the justice department is going to prosecute a former president and those around him. I got tired of hearing constitutional crisis during the four years of the Trump administration, but again, it wasn't because we needed to take that word out of our vocabulary. It was because we were constantly living on the edge of a constitutional crisis, and I think what we are tired of isn't these words. It's that damn man who made them part of our every day way of living, and here's to a '22, '23 and '24 where he fades away and not the words.

Barb McQuade:

That's so Joyce. I brought up this funny thing, and you're so much smarter and bigger than I am. That's brilliant. You're right.

Joyce Vance:

I just don't have a sense of humor, honey. I'm sorry.

Barb McQuade:

No, no, no. I think you're absolutely right, and, in fact, the last thing that we need is to become numb to all of these things. Another one on the list that Jill got in response to her tweets was gaslighting, and although you hear it a lot and it's overused, it's not one that I would suggest we retire or banish, because it is a technique that people use to manipulate public opinion, and so it's pretty appropriate.

Joyce Vance:

Are you kidding? Gaslighting is commonplace in my house. This is how it happens. Oh, no. Joyce, you said you would cook dinner tonight. No, I absolutely didn't, Bob. You've been sitting here playing video games all day and I've been working. Oh, oh no. You promised you would cook dinner, every, every week, so yeah, gaslighting stays.

Jill Wine-Banks:

It cannot be retired, because I have a great gaslighting pin, so we need to have a gaslighting episode.

Barb McQuade:

Well, there you have it. We'll keep it there. Well, please send to Jill any words that you think should be retired or banished, because there are certainly some good nominees out there.

Jill Wine-Banks:

Well, that was a fun discussion, but let's get to something a little more serious. Jim Jordan, the Republican representative from Ohio, who never wears a jacket, has received a letter request from the January 6th committee. Not a subpoena, but a request in deference to his being a member of Congress. He is the second member of Congress to be asked to voluntarily provide information and be interviewed. Scott Perry, a Republican from Pennsylvania, was the first. He has refused cooperation. Will Jordan do the same?

He was nominated by the Republican house leader, McCarthy, by the way, leader McCarthy was one of the things that people didn't want to see repeated again this year, to serve on the very committee requesting his cooperation, but he was rejected by speaker Pelosi, because of his comments about January 6th and his communications with then president Trump before and possibly during January 6th, which might make him a witness, who therefore should not be on the investigation committee, and now that's exactly where we are. Will he cooperate in response to the letter? Will a subpoena be needed? Will Congress subpoena one of its own?

I have strong feelings on the subject, but let me start by asking some questions. First, let me start with you, Barb. Legally, Jordan's initial reaction to the request was as vague as his answers to the press about when he spoke to former president Trump. He said, "Well, I just got the letter. I have to decide," and so far he hasn't changed his mind on that. Is this the best way to get his cooperation through this request? And legally, does he have to reply to the letter request? And would he have to respond if it was a subpoena?

Barb McQuade:

I think this is not the best way to get his cooperation. It's requesting voluntary cooperation. Come talk with us, and I think the committee is using the typical courtesies that they give to each other, which is not to drag colleagues before a committee for live testimony, I think out of professional courtesy, but man, in this instance, if there is ever an instance where professional courtesy just ought to be thrown out the window, it is when there is the planning for an insurrection in the very body. They're killing people in that very building, my gosh, so it strikes me as maybe what they perceive to be a necessary step before they issue subpoenas, but I can almost guarantee you, he is not going to cooperate. That is just not Jim Jordan's brand.

You've probably seen him in some of these congressional hearings, where he plays, relies the role of a attack dog, so the idea that he would cooperate strikes me as highly, highly unlikely, but I guess they'll give him a chance. Sometimes, that can be helpful later, if you have to litigate these things, that we tried to do it the nice way and he refused, but he does not have any legal obligation to respond to a letter request. If there is a subpoena, now, that would be unprecedented, but he would be legally required to respond to it just like anybody else, and so then maybe we see him resort to the courts and other things, but I don't think he's got any claim at all of executive privilege as a member of the legislative branch. I don't know.

I suppose he could make one up since he was consulting with the president. He could invoke his fifth amendment rights against compelled self-incrimination I suppose, but I think, ultimately, if they want to compel his testimony, they can do that, and the only thing he could do to stop it is either take the fifth or go to jail to avoid testifying.

Jill Wine-Banks:

Your use of unprecedented there is absolutely correct, so kudos for that, but it also reminded me that, in Watergate, we actually issued a letter request to president Nixon before the subpoena. We, the younger members of the team, wanted to issue a subpoena immediately, because we knew that a letter would be ignored and had no impact, but Archie Cox felt that it was the appropriate thing to do, and so a letter request was sent. Of course, it was denied and ignored, and so we immediately issued a subpoena. We did not delay, we did not wait very long, but we did go through that same process, so Joyce, let's move to looking at what have we learned from Bannon and Meadow's contempt referrals, and from Flynn's challenge to the committee being thrown out of court? Although, it was partly due to procedural errors on his part. Does that instruct us at all as to what might happen in terms of a subpoena to, in this case?

Joyce Vance:

I think it does. I think we're learning a lot about the dynamic with the January 6th committee. They seem to have learned the lessons of the Mueller investigation and of impeachment, where it was difficult to obtain witness testimony, where witnesses either just flat out refused or went to court, and played the whole Trump delay game, so the January 6th committee, which I think we've discussed this, but the committee has hired as staff some former prosecutors, some of Barbs and my former colleagues, some investigators. These are people who are not used to having their subpoenas ignored, and I think that we're seeing that along with a real development of backbone among members of Congress who are on the committee, so they came into this ready for the fight. It wasn't like they were stunned when they stonewalled by Steve Bannon.

I don't think that they've issued a request to Jim Jordan expecting that he's going to voluntarily comply with it. They are simply setting the stage, I think as Barb said, to show that they are doing everything right, giving everyone the benefit of the doubt, so that when they get to the final stage in this sad drama, which inevitably is going to be a request to the justice department, to prosecute Jordan for contempt, they will be able to go to DOJ with clean hands.

And I think that we've seen some effectiveness with the way the committee has proceeded with Mike Flynn's decision to file a lawsuit, instead of just trying to assert executive privilege and bluff his way out, because he knew that if he did that, the committee in its steadfast deliberate manner would go ahead and refer him to the justice department that he like Bannon was outside of executive privilege, and that the outcome would likely not have been a good one. Jill, as you pointed out, the decision in Flynn's case is more about procedural failure than the substance of the case, but nonetheless, I think the January 6th committee is sending a strong message to all of these people, testify or face the consequences.

Barb McQuade:

Can I just interject? How much I admire the way Joyce pronounces privilege. She hits all three syllables. I cram it into two, but privilege. It sounds very melodious.

Joyce Vance:

You should hear my daughter say butter. It has like 12 syllables.

Jill Wine-Banks:

Okay, so Kim, let's move to some of the substance and political consequences of this. First of all, what does the community want from Jordan? What kind of information?

Kimberly Atkins Stohr:

Yeah, so it's really important. Look, Congressman Jordan isn't just one of their colleagues. He was someone who by his own admission was in touch with Donald Trump during the critical period that they are investigating, and what, like all witnesses, the committee wants to know what Jim Jordan knows, what he said and what he did before and during the attack on January 6th. And in part they want to know that, because they also want to know exactly what Donald Trump knew, said and did before and during the attack on January 6th, and Jim Jordan, again, by his own admission, was in touch with Donald Trump. So that in itself makes him a critical, critical witness. And the information that he can give is very important to the committee's work.

I think that sets him apart, again, from like a Steve Bannon. Yes. Although, Steve Bannon was in the middle of this, he's likely not going to be very helpful, and I think he serves as a good example of what happens when you completely flout a subpoena from Congress. So I think that certainly is true, but one of the things that the committee is asking for according to chairman Bennie Thompson is any communications that Jordan had with the folks who were at the Willard Hotel on January 5th, that so-called war room, before this January 6th rally that Donald Trump put on that led up to that coup attempt at the capital.

They want to know what, if anything, he said to any of those folks there, and also more information, of course, about one of the messages that came from Jim Jordan, one of the memos suggesting ways in which Mike Pence could reject the votes of the electors on January 6th, to show that perhaps he was part of this plot to develop a way to try to circumvent the election. So there is a lot of there, there, but this is again something that's unprecedented. It's not often that a committee seeks as a witness one of their fellow members of Congress. And so, yeah, there are political implications here, as well as legal ones. There are a lot of options open to the committee.

Remember just seeking a criminal contempt referral is, that's what they've done so far, but that's not the only thing they can do. They could seek inherent contempt, which would allow the committee to have the sergeant at arms have Congressman Jordan, the next time he's in the capital, bring him before this committee and force him to testify. Now, that would be, that certainly there, that would have huge political implications, because that would give Donald Trump and his supporters a way to say, "See, this was just a politically Mo motivated theater. This has nothing to do with anything with the truth. They're just out to get me and all of my supporters," and that could really backfire politically.

They can also seek civil contempt, which would basically be a judge ordering Jordan to comply and give testimony, as opposed to just saying he's guilty of a crime by avoiding it, so it's tough. It's there are political consequences to everything that they do, because he's a member of Congress, and because he is such a staunch supporter of Donald Trump. So the committee has to move carefully here, and I'm sure they're considering all of this.

Jill Wine-Banks:

And let me just add that, if a judge orders him to testify in a civil contempt proceeding, he can be jailed, until he does comply, so jail can be the result not just of criminal contempt, but also of civil contempt,

but in that case, he would hold the key to the jail door and could unlock it anytime by ... And I will also point out this does raise a very direct executive privilege claim, which I think will fail, but because one of the things they have spelled out in the letter is that they want to talk about Jordan's conversations with the president. So anytime you mention conversation with the president, that leads to a question of privilege, which the only person who can invoke that legitimately is president Biden. And he has waived that. So I would say there's no chance it's going to prevail, but it's just something worth noting. So maybe I'm going to ask all of you how important a witness he is. And if it does get to a subpoena, if you think there'll be political blowback for that.

Joyce Vance:

Well, he would be a great witness, if he had the capacity to tell the truth about these subjects, but he is so deep into Trump world that I just don't think that this is the person who's going to become the John Dean for the insurrection. Jim Jordan is one of those figures who, every time you flipped on your TV screen for a congressional hearing and had to hear him questioning witnesses, it was just so grading. It wasn't the professional demeanor that you expect to see taking place in the Congress. It wasn't about getting to the business of doing the work of the people that you represent. It was always about political points and this sort of sorry tit for tat that was just so unseemly. I just don't view him as having witness evidentiary potential.

He's nonetheless somebody that you have to go through, because he's a key player, a principal player, and this suggests to me that the committee has talked to a lot of people who were around him and around these conversations. They very likely know a lot of what he would say, if he had the capacity to tell the truth. They're giving him that opportunity. They're giving him that and let the consequences fall out how they may.

Kimberly Atkins Stohr:

But Joyce, do you think he's willing to commit perjury for the president?

Joyce Vance:

I don't think he'll testify. I really don't. I think at bottom, he's in such a bad place, right, Kim? Because how horrible would it be for him to have to take the congressional witness stand and take the fifth amendment? That would be tantamount to the whole house of cards crumbling, but I think he'll file lawsuits and say you can't do this to a Congressman, and delay for as long as possible. It's an interesting question. What would he do if he actually got to the point where he was under oath in front of his peers being asked questions? That's just a fascinating pickle for him to be in.

Jill Wine-Banks:

And I think with the evidence that the committee already has, the details of conversations and the evidence they will still get eventually, including all of the records from the lawsuit involving Trump's documents, that it will be something that they could prove perjury on, but we have, oh gosh, we have so many more questions. If he does get subpoenaed and doesn't comply, how do you think the department of justice is going to respond? Maybe I'll direct that to you, Barb and Joyce. Would they treat it like they have Bannon? Or would they treat it differently, because he's a member of Congress? And if so, it's going to make me really mad.

Barb McQuade:

I think it would be considered differently for a couple of reasons. One is every case rises or falls on its own facts, so I think they will look at the facts of the situation. Bannon is a fairly easy case, because he refused to even engage with the committee. He just completely blew them off. He wouldn't show up. And so Jordan is probably savvy enough to at least go through those motions to avoid that, but if not, that could be a factor, but there is special consideration when charging members of Congress with a crime. It has to be discussed with the highest levels of the justice department to ensure that it is not being done for a political purpose.

So I think, I'm sure Steve Bannon also got that kind of scrutiny, but I do think that they have to be extra cautious to ensure not only that they are not using any kind of political motivation in making this decision, but also avoiding the appearance that it's politically motivated. So I think for that reason, it makes it a little harder, but that being said, I think, if the facts are right, it's not out of the realm of possibility that they would charge him with a crime.

Jill Wine-Banks:

I just have to weigh in here, because to me it's he cannot be treated differently than anyone else. I do not think that the speech and debate clause protection applies in any way to this. This is not speech or debate on legislation on the floor of Congress. This is something completely unrelated, and if he is being held above the law, when we know that even the president can't be above the law, and presidents have been subpoenaed, we have a history of that. So it's not unprecedented in that regard, even though there has never been a congressional committee subpoenaing one of its own, but I think I would be very angry if the department of justice doesn't pursue, assuming his behavior is contemptuous and that he does things that would justify it. I think a referral would be the way you have to go, and they would have to act on it.

Joyce Vance:

I think where we're really headed here is a conversation that centers around this notion of the crime fraud exception. That means that even privileged conversations aren't cloaked with privilege, and it's a weird problem and maybe a good topic for us to take up in full down the road, because there's a little bit of a chicken and an egg problem here. To say that there's a crime fraud exception problem, that these conversations aren't privileged, because they were discussing crimes, they were discussing insurrection. They were discussing interference with the election. You have to make this value judgment that a crime was being contemplated. And that's really the problem that DOJ sits on the horns of in making these considerations, but I think, if Barb was the attorney general, and if I was her deputy attorney general, we would do a review of all of the evidence for her.

That's really the important thing, right? You have to look at each case on its own merits. What you have to avoid is making a political judgment and that cuts both ways. That means he doesn't get treated worse, because he's a politician from the opposing party. You have to be scrupulously fair in how you consider the situation. He also though, doesn't get any benefit, because he's a member of Congress. And in this country, we have a proud tradition of indicting members of Congress, like Jack Abramoff, when they commit crimes. They too are required to comply with the law. They cannot be above the law. I say all that to say DOJ has a difficult job here. It's not as easy as we would like for it to be, or as they would like for it to be, but I have confidence in the folks that are there, and that they'll navigate this territory carefully and properly.

Jill Wine-Banks:

I agree completely with what you said. And I will just add very brief statement that during Watergate, we faced this exact question of subpoenaing the tapes, and we very carefully picked only nine for the first subpoena that we felt we could make the strongest argument were not discussions about politics or policy, but were in furtherance of the obstruction of justice. And so we would pick a tape that was John Dean, and I'm going to close with just asking who you all think might be the John Dean of this investigation, if there is anybody strong enough to be the John Dean, but we were very careful, because we took a conversation where he said, "This is what I told the president on this conversation."

And we knew that, that was criminal. Or we had timing that indicated this is the first conversation he's having with the attorney general after the break in. And so we know that they're going to be talking about the break in, and we were able to convince the court that all nine of those fell within probable crimes. And that's how we got them. So last question, who do you think might be the John Dean of January 6th investigation? Is there anybody?

Joyce Vance:

I don't think there is one. This is just so different.

Jill Wine-Banks:

I agree with you.

Barb McQuade:

Yeah. So far, nobody has shown up. Maybe somebody whose name is not a household name. I think that we hear a lot about the big names, but there could be other people, staffers and aides and chiefs of staff who are not household names. Maybe it'd be someone like that who comes through and tells the truth.

Jill Wine-Banks:

I think that's right. I think that there will be a number of smaller versions of John Dean. It'll be people who look their future squarely in the eye and realize it's time to, as prosecutors will often say with defendants, have a come to Jesus meeting.

Barb McQuade:

Joyce, I know you've been knitting many of your holiday gifts. Have you been using any online shopping and using Honey?

Joyce Vance:

Well, a girl does have to buy yarn, if she's going to knit, and I've fallen in love with Honey, who helps me find the best deals on everything that I need and yarn that I don't need, because I have enough to last for the rest of my life, but Honey is great. What do you think Kim?

Kimberly Atkins Stohr:

I love Honey. I have been, I was done with my Christmas shopping weeks ago, in part, because I didn't have to wait. Yeah, I didn't have to wait for the sales or Black Friday and all of that.

Participant:

Such an overachiever.

Kimberly Atkins Stohr:

I know. It was great. I've been, well, maybe I continue to shop for myself, but in addition, that's why Honey is so great. I knew I was going to get the best deals, because they would make it easier to find all of those codes that you want to enter at the end of your online experience. What about you Jill?

Jill Wine-Banks:

I have been a longtime user of Honey. I signed up for it ages ago, and it has been consistently wonderful. If there is a possible discount anywhere in the universe, Honey finds it and adds it immediately to your online purchases. You don't have to look individually. You don't have to do a Google search for coupons for whoever the vendor is. Honey does it all for you. And these days, of course, we all shop online, and we can't help feeling it when the promo code box taunts us at checkout, but thanks to Honey, manually searching for coupon codes is a thing of the past. Honey is the free browser extension that scours the internet for promo codes and applies the best one it finds to your cart, getting you the perfect deal. They support over 30,000 stores online with everything from tech to popular fashion brands, and even food delivery. And so far, Honey has found its over 17 million members over two billion. That's \$2 billion in savings.

Kimberly Atkins Stohr:

It is so easy. I wish I had been using it for ages. So you know when you get to your, the checkout section of your favorite sites and you see that coupon code, well, the Honey button drops down and all you have to do is click apply coupons. And then you wait a few seconds as Honey searches for coupons it can find for your site, and when it finds one that works you'll watch prices drop. It's that easy.

Jill Wine-Banks:

If you don't already have Honey, you could be straight up missing out on free savings. It's literally free and installs in a few seconds. And by getting it, you'll be doing yourself a solid and supporting this podcast. So go on, get Honey for free at joinhoney.com/sisters. That's joinhoney.com/sisters, or look for the link in our podcast notes. And please don't forget to use the slash sisters, so that we get credit for your signing up.

Kimberly Atkins Stohr:

All right. Up next, we are discussing the verdict in the case of former Brighton Center police officer Kim Potter, who was found guilty of both first and second degree manslaughter on Thursday. I want to start with you guys just to get a sense, and we can start with you, Joyce. Were you surprised by this? Especially, A, given I heard a lot of legal commentary after this trial, after both sides closed, that thought a conviction would be difficult in this case. And then we also know that the jury asked a question, including what happens if they couldn't come to a verdict? So were you surprised by this verdict and why?

Joyce Vance:

I was a little bit surprised, only because I'm jaded from prosecuting cases in a district that had a pretty strong history of prosecuting police officers for excessive force or other kinds of misconduct, and all too often getting a hung jury in a case where we thought the evidence was very clear. So you get jaded over time, but something really interesting happened here, Kim. And unless I misheard the judge, when she was announcing the verdicts, she indicated that they had reached the verdict on the second charge,

manslaughter two, two days earlier than they reached the verdict on the manslaughter one charge. So I suspect that's what was happening. They probably had a pretty easy time getting to a verdict on negligence and the holdup, the lengthy deliberations were over manslaughter one. That's what provoked the question on what do we do if we can't reach agreement? So it sounds like, at the end of the day, the jury had a little bit easier of a time getting to guilty than many commentators suspected they would.

Kimberly Atkins Stohr:

Yeah. And so that turns on the difference between negligence and recklessness, right? Whether that her draw a firearm, even if you accept of what she said was true. She thought she was drawing a taser. She said, taser, taser, taser, yet drew her firearm and had it in her hand for seven seconds before firing it, did that rise to the level of recklessness? Which is that higher standard. What do you guys think about the verdict? Were you surprised? And specifically at those different standards.

Barb McQuade:

I've been grading law school exams that slice through that exact issue of the difference between negligent homicide and recklessness for manslaughter, and the malice that you need for murder. And just to explain the difference, negligence means that she should have known better, that there was a risk, she should have known there was a risk. And so she should have checked twice to make sure she knew which weapon she had in her hand before she fired it. And it seems like it was pretty easy for the jury to figure that out, because they had training officers testify that there's training in this, so that officers are aware of the same. And in fact, she's a training officer herself.

Recklessness requires a slightly higher level. That requires that she actually knew of the risk and disregarded it anyway, when she didn't check twice to make sure she knew what weapon was in her hand. And that's difficult, because you often get a jury instruction along the lines of we can't read what's in another person's mind, and because can't read what's in another person's mind, we have to look at all the surrounding facts and circumstances, what they said, what they did, including their training and experience. And so based on her training and the fact that she's a training officer, I think that there is very, very strong circumstantial evidence that she did know there was a risk that you would use the wrong weapon, and that's why you need to double check and shoot it, but it's a harder question.

And I think that's the difference, is whether she should have known there was a risk or whether she actually knew there was a risk. And in light of the testimony and the other evidence we heard in this case, of course, she knew that there was a risk of using the wrong weapon, and what could happen if you use a gun when you think you're using a taser. So I think it was the right result. As Joyce said, I tend to agree that I think jurors are, give extra deference to police officers who have to make decisions under challenging circumstances. Split second decisions, matters of life and death, but here where she said it wasn't that she thought she needed to use lethal force, is that she was trying to tase him and she just goofed. And at that level, when you're dealing with those kinds of issues, you're not allowed to goof, because you didn't bother to check twice.

Kimberly Atkins Stohr:

Jill?

Jill Wine-Banks:

I have a slightly different view, because I was actually able to watch the closing arguments with my husband. And he was like, "Definitely guilty. She's going to be convicted." And I was making arguments saying, well, what about, what about, what about? And I think in the end of the day, as lawyers, even as prosecutors, and I've been both a prosecutor and a defense lawyer, we see nuances that the jury just doesn't necessarily see, and that it was obvious. I thought, I changed my mind from a hung jury to that she would get convicted when they asked to handle the weapon, and seeing it you know there's a big difference, but if you hold it, and you feel the weight of one and the size of one versus the other it can't be a mistake.

When you pick up your service weapon, it feels very different than a taser. And the other thing was all the testimony about your dominant arm and where she kept the service weapon. I think the evidence ended up being very compelling. How do you reach across your body with your dominant arm to take the wrong weapon out? That got to me as well. I think my husband is right and he was, so I'm less surprised by the verdict.

Kimberly Atkins Stohr:

And so she will be sentenced I believe either in February or March. In the meantime, the judge ordered her held without bail. So what aggravating or mitigating factors do you think is going to go into the sentencing, and how will the fact that the judge recommend that she not be released? Her attorney ask that she be released on bail. The judge said no. She faces roughly seven years for the first degree charge and four years for the second degree charge under the state's sentencing guidelines. What do you think will happen there, Joyce?

Joyce Vance:

So there was an interesting conversation after the verdict came in back and forth between the lawyers with the judge talking about Blakely factors, and it suggests that there will be some consideration and effort by the prosecution to enhance the sentence to go higher within that guideline range towards, I think there's a 15 year max on the manslaughter one. I might be off on a number.

Kimberly Atkins Stohr:

I believe so, yes. On the first degree, yes.

Joyce Vance:

But as you point out, the guideline is a seven to nine year range. I think we'll hear an argument from the prosecution, will say this is a police officer, a law enforcement officer who did nothing to help this man after she shot him. Instead, she collapsed and said, "Oh my God, I'm going to go to prison." Me, me, me, me, me, without making any effort to render care. She had no way of knowing that she couldn't have saved his life. Her first thought should have been to help him. And it wasn't. And so I think we'll see some sort of an abuse of office or something along those lines to enhance the sentence.

Kimberly Atkins Stohr:

What do you think, Jill?

Jill Wine-Banks:

Agree with Joyce, and it'll be very interesting to see what factors they rely on, but clearly this collapsing, and it was not just her saying, oh, me, me, me, but it was getting the attention of the other police

officers there to render her aid, instead of helping someone who might have lived had aid been rendered immediately. That to me is an exaggerating circumstance that will increase the sentence.

Kimberly Atkins Stohr:

What do you think Barb?

Barb McQuade:

Yeah, I agree with both of those things, that I think those are aggravating factors. Sentencing guidelines are very mechanical in their application. You get two points for this minus one point for that. I think that she will get credit for her career as a law enforcement officer and for serving the public in some way, if not a numerical credit that somehow implicitly in the judge's decision there will be some mitigation for that, but I think those facts, the recording captures her in real time, what she said. There was also injury to members of the public and fellow officers, because she failed to alert people on the scene about exactly what had happened, so I think those will come into play as well. I don't think she'll get 15 years, but I think she could get a little more than the seven to nine years that we've been talking about.

Jill Wine-Banks:

Another factor is that she was a training officer who could have said don't make this stop and probably should have said don't make this stop, and didn't. And although there was no racial animus expressed or proved in court, I think there may be some lingering doubt about whether this was a racially motivated stop.

Kimberly Atkins Stohr:

Yeah. And on that point, for me, what I'm hoping that the result of this verdict, as well as the Derek Chauvin verdict in Minnesota, and beyond, what I hope the impact could be is on reform. We've seen at the state and federal legislative level police reform just go unaddressed in a way that's really shocking, after the last two years that we've had and the protests that we've seen over Black Lives Matter. The inaction has just really been shocking and disappointing. So one thing that I am hoping, aside from the fact that this shows some transparency and accountability to the public, which is really important, it's important for police departments, it's important for communities that perhaps police departments now will see, okay. When there are problems with our policies, when there are problems with our training, when things like this happen, it's not just a matter of as long as we fight it and hold that blue line of resistance, it's okay and we can get through it, and we don't have to change.

People will go to jail. Police officers could go to jail. There will probably be civil cases that will come for this. We still have qualified immunity that will be an impediment to some of these civil trials, but at least now police departments, I hope, will say, okay, you know what? We really need to find better training, use better training methods, and to ensure that no one accidentally mistakes a taser for a gun. We need to maybe change the way we do deescalation. We need to change our policy when we decide whether or not we approach a car based on something like a hanging air freshener that technically is illegal. Maybe we should change the way that we do those stops. Maybe if there is an active warrant for someone, we prioritize finding them at their home and not stopping them in a vehicle.

There are so many things that they can do, even if the motivation is just to keep their officers from going to jail. I will take that if it results in fewer people dying the way that Daunte Wright did. So do

you guys think this provides an opportunity for police departments to reform themselves, even if the laws don't change to force them to do it?

Barb McQuade:

I think it does Kim, and I think that some departments are already having some of these conversations, but when you have a moment like this, I think it catches everybody's attention in a way that sometimes voices are not heard when they have ideas. When you see something like this and show how it can really bring some very severe consequences for failure to change policies, I think suddenly people start paying attention.

And so one of the things you mentioned that I think is very worthwhile is for police departments to review their policies about when you can pull someone over. Certainly, if there's somebody who is posing a danger to a community, I think all of us would want police officers to pull them over, whether it's because they have a warrant for a serious crime or they're operating their vehicle in a manner that is very dangerous to the public, but for things, as you say, like an air freshener or a broken taillight or expired tags, those kinds of things, those are things that can be handled with a citation.

You write down the person's license plate number and you send them a letter, and you say you're out of compliance. Please comply with this within the next 10 days or whatever it is, or you will get a ticket for doing this. And I think, if your goal is public safety, that is a much better way of obtaining public safety than having these confrontations that pose, number one, risk to motorists, but number two, maybe even more importantly, risks to police officers. They say, "I don't know who it is I'm pulling over when I stop that car." It's a very dangerous counter. And so rather than having all of these dangerous encounters, it seems like we could eliminate a lot of them.

Now, I think the pushback to that would be, and I've heard this before from police officers, "Yeah, but you'd be surprised at what we find. So often, we just do a routine traffic stop. And before you know it, we found dope or guns, or something like that," but is that the way we want to conduct searches in our society? When we care about not only public safety, but also about individual liberty, I don't think any of us would want to be pulled over for a minor, it's not even a traffic infraction. A minor compliance infraction that leads to a full search of our vehicles. And so I think that, that's a policy choice that we need to consider, and maybe need to draw in a different place than we have in the past.

Joyce Vance:

I just have to say that y'all are spectacularly more optimistic than I am, because I think police departments that are already on a trajectory towards criminal justice reform will do what you all are suggesting. I think it's the departments where they're the worst problems that will just remain intransigent and dug in. And so I feel compelled to say, yet again, I wrote about this. I think my piece is in the show notes a couple weeks back, after the Ahmaud Arbery verdict came in. We are long past due to pass the George Floyd act. If we cannot make that bare minimum level of progress in requiring, not prevailing upon the good auspices of police departments that are inclined to do so, but requiring a minimum standard of constitutional policing in this country, then this problem continues to be unaddressed and predominantly black men are at great risk in any encounter with police.

It's the holiday season, and even with the pandemic, Bob and I have been getting out a little bit. We've been to some neighborhood parties where everyone's vaccinated, boosted and tests before they go, and I had a wonderful red wine last night. I need to track my neighbor down and find out where she got it. Where do y'all get your wines from? Kim?

Kimberly Atkins Stohr:

Yes. I've been really enjoying Cameron Hughes wines. And one tradition for Christmas is that my husband makes Cornish hens for Christmas dinner, and the Cameron Hughes Lodi Zinfandel pairs so nicely with it. I'm really looking forward to having that with our dinner this year. And it's certainly a great bottle to bring if you're going to a celebration.

Jill Wine-Banks:

Like you, I love bringing wine as a gift whenever I go somewhere. And even now, while I'm not going very many places, except to small gatherings at friends who are fully vaccinated and boosted, it's still a great gift. And Cameron Hughes is terrific. I recently gave a bottle of their Napa Valley White Meritage, which they describe as being a rare, elegant Bordeaux style white wine. And the important thing about it is it's produced with classic French wine technique at a top Napa Valley estate. And it's priced at only \$16 a bottle, which is less than half of what you would pay for that in its original branding name or in a tasting room.

Kimberly Atkins Stohr:

Yeah. And 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 their prices high. Well, 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 fast, so drink the best wine and save.

Jill Wine-Banks:

I love how they save us money on really good quality wine. So go to chwine.com today, to get 20% off the already great prices, and you get free shipping too, when you buy three or more bottles. Just enter our code, sisters, at checkout. That's chwine.com with the code sisters for 20% off three bottles or more, plus free shipping. Great wine, 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:

The shadow docket is a term used for the docket the Supreme Court uses to decide emergency orders and summary decisions without oral argument. That term was coined in 2015 by University of Chicago law professor William Baude. The shadow docket is a break from ordinary procedure, or at least it used to be. Its use has become much more frequent, but it's not as suspicious as the name makes it sound. It's frequently used as a process for emergency motions like last minute death penalty appeals. There are those sustained concerns about how opaque the shadow docket can be, and whether it leaves the lower courts without sufficient guidance on what the law is after the Supreme Court makes a ruling. So that takes us to this unusual announcement yesterday by the Supreme Court involving federal vaccine requirements. The court will hear oral argument on January seven. Kim, can you help us sort it out? What are the issues here? Is this part of the shadow docket or something else? Unpack all the legalese for us, please.

Kimberly Atkins Stohr:

Yeah, so it's for really interesting. In fact, dare I say that it's unprecedented? Sorry.

Joyce Vance:

No. Drink.

Kimberly Atkins Stohr:

Sorry, so yes, the Supreme Court set a January 7th argument to hear a challenge to federal vaccine mandates. There are actually two federal vaccine mandate, and it's unusual. It's really unusual for a number of reasons. One, it's on a Friday. Anybody who's paid attention to the US Supreme Court knows there are usually two argument weeks per month in the months that they hold arguments, and they're usually Monday, Tuesday, Wednesday, or if Monday's a holiday, they'll just be Tuesday, Wednesday, and that's it. They added this on a Friday. I've covered the Supreme Court for 15 years and I've never seen a Friday argument, so that alone was interesting.

It's also an argument on an application for a stay. And that gets to Joyce's point about the shadow docket. Normally, the way things work is someone asks the Supreme Court to take up a case, and what they do, that is called a writ of certiorari that requests to take up a case, and the court will grant a writ of certiorari. And what happens in the ensuing months is people submit briefs, amicus, friends of the court, people outside who are not parties to the case, but who have of an interest in it, they will submit briefs. Supreme Court will set schedule an argument. It takes months and months, and sometime before the term wraps up in June they'll issue an opinion.

In this case, for the third time this term alone, the Supreme Court has scheduled argument in what is normally a shadow docket case. It's a procedural element of the case. They schedule the arguments in a matter of weeks, a very, very short time schedule, and it is expected that they will issue an opinion very quickly as well. For example, in that Texas abortion case, that opinion came in a matter of weeks instead of a matter of months. Usually, big controversial cases like that don't come out, 'til the end of the term.

So all of this is very different, and it's because, I believe, of all the increased attention we as well as other folks have been giving to the fact that the US Supreme Court had been using the shadow docket increasingly to issue rulings that have a broad impact on a lot of people, whether it was challenges to local mandates about social distancing that was made by church groups for example, who said they wanted to be exempt from it. And in the process, the court was really expanding their religious rights jurisprudence, but they were doing it in a way that didn't have arguments. There was no transcript. There was no opinion. There was no way we know who voted for what, just in a really opaque way.

That was not good for public trust in the institution. I think they heard that. And I think now that's why we're hearing arguments in these two cases, so there are two cases. One involves the employer mandate. Any employer over 100 people are mandated by this Biden order that was issued through the Occupational Safety and Health Administration, that they either have to require vaccinations or regular testing. Another one was issued by the center for Medicare and Medicaid that applies to healthcare employees, that they either have to be vaccinated or tested regularly. They were challenged by business groups and GOP led states, so this is a procedural issue, right?

It decides whether this, it can go into effect essentially, and stay into effect. So even though it's procedural, this is the bag. This is the game. Either it's approved by the US Supreme Court and Biden can do it, or they don't. And I think that's another reason why they're having arguments in it, making it more transparent. So they don't issue an opinion like this in a late night order where nobody knows it's coming and nobody knows exactly why they reached the decision that they did.

Joyce Vance:

Thank you for that, Kim. That makes that so much clearer. It's a fascinating case for so many reasons, including the procedural ones you identify. I am very intrigued that the court did not shut down the mandate while it hears the case. In other words, that mandate continues in effect. OSHA is beginning to take baby steps towards enforcement. For CMS, you can really get the rational reason, right? If you're the federal government, maybe you should be able to say that medical workers who are administering your programs have to be vaccinated. Maybe you could even otherwise have liability if you didn't do that. And of course, OSHA I think was the big surprise here.

When Biden went forward using the OSHA authorization, nobody really thought workplace safety rules, but I remember when we discussed it on the podcast, Barb had this great argument where she said, well, you can have to wear a hard hat on a construction site, so why not a vaccine in the middle of a pandemic? It's going to be fascinating to watch how this piece of the vaccine mandate goes forward, but Jill, this is not the first vaccine mandate case that the court has heard. Can you talk with us a little bit about where the court has already been on this issue, and talk with us about how the court has tended to rule when people are trying to challenge mandatory vaccination?

Jill Wine-Banks:

Sure, and there's two parts to my answer. One goes back to 1905, when there was a Supreme Court case about a Massachusetts state mandate for the smallpox vaccine, and the court ruled that, that was perfectly legitimate, that there was no violation of anyone's 14th amendment rights by the state imposing a mandatory vaccine, and that it was a proper use of the state's police powers to protect its citizens from the ramp and spread of a pandemic. So that starts the jurisprudence, I would say, back in the early 1900's, but they have ruled on some state mandates and have basically said states can do it. So the cases that Kim is describing, OSHA and Medicaid, Medicare, are a very different question. That is the question of how much power the executive branch has that it has been given by Congress? Can the federal government impose these kind of mandates?

And I think that you, Joyce, in your response have made a very clear and compelling case. I think, or going back to Barbara's original comment, if you can be mandated to wear safety goggles or a hard hat on the workplace, why can't you be required to have a mask on and a vaccine to protect other workers from dangerous situation? And in light of Omicron, that seems even more logical. And the same is true about the mandate, particularly think about nursing homes, and if medical personnel don't have to be vaccinated. They can spread to a very vulnerable population the virus, because they're not vaccinated. And so it seems to me that it's a very good time and case for the Supreme Court to look at the federal power to do this, but there is no inherent federal power, except what's set forth in the constitution, and that's a little vague on their power. The federal government has no power that isn't assigned to it in the constitution.

Joyce Vance:

Barb, I'm interested in your take on this. Jill lays out where the Supreme Court has been and makes I think a really compelling argument for why you might want to have the federal government involved, but is it that easy? We have a constitutional form of government where we tend to reserve powers to the states, unless there's an expressed grant of authority to the federal government. Do you think these federal mandates will stand up to scrutiny by the Supreme Court?

Barb McQuade:

Well, you draw an important distinction, because we have seen this Supreme Court uphold all of these state-based mandates, but it's a very different animal when we're looking at the federal government. The sixth circuit court of appeals issued an opinion written by conservative judges saying that both OSHA, which is the one that has issued the workplace mandate, and the Center for Medicare and Medicaid Services, CMS, is the one that has issued the healthcare mandates. That each of them have statutory authority that has been delegated to the executive branch to issue rules that are necessary to protect those workforces. And so it seems very logical to me that they have that authority and that they've done that, and that the court should stay out of it and let it play out, but of course the court isn't looking at what is good or bad policy.

It is deciding whether these two agencies have this authority. And one thing I think that is swirling around all of this is there has been a movement by the Federalist Society for the past couple of decades against what they refer to as the administrative state. Saying that the executive branch has become too big, that there are all of these, some people call it the deep state, but bureaucrats who make up all these rules, too many rules that apply to all of us, and that sometimes these rules exceed their statutory authority. And so they're not really saying whether it's good or bad policy. They may say vaccines are good policy, but they're focused on this idea of whether these administrative agencies have this authority to do it.

So, although, I think it's a very strong case in favor of keeping it, I do worry that some of those who do have this worldview, that the administrative state has grown out of control and needs to be reined in, that on that procedural basis could find it important to strike this down, but I'm glad it's getting a full airing. I'm glad that this is going to be in the open and not in the shadows. As Kim has said, really important. And a number of people have been calling out the Supreme Court on its continued use of the so-called shadow docket. And I'm sure we had a huge part to play in that, Kim. I noticed that you included us in taking credit there, and I'm sure it was. I think probably Justice Gorsuch probably listens to us a lot.

Kimberly Atkins Stohr:

I bet you he does.

Barb McQuade:

Yeah. And probably thought, "We've got to have an open hearing on this, or otherwise-"

Kimberly Atkins Stohr:

We've got to do better.

Barb McQuade:

Kim Atkins-Stohr and Joyce Vance are going to be on me.

Kimberly Atkins Stohr:

You know, you guys, there are some things I like to do at the end of the year. I think about my charitable contributions and make sure that I've given to the charities that I care about. I make sure all my tax documents are in order. And I also make sure that I have the insurance that I need for my needs, and on that, Joyce, what do you use to make sure that you can find the policies that might be best for you and your family?

Joyce Vance:

It's really hard to navigate all the options out there, and also your family circumstances change. We've had kids get older, we've got some new things that need insuring. Policygenius is a really great option, if you want to be up to date and make sure you're getting the best deal.

Barb McQuade:

I concur. Policygenius makes it easy to compare quotes from top insurers all in one place, and getting started is easy. Just head to policygenius.com, answer a few questions, and in minutes you can work out how much life insurance coverage you need, and compare personalized quotes to find your best price.

Joyce Vance:

You can save 50% or more on life insurance by comparing quotes with Policygenius. They have licensed experts ready to help you navigate the shopping and buying process, with service that has earned Policygenius a five star rating across thousands of reviews on Trustpilot and Google.

Barb McQuade:

The Policygenius team works for you, not the insurance companies, and you can trust them to offer unbiased help and advocate for you at every step, until you're covered. They won't add on extra fees or sell your information to third parties. They've helped over 30 million people shop for insurance since 2014. You could be next.

Joyce Vance:

So head on over to policygenius.com to get your free life insurance quotes and see how much you could save. That's policygenius.com, or look for the link in our show notes.

Barb McQuade:

Well, you know our favorite part of the show is always answering listener questions. We get a lot of great questions and we have to choose which we're going to ask, but we hope you'll send your questions to us. You can email them to us at sistersinlaw@politicon.com, or tweet using #SistersInLaw. If we don't get to your question during the show, please keep an eye out on our Twitter feeds throughout the week, where we'll answer as many of your questions as we can.

Our first question comes from Kelvin regarding the discovery phase of lawsuits filed against states enacting voter suppression laws. For instance, if the NAACP Legal Defense Fund and Marc Elias are suing Georgia. Can they get access to emails, text messages, calls, and documents of Florida, Arizona, and Ohio state officials to establish conspiracy or coordination?

Joyce Vance:

I think the answer here is maybe. The way the question is asked, it ranges a little bit wider than you'd expect, because what you can do, if you're say the LDF and you sue the state of Georgia, and you're probably not going to, you're going to, there's this whole question of who's the proper defendant in the case? You can only get discovery that's in their possession. So you can't, for instance, from the Georgia entities, get material about Arizona, but if, for instance, you are developing a wider ranging conspiracy theory, you might be able to take depositions from other people. It really depends on the specific allegations in your case, and whether or not people you seek discovery from are really aggressive about keeping you from getting it. Sometimes, someone whose deposition you notice will sit for it. In the case

that's suggested by this question, I suspect that there would be vehement opposition to anything that went very strictly beyond the confines of what Georgia was doing.

Kimberly Atkins Stohr:

Yeah. I agree with everything that Joyce says. I think the answer is maybe, and it depends a lot on the judge, because, while it is absolutely true in litigation there is discovery and it can produce a wide range of information, that's only, A, if people comply with discovery requests and submit them, and if they go challenged, if a judge does or doesn't say, look, let's limit this, let's limit the scope of this discovery. Let's get to the documents that you really need. And it doesn't always end up producing quite as much of that wide ranging information. And certainly, if the plaintiffs want to move expeditiously, they'd be willing to go along with the limited discovery to move forward. If they think they can still make their case. So we'll have to see.

Jill Wine-Banks:

I would add to that, that if this is really to prove a conspiracy or some coordination, it would mean that the state being sued, Georgia in this hypothetical, had received those emails. So they would be in the possession of the officials in Georgia. And so therefore, they might be able to get them under that theory.

Joyce Vance:

Yeah. We should say that there's a distinction between criminal and civil conspiracies. I think the question contemplates some kind of a civil Ku Klux Klan type conspiracy, which is very different from a criminal conspiracy charge.

Barb McQuade:

All right. Our next question comes from Carrie. Carrie writes, "I know many of you have made significant career changes. Why did you decide to make a career change? How did you go about deciding what your next move would be? What did you learn from the process? And what, if anything, would you do differently?" Kim, how about you?

Kimberly Atkins Stohr:

Yes, I did make a major career change. I don't know what I would do differently, because I'm really happy where I am now. I think that I made the right decision. I started out as a civil litigator, as I've mentioned, working straight out of law school, my own caseload, going to court, arguing cases, doing the very thing that I thought I wanted to do. And I realized that I wasn't fulfilled in doing it in that I couldn't imagine spending the next 20, 30 years of my life doing that. And that I missed journalism. I was a pre-law journalism major in college. I wrote for my school paper and really enjoyed that, and contemplated, maybe I will go into journalism instead. I wasn't sure.

I was moving to New York at the time. And I both took the New York bar and applied to Columbia Graduate School of Journalism. Got my Columbia acceptance before I got word that I had passed the New York bar. And just took that as a sign that I should go ahead and go into that program. And I'm very glad that I did, but I think it's just a matter of listening to, you need ... Your vocation is something you spend a great deal of time on, and it needs to make you happy and fulfill you. I think part of my problem too, is I work better when I have four or five jobs. And at that time I only had one, and now I have a nice, comfortable roughly five jobs. And so I'm much happier.

Barb McQuade:

Jill, how about you? You've had a number of different jobs.

Jill Wine-Banks:

I have. It's not just a number of different jobs, but it is different careers. In terms of jobs, within law, I started as a prosecutor, but moved to become in private practice. Then becoming general counsel of the army. Then back to private practice. Then becoming the deputy attorney general, the State of Illinois, and the solicitor general of Illinois. And then as the chief operating officer of the American Bar Association, but it was in that position that I went, I really like running a business. I like managing people. I like making sure that we have the proceeds to do the pro bono work that the ABA does so very well, and decided that I wanted to become a corporate business executive.

It took me a year of actual, really looking for a position in that, to convince someone that my experience as a lawyer qualified me to be a corporate executive. And I loved my job in corporate. It was, I worked first for Motorola, and then for Maytag, and did international business development and loved every single minute of it, and knew that it was the right choice for me, that I had correctly identified things that I really liked about my jobs in the past, which all involve some management. General counsel of the army manages a lot of lawyers. It's the largest law firm in the world. When you consider the judge, general corps and all the other lawyers, the corps of engineers and the [inaudible 01:14:46] procurement lawyers.

So it was the right move for me. And then I ended up returning to what has always been my love, which is public service, as the head of career education, career and technical education for the Chicago Public Schools. And then I finally retired and wrote an op ed, and that op ed led to my ending up being an MSNBC legal analyst, which means that I finally returned to my college degree, which was journalism. And I've made those decisions based on sometimes just the pure luck of availability, but also on analyzing what are the things I have enjoyed in each job and what are the things I haven't liked? And where could I maximize the good and minimize the bad? And they've all worked out to be absolutely terrific. And they all required some risk taking. Changing careers is tricky, but it's worth it when you get into something that you really love. And I have loved each of my jobs and each of my careers.

Barb McQuade:

That's great. How about you, Joyce?

Joyce Vance:

Well, I had a sudden career change when I left the justice department after more than 25 years. The night before Donald Trump was inaugurated, I made a decision that I would resign before he became the president, and I had this really rosy vision of what I was going to do. I actually thought that I would take a little bit of time off, get caught up on Netflix, do some gardening, and it didn't really work out that way. Actually, Barb, one of our former colleagues, Tom Perez, who had run the civil rights division when you and I were there, called me early in the morning on that first Monday after I resigned and said he had something he wanted me to get to work on, and I was like no. It was six in the morning, but Tom is a very difficult person to resist. And so I worked on a little project with him, and then just kept going. And I thought that I was headed to a job, like what Jill has done.

I was talking very seriously with a company of taking on a general counsel role, and with a couple of law firms. They were all fabulous opportunities. I would've been incredibly fortunate to have any one of them, but the opportunity to teach dropped into my lap and it felt so right. I immediately

knew I wanted to continue working with young lawyers and helping them figure out what they wanted to do with their careers, because I'd been the beneficiary of so many people who had helped steer my career the right way. Having the chance to do the work that we've done, being legal analysts, both on television and here with the podcasts, is just really icing on the cake. Helping other people in our country come to love and understand the legal system the same way we do, and carry forward that commitment to public service a little bit as though we'd never left the justice department.

Barb McQuade:

Joyce, I know people often confuse the two of us, and it's becoming-

Joyce Vance:

All the time, right?

Barb McQuade:

Are we the same person? Because that's exactly my journey.

Joyce Vance:

How many children do you have, Barb?

Barb McQuade:

Four.

Joyce Vance:

Four here.

Barb McQuade:

Yeah. I don't knit and I don't raise chickens, so that's how you can tell us apart.

Joyce Vance:

You could knit, and I think you would like chickens, if you had some.

Barb McQuade:

All right. Well, that's all the time we have. Thank you for listening to #SistersInLaw with Jill Wine-Banks, Kimberly Atkins Stohr, Joyce Vance, and me, Barb McQuade. You can send in your questions by email to sistersinlaw@politicon.com, or tweet them for next week's show using #SistersInLaw. Go to politicon.com/merch to buy some of our fun swag. This week's sponsors are Honey, Cameron Hughes Wine, and Policygenius. You can find their links in the show notes. Please support them as they really help make this show happen. To keep up with us every week, follow #SistersInLaw on Apple podcasts or wherever you listen, and please give us a five star review. It really helps others to find the show. See you next week with another episode, #SistersInLaw.

Joyce Vance:

So y'all, I have to tell you that last night we had our neighborhood Christmas party. I mentioned before everybody's vaccinated, boosted and we tested. And so I was talking to one of my neighbors just a

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couple houses up and she was telling me how much she likes the podcast, but she said she was getting a little bit worried about herself, because she's starting to feel like she's having conversations with us. And she and I obviously talk all the time, but she was like, "Yeah, I feel like I'm talking to Kim and Barb and Jill." So I reassured her that, that was what we wanted. And I said, when COVID is over and we can take the podcast on the road, I'll convince everybody to come to Birmingham, and we'll get together with our neighbor and do dinner.

Participant:

Oh, gladly.

Kimberly Atkins Stohr:

Oh, that would be so much.

Participant:

For sure.

Participant:

In that case, merry Christmas y'all.

Participant:

Thank you all. Merry Christmas, everybody. Have a wonderful holiday. We'll see you next week.