

Kimberly Atkins Stohr:

Happy New Year to all of our listeners. And welcome back to #SistersInLaw with Barb McQuade, Joyce Vance, Jill Wine-Banks, and me, Kimberly Atkins Stohr. One thing I have absolutely loved is seeing the tweets from people who got sisters in-law merch for Christmas and they were posting it. I hope you've seen those posts and you've seen us wearing our merch. You can still order yours. You can go to [politicon.com/merch](https://politicon.com/merch), where you can get yourself a t-shirt, a hoodie. The hoodie is so warm, y'all. It's so comfy and much, much more. So today we will be discussing the verdict in the Ghislaine Maxwell trial, the legal battle between the New York Times and Project Veritas and former New York Governor Andrew Cuomo, and the difference between civil and criminal charges. And as always, we'll be taking your questions at the end of the show, and we look forward to that.

But before we get to it, since it's a new year, I wanted to ask all of my fellow sisters, if they're making new year's resolutions. I will start by saying generally speaking, I don't like the concept of new year's resolutions. I feel like it's so negative. It takes something that you're failing to do and makes you feel judgmental of yourself. And then you make this vow to do it differently in the new year. And you set yourself up for expectations where you're likely to fail. I think it's really negative. So I have been trying to do it for the past couple years in a different way, in a positive way, in which I take something that I did or I tried in the previous year and said, I want to do more of that. And so this year it is actually an idea of my husband, Greg, to enjoy the city that we live in, in a way that we would if we were a tourist visiting.

And a lot of times when people come to DC, that's the only time I will go to a Smithsonian or go see some of the cool things that DC has to offer. So we've been on weekends doing it ourselves. A lot of the things are either easy or cheap or free. We went to Roosevelt Island and walked around, then there's this amazing Memorial to Teddy Roosevelt that I didn't even know exists in the 15 years that I lived in Washington, DC. And we went to Lincoln's Cottage which is in the Petworth neighborhood of DC. And that's one of the sites where he wrote the Emancipation Proclamation. We were able to stand in the spot where his desk was where he was doing that. There's so many cool things like that here, and there are cool things like that wherever our listeners are living. You can go to Atlas Obscura and check out some of the things that might be in your neighborhood that you don't know, so I highly recommend doing that. Jill, what's your resolution for 2022?

Jill Wine-Banks:

Well, I can't top that so I'll have to adopt it. I don't actually see resolutions as a negative thing. And by the way, my office at the Watergate Office Building when I was in private practice, right after Watergate, overlooked Roosevelt Island. So I actually knew that one, but Lincoln's Cottage, that's new. I want to see that, and I want to know if you've ever been to the Women's Military Museum at Arlington? If you haven't...

Kimberly Atkins Stohr:

I have not. I'm going to put that on our list.

Jill Wine-Banks:

Put that on your list and look for the glass ceiling that's pierced by two stairways. You will love it.

Kimberly Atkins Stohr:

That's great.

Jill Wine-Banks:

It's fabulous. Fabulous. But yeah, I do the usual things of promising myself that I will stick to Noom, that I will work for saving democracy and world peace. Those are maybe not so achievable, but I think they're good goals for all of us to think about at this time of year and how important it is right now to be doing that. So as a child, those were the things I thought about, and I still think about. And now, I think they're more important than ever. And what about you, Barb?

Barb McQuade:

Well, I've got my self-help resolutions, but I think more relevant to this podcast... You know the old quote by Gandhi of be the change. I want to help promote hope. I feel like so often members of the media, podcasters, or people on Twitter are contributing to this feeling of chaos, and that we are living in a time of uncontrolled factors. And I think that that is a big goal of anti-democratic forces, to create so much chaos and despair that people just throw up their hands and they get numb to it, and complacent and say, I'm so exhausted. There's nothing I can do about this. And so I think that trying to bring calm to chaos and explain things in a rational way, staying engaged in issues, but trying to offer solutions and calls to action, as opposed to just contributing to the chaos. So that's my goal is to sort of promote hop with rational thinking. So, that's my lofty goal, anyway. How about you, Joyce?

Joyce Vance:

It's no surprise, Barb, that people are constantly getting the two of us confused because I have a very similar resolution. I've actually got two for this year. And one is in the area of voting instead of just letting people think that our rights are subsiding, to help people figure out how they can connect and what they can do. Is it, taking your kids with you when you vote and creating familial urgency year around voting, can you help people get IDs? Can you help people get rides to the polls? Can you register people? So, one of my goals is to try to be a clearing house for information, especially in the south, for people who don't think that they can do anything so that they actually can get engaged in that process.

So maybe this is more work for us together. It sounds like I think people are going to need to feel positive and upbeat if we're going to get through 2022. And then my second one is sort of a selfish, personal resolution. I've decided to priorities more time for yoga. All too often, I get to the end of the day and I haven't practiced yoga. And I thought, I'm going to set aside time for me first, and I'm going to do yoga first when I get up in the morning, no matter what else is happening and how pressing it is. Yoga and a little bit of meditation time will get priority for me next year.

Kimberly Atkins Stohr:

Well those sound like fantastic resolutions and a great way to kick off 2022. But we will start our show now talking about some of the things that happened at the end of 2021 as the year wrapped up, which included a verdict in the Maxwell trial. Joyce, tell us about that.

Joyce Vance:

On the Wednesday before the end of the year, Jeffrey Epstein's longtime associate and according to prosecutors, and now a jury, his co conspirator Ghislaine Maxwell was convicted on five of the six charges involving grooming young girls and sex trafficking girls that federal prosecutors brought against her. So first off, Kim, I want to start with you. And one of the most pressing questions I have about this case, because you told us yesterday, you had finally sorted it out. What is the definitive pronunciation of Maxwell's first name?

Kimberly Atkins Stohr:

So, it's French. It is Ghislaine.

Joyce Vance:

Ghislaine.

Kimberly Atkins Stohr:

With a hard G. I think if you are really trying to speak it in French, it would be Ghislaine. But I think just saying Ghislaine for our purposes is fine.

Joyce Vance:

My pronunciation has evolved over time, and I so appreciate knowing that. So talk with us, Kim, a little bit about what the charges that well was convicted of are, what conduct they involved, and the real question here is, were you surprised that she was convicted on five of the six counts?

Kimberly Atkins Stohr:

Yeah, so I was pleased that she was convicted on five of the six counts. For people who have been watching this trial, which didn't get quite as much media attention as some of the other recent trials, not in the day to day, anyway. Overall, what she was accused of was really, really ghastly. We know that Jeffrey Epstein was accused of some of the most vile sex trafficking and sexual assault actions that you can imagine. Well, what Ghislaine Maxwell was essentially overall charged with was essentially being his accomplice and befriending women, encouraging them, grooming them, normalizing what turned out to be a really horrific sexual abuse, and really helping to facilitate this whole operation happening. So having watched a couple of documentaries about it and heard a lot of interviews of people who were victims of this, I was hoping that there would be a conviction there, and there was.

She was convicted of five of the six charges that she faced. One was conspiracy to entice minors to travel. So a lot of this conduct involved getting minors, bringing them on trips in which they were forced into horrific situations with Epstein and other people. Count three, that was count one, count three was conspiracy to transport minors with intent to engage in sexual activity. That's related to that as well. Count four was transportation of a minor with intent to engage in criminal sexual activity. Count five is sex trafficking conspiracy, and count six is trafficking of a minor. So each of these involves specific people who were trafficked.

The only count that she was acquitted of, and I want to get you guys' reaction to that, is count two, which is enticement of a minor to travel. That was the one count that she was acquitted of. So overall, I was happy about this conviction. I feel like one thing, one overarching theme of 2021, is that we saw some convictions in cases that we weren't always sure that we would get, but in this case I was really hoping that we would. And my personal opinion is that justice, at least in the convictions was served here. We'll see what happens in the sentencing.

Joyce Vance:

Well, Kim raises a fair question, Jill. What do you think? We've got this interesting feature of the verdict where she gets acquitted on count two, which is a substantive charge. Do you have an explanation for what's going on there?

Jill Wine-Banks:

Yes, it's interesting because the first count is the conspiracy to entice, and the second is the actual enticement. And what's interesting is that you can be guilty of conspiring, which is agreeing with other people to do something, but not be guilty of the underlying crime. And that seems to be what happened is there was a failure of evidence for some reason on the specific act of enticement of a particular minor that was charged in count two, but she was found guilty of conspiring to do that. So it's just a question of one small piece of evidence that for some reason, the jury didn't find compelling. And because of the way sentencing works, it's not going to make probably that much difference in terms of her sentence.

But, I think we'll have someone else talking about the actual sentencing. So it was a very interesting outcome, and it shows how carefully the jury considered each piece of evidence and whether there was an agreement that is conspiracy, and whether there was an overt act, which has to happen as part of the crime. But it could be that they found that someone else actually arranged the transportation and that, although she agreed to it, she didn't do the transportation, and that someone else did. And so they were careful in their findings.

Joyce Vance:

The appellate lawyer in me is always very happy to see a split verdict like this.

Jill Wine-Banks:

Yes.

Joyce Vance:

Because it does signify that the jury weighed the evidence very carefully. And that's something that on appeal, I think we'll hear the government say. This was not a haphazard or a reactionary jury, not a jury that felt pressure. So I do think that that's important, and we'll hear more about that. Barb, you wrote a great piece in the Daily Beast yesterday about 30 seconds after the verdict was out. I thought it was very insightful and very helpful in putting this verdict in context because this really is part of a societal shift in how we treat people who are trafficked for sex. All too often, they've been viewed as part of the crime. Increasingly, we're seeing a willingness to treat them as victims. Can you talk a little bit about the sentence that Maxwell faces and what that sentencing process and timeline will look like?

Barb McQuade:

Yeah. So she was convicted of these five counts as we've discussed. The highest of those counts is the one for sex trafficking of a minor, which carries up to 40 years in prison. The others are either 10 or five each. And I think the total, if they were all to be served consecutively, would be 65 years. One thing that's interesting, Joyce, you and I spent a lot of time going back and forth on this yesterday, was the statute has evolved over time. And so her conduct occurred going back to the nineties and into the early two thousands. So you have to look at the statute that was in place at the time of her conviction. So now there are mandatory minimums and up to life in prison for conviction of some of these crimes. For her, it's 40 years on the longest count and then five or 10 on the others for a total of 65.

But of course the sentencing process involves sentencing guidelines as well. That's the absolute statutory maximum that anybody could possibly get. What actually happens is, the next thing that will happen is, she will be interviewed by the pretrial services and they will look at everything about her, her criminal history, any good works that might mitigate her sentence, any aggravating factors that might add to it. They'll calculate sentencing guidelines, and from there, the lawyers will argue whether she should be punished above or below or within that range. And I don't know what that number will be,

that calculation has to occur, but I think we're talking about decades as opposed to months or years. And in terms of timeline, I would say, in my experience, typically a sentencing hearing is about three months from the date of conviction because of all that work that needs to be done. And so I would expect her to be coming back sometime in the next three months to learn what her sentence is.

Kimberly Atkins Stohr:

Can I ask a quick follow up question there? You're talking about good works and mitigating factors, and I know we talk about this normally in sentencing. In a case like this, what possibly can mitigate that sentence given how horrific the claims are against her?

Barb McQuade:

Yeah. So again, a judge is going to have to make a decision and maybe they decide there's nothing that can offset what you've done here, but everything's fair game. Like in the Michael Flynn case, they pointed out that when he was a teenager, he jumped into a lake and saved someone's life. And all that counts, his military records. So I don't know what good work she's done in her life. Maybe she has done charitable work and other kinds of things. This is one of the areas though, Kim, where I find huge disparities between the haves and the have nots, because a defendant who can afford a good defense attorney will also have a body of work that they can point to. And they will produce a sentencing memo that talks about all kinds of things about, they were the chair of the board of this organization, or they were president of the symphony foundation for a few years.

And all these kinds of things that people are working two jobs don't have the opportunity to do, nor do they have a lawyer who will go dig that all up and also submit letters on their behalf that this person has done all of these great benevolent works. They have mentored people. They've done all these good things. So I don't know what, if anything, she has done that could be good, but I'm sure her lawyers will look to find things. Or it could also be, Kim, things like if she suffered abuse herself during her life, that would be something that they would share with the judge. I don't know whether any of that will make a difference to the judge, but I imagine that's what the lawyers will be looking to research over the next three months to put in a sentencing memo.

Jill Wine-Banks:

And I think we have to point out the prosecutors will be looking for the aggravating circumstances of this case. And there are plenty of those. The fact that it is minors is always an aggravating circumstance. The fact that she committed perjury, although that's a separate trial, so she hasn't been convicted of the perjury, but she certainly never has admitted and she hasn't cooperated.

Joyce Vance:

I think sentencing is really fascinating and something that people aren't always aware of is what's called the parsimony principle. At the beginning of the statute, under which federal judges sentence, the language says that a defendant should be sentenced to an amount of time that is no longer than necessary to achieve the goals of sentencing. And then Congress has set out all of these goals of sentencing, punishment, but also factors like rehabilitation come into play. And the judge is authorized to take into account the defendant's background and upbringing, but as Jill points out under the sentencing guidelines, they're accelerating factors. And so your sentencing guideline range can be increased because you had for instance, vulnerable victims. But also I think fascinating in this case, prosecutors are able to argue relevant conduct. That means conduct that wasn't necessarily proven at trial, but that comes into play.

And in a case like this one where you have a lot of additional victims, there will be a real fight between the defense and the prosecution about what conduct is fair game, what can't be used to enhance a sentence, because it hasn't been found by a jury and what can be under the guidelines. So we could all be in for real education about the sentencing process and maybe even some fresh legal ground. That's going to be interesting. I have a lightning round question for each of you, though. I think the gorilla in the room right now is now that she's been convicted, is Maxwell going to cooperate? Will she name big names or offer prosecutors any evidence to help them go after additional defendants? So I want to know what each of y'all think, starting with you, Kim.

Kimberly Atkins Stohr:

I don't know in this case. I'm not sure. I hope so. In part, and this gets to a bigger issue, and I want to hear what the other prosecutors have to say about this, but it gets to the bigger issue while I'm very glad that Ghislaine Maxwell was convicted of this because clearly she was one of the people at the center. Jeffrey Epstein is no longer alive. I know that this was not an operation run by women, and that there are a lot of men involved in this who committed atrocious acts as well. And it would be a shame if the only person who was held accountable for her actions is a woman in this case.

And so I am hoping that she cooperates. I am hoping that prosecutors have strong cases against the other people who are involved because we already talked about the fact that she was trying to say that she was being accused of the acts of a man. And that was a ridiculous defense, but at the same time, she did not do this by herself. And I hope that other people are held accountable for this. This shouldn't go down in history where the only justice that is served is the justice that is [inaudible 00:20:33] out against a woman. But I want to hear what you guys say about the prospects of cooperation.

Joyce Vance:

Jill, what do you think?

Jill Wine-Banks:

Well, I want to say first that she was not a substitute for Epstein. She was...

Kimberly Atkins Stohr:

No, she wasn't.

Jill Wine-Banks:

A key to this operation. She was an important part and she was held accountable for her conduct, not for someone else's conduct.

Kimberly Atkins Stohr:

100%.

Jill Wine-Banks:

The same is true for all those other men who are now having heart palpitations, worrying about whether she is going to name names. And that includes a lot of people all over the world who are worried. And it includes Prince Andrew who has a civil suit against him by a victim who wasn't in this case, but who will probably benefit from this. But what I want to say about her cooperating is does she have anything that

would be worthwhile to the prosecutors to even listen to? And I'm not sure that she does. The crimes of the others would mostly be state crimes. So it wouldn't be the federal prosecutors who would care about whether she can say that someone else slept with a minor in whatever state it was, and he was all over the place, in New York or Miami. And if she doesn't have something that is valuable enough to them, then why would they work with her and recommend a reduced sentence in exchange for that cooperation if they can't prosecute as a result of that?

Joyce Vance:

So, Barb, I'm curious about your take on this. I suspect you and I are sort of on the pragmatic side of things, thinking about how cooperation plays out in the Southern district of New York. Do you see any potential here?

Barb McQuade:

Unlikely, but I think if she wanted to come to them, the way this works is the defender or the subject comes in first and lays their cards on the table. So before any promises are made by a prosecutor, first, they say, what is it that you're selling? What do you have to tell us? And so it would have to be something pretty great, I think, and also keep in mind, this is someone who's been indicted for perjury. So using her as a witness is going to be a really uphill battle. So it would have to be something pretty fabulous. And I also think it would have to be something that can be corroborated. So she gave information that you could back up with bank records or phone records or travel records or bank records. That might be something that they can talk about.

And I do think that I have seen this where cooperation can be credited in a federal case, even if the charge is in a state case, or it could be that one of these, or more of these men, could be indicted as part of the conspiracy with Jeffrey Epstein and Ghislaine Maxwell. So, I think it's a possibility, but as you mentioned, Joyce, the Southern district of New York takes a very hard line on cooperation and requires a person to tell you about everything they've ever done, and anything that they know about of others. You can't hold anything back, and if they catch you in a lie, the deal is off. So for all those reasons, I'm fairly skeptical that this will actually amount to something, but there's also potential that she could know some things that are very valuable and so I won't close the door. If I were the prosecutor and she said she wanted to come tell us something, I would listen.

Joyce Vance:

I will would too. I don't know what y'all say in Michigan, but in my old office, we used to say that when it came to cooperation, we didn't buy any pigs in a poke. You had to put down what you had on the table. And we had to be confident that we could use it to make a case before we would cooperate someone. In fact, we would often just say, let's go ahead and do your sentencing. And then, we've got up to a year to come back and ask the judge to reduce your sentence based on cooperation. So let's see what you can do, and if we can make use of your evidence and if you can, we'll give you credit for it. But it's a very... The burden is on the punitive cooperator to come up with something.

And I think it's tough to cooperate her against people who in some sense are less culpable or lower down the food chain than she is because she's now been convicted in this overarching conspiracy of grooming and obtaining girls for people. I'm not sure how it works out to have her testifying against lesser participants. Although this could be a unique situation since those were people who were actively sexually assaulting and perhaps raping girls, it might be that this is a unique sort of a situation where it could work. But I think Kim is right. We are just going to have to wait and see.



So Barb, I don't know about you, but I have a confession to make. I do a little bit of extra shopping after Christmas, mostly for myself.

Barb McQuade:

[inaudible 00:25:41].

Joyce Vance:

Something that's really helped me feel less guilty about that this year is that I've been using Honey and saving a lot of money doing that. Have you been using Honey at all?

Barb McQuade:

I have. I've got the app on my phone. And so when I buy things online now, it just automatically looks for discount codes before I get my final total. And it automatically finds me those discounts. So yeah, I used it a fair amount for holiday shopping actually. How about you, Jill, you using the Honey app?

Jill Wine-Banks:

I've been using the Honey app for a very long time. A friend told me about it a long time ago, and I was amazed because it's a free app and it does save money almost every time you shop. If there is a coupon anywhere in the world... Well, anywhere on the internet, anyway, it will find it. You don't have to check for coupons for this particular vendor. They do it all for you. And these days when we all are shopping online, and even more so now that COVID is back, you can't help feeling it when the promo code box taunts you at checkout. But thanks to Honey, manually searching for coupons 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 cosmetics. And so far, Honey has found its over 17 million members over \$2 billion in savings. How does it work, Kim?

Kimberly Atkins Stohr:

I can tell you exactly how it works because one of the presents I got for Christmas was a gift card from my wonderful husband for Saks. And again, I didn't want to go into the store because things are a little dicey right now. I'm trying to be safe. And so I went online and used it, and Honey, I had almost I'd forgotten about Honey, and it popped up. It doesn't let you forget. It was great. So imagine you're shopping on your favorite site like Saks, and when you get to the checkout, 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 the best deals it can find across the internet, and then boom, it enters it for you and you'll watch the prices drop. It's easy.

Jill Wine-Banks:

Follow Kim's advice. 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. Get Honey for free at [joinhoney.com/sisters](https://joinhoney.com/sisters). That's [joinhoney.com/sisters](https://joinhoney.com/sisters). Or look for the link in our show notes.

Barb McQuade:



Last week, a state court judge in New York ordered the New York Times to refrain from publishing stories about the content of memos that were written by lawyers for Project Veritas, and to destroy its copies of the memos. Project Veritas, as you know, is that conservative group that uses undercover reporters and hidden cameras to embarrass media outlets and democratic party officials and liberal organizations. They had sued the New York Times for defamation.

And then in November, the New York Times published article about these memos that were written by lawyers for Project Veritas, advising them on how to use deceptive practices without violating the law. And so the New York Times says it will appeal, and in fact, the judge has stayed the order and says they don't have to destroy their copies of the documents while that appeal is pending. This sounds to me an awful lot like what we refer to as a prior restraint, which we all learned in law school is almost never permissible under the first amendment, but only almost. And so I want to talk about this. First, Joyce, can you tell us, what was the basis for the judge's order?

Joyce Vance:

Well, like you say, almost never, right? Project Veritas argues that the memos that were prepared by its lawyers were disseminated in violation of its attorney client privilege rights. The issue is whether this information, these memos that were in essence, lawyers' advice to a client, and that the Times obtained by the way, in the course of reporting work. They didn't obtain them through discovery in a lawsuit.

Barb McQuade:

Yeah. That seems really important to me.

Joyce Vance:

I think that that is a key factor. It was part of their investigative work. And so the issue is whether preventing them from publishing these stories is a prior restraint from publication that would violate the first amendment. The Times says that there's precedent going back to the Pentagon Papers Case that would indicate that this is a prior restraint. Project veritas adamantly is saying that it's entitled to its attorney client privilege here. So we have this conflict that's been set up between the first amendment and the attorney client privilege. The court rejected the Times' allegation that the memos were a matter of public concern. And it says, no, this isn't a matter of prior restraint. The court writes the Times is perfectly free to investigate, uncover, research, interview, photograph, record, report, publish, [inaudible 00:31:08], expose, or ignore whatever aspects of Project Veritas its editors in their sole discretion deem newsworthy without utilizing Project Veritas attorney client privilege memoranda. So, that's the ruling that will now end up getting appealed.

Barb McQuade:

Yeah. And Jill, let me ask you about the precedent. Joyce mentioned the Pentagon Papers Case. What is that case about? How does that play into the New York Times' position in this case?

Jill Wine-Banks:

So well, before we talk about the Pentagon Papers Case, there is actually a precedent that even precedes my life, Near v. Minnesota in 1931, when the court really established that there can be no prior restraint and that the first amendment rights of the press are so important that it cannot be prevented from publishing. And then of course the Pentagon Papers is very much a part of my lifetime because Daniel Ellsberg was a victim of the plumber's unit, which was involved in the burglary of the

democratic national committee in the Watergate break. And so I've gotten to know Daniel Ellsberg, who felt that he, as a part of the government, had discovered information that was of enormous public interest in terms of foreign policy and war. And he copied those documents and gave them to the New York Times and the Washington Post who then published them.

And they were sued because of national security and the classified information that he was releasing. The court there said, no, that in this case, the public need to know, and the right to publish cannot be stopped in advance. You can sue afterwards for, in the case of Near, it was a question of defamation. You can sue for defamation after the fact of the publication, but you can't stop the publication. And so Pentagon Papers basically reaffirmed that even where there's national security documents, the public interest can outweigh the potential harm and the media's role as a watchdog is so important that it must be protected. And I think that we're going to see more of those kinds of things happening now as courts weigh even things like the release of the president's documents, the public need to know versus the executive privilege. And the same thing here is okay, the public need to know versus attorney client privilege, assuming that this falls within attorney client privilege.

Barb McQuade:

Yeah. Kim, I want to ask you. You're the journalist among us, in the Pentagon Papers Case, I saw the post, I remember this. And I've read the case fairly recently. We discussed this in my national security and civil liberties class. The court there did say that the order in that case was an impermissible prior restraint, but it did leave a little bit of room for prior restraints. And the examples they gave were troop movements or dates of warships were launching. So they did say there is some room for this. So what are your views about the boundaries of what's fair game for reporting under the first amendment? Is there anything that's off limits? And if so, where do reporters think about drawing that line?

Kimberly Atkins Stohr:

Yes. There are some very limited areas that is beyond the first amendment, right? But they are very limited, and it's important to understand why. The press is the only industry, the only industry to be given explicit, constitutional protection in the Bill of Rights, right, the first amendment. Congress shall make no law abridging the right to freedom of the press. I know whenever I say this or write this or tweet this, people respond to me saying, no, what about clergy? What about... Yeah, there is a freedom of religion, but the freedom of religion that's in the first amendment belongs to people. The right to exercise, the right to practice. It doesn't belong to the clergy. The first amendment, freedom of press right belongs to the industry. It belongs to the press. So it's taken very seriously. Courts generally, not in this case, take it very seriously.

And as such, it is very broad, but there are limited exceptions. Of course, there are situations, it usually involves national security or security of specific individuals. For example, as a political reporter, there are times that I have known that, for example, the president or other high profile people may be moving, traveling to Afghanistan or some other places where that operation is sensitive and they want to protect them, but have us have the opportunity to be there when he lands. And we do not report that ahead of time.

There are limited situations when it comes to national security, very sensitive, usually top secret information. But generally speaking, it is not something like this. It is not saying, oh, this may be attorney client privilege. And again, Jill is quite right, we don't even know if this is covered by a privilege. That certainly would not warrant a prior restraint. I am actually shocked by this. Prior restraint is something both as a lawyer and as a journalist, that is something that's supposed to happen so rarely. It's supposed to be just an extraordinary circumstance that to have this trial court level. And I know he's

called a Supreme Court Justice in New York, that's the trial court level. A trial court level judge to make a ruling like this and not expect it to get overturned to me is really, it's just, it's quite shocking.

Barb McQuade:

Yeah, well let's talk about the privilege for a second. So Joyce, I want to ask you if this material is privileged and as we say, we're not really sure whether it is or isn't right? Because it got disclosed somehow. We don't know if it was the client who disclosed it, but somehow through its reporting, the New York Times ended up with this material. The judge says it's privileged. If it is privileged, can the press report on that even if it hasn't been waived by the client, or is it subject to other crime fraud?

Joyce Vance:

Yeah. I think that's what we're about to find out. It helps to clarify what the attorney client privilege involves because it's a rule of evidence. So a client can keep a lawyer from testifying in court proceedings or even from releasing information during court proceedings. And more broadly, attorneys agree that they won't disclose any of the content of their communications with their clients. So in other words, it's about the relationship between an attorney and a client, not an attorney or a client and a third party like the New York Times, which is, I think why it's hard to figure out here, really, whether the information is still privileged. If you discuss this information with a third party, you often use the privilege, but there are of course, exceptions to the privilege. And I know Barb that your favorite one, one that you and I talk about a lot is the crime fraud exception, which seems to have just sort been picking up its ugly little head in a lot of different circumstances lately.

And here it is again. So to the extent that communications with a lawyer are in furtherance of a crime, if that's actually the case, then communications aren't shielded by the privilege. And here, again, that's not clear in this situation because I think it's fair to go to your lawyer and talk about something that you want to do. And especially in a regulatory area, for instance, to figure out where's the dividing line between what you can do and what you can't do? But if you are planning to commit a crime, let's just draw an example out of the air. Let's say you're planning on stealing a political candidate's daughter's diary. And you're trying to make plans to do that. Well, certainly those sort of communications with your lawyers wouldn't be covered by the attorney client privilege. So there is some line drawing that needs to be done here. And again, we'll figure this all out when the case goes on appeal and some more judges get to take a look at this situation.

Kimberly Atkins Stohr:

That was quite a hypothetical, Joyce.

Joyce Vance:

It was, wasn't it? It just sort of popped into my mind.

Barb McQuade:

Well, Jill, let me ask you this. So Joyce discussed the idea that, maybe this isn't covered by the privilege at all, if it fits under this crime fraud exception, which is quite possible, what if it does? Does it matter how the reporter obtained the material? If only a client can waive the attorney client privilege, what if the reporter used some sort of manipulative means to get it or obtained the memo from someone else, should the privilege be respected? You probably see at the end of all these emails that someone will send you and it say anything in this email is protected by the attorney client privilege. And I always

think, well, no, it's not, not if you send it to me. But I think they're trying to cover even inadvertent disclosures. Must the privilege be respected if the New York Times, through its own reporting, obtained this document?

Jill Wine-Banks:

So that's obviously a complex question and let's start with, is it privileged? And the answer is, we don't have enough information to say one way or the other. And I would agree with Joyce, I know in private practice, when a client comes to you and asks a question, they don't want to be told, no. They want to be told how they can do what they want to do. They may say, here's what I'm planning to do. Can I do that? And you can say, well, you can't do it that way, but here is a way that you could do it to get to the same result. So I would consider that advice within the privilege, but we don't know exactly what this was about. And the privilege can be waived by other than the client. Yes, the client can waive it, but inadvertent accidental disclosure to a third party, you're not even aware you're doing it, but you reply all to a memo.

And you say something that you intended for the lawyer who is the person you intended to get it to. But if it went to other people, it's not protected. So there are a lot of ways to lose it. A very good resource for any lawyer or client is the American Bar Association, which I was proud to be part of for a long time, has a lot of writings on how you can lose attorney client privilege. And they stress that it can be voluntary, deliberate, or it can be accidental. And anything that is business advice rather than legal advice isn't within the privilege to begin with. But when you're talking to three people, your lawyer and you are talking and the third person is a consultant. It's not privileged if the consultant's in the room unless he's absolutely essential for the advice that the lawyer has to give.

And so the answer is that if it gets to the reporter through legal means, if the reporter stole the documents, entered the lawyer's office, rifled through their files and took them, clearly that isn't a waiver. And clearly they're guilty of theft as well as a violating the attorney client privilege. But if they got it from, and we have no idea how they obtained it... During Watergate, a janitor basically alerted the Washington post that our garbage contained a lot of memos. And that's how the Washington Post got memos. Of course there's no attorney client privilege there, but it was information we didn't want out. It could be that somehow a janitor found these memos and gave it to the newspaper. So we don't know how it happened as long as they didn't steal it directly. I think that it could be something that they have a right to publish.

Barb McQuade:

All right. Well, here's one question I want to ask Kim. When the media outlet is the New York Times, I think those arguments that you make about the press and the right to free press is enshrined in the first amendment. And that all makes a lot of sense, but do these rules apply equally to less established media? Nowadays, anybody in their basement can be a blogger. If we've got an extreme right wing blogger or Steve Bannon's radio show, do they get the same protections as the New York Times. Or how about WikiLeaks, which was being used by Russia to disseminate stolen email messages? Julian Assange is charged with encouraging Chelsea Manning to steal department of defense computer files so that he could publish them on WikiLeaks. Are those tactics permissible as part of the news gathering process?

Kimberly Atkins Stohr:

So the way it works... The overall question is for the most part, yes. And the way that it works is you need for first amendment purposes, and I want to separate that from other laws that might be broken. For first amendment purposes, you need to cut a wide swath around the press because the problem is if

you start picking and choosing what constitutes press and start allowing prior restraint rulings against certain organizations, because you don't really think that they're news, that sets up precedent that can be used against media organizations, including the New York Times. Which is why a lot of times, including in the Assange case, you saw a lot of editorials in his favor on the first amendment question. I want to be very specific. So of course there can be other laws that are in place, laws against things like criminalizing dissemination of classified information, for example.

Certainly as Jill pointed out, there are defamation laws that are meant to prevent people just from putting out falsehoods, lies, things that can destroy people's reputation. There are laws in place that keep good reporters, legitimate reporters on their toes and make sure we do our jobs, and we report out and have the facts behind us, which is where a lot of these other organizations can get caught up. But I think it's very ironic, perhaps hypocritical, that an organization like Project Veritas, which puts itself out as a media organization and demands the kind of first amendment protections that other media organizations get. And by and large, like I said, the default I think is that they should to protect other media organizations would then turn around and try to shut down another one. And I think that that is one of many reasons why this case should go against them.

So, while the situation in the world is what it is, I'm trying to do my part. And I haven't been going to my mani pedi place as much, but it's okay because I've been using Olive & June to do my own nails. And I found it to be really easy. Have you heard about this, Barb?

Barb McQuade:

Well, I have only because my daughter uses it. When you have nails like these I'm displaying them for the grip here. It's really difficult to tamper with perfection, but my daughter loves Olive & June. She loves the colors. She loves how easy it is to apply. So she's a very good test sample. How about you, Jill?

Jill Wine-Banks:

Well, I'll hold up my nails because I actually...

Barb McQuade:

Thank you.

Jill Wine-Banks:

I'm wearing Olive & June today, and it's really wonderful. I will admit that I still go for a manicure and occasionally a pedicure, but the quality of Olive & June is so good and the colors are so fabulous that I actually am bringing bottles of it to my manicurist to use. And she really likes the quality and she's very, very strict about quality. 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:

It's so easy to use, especially with the poppy, a patented brush handle that makes it easy to paint with both of your hands, not just your dominant one. My home manicures with Olive & June have been lasting for at least seven days without chipping and my pedicures last for up to a month. It's been great.

Jill Wine-Banks:

Wow. Olive & June is a game changer and now my nails always look professionally done, much more affordably. I could never see myself doing a home manicure before this, but now I actually love doing it.

Joyce Vance:

Getting beautiful salon perfect nails at home is now a reality with Olive & June. So visit [oliveandjune.com/sisters](https://oliveandjune.com/sisters) and use code SISTERS for 20% off your first mani system. This is an exclusive offer. You can only get it here with #SistersInLaw. That's O-L-I-V-E-A-N-D-J-U-N-E .com/sisters. Use the code SISTERS for 20% off your first mani system.

Barb McQuade:

My favorite part of all of that was when Jill described her nails as show stopping. I imagine Jill sitting in the audience at a big show in Chicago...

Kimberly Atkins Stohr:

And everyone goes...

Barb McQuade:

Someone notices her nails, stop the show everybody. Did you see Jill's nails? Oh my gosh. Wait, everybody. House lights, please. We got to see these nails. Showstopping.

Jill Wine-Banks:

So let's look at Andrew Cuomo. Our friend and former MSNBC colleague, Mimi Roka, is the new DA of Westchester County, and she's taking a lot of heat for her decision not to indict the former governor on allegations of sexual misconduct in her jurisdiction. Twitter sees her decisions as very black and white, you're either for or against Cuomo. Of course the law is far more nuanced than that. So let's analyze the facts and the law, and whether DA Roka did the right thing. So Kim, let's start with the facts, the facts that she was examining to decide whether to bring charges.

Kimberly Atkins Stohr:

Yeah. So recall that Attorney General Tish James put out this big report over the summer that detailed a number of allegations against the now former governor of New York. One of those cases arose out of Westchester County where the governor had home. And another case is not related to James' report, but that came to light and so District Attorney Roka was looking into them. One involves, and I think we remember media coverage of this, a police detail, a state police detail who Andrew Cuomo wanted on his detail, who was not necessarily had reached the level to qualify for it, but he made sure that she was on it. She claims that at one point she said in the course of her job, is there anything else I can do for you? And he said something to the effect of, yes.

Can I kiss you? And she froze, afraid of what the implications to her job might be if she refused, said, sure. And then he did and said something to the effect of, oh, well, if that's not against the rules or if I'm not going to get in trouble for that or something like that. There was another incident where a woman alleged that he grabbed her by the arm and similarly kissed her against her will at a high school in Westchester County. And so both of these cases were investigated and that's what was the basis. It's important to note that Mimi Roka in her statement said that she believed both of these women, that she believed that these things happened, that there was evidence that supported that these allegations were credible, but that they just did not rise to the level of criminality under New York law.



Jill Wine-Banks:

So, Barb, let's talk about New York law. What possible criminal violations might there have been, and are there any possible federal violations that could have happened in that? And why do you think that she reached the conclusion that those laws weren't violated?

Barb McQuade:

Well, looking at her statement, as Kim pointed out, it seems to be that it was a legal problem, not a factual problem here. And so I looked at all the statutes, there's a whole section in New York law on sexual assault, all the various kinds, starting with first degree, rape all the way down to something called forceable touching. And even at the lowest levels, the least egregious of these crimes requires forcibly touching the sexual or other intimate parts of another, or subjecting another person to sexual contact for the purpose of gratifying the actor's sexual desire. And they describe forcible touching as squeezing, grabbing, or pinching intimate parts of a person. And so I don't know exactly what their thinking was, but it would seem that one could argue that it would be difficult to be able to prove that kissing someone on the cheek is sexual contact.

That a cheek is an intimate part of someone's body. You also have to show that the intent of the actor was for sexual gratification or to degrade the other person. And although, I suppose some might say, I felt degraded when he did this to me, you have to show that he intended to degrade. I think what we would hear from him, whether you believe him or not, is I'm Italian. I kiss people. That was what he said when this came out. And I think while many of us would say, oh, come on, please. A prosecutor typically has to believe that he or she has sufficient evidence such that it is probable that they will obtain a guilty verdict, which means a unanimous verdict by 12 people beyond a reasonable doubt. And so when you've got the physical contact is a kiss on the cheek, unwelcome it may be, and someone who is this, I love to kiss and hug people person.

I think that one could argue that it just isn't going to reach that level of probable conviction under the statutes that talk about sexual contact. But one thing to point out, Jill, in here is that these are solely related to incidents occurring in Westchester County as Kim pointed out. There are these two incidents, the state trooper and the woman at the high school. There are other allegations in the Attorney General's report relating to an account that occurred in other counties, Albany County, where the state capital is located, for example, that could still amount to criminal charges. And then of course there are other remedies besides criminal charges.

Jill Wine-Banks:

So let's talk about those other remedies and, Joyce, maybe you can describe the difference between criminal conduct and civilly compensable conduct.

Joyce Vance:

Yeah, I think Barb makes a really good point here because state criminal law would address one act, one act at a time in one jurisdiction, that's in one county, and district attorneys can only address statutory crimes that happen in their counties. So if you've got conduct that's what I would call awful but lawful, in other words, not technically a crime prosecutors can prove, a district attorney becomes just the wrong actor to try to address that. The real problem with what Cuomo did was a lot larger than what he did in Westchester County. When he asked the state trooper if he could kiss her on the cheek and she felt she had to say, yes, that was a terrible thing, but that wasn't the totality of his conduct. The real



problem was this ongoing pattern of behavior between the governor and others that he came into contact with, especially trooper number one in a number of different counties.

And it's this pattern of harassment and power that's the problem. That's why given the limitations in criminal law, civil sexual harassment laws may actually be a better vehicle here for accountability. They're far better suited to capture this corrupt use of power. It puts, I think in many ways, the victims in control, although it imposes the burden of litigating on them, it lets them identify what they want to put forward in front of courts for correction. And the analogy that I would make, although it's an imperfect one, is to this defamation lawsuit that Eugene Carol has brought against former president Trump, where she's seeking to vindicate the nasty, unnecessary things he said about her after she alleged that he had raped her 20 or 30 years ago. This would actually put the women who were subjected to Cuomo's behavior in the driver's seat, let them put their cases forward and ask courts to impose accountability. So ultimately this may be the real solution to this problem.

Jill Wine-Banks:

And Barb and Joyce, as former prosecutors, let me just ask you whether you agree that Mimi did the right thing. And before you answer, I want to point out that all of us are friends of Mimi. So if that colors your opinion say so, but I'm asking you just as former prosecutors viewing this in the light of facts and law, what you think?

Barb McQuade:

Yeah, I think this is the right call. I know she's gotten some heat on Twitter, but I find it so interesting. Sometimes in public opinion, it's perceived as you're either for Cuomo or against Cuomo. And in fact, the law is far more nuanced than that. I've also seen criticism that she did this because she's a political coward or something like that. I think frankly, it takes political courage to decline prosecution sometimes. But aside from all those politics and other things, if you look at the facts in the law here, you have to prove that there was sexual contact. Kissing on a cheek is not sexual contact. I've also seen other people say on the other side of the equation, well, so much for the Attorney General's report then. I guess that was all a bunch of lies.

No, right. If you read her statement, what she says is I found their allegations to be absolutely credible. What I don't find is that these two incidents satisfy the requirements of the statute. We've talked before about that phrase, awful but lawful. That something complies with the law, unless it is previously defined as criminal by statute, then just something that somebody does cannot be enough to be a crime. And I, think one of the things that causes us to see Cuomo's conduct here in a sinister light is it's a whole pattern of conduct of things that he's done with many other women in many inappropriate ways.

And in other instances may amount to criminal misconduct, but there are other ways to hold people accountable. Criminal law is only one way, and I don't think it fits here. But as Joyce said, there are civil remedies. There are remedies like voting people out office or forcing people to resign from office and public shaming and not allowing him to hold elective office again, all of those things are possible remedies. Criminal law is only one and it has a very, very high bar that needs to be passed.

Jill Wine-Banks:

And Joyce, do you agree?

Joyce Vance:

I love Miriam Roka like a sister. She's important to me and a friend and I wouldn't hesitate to criticize her or say she was wrong if I thought she was. But I think that she did the right thing here. And I think Barb hits the nail on the head when she says the tough thing to do here was not to prosecute. It would've been easy to indict the case and let the jury take the heat for anything that went wrong. But Mimi looked at the evidence and seems to have decided that even if you fully credited these women, which she did, it simply didn't violate the criminal laws. That took a lot of courage. Ultimately that's the right thing to do. We don't prosecute people because we don't like their conduct. We only prosecute if we believe that we can get a conviction, that we can get it confirmed on appeal. She did the right thing here, but it was the hard thing to do.

Jill Wine-Banks:

For sure. And to follow up on something Barbara said, which is about awful but lawful, that's the reason that we have these kinds of disclosures in reports so that Congress, or in this case the state assembly, might change the laws so that they would not be lawful anymore. Things that are awful should be unlawful, but if they aren't, you can't prosecute. But Kim, what are the options that women have in the face of workplace harassment? The kind of thing that we saw in the pattern and practice of Governor Cuomo as reported by Tish James, what do you think women should be doing to protect themselves? And what kind of actions can they take to stop this behavior?

Kimberly Atkins Stohr:

So it's important to note that the actions that were laid out in this case are things that women face in all kinds of industries, not just in the public sector, but in the private sector as well. And that it is, even though in this case, we were talking about criminal liability is important to underscore, or that it is unlawful for someone to sexually harass someone in the workplace. It is unlawful for someone certainly to sexually assault someone. It's even unlawful to create a hostile work environment in your workplace. And if these things are happening to you, the first thing that I would say as somebody who did employment discrimination litigation civilly is document it. If any of this occurred in written form, in emails, in text, make sure you keep and preserve it. If you had a conversation like the one that the trooper alleged and was believed by prosecutors had with the former governor, text it to yourself, write an email to yourself, just to memorialize your thoughts about your recollection of what happened in real time. Keep as much documentary evidence as you possibly can.

If you believe that you have been harassed or there has been a hostile work environment or retaliation for making an allegation is also unlawful. If any of those things happen to you, you can file a complaint with the equal employment opportunity commission in your state, the EEOC. Now this is the hard part. I would suggest anybody in this position get an attorney because the attorney is going to know the timelines. There are very short timelines that you have to file a complaint like this. They're going to know whether you would file an under state or federal law. They're going to know what statutes may be violated. And I understand that only people in a privileged position to be able to afford a lawyer often have that opportunity. You can file an EEOC claim without a lawyer, but I would advise that you have one.

So I would, at the very least look for legal aid organizations that can help you at lower or no cost to obtain legal representation in order to do that particularly, if you are afraid of retaliation for making this claim and just keep the evidence there and listen to the advice of the legal professional as to what to do next. And they will also know, a lawyer will also know whether or not what happened to you rises to the level of criminal culpability and whether you need to get the police involved.

Jill Wine-Banks:

And I would just add to your very good advice that you make notes of who else heard any of the conversations or saw any of the conduct. Having witnesses noted is very important, and you can report it within your company. You can report it to friends because that even helps. When Clarence Thomas was accused, one of the things that helped was that she had reported it to other people, and that helps the credibility of the reporting. So all of those things are really, really important, and it's a serious issue that needs to be taken very seriously.

With the holidays coming up and COVID rampaging through Chicago and everywhere else, I am so glad that I subscribe to HelloFresh and get three meals a week for my husband and me delivered, all the ingredients, all in one bag, high quality products and great, easy to follow recipes. And the food really looks like it's restaurant quality. It's just delicious. Have you tried it, Kim?

Kimberly Atkins Stohr:

I really have. I feel like a rock star last week because my two stepchildren are home from college and they're wonderful, but they have very different tastes in food. And I made them three HelloFresh dinners over the course of the time leading into the new year, and they liked all three. I just felt like I hit the jackpot because you're right. The ingredients are really fresh. There are things that I wouldn't think to make it home like the biscuit chicken pot pie which was fantastic and was a real crowd pleaser. And it makes things easy. We were able to put it together in well under an hour. And so we were able to spend that time with family as we got back together for the holidays. What about you, Joyce?

Joyce Vance:

Well, it's always a good week for me when Bob cooks, and Bob likes cooking best when he has HelloFresh. He always picks out really interesting recipes too. It's just like you've been saying, it's a big hit when you're trying to feed a lot of different kids with a lot of different tastes. What about you, Barb?

Barb McQuade:

Yeah, I'm a big fan. Historically, I know this will shock you. I've not been a big cook. Our kids say what's for dinner, what's the phone number of the place we'll be ordering from tonight? Is how we choose our menus historically. But I have found HelloFresh to be really easy, great variety and very healthy eating too. So with HelloFresh, you get fresh pre-measured ingredients and mouthwatering seasonal recipes delivered right to your door. So skip the grocery store, and sign up with HelloFresh to make home cooking, easy, fun, and affordable. HelloFresh features recipes ready in around 30 minutes or less. Plus with their quick and easy meals, 20 minute recipes or low prep and easy cleanup options, you can get food on the table quicker so you can spend more holiday time with your loved ones.

Joyce Vance:

Imagine enjoying recipes like balsamic and fig beef tenderloin or pecan crusted salmon to make holiday meals feel special without the high cost or risk of dining out or delivery. Or go for cozy comfort food like chicken sausage, and sweet potato soup on a cold winter's night. Y'all, I'm starting to get hungry as we're doing this. You can easily customize your order on the app within minutes. You'll feel good knowing that you'll be getting fresh high quality ingredients that go from farm to your door in less than a week.

Barb McQuade:

So don't wait to get started. Go to [hellofresh.com/sisters14](https://hellofresh.com/sisters14), and use SISTERS14 for up to 14 free meals and three free gifts. That's [hellofresh.com/sisters14](https://hellofresh.com/sisters14), and use code SISTERS14 for up to 14 free meals and three free gifts, or get the link to America's number one meal kit in our show notes.

Jill Wine-Banks:

Can we start sharing which ones we've liked because I didn't try this pot pie.

Kimberly Atkins Stohr:

Yes.

Jill Wine-Banks:

But that does sound good.

Barb McQuade:

I've had the pot pie. It is good. My kids like it.

Kimberly Atkins Stohr:

It was so good. It was really good.

Joyce Vance:

Y'all, I made homemade chicken pot pie this week and I made my own pie crust. When just our oldest kid was a baby, I used to make it a lot and call it woo pie.

Jill Wine-Banks:

Showoff.

Joyce Vance:

And I would let him cut out the... No, the point is it is such a pain in the you know what...

Jill Wine-Banks:

Yeah.

Kimberly Atkins Stohr:

Yes.

Joyce Vance:

To make a pie crust.

Kimberly Atkins Stohr:

You would never make it.

Joyce Vance:

And let it harden. Its a once a year thing, so I'm going to have to try that next go round. That's a great idea.

Kimberly Atkins Stohr:

It took a half hour. It was great.

Joyce Vance:

I am all over that.

Barb McQuade:

Yeah, I made that one. It's just like a Pillsbury [crosstalk 01:08:33]

Kimberly Atkins Stohr:

Yeah, on top.

Barb McQuade:

Yeah, yeah, yeah.

Joyce Vance:

That sounds great. I'm not proud.

Barb McQuade:

Yeah, I like it. I made it.

Kimberly Atkins Stohr:

The ratio of filling to biscuit was perfect.

Jill Wine-Banks:

Oh, man.

Kimberly Atkins Stohr:

So, you should do it.

Joyce Vance:

The beef tenderloin sounds really good. I think I'm going to get that for next week.

Kimberly Atkins Stohr:

It does sound good.

Barb McQuade:

I still think the barramundi is my favorite, Jill.

Jill Wine-Banks:

That's my favorite.

Kimberly Atkins Stohr:

[crosstalk 01:08:52].

Joyce Vance:

We love the barramundi.

Barb McQuade:

Yes, yeah.

Kimberly Atkins Stohr:

The barramundi. We did the barramundi too.

Joyce Vance:

So good.

Jill Wine-Banks:

Yeah. That's really good.

Kimberly Atkins Stohr:

It's really good.

Jill Wine-Banks:

Really, really good.

Kimberly Atkins Stohr:

It was really good.

Jill Wine-Banks:

And I just made a one pot turkey chili that was so easy.

Joyce Vance:

Nice.

Jill Wine-Banks:

And it really was one pot. It was chopping on the chopping board, put it in the pot. There was no cleanup. It was amazing.

Barb McQuade:

Oh, maybe I'll try that.

Joyce Vance:

That sounds great.

Jill Wine-Banks:

Yeah, I definitely recommend those one pot deals. It was fabulous.

Kimberly Atkins Stohr:

And now we come to one of our favorite parts of the podcast, answering your questions. If you have a question for us, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tweet us using the #SistersInLaw. If we don't get to your question during the show, keep an eye out on your Twitter feeds throughout the week. I know we all do as best as we can to go there and answer some of your questions. So our first question this week is from Kathleen, do federal jurors still care whether a witness is caught in a lie? I will turn to our prosecutors to answer that question. Barb, what do you think?

Barb McQuade:

Yeah, I think absolutely. If they're caught in a lie, perjury on the stand I think is a really big deal. And I think jurors would care about that. But I also think that sometimes lawyers overplay their hand on this when they find someone making a prior inconsistent statement and expose that as a lie and saying, aha. Therefore our jury and their closing argument, you can't believe anything this person said. And I think sometimes they overplay that hand because I think people understand that the real world is messy and nuanced. For example, in the Maxwell trial recently we heard testimony that she described some of the conduct that occurred by Maxwell, many years ago. And they say, well, here's your FBI statement, and you didn't mention that in the FBI statement, did you? Because it's not true. No, they didn't ask me about it. So I think sometimes lawyers overplay their hand when a witness makes an inconsistent statement. But I do think that they care about lies if they're caught in the act on the stand.

Jill Wine-Banks:

I agree with you, Barb, that jurors do care. And I had one trial where the defendant took the stand and told a lie, which I didn't know it was a lie, I just thought it didn't sound right. And I investigated with an agent who was working with me. While the trial was still going on, brought in a rebuttal witness, and I heard one of the jurors as that witness got off the stand say, she caught him in a red-handed lie. And I knew for sure there was a conviction coming my way. So jurors do care about blatant lies. But yes, I think nowadays we all understand when there is a minor deviation. And the surest way to know that someone is lying is if they are a hundred percent consistent from the time they talk to the FBI, to the time they testify in the grand jury, to the time they testify in trial. If they've viewed is the same exact words, you know they're not telling the truth because it doesn't work that way.

Kimberly Atkins Stohr:

All right, our next question comes from, why must you judge? And it is, what lawyers led the defense for Nixon? What was their legacy post Nixon and how will Trump lawyers be perceived in the long run? Jill, do you know what happened to the Nixon lawyers?

Jill Wine-Banks:

I do. And of course we're not talking about John Dean who was a Nixon lawyer, but not in the defense of Nixon. He was in the prosecution of Nixon. The lawyers who defended Nixon, quite unlike the lawyers that I see defending Trump now, were high class, high quality, very well respected lawyers who acted in



complete compliance with all the rules of ethics and truth and honesty and stayed with facts. They didn't make up conspiracy theories. So they all ended their careers with the same good reputations they had when they started.

The lawyers who have been involved in the defense of Donald Trump and in perpetrating the big lie will not end their careers well. We've already had Rudy Giuliani, disbarred. I expect more of that to come. Sidney Powell is up for disbarment. And I think that they also will be paying huge civil penalties for defamation in filing cases and penalties for frivolous lawsuits. There was none of that in this. I would say some of the Nixon lawyers made some strategic errors in things like disclosing discrepancies in the tape. They first came to us and said, there are two tapes that are missing. And then we had a hearing on that. And then they said, after that hearing ended, oh, we forgot to say, and there's a third tape that has a problem. That's bad strategy, but it's not bad ethics. It's not anything that will affect their reputations.

Joyce Vance:

Can I just add to that, though? I think it's disgraceful when we hold lawyers accountable for representing clients who aren't well liked, right?

Barb McQuade:

Agree.

Joyce Vance:

If we believe that everybody is entitled to a defense, that does mean everybody as long to your point, Jill, as the lawyers are being honest and forthright in their representation. And I am reminded that during the Obama administration, a former NAACP legal defense fund lawyer named Debo Adegbile was up to be the head of the civil rights division, and senators on both sides of the aisle voted against his confirmation because at one point earlier in his career, he had represented a Black Panther who killed a police officer. And I thought it was a terrible thing that they held that against him. We need to have lawyers who are willing to do that work. And when we hold clients against lawyers, we diminish the legal system.

Barb McQuade:

It goes back to John Adams, right, who represented the defendants in the Boston massacre who were British.

Joyce Vance:

That's right.

Barb McQuade:

For that exact principle. Totally agree. But it is something we see all too often.

Jill Wine-Banks:

Absolutely. I was on the board of the ACLU when the Nazis marched in Skokie and the right thing to do was to say they have a right to do that, and so I agree completely that you have to. I will tell you one other example. I had a fellowship from the EEC, European Economic Community, and as part of the that I witnessed the Klaus Barbie trial. He was one of the last defendants to be tried for.

Joyce Vance:

Wow.

Jill Wine-Banks:

And as part of that...

Joyce Vance:

Jill, I just have to interrupt and say, is there anything that you haven't seen or done? Because I haven't found it. I'm sorry to interrupt, but I'm always amazed by your experience.

Jill Wine-Banks:

I'll try to keep amazing you. And part of this, I was supposed to meet the defense lawyer, and I called off the meeting because I knew I'd have to shake his hand. And as much as I believe Barbie deserves a defense, I didn't want to shake the hand of the man who was defending him because I had seen the witnesses and heard the testimony and it was too awful to engage with him. So even though I think he deserved a defense, I didn't need to meet that person.

Kimberly Atkins Stohr:

All right. And for our last question, a drastic change in tone, it's from Ryan. It reads, Stephen Colbert has asked every Supreme Court justice this question, and I was curious what you all thought on the is highly contested matter, is a hot dog a sandwich? Okay. In answering this, I'm going to evoke a different talk show host, one who helped inspire me to do what I do, which is John McLaughlin. I'm going to go to each of you, ask your answer and tell you whether or not you're wrong. Joyce, is a hot dog a sandwich?

Joyce Vance:

No, it's not a sandwich. It's a hot dog.

Kimberly Atkins Stohr:

All right, correct. Barb, is a hot dog sandwich.

Barb McQuade:

Absolutely not.

Kimberly Atkins Stohr:

All right. Correct. Jill is a hot dog sandwich?

Jill Wine-Banks:

It is a Chicago icon, and I'm posting a picture of my favorite pin, which is of course a Chicago Vienna hot dog.

Barb McQuade:

There you go.

Jill Wine-Banks:

Huge pin. And no, it's a hot dog and it's different than a New York hot dog. It's a Chicago hot dog.

Kimberly Atkins Stohr:

Okay. So all of you are correct, except I'm going to give Jill only a half point because Chicago coney's have pickles and stuff on them.

Jill Wine-Banks:

Yes.

Kimberly Atkins Stohr:

And as Barb knows, a coney is supposed to have good chili on it and onions like you get at Lafayette and American.

Joyce Vance:

Chili?

Kimberly Atkins Stohr:

That is what a coney is [crosstalk 01:17:35].

Barb McQuade:

And mustard, but that's it.

Joyce Vance:

Chili? No.

Kimberly Atkins Stohr:

And mustard.

Barb McQuade:

That's it.

Joyce Vance:

Mustard and onions.

Kimberly Atkins Stohr:

And Lafayette is better than American.

Joyce Vance:

No.

Jill Wine-Banks:

And piccalilli.

Kimberly Atkins Stohr:

In downtown Detroit.

Jill Wine-Banks:

Piccalilli.

Kimberly Atkins Stohr:

No pickles. Pickles do not belong on a coney.

Barb McQuade:

I'm an American Coney island, girl, Kim.

Kimberly Atkins Stohr:

What?

Barb McQuade:

Because I like the building. You can sit in that little pointy corner on the corner.

Kimberly Atkins Stohr:

Yes.

Barb McQuade:

Like you're sitting in the bow of a ship. I love that seat.

Kimberly Atkins Stohr:

Okay. So for those of y'all not Detroit, Lafayette and American are a half a block from each other.

Barb McQuade:

They're right next door.

Kimberly Atkins Stohr:

There's a big debate. There's a big debate about which is better. I'm a Lafayette gal.

Barb McQuade:

All right. All right.

Kimberly Atkins Stohr:

But to each their own. The reason that a hot dog is not a sandwich is because the bread is connected. A sandwich is between two pieces of bread. A hot dog is in one.

Barb McQuade:

Oh, trick question.

Kimberly Atkins Stohr:

And that is why I believe that it is not a sandwich.

Joyce Vance:

We're obviously going to have to talk about food a lot more. We started with HelloFesh and here we are with hot dogs.

Kimberly Atkins Stohr:

There we go.

Jill Wine-Banks:

I want our audience to weigh in on whether they think the Chicago hot dog or a Coney or a New York hot dog is the right way to go.

Kimberly Atkins Stohr:

And the answer is the Detroit Coney.

Barb McQuade:

Coney.

Jill Wine-Banks:

Chicago, all you guys out there vote for Chicago. Please vote for Chicago.

Kimberly Atkins Stohr:

All right. Thank you all for listening to #SistersInLaw with Jill Wine-Banks, Barb McQuade, Joyce Vance and me, Kimberly Atkins Stohr. You can send in your questions by email to [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tweet them using the #SistersInLaw. We'll try to get some on next week's show. And you can go to [politicon.com/merch](http://politicon.com/merch) to buy some of our fun stuff. The hoodie is amazing, y'all. I highly recommend it. This week's sponsors are Honey, Olive & June and HelloFresh. You can find their links in the show notes. Please support them as they really make this show happen. I should also say you can also find some of the links to all of our latest works in the show notes as well if you want to check that out. And you can keep up with us every week by following #SistersInLaw on Apple Podcast or wherever you listen, and please give us a five star review. It really helps others find our show. See you next week with another episode, #SistersInLaw. All right. Happy New Year, Y'all.

Jill Wine-Banks:

Happy New Year.

Barb McQuade:

Happy New Year, everybody.

Jill Wine-Banks:

Great to have you as sisters for the 2022 coming up.

Kimberly Atkins Stohr:

Yes. Yay.

Joyce Vance:

Love y'all. You don't really put chili on your hot dogs, do you?

Barb McQuade:

Chili, onions, and mustard.

Kimberly Atkins Stohr:

Yes. It's not just any chili.

Barb McQuade:

Yeah, special chili.

Kimberly Atkins Stohr:

It's a special chili. It is runny and delicious and tomato based, and it is fantastic.

Barb McQuade:

Better than ketchup.

Joyce Vance:

I will say when I was pregnant with my first kid, I had such horrible nausea the whole time that I really couldn't eat very much. But every once in a while, I'd get just hit with this intense craving for a hot dog. So I'd run downstairs to this place called Gus's hot dogs, best hot dogs in Birmingham. And I would get a dog with mustard and onions and I would eat it and it would stay down, and I've always been so grateful for those hot dogs.

Kimberly Atkins Stohr:

I would say a close second to Detroit's coneys are the half smokes at Ben's Chili Bowl in Washington DC.

Barb McQuade:

Oh, is that right?

Kimberly Atkins Stohr:

Also covered in chili.

Barb McQuade:

I'm not sure I've had one of those.

Joyce Vance:

I've had Ben's Chili Bowl, but I've never had that.

Kimberly Atkins Stohr:

Oh, the half smoke. You have to have the half smoke.

Jill Wine-Banks:

The half smoke?

Joyce Vance:

[crosstalk 01:20:58].

Barb McQuade:

What's the half smoke, Kim?

Joyce Vance:

That's a date when we can all go to DC together.

Kimberly Atkins Stohr:

The half smoke, it's the type of hot dog, the type of hot dog brat thing that's inside the bun.

Barb McQuade:

It's called a half smoke?

Kimberly Atkins Stohr:

Yes, it's called a half smoke. And then they top it with the chili. And then I have to say, I got my first vaccine shot at Howard University. That's where it was available. And I walked in celebration. It was a beautiful day. And I walked to Ben's and was so thrilled that it was still open because that was in the still fairly early days in the pandemic. And a lot of businesses had closed, and they were still there, DC institution. And I celebrated by getting a half smoke after as literally the first restaurant that I walked into in the pandemic was after I get my vaxx.

Jill Wine-Banks:

Well, next time you're in Chicago, I'm taking you all to Big Herm's, which is the best Chicago.

Barb McQuade:

Big Herm's. I love it.

Jill Wine-Banks:

Big Herm's.

Barb McQuade:

Okay. I like Chicago hot dogs.

Jill Wine-Banks:



All the times that I lived in the east from New York and Washington, when I flew in, my parents would pick me up and the first stop was Big Herm's. I always craved a Chicago hotdog when I lived on the east coast, so I want to share it with all of you.

Kimberly Atkins Stohr:

I love pickles, but it's just weird on a hot dog. I'm willing to try it.

Barb McQuade:

It's different. It's definitely very different.

Joyce Vance:

I'm willing to expand my horizons though. Yeah.

Kimberly Atkins Stohr:

I'll try it.