

Jill Wine-Banks:

Welcome back to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, and me Jill Wine-Banks. Barb McQuade is away this week with her daughter on a sporting trip. So we'll miss her and so will you.

Jill Wine-Banks:

But today, we will go ahead without her talking about the new voting rights bill being considered in Congress, we'll discuss the indictment by special counsel Durham, who was appointed by the Trump administration to investigate the origins of the Russian inquiry, and we'll explain civilian control of the military after new revelations of General Milley's concerns about Trump.

Jill Wine-Banks:

As always, we really look forward to tackling some of your questions at the end of the show. But before we get to any of those conversations, it's been a week of a lot of food and a lot of non-food for Joyce and I at least because it was Yom Kippur, which means you have to fast. So, Joyce, I know you cook a lot. What kind of foods did you cook for what's called break fast? That's breakfast in two words as a breaking the fast.

Joyce Vance:

My husband who's not Jewish always needs the reminder that Jewish holidays go from sundown to sundown. So you start fasting at sundown one day and you end at sundown the next. And it gives me actually a lot of compassion for my Muslim friends who do it for far longer than we do. I'm always super impressed that they do it for an entire month when I struggle with a day.

Joyce Vance:

But this was a huge week for food in our house. The birthday of my oldest child was this week. And so we decided to make him special meals every night. He's grown, he's a lawyer. He's just taken a new job that he's really excited about. So we thought, "Let's have some fun."

Joyce Vance:

So I made his favorite dinner rack of lamb for his actual birthday on Tuesday night. It's one of his favorite things. It's super easy, by the way. I use the Joy of Cooking recipe. It's a no-fail recipe with a good green salad and some spinach and it's a meal, and got a beautiful cake from a local baker, last chance baking in Birmingham. The cake was stunningly gorgeous. There's a picture on my Instagram feed.

Joyce Vance:

So my husband followed up the night before Yom Kippur and made a beautiful meal with salmon and fresh asparagus. And then last night I went for the lamb trifecta because it's hard for me to cook on Yom Kippur. If you have to go in and cook at all during breaks during the day, it's awful.

Joyce Vance:

So I made a lamb cassoulet and actually put it on the night before and just had to do a little bit of the work in the middle of the afternoon. So, lamb shanks and beautiful cassoulet beans and everything started out in duck fat.

Kimberly Atkins Stohr:

Oh, my God.

Joyce Vance:

Nobody tell [inaudible 00:03:06] that I did this because [inaudible 00:03:08] is going to hate me this week. But it was really delicious and well worth the effort. And now I'm going to have to fast for the whole weekend to get over it.

Kimberly Atkins Stohr:

Well, I was just going to say, in addition to the Happy New Year to you both, I'm ready to convert if I get that after the...

Joyce Vance:

I get really enthusiastic about food. I'm sorry if I just bored you guys with a whole worth of food.

Kimberly Atkins Stohr:

No.

Jill Wine-Banks:

No.

Kimberly Atkins Stohr:

You made my mouth water is what you did.

Jill Wine-Banks:

Yeah, and we both love... I really enjoy cooking but I enjoy cooking things that are not just grilling something. I like making soups and casseroles. So that's my favorite thing. And you're right. Of course, you don't want to be cooking when you can't eat or even taste it. It's hard to cook if you can't taste as you're cooking to know that you're doing it right.

Jill Wine-Banks:

I solved the problem by going to a break fast at a very good friend's who's been doing this for many years, and who orders lox and bagel and whitefish and sable and kippered salmon all from New York because she thinks it's the only place that has the right stuff. And kugel-

Joyce Vance:

That's true. That's absolutely true.

Jill Wine-Banks:

No, it isn't. It isn't.

Joyce Vance:

It is. You have to order from Zabar's or forget-

Jill Wine-Banks:

Yeah. Well, she had a great spread. It was really wonderful. And the kugel was as good as my mother used to make. A recipe that every time I tried to make does not come out tasting like my mother's kugel. Kugel is a noodle dish with raisins and apples and cinnamon and it's sweet and delicious, and I love it. It's one of the few things that I have my mother's handwritten recipe and I just can't get it right.

Jill Wine-Banks:

But I brought with me some of my home-canned preserves because part of our tradition is to wish someone a sweet New Year. And so I thought, what better way than with my peach preserve. So she got some of my canned peach preserve canned in my new Presto Pressure Canner, which was a gift from one of my very dearest friends. A daunting item to use, I will say, but still, I liked it. It was really good. And so what did you eat this week, Kim?

Joyce Vance:

That is so cool.

Kimberly Atkins Stohr:

Well, I didn't have nearly as wonderful a feast as you two had. But when Joyce was talking about making lamb, similarly, it's a tradition for me for Easter, to make lamb as a lot of us do. And lamb chops is one of my favorite things to make. So maybe I will do it. I won't wait until next spring to do that because you made it sound really good.

Kimberly Atkins Stohr:

Although I need to be a little less stressed and busy. Because yesterday when I was cooking dinner, I took a cast-iron skillet out of the oven, put it down, forgot instantly that I had just taken out of the oven and I grabbed the handle. So I currently have a terribly burned hand.

Kimberly Atkins Stohr:

But Aloe Vera, you all, keep it in your house because it really... I did not realize how important that is on a burn. I would be in excruciating pain right now if I did not literally basically bathed my hand all night in Aloe Vera. So that saved me. But yeah, be mindful when you're cooking.

Jill Wine-Banks:

Good advice. I bought a new food processor, and I wanted to test it. And one of the things I had to do for the ingredients was to peel them and I bought a new peeler. And I actually cut my finger on the peeler. Whoever thought of a peeler being that sharp?

Kimberly Atkins Stohr:

But they're sharp.

Jill Wine-Banks:

Yeah, well, this one was. I guess it's because I've been using old ones that have been so dull, it didn't matter. So it was an injury-prone week for you and for me, and maybe for the country. Let's talk about maybe going to voting rights right now.

Kimberly Atkins Stohr:

Yes. So there was big news from Capitol Hill this week. Senate Democrats came to a consensus on a voting rights bill called the Freedom to Vote Act. And by consensus, there was Joe Manchin on one side and all the other Democrats on the other side, but they eventually worked it out.

Kimberly Atkins Stohr:

It's neither the For the People Act nor the John Lewis Voting Rights Act, which we've talked about a lot. And both of which were passed in the House doesn't do everything that those bills do, but it does something. So Joyce, I want to turn to you, exactly what does the Freedom to Vote Act that Democrats in the Senate came up with? What does it do?

Joyce Vance:

Yeah, so a little context here, because there were these two key bills in the house and they do different things. They're progressing together. Now they're both sitting over on the Senate side. The For the People Act has been renamed the right to vote out. But here's why it's important to have the provisions of both of the bills.

Joyce Vance:

The John Lewis Voting Rights Restoration Act actually takes care of something we've talked about a lot. That's the fact that the Supreme Court in Shelby County versus Holder gutted the provisions of the Voting Rights Act, it got worse this past term in Brnovich.

Joyce Vance:

And that made it virtually impossible for DOJ or for private litigants to challenge state voting laws and other practices in the absence of just cut and dry evidence of discriminatory intent. So there's that side of the equation. But passing that restored voting rights act alone isn't enough. And that's why the house also sent forward the For the People Act.

Joyce Vance:

It's got three top-line goals as it manifests in this new mansion birthed Senate side bill. So here are the three things it does. The bill makes it more difficult to suppress voters. It makes it easier for people to register, it has online registration, it has automatic registration, makes it easier for voters to stay registered, there's no more pruning you off the act of voting rules if you miss a couple of elections. It makes it easier for people to vote. There will be a national holiday, 15 days of early voting, vote by mail, drop boxes, and equitable and efficient polling places.

Joyce Vance:

And I want to highlight that last provision, that makes sense if, like me, you do election protection work in Alabama, and you know that every election cycle in heavily minority boxes in Montgomery, Alabama, there will be long lines and they will run out of ballots. This new law will prohibit those sorts of discriminatory practices.

Joyce Vance:

And, of course, you have to be able to have your ballot counted. So this bill will provide for improved infrastructure. And it will help to count ballots. So this all gets carried forward in the new Senate bill. The bill also protects election integrity. And most importantly, it prohibits the removal of state and county

election officials, this measure that we've seen in the Georgia bill. It establishes national vote-counting standards so people can have confidence in the integrity of elections.

Joyce Vance:

And finally, it has what I'll call citizen empowerment provisions. It, for instance, bans political gerrymandering and improves disclosure. So look, without these essential measures, if these bills don't clear the Senate, the 2022 elections and future elections are in grave danger, we will be a significantly lessened democracy. And there is, Kim, I know we've talked about this, there's no guarantee that these bills are going to pass in the Senate, even this compromised version.

Joyce Vance:

One really encouraging factor, though, is that President Biden went on record last week saying he was ready to go twist arms on the filibuster issue. And here's why that matters. I think that they'll give Joe Manchin some maybe a week or 10 days to see if he can find 10 Republican senators to vote for these bills. It will take 10 Republican votes. That seems to me like an impossibility.

Joyce Vance:

I hate to be pessimistic. I just don't think that there are 10 Republican senators out there that will vote for these measures. So that means this will come down to whether or not we bypass the filibuster. It's important that the President is now on record saying that he's ready to twist arms.

Joyce Vance:

And let me just say one other quick thing. As I read this bill, I thought, "Boy, these measures are great. And I understand why people in Georgia are super excited and Arizona, it provides protection for some rights that they're afraid that they've been losing." It looks very different if you're in Alabama, or Idaho or North Dakota, or Mississippi.

Joyce Vance:

This is a floor, not a ceiling. This provides minimum national standards. In Alabama, where we now have one day to vote, we would suddenly have 15. We would be guaranteed the right to have no excuse absentee voting. This would significantly alter the landscape in some of the most needy jurisdictions in the country. So that I think is important to flag.

Kimberly Atkins Stohr:

Yeah, just on your point about Joe Manchin being given 10 days, if he gives a quick phone call to Mitch McConnell, he won't need 10 days, he knows exactly what will happen. But before we get to that-

Joyce Vance:

It's about 30 seconds, right?

Kimberly Atkins Stohr:

Exactly. Before we get to that, I want to talk to Jill about what the Freedom to Vote Act doesn't do because it is different from what was passed in the House.

Jill Wine-Banks:

It is and I want to say would take Manchin exactly one second to go online and he would see that there is no hope that McConnell has said absolutely not.

Kimberly Atkins Stohr:

He said it.

Jill Wine-Banks:

Okay.

Joyce Vance:

Unless his members go rogue, which I just don't think this can happen.

Jill Wine-Banks:

I think it, I-

Kimberly Atkins Stohr:

Even Susan Collins is a no, come on, y'all.

Joyce Vance:

[crosstalk 00:13:23]

Jill Wine-Banks:

I'm all for Manchin trying. But I'm all for Manchin living up to what he said, which is the fundamental basis of our democracy is the right to vote, and that he's going to have to step up on the filibuster. Because Joyce, I can't agree with you more, that this is the time when we have to change the filibuster rules. They have no purpose in our democracy now other than to allow a tyranny of the minority. So, I'm all for it. But back to your question, Kim. Sorry.

Joyce Vance:

Some strong feelings here.

Jill Wine-Banks:

Yes. I'm one of those people who is always optimistic, although I'm this one, I am realistic and say there's no chance and that filibuster has to be changed, or we can't do it. I also was very much like it's not worth compromising because if the Republicans aren't going to agree to it anyway, we may as well pass the strongest bill we can.

Jill Wine-Banks:

But then I watched people like Marc Elias, who is, to me, the superhero of voting. And Norm Ornstein and Amy Klobuchar, and many others who said, "No, this isn't actually a bad bill that Manchin has come up with." And as Joyce pointed out, it does a lot of good things.

Jill Wine-Banks:

For me, the most important missing element is what states have done to prevent counting your votes. And I don't mean the technical stuff that is taken care of, I'm talking about saying, "Well, if we think there's fraud, we don't have to prove it, we just have to say it. And we'll reject the results."

Jill Wine-Banks:

That to me is the total obstruction of our democracy. And that has to be countered, it has to be taken care of. No one, no state can say, "I don't care what the vote is, we think there was fraud, and we're going to go ahead with it." Just look at all the lawsuits that were brought, and the absence of any evidence. And so that has to be addressed, or I will not be happy with the outcome of this. That to me is the most important thing.

Jill Wine-Banks:

All the other things that were in the original law, number one may be added back in once the Republicans aren't supporting it anyway, if we get rid of the filibuster, and can go ahead with 50 plus the Vice President, then we may as well include back some of the things that weren't included.

Jill Wine-Banks:

But even things like the Voter ID that Joyce mentioned, has been cured, even though it doesn't require that there be IDs, but it said, "If you're going to have an ID law, you have to be reasonable about it. And you have to allow utility bills or student IDs, you can't require only a driver's license." Because too many people don't have a driver's license. So, I think it's a good bill and that without one significant omission, it's fine.

Kimberly Atkins Stohr:

Yeah, so I want to get to this idea of is it enough? Do we like it? I know Joyce and I tweeted about this a little bit, and-

Joyce Vance:

We might have a rare moment of disagreement, Kim.

Kimberly Atkins Stohr:

And look, I appreciate what Marc Elias said about it. Beforehand he made the statement that there's really no room for compromise between an arsonist and a firefighter, which I really agree with. But then he also, he put up a post that pointed out all the really good stuff that is in this bill, the urgency of this moment, and why it is so badly needed. And I certainly agree with that.

Kimberly Atkins Stohr:

I agree with other folks like Stacey Abrams, who say that this is so important that we need to do something. And there are a lot of things in this bill that will forward that.

Kimberly Atkins Stohr:

I guess my biggest problem, and why this wasn't a purely joyful moment for me, is because this moment is so existential. And there is nothing more important to the protection of our democracy than the ability for everyone to vote, that this not be subject to a purposeful political attack by one party that is aimed not only at democracy be damned, but also really targeted toward black and brown folks.

Kimberly Atkins Stohr:

There is a party in our country that really want folks like me not to cast their votes. And after all of the struggles, one reason why I vote in every race, I vote for dog catcher, I vote for every local thing because I know it took one but two constitutional amendments plus federal law plus local laws to ensure that I could. The Constitution wasn't enough.

Kimberly Atkins Stohr:

And it's so appalling the way that it's being attacked right now. And the idea that one senator from a state whose population makes up less than one-half of 1% of the US population is in the position to place himself in the way of that progress until his demands are met, is beyond offensive to me.

Kimberly Atkins Stohr:

So yes, this bill is better than it could have been because senator wanted to impose things like ID requirements, which, as a North Carolina federal judge once said, can be crafted to be "with almost surgical precision" to deny the rights of black voters to vote, that he even consider things like that, is really just repugnant to my moral fiber.

Kimberly Atkins Stohr:

So I'm glad that voting rights very likely could pass out of the Congress. I really am. And I agree with folks who say, "You know what, this isn't the perfect train, but it's the one that's leaving the station, so I'm on it." I agree with that. But I'm salty about this. I'm not going to lie, I'm salty about this.

Joyce Vance:

Kim, I like salty Kim. Maybe we have less disagreement than we originally thought we did. My pragmatic view is this. If we do not protect the right to vote at this juncture, I hate to be all doom and gloom, but I really do think democracy hangs in the balance.

Joyce Vance:

And if we go forward in an environment where people can't register and can't vote, nothing else is really going to matter. So I'm in favor of taking these very strong steps right now, and not considering them the endpoint. We obviously have an obligation to continue to expand the protection.

Joyce Vance:

I hear a lot of comfortable people, and Kim, to your point that there is a deliberate effort to keep black and brown people from voting, which anybody who's got their eyes open knows is true. There was a Texas case where there was just evidence in the record of discriminatory intent in the creation of the laws. Alabama, not a whole lot better.

Joyce Vance:

And so, if you don't understand that that's true, you're just not paying attention. But it is a mistake if people think that the effort to suppress votes is only the votes of black and brown people. And if conservatives continue to get away with that, they will come for other people who aren't their voters.

Joyce Vance:

So, protect other people's rights to vote because it's the right thing to do and you should, but also, maybe have a little bit of self-interest there in protecting your own vote. So, I have a lot of faith in Stacey Abrams, who I think is the rocket scientist of voting in this country right now. If she's comfortable with this bill, I'm comfortable with this bill.

Kimberly Atkins Stohr:

And I'm going to make one last point, I'm going to give you this one thing, Mr. Senator for West Virginia, but when we get to the filibuster, I'm not having it. Come on, you know the truth. You got a lot of what you wanted, now it's time to give that up.

Jill Wine-Banks:

It sounds like you guys have come closer together. And I agree with both of you on what you've said. And I just want to point out, I'm always the pragmatist in the, although you think I'm the most liberal of you. I actually am one who supported Joe Biden because I wanted a middle-of-the-road person who could attract and possibly reach compromise.

Jill Wine-Banks:

But as I said, I think that this bill, if it has to go the route of changing the filibuster, is essential. And that we should add back because I didn't add... I talked about my one major problem with the bill, what was missing. But let me just mention a few of the other things that I would put back in that are missing. And that is public financing for congressional campaigns.

Jill Wine-Banks:

I would change the way that voter rolls are purged right now, and prohibit that kind of roll purging, and reform the FEC leadership so that we can end the gridlock that exists there. And I would prohibit states from using partisan redistricting. And, of course, the one thing that is missing is the mandate for Voter ID, so that I would leave out. That's a good one. And just make sure that it's-

Joyce Vance:

But can I just say something about that one, I'm not a fan of Voter ID Act. Alabama passed its Voter ID Act and put it into effect as soon as Shelby County came down. On the other hand, because that provision broadens the number of ID mechanisms you can use including utility bills.

Jill Wine-Banks:

Right. The reformed one.

Kimberly Atkins Stohr:

Yes.

Joyce Vance:

Yeah, the reformed one. I think that's actually something to push back on. If conservatives want to push against this bill, I think Democrats now have a talking point that this bill is fair, that it meets their concerns. Would I have liked to have had no ID? Sure. But given the world that we live in, this may be a smart strategy that allows for political compromise without denying folks their right.

Kimberly Atkins Stohr:

Yeah, I agree with you. But Jill is right that it could have been a lot worse than the original proposals.

Jill Wine-Banks:

Right.

Joyce Vance:

No kidding.

Jill Wine-Banks:

Well, this has been a really big week in the news enough to keep you awake at night. So I'm really glad that I have a Helix mattress to unwind on. What about you, Kim?

Kimberly Atkins Stohr:

Yeah, that quiz that you take when you go to the Helix site, I was a little skeptical at first, but it really was easy to use. It allowed you to pick the mattress that is right for you. I think I have discovered that I need a bit of a softer mattress than I thought I did beforehand. I always had a very, very firm mattress. I thought that gave you a better night's sleep, but I sleep so much better with a little more cushion. And you are right. This has been a week that was exhausting. So I'm extra appreciative of my bed. Joyce, what about you?

Joyce Vance:

Like both of you all, I've become so focused on how important it is to get a good night sleep. And you just can't do that if you don't have the right mattress. So I'm such a fan of the quiz. I'm getting ready to redo a bedroom for one of our sons. And I'm going to go through the quiz with him to purchase his mattress too.

Kimberly Atkins Stohr:

Well, that's great.

Jill Wine-Banks:

What a good idea. I know when I took the quiz from Helix, I was surprised that it recommended a softer mattress than I thought I wanted which was the hardest I could have. But it matched me with the Helix midnight mattress. And it was exactly what I wanted, something just right for me. And I have to ask everyone, why buy a mattress made for someone else?

Kimberly Atkins Stohr:

That's totally right. And you can just go to helixsleep.com/sisters to take their two minutes sleep quiz to match with a customized mattress that will give you the best sleep of your life from soft to firm plus size and even cooling, they have it all.

Kimberly Atkins Stohr:

Not to mention that it's gotten many doctors and chiropractors to give it the thumbs up. Helix mattresses come with a 10-year warranty and you can try it out for 100 nights risk-free. It gets delivered right to your door and they'll pick it up if needed so you never have to go to a mattress store again.

Joyce Vance:

Helix is offering up to \$200 off all mattress orders. I'm really excited about that because I will be taking advantage of it. And two free pillows for our listeners at helixsleep.com/sisters. That's helixsleep.com/sisters for up to \$200 off and two free pillows.

Kimberly Atkins Stohr:

And look for the link in our show notes. Thanks to Helix for sponsoring this episode. And we thank you our listeners for supporting Helix.

Jill Wine-Banks:

And now I want to turn to another issue which is John Durham, who was appointed US Attorney for Connecticut by President Trump and then was assigned in April of 2019 to investigate the origins of the FBI investigation of Russia's interference in the 2016 election.

Jill Wine-Banks:

In October of 2020, just before Trump lost the election, Durham was secretly appointed as the special counsel to investigate the same subject. And then more than a year ago, in that role, he indicted an ex FBI lawyer named Clinesmith for altering a CIA email which was used in support of a wiretap on Carter Page. That was his only indictment until now. Trump was disappointed back then because he said prosecutors did not reveal any evidence in charging documents that showed Mr. Clinesmith actions were part of any broader conspiracy to undermine Mr. Trump.

Jill Wine-Banks:

Now on Thursday, just three days before the statute of limitations runs on the event, Durham returned his second indictment against another lawyer, again for a false statement to the FBI. Trump is probably disappointed again by the one-count indictment for a false statement because as many have said, it's based on very thin evidence and particularly concerning proof of materiality, which is an essential element of the crime charged.

Jill Wine-Banks:

The lawyer who has been indicted is Michael Sussman. He was a partner at Perkins Coie until resigning as a result of this indictment. Interestingly, I've already mentioned Marc Elias and he was a partner at that firm. He left just a few weeks ago to set up his own firm. So it's interesting that they've both now left the firm. It's also the firm that many will associate with the creation of the steel dossier.

Jill Wine-Banks:

Anyway, as to the indictment, it's a single false statement charge. And it's the same crime that Flynn, Michael Flynn was accused of and pleaded guilty to twice before Barr intervened, and then Trump pardoned him.

Jill Wine-Banks:

Let's look at the specific allegations against Sussman, what the government would have to prove to sustain a conviction and what we know of his defense. So let me start with Kim if you could summarize, it's a 27-page indictment. So it's a little hard to summarize, but I know you can do it. You're a journalist, and you're used to getting down to the lead. So, take it away.

Kimberly Atkins Stohr:

Yeah, as you said, it's 27 pages, but it's actually pretty straightforward. I don't think that it's so hard to summarize. Essentially, Sussmann is accused of lying.

Kimberly Atkins Stohr:

So it stems from a September 19th, 2016 meeting between Sussmann and the then FBI General Counsel James Baker about suspicions that Sussmann expressed about a potential communications between the Trump campaign and Russia.

Kimberly Atkins Stohr:

Now, it's important to remember ultimately, a lot of folks looked into this, the FBI, the Robert Mueller investigation, and nothing came from this alleged suspicion about the communication that Sussmann was talking about.

Kimberly Atkins Stohr:

It's also important to note, as you mentioned, the law firm of Perkins Coie is here in DC, it's a very big political law firm. And it does have a political division that Marc Elias used to run. And Marc Elias did work for among other people, the DNC.

Kimberly Atkins Stohr:

But Sussmann was in a completely different group in that firm, he didn't work with Marc Elias, and that's important for his defense. So, the indictment itself says, I'm going to read a little bit from it. "During the meeting between Sussmann and James Baker," the indictment says, "During the meeting, Sussmann lied about the capacity in which he was providing the allegations to the FBI. Specifically, Sussmann stated falsely that he was not doing his work on the aforementioned allegations "for any client," which led the FBI General Counsel to understand that Sussmann was acting as a good citizen merely passing along information, not as a paid advocate or political operative."

Kimberly Atkins Stohr:

That's what the indictment itself says. It goes on to say, "In fact, Sussmann acted on behalf of specific clients, namely a US Technology Industry Executive, a US Internet Company, and the Hillary Clinton Presidential Campaign." So all that is quoted in the indictment.

Kimberly Atkins Stohr:

Now, Sussmann denies that he was working for the campaign and that he disclosed the clients that he had but specifically stated that he was making these claims on his own behalf and on behalf of a client. So the indictment essentially says that his work, there are billing records that show that he built the Clinton administration, and that's part of their claim that they have proof that he was working on behalf of a client, specifically the Clinton campaign and also this internet executive that isn't named. So, it's one

count, the count is of making false, fictitious, or fraudulent statements to the executive branch, in this case, the FBI, and violation of federal law.

Jill Wine-Banks:

Okay. So, 27 pages is a long indictment. And sometimes that shows real strength because it details a lot of information. Sometimes it's the opposite. It's like a lot of filler. And so I'd like to know what you think here. How strong does the case look? And what are its weaknesses?

Joyce Vance:

So, on the face of the indictment, it does not look strong. It's possible that DOJ has more evidence, but I mean, they've given us 27 pages. So you would think that if there was something there, it would actually be in the document.

Joyce Vance:

The core of this case is a conversation that Michael Sussman, a former DOJ employee, someone who is involved in CISSP, the unit that deals with internet and computer-related crimes that he has with Jim Baker. Baker is then the general counsel of the FBI.

Joyce Vance:

And so Sussmann goes in and talks with Baker about some information that has been uncovered, that talks about a possible connection between servers and Trump Tower and Alfa Bank, which is apparently considered a marker for Russia and the fact that there's about to be a story, a news story that will detail this connection. And says and here I am as a public citizen to share that information with you before it drops.

Joyce Vance:

And of course, all we know right now is what's in DOJ's complaint. That's the side of the story that we've heard. But I would compare this 27-page complaint or indictment to the T-page information that Robert Mueller used to indict General Mike Flynn on the same charge 18 US Code 1001 lying to the government.

Joyce Vance:

And that was a case involving Flynn's lies to the FBI about conversations and communications he has had with Russia's Ambassador, sort of a more weighty subject matter than a conversation between two old friends about who the client was. And Mueller only used two pages to indict Flynn. Ultimately, Bill Barr dismisses that case but it's only after Flynn has pleaded guilty twice.

Joyce Vance:

That was a weighty charging document on these same charges that didn't take nearly the amount of time. So, the Sussmann indictment gets returned just before the statute of limitations runs, five-year statute of limitations, it runs on Sunday.

Joyce Vance:

The indictment spends a lot of time on irrelevant details that look a lot more like they're intended to inflame passions than they are to explain the charges. And some of what they're citing in this indictment

sounds like it would be inadmissible hearsay, notes coming from a third party about a conversation with Baker. That doesn't sound admissible to me.

Joyce Vance:

So I suspect that if this case goes to trial, there will be a lot of motions by the defense to strike some of the language from this indictment before the jury hears that.

Joyce Vance:

Jill, I think you want to dig deeper into the elements of 18 US Code 1001 in a minute. So I'll just say, it looks to me like the real issue here isn't what Sussmann said about who the client was. Trump had tweeted back on January 22nd, of 2019 about Sussmann by name. And he expressed outrage that Sussmann had provided information that led to this investigation of Trump servers and Alfa Bank.

Joyce Vance:

This looks at one possible interpretation of this indictment brought by a former Trump-appointed inspector general is that this is political revenge and that sort of a bad look for DOJ.

Jill Wine-Banks:

So I tweeted about how to me this looked political, and that it was hard to see it any other way. And I think your point about the Mueller indictment versus this one, Mueller basically said, "This is what Flynn said, that wasn't true." That's really what people need. That is clear.

Jill Wine-Banks:

In reading this 27 pages, I was scratching my head, and really taking notes, and trying to figure out who is this executive? Who is this lawyer? Who is that? And what does this all mean? And to your point about having stuff stricken, there's at least one paragraph, paragraph 15, which to me is really an irrelevant attempt to undermine one of the potential witnesses, in this case, the cyber executive who Sussmann did represent.

Jill Wine-Banks:

And it talks about how he sent an email that if Hillary won, he was going to get a job in cyber security. And we should point out that Sussmann is a cyber security lawyer. He is not in the political division of the law firm. That wasn't his role. His role was cyber. And what he was reporting was cyber data that made it look like there was some backchannel between this Alfa Bank in Russia and the Trump campaign.

Jill Wine-Banks:

It turns out that it probably was not a backchannel, that it was a marketing company's server that served a lot of clients, including the Trump organization. But that was something Sussmann didn't know. He thought he was... I'm guessing that he thought, I don't know this, that he was protecting the country and revealing information that would be useful.

Jill Wine-Banks:

But let's look at some of the things that the government would have to prove. And Joyce, you have tweeted about this materiality, and you've been on MSNBC talking about materiality, which is an

essential element of proof for a case like this. So tell us why this isn't really material, even if it was false, that he wasn't there on his own, that he was there for a client. Why does that matter? How is it material to the FBI?

Joyce Vance:

It's interesting, the word materiality didn't actually appear in all the clauses of the statute until 1996 when it was amended to do that. But materiality is a requirement that has come to mean that the government has to prove that it was an important lie, that it was a lie that really influenced the way that the government agency at stake acted or reacted.

Joyce Vance:

So here what's so interesting about this, and Baker and Sussmann are not strangers to each other. And so it's a little bit difficult to contemplate that Baker didn't know that Sussmann was at a firm that did some work for the DNC and for the Clinton campaign.

Joyce Vance:

But setting that aside, had this information where a cyber expert was coming to the FBI and saying, "We're seeing something funny here." The FBI would have undertaken that investigation no matter who the client was. It didn't really matter where it was coming from, if that information that the FBI had received looked credible then they would have checked it out further, like they did here. So it's very hard to believe that even if you credit the worst possible construction here that Sussmann was intentionally lying, it's tough to believe that it's material.

Joyce Vance:

There's a more fundamental requirement in this statute, which is that he asked to have knowingly and willfully lied. And if Sussmann is able to raise a defense that says, "Look, I was just bringing forward evidence that I was legitimately concerned about. I believed at the time that this was a real concern. And I believe that I was honest about disclosing who I was working for and why I was there." It's a tough case to prove. DOJ will have the burden of proof beyond a reasonable doubt at trial, they may have trouble with the jury, they could also potentially have trouble on appeal. So there's some real issues here, for sure.

Kimberly Atkins Stohr:

So I'm going to ask you guys something because I was a civil attorney and not on the criminal side, like you guys. But on the civil side, in federal court, there are rules that require you, when you draft a complaint, you need to state material facts that can back up your complaint in the complaint, you can't wait until discovery. And in some state courts, you can file a complaint and anything and then throw spaghetti at the wall and then you go through discovery and then you whittle them down. Federal courts not playing anymore. You need to state the facts.

Kimberly Atkins Stohr:

And the fact that there was so much mushiness on this side made me, just reading this, as a civil lawyer, I thought, "I wouldn't have drafted this without more specific... Talk about what the rules are there, not just in the standard of proof that they'll have to prove in the end, but in the pleading.

Jill Wine-Banks:

[crosstalk 00:41:51] Just one second. I want to let Joyce answer that part of the question, but I want for our audience to hear some of the language in the indictment that may be relevant to this discussion. So, on materiality, the indictment says that if the FBI had known that he was representing the clients, multiple clients that he allegedly was representing as opposed to being there on his own, that it would have made them suspicious. And they would have maybe re-looked at things in a different way.

Jill Wine-Banks:

But I think, as Joyce has already said, unless they ignored it in the same way they ignored the gymnast complaints of sexual assault and just blowing it off, they would have had to investigate the facts that were alleged. But the indictment also says the FBI might have learned and might have assessed it differently.

Kimberly Atkins Stohr:

Exactly.

Jill Wine-Banks:

He used the word might in an indictment. That's, I think what you mean when you're talking about it being mushy. So, I think that that's really important background before Joyce answers about why it matters.

Joyce Vance:

Yeah, so I'm not as worried about that language, to be honest, because I think you have to show that it had the potential to influence. But what you have to do in a criminal proceeding, is you have to allege every element in the statute. So all of the traditional elements here knowingly and willfully the false statement. And, of course, after the case law that I discussed, the amendment to the statute, where you now have to prove that it's material, all of those elements have to be in the indictment.

Joyce Vance:

But nothing more, Kim. It's a really interesting comparison to civil practice. Sometimes we see these lengthy, convoluted criminal indictments you've heard us refer to those as speaking indictments. That usually happens when you've got a complicated conspiracy. And the government needs to explain enough to make the indictment comprehensible.

Joyce Vance:

Look, sometimes prosecutors do try to get some important facts out in their speaking indictments. But this is next level. I think what you're saying here is where I started on this one. Some of this looks more like it's an effort to prejudice than it is an effort to prove. I would expect that we will see pretrial motions from the defense in that regard.

Jill Wine-Banks:

I'm going to add two things to that which is on speaking indictments, there are two reasons why they may be used. One is because it's a case of public interest. So if the public in reading it can understand what it's really about. And the other is because it is a document, unlike most documents that the jury

can take into the jury room with them. And so it's a good way of summarizing evidence that you may want. I don't think this document will help anybody.

Jill Wine-Banks:

And if we have time for just one more quick question. It's one that's bothering me, which is, the indictment does allege a second meeting at which, supposedly Sussmann repeated the same lie to a second federal agency. So that made me wonder, well, if that's true, why is there only one count? Why didn't they indict him for lying twice? Anybody have a theory on that?

Joyce Vance:

I think we'll see more on that as this case moves forward. I think that's a good catch by you.

Joyce Vance:

This is one of those weeks where I've been really interested in having good meals and good comfort food because it's actually been a little bit cooler here. I know you don't think September cool, Alabama. But that's been the case. So I've been grateful to have some of the really nice Hello Fresh meals on hand, especially the vegetarian grain bowl-focused meals. What about you, Jill?

Jill Wine-Banks:

Well, our weather has been great in Chicago, quite surprising, but it really has been lovely. So that's not the reason that I love having Hello Fresh. I love having all the choices that it offers, and the comfort it offers me in cooking them, and the feeling of accomplishment I have when I put on the table something that looks like it had to have come from a restaurant because it's drizzled with sauces and it was easy to do. It's really fun. And it really does take my mind off the news and help me to relax to do the cooking. So I love it. What about you, Kim?

Kimberly Atkins Stohr:

Yeah, I think fun is an important part of it. When we have Hello Fresh here, when I volunteer to make dinner, I always notice somehow that my husband usually shows up and he starts helping and looking at the instructions and it ends up being a partnership in creating dinner. I think he doesn't want to miss out on the fun and it is. It has really fresh ingredients. It teaches us ways to prepare food that we never thought of before. And it always comes out to be a great meal. The tacos are a crowd-pleaser, man. Those are really, really good.

Joyce Vance:

We love the tacos too. And with Hello Fresh you get fresh, pre-measured ingredients, mouthwatering seasonal recipes, and it's all delivered right to your door so you can skip the grocery store. If there's a theme in our ads this week, skip the stores, spend time on yourself and your family. Let Hello Fresh show up on your doorstep and make home cooking easy, fun, and affordable.

Jill Wine-Banks:

There's something for everyone to enjoy. All tested by professional chefs and nutritional experts to ensure deliciousness and simplicity. But also, they're tested by my family for being delicious. Hello Fresh recipes save you time you'd otherwise spend meal planning and shopping. And if Greg would please call

Michael and tell him how much fun it is to participate, it could also be a family event at my house too. So Kim, have Greg call.

Kimberly Atkins Stohr:

Yes, Michael, come on, get on board. It's a lot of fun. Greg does like to cook.

Joyce Vance:

I like this, the revolt of the wives.

Kimberly Atkins Stohr:

It's good news that the fall harvest is officially on with Hello Fresh. You can count on seasonal recipes like pumpkin cinnamon rolls and Friendsgiving ready sides with fresh, high-quality ingredients that travel from the farm to your front door in less than a week. Hello Fresh gives you the flexibility you need to easily customize your order on the app within minutes. So don't wait to get started.

Jill Wine-Banks:

Go to hellofresh.com/SISTERS14 and use code SISTERS14 and get up to 14 free meals plus free shipping. That's hellofresh.com/SISTERS14. That's SISTERS14 and use code SISTERS14 and get up to 14 free meals plus free shipping. That'll save you a lot.

Jill Wine-Banks:

So now let's turn to Joyce who's going to take us through a really important conversation that stems out of General Milley's saying or being revealed to have had a conversation with his Chinese counterpart and the issues that it raises about civilian control of the military and some other issues. So Joyce, why don't you explain the issue and start us on that conversation

Joyce Vance:

Back in September of 2019 on September 30th, General Mark Milley was sworn in as the 20th Chairman of the Joint Chiefs of Staff, the highest-ranking officer in the US military.

Joyce Vance:

A new book due out next week by journalists Bob Woodward and Robert Costa makes claims about his growing concern as Trump refused to acknowledge he'd lost the election. Milley's response has become controversial and among the claims in the book, there are claims that he coordinated with other members of the Joint Chiefs considering possible responses if Trump took steps to block the transfer of power or use US military might to hold on to power.

Joyce Vance:

The book claims that Milley had calls with a Chinese counterpart to offer reassurances and to offer communications if there was an attack in the offing. So controversy erupts and simultaneously Milley is being hailed on one side as a hero, and denounced as treasonous by other folks.

Joyce Vance:

Milley issued a statement saying that the conversations were routine, that they were part of an ongoing motif of conversations held to manage relationships with foreign powers and also among the Joint Chiefs. But there are others like Alexander Vindman, who were shocked by the reports and Vindman tweeted that Milley should resign if the recording was accurate. He said that Milley usurped civilian authority, broke chain of command, and violated the sacrosanct principle of civilian control over the military.

Joyce Vance:

So the facts here are still emerging. They're not yet entirely clear. The January 6 committee did demand relevant records from the Joint Chiefs yesterday. So I think that clear vision will emerge in the coming weeks. But given that the facts are still a little bit of a moving target, we wanted to discuss the legal and policy architecture around the dispute.

Joyce Vance:

So Kim, why don't you start a little bit with something that I talk about a lot with my democratic institution students, that civilian control of the military. Explain what that is, why it's important, and why it matters here.

Kimberly Atkins Stohr:

Absolutely. So, in America, this idea goes back to the founders who were very concerned about the existence of a standing army, that could undermine democracy by being able to essentially overthrow the government that it professes to serve.

Kimberly Atkins Stohr:

So the principle of civilian control works by putting control of the armed services in the hands of civilian leadership, with a secretary of defense that is chosen by the executive branch and confirmed by the legislative branch. It's part of that checks and balances, that is a protection that the founders relied upon.

Kimberly Atkins Stohr:

And there's a lot of reasons why this is important, not just as a principle from the founders, but right up to modern-day, in practicality. And they don't all deal with the prospect of a government overthrow, although it's so strange to talk about that now knowing how more of a reality it seemed to be than we ever could realize.

Kimberly Atkins Stohr:

One principle is that you want to have people who were in control, who were not primarily focused on military strategy when they're making decisions at the head of the Department of Defense, like a general would be. It's no disrespect to a general but the general's expertise is in military strategy. You want someone who also balances the diplomacy, the political solutions to any potential conflict, particularly an international conflict so that you have a political solution in play, not just a military one.

Kimberly Atkins Stohr:

Another principle is having a non-partisan military. You don't want a military that is fighting for one side or the other. You want your military to be nonpartisan, ready to act regardless of who was in charge. In this case though, it seemed the real threat was coming from inside the White House.

Kimberly Atkins Stohr:

Recall that days after Donald Trump lost the election, he began firing people. Within his administration, he got rid of the people who he did not like and one of those people was defense secretary Mark Esper. Trump was angry about a few things including Esper's apology.

Kimberly Atkins Stohr:

Remember, he apologized after being a part of that Bible photo op that Donald Trump took when the Black Lives Matter protesters were cleared from Lafayette Square, and Donald Trump walked across the street held up a Bible. And Esper was on the scene. He later apologized for that.

Kimberly Atkins Stohr:

Trump was also mad that Esper refused to invoke the insurrection act to put down Black Lives Matter protests across the country. So he wasn't his favorite person. He got rid of him, installed on an interim basis. There were a lot of acting folks in the administration toward the end, someone named Christopher Miller who had a thin resume.

Kimberly Atkins Stohr:

And so, it goes back to this idea that while you don't want to put primarily military people in charge of DOJ policy, you also don't want the makings of a coup, or using someone in the military for their own political purposes, which is exactly what Milley was worried about toward the end, if you listened to the reporting from this book.

Joyce Vance:

So, Jill, there are also military lines of authority that are involved here. Can you, especially with your military experience, talk about the importance of the chain of command to the military? We all get that people in the military have to follow orders. But what does that mean for people at the level of the Joint Chiefs of Staff and who does General Milley give and take orders from?

Jill Wine-Banks:

So, before I get to that question, Joyce, I just want to add to something that Kim said, which is one of the things that I learned when I became General Counsel of the Army was how closely state and DOD work together. I really had no idea about that.

Jill Wine-Banks:

But it's an important thing for people to know that the military people do not make policy decisions without coordination. And that whatever happened in this conversation, it was fully staffed and coordinated, which means that the State Department did know about it and that the NSC knew about it. So that's important.

Jill Wine-Banks:

But I also want to make sure people understand what civilian control means before we get to chain of command. Civilian control means that the Chairman of the Joint Chiefs of Staff reports to the Secretary of Defense who is a civilian, which is why it's unusual. Now, of course, we have general Austin became Secretary Austin. But that was by special waiver of the requirement that he not have been in the service for a long time.

Jill Wine-Banks:

And the TJAG, who's the top JAG officer reports to the general counsel and so on up the line so that the civilians always outrank the military components under them. And that's how the civilian control works. And that takes us to the same thing about the chain of command.

Jill Wine-Banks:

So in the chain of command, General Milley reports to the Secretary of Defense. He is not a commander in the sense of a combat commander. Combat commanders report up to the Secretary of their service. So they report to the Chief of Staff of the Army who reports to the Secretary of the Army. So again, it's always a civilian at the top.

Jill Wine-Banks:

One example I can give, where I came to realize how important chain of command was, was during my time, a union tried to unionize the army. Now, think about this. I'm a private in the army and I say to my commander, "I'm sorry, I have to consult with my union steward before I agree to follow your orders." This could happen in a combat where, "No, I'm not taking that hill, I'm consulting with my union steward. It's during my working hours."

Jill Wine-Banks:

So I came to realize how utterly ridiculous it was and how essential the command structure is, and how important it is that they're waiving that chain of command in sexual assault cases or that they may, it looks like that's a final done deal is that in that one instance, a victim of sexual assault does not have to report to their commander. In all other cases, the commander has to be listened to. Otherwise, you cannot have a functioning military, particularly during combat.

Jill Wine-Banks:

So I think that's really the importance of why people have to follow orders. And that means that the chief of staff and the Chairman of the Joint Chiefs of Staff has to follow the secretary of Defense's orders. And that's how it is. If the president says do something, they can advise him, he would be unwise not to ask for military input and advice. But once the decision is made, then it has to be followed.

Jill Wine-Banks:

One of the reasons that's important is, in this case, the facts are an issue. Did he say, "In a normal routine, fully staffed, coordinated phone conversation that's quite routine, I just want you to know everything's under control here. You have nothing to worry about." That would be in the course of his job and would not be something he would talk to either the Secretary of Defense or anybody else about.

Jill Wine-Banks:

If he said something like, "And by the way, if that ever came to pass, I will give you advance notice. That's a very different thing. It also depends on when he said it. If the President had already said, "I want to attack China," any conversation like that would be a violation of the chain of command. Because once the order is issued, he can't question it, he has to follow it. Until it's issued, he can argue with the president, he can make his points known. But once the president decides it is the President's decision period. So that's how chain of command in the military works and how it's very important.

Joyce Vance:

So that's incredibly helpful to understanding this situation. My last question, and it's for both of you, it's just about how should this have worked. Because we were in this unprecedented situation. It's, in some ways, so hard to remember what the country felt like before January 6th.

Joyce Vance:

But remember, we've got Chris Miller who comes from the National Counterterrorism Center and suddenly finds himself acting Secretary of Defense, not confirmed by the Senate. And he's doing some unusual things that make it look like the civilian part of this equation may be broken, civilian control of the military. He looks like he's thrown his lot in with Trump.

Joyce Vance:

All 10 of the living former Secretaries of Defense write an op-ed that runs in the post, making the point that the military must stay out of the transition of power. And Miller has done a number of things. He's refused to hold transition team meetings with the Biden transition team. And ahead of January 6, he issues this order that prohibits the National Guard from being outfitted with anti-riot gear.

Joyce Vance:

And then on the sixth, the reporting at least so far is that he delayed the order to deploy the guard for more than three hours. So he looks to have been firmly in the Trump camp. What do you think General Milley should have done in this situation? Will history treat him kindly or not? Jill will start [crosstalk 01:01:56]

Jill Wine-Banks:

Go ahead.

Kimberly Atkins Stohr:

Well, I just wanted to chime in first since Jill was the expert and I didn't want to be the last person to speak on this.

Joyce Vance:

Smart move, Kim.

Kimberly Atkins Stohr:

But just from my general understanding, and Jill will correct me if I'm wrong. What Milley did was not unusual. I think in some ways this is being portrayed as if General Milley did something completely out of the ordinary and picked up the phone and called Chinese officials and suddenly was talking smack about the President of the United States.

Kimberly Atkins Stohr:

Now, General Milley's job was to interface with his counterparts in other countries on a regular basis. And there are many situations in which that conversation will include assurances that a war was not imminent. And it seems to me that what Milley said was a lot more in line with that more usual conversation.

Kimberly Atkins Stohr:

Now, you have that other conversation that Milley had with Speaker Pelosi, in which they both expressed a lot more.

Jill Wine-Banks:

Candid.

Kimberly Atkins Stohr:

Yes, a lot more candid. That's a perfect word for it. That conversation in which they both sort of said, "Yeah, we don't know if the President is all right. And this could be a problem." But in terms of what Millie said to his counterparts in China, run of the mill, that seemed more a part of his normal job. But I want to hear what Jill has to say.

Joyce Vance:

Can I just interject and say that I used to always tell my young lawyers, "Don't ever put anything into an email or say something that you don't want to see on the front page of the New York Times tomorrow morning." That was my standard of conduct. And this explains exactly why that happens. That conversation between Millie and Nancy Pelosi, they were saying what was on the country's mind, you really don't want to see it reported on the front page of the Times. And it was in this case.

Jill Wine-Banks:

And there's apparently a transcript of that conversation. So, it's even worse. But Kim, you stated everything completely correctly. But I want to even make it more dramatic because it is my understanding that Secretary of Defense Esper, encouraged that call that he is the one who requested that it happen. So there was civilian control and all the rules were followed. And you are right. This is a traditional routine kind of conversation. There was nothing unusual about it. So I don't understand.

Jill Wine-Banks:

I also want to point out that I also co-host another podcast called iGen politics. If you want to know more about Chris Miller, please listen to the episode in which Victor Shi and I interview Chris Miller. It will give you a good insight into maybe why General Milley may have gone further than he maybe wanted to or should have. But I think you'll enjoy that episode.

Jill Wine-Banks:

Unfortunately, we talked to, in an upcoming episode, Colonel Vindman. But it was before we knew about his tweet, which I wish I had known about because I would have certainly questioned him. I think that he overstated dramatically. And I would love to give him a chance. And I have reached out to him by email to ask him more specifically about it because I'd like to hear what his thoughts are.

Jill Wine-Banks:

I have consulted with a couple of generals from my days in the Pentagon before coming forward with today's episode. And in terms of what General Milley could have done, it's really tricky because basically, there is the final commander in chief, the only commander in chief, the only one who can give combat orders of this nature, is the president.

Jill Wine-Banks:

And as I said earlier, once the president issues a directive, that's it. And he does not go through the Chairman of the Joint Chiefs of Staff, he goes directly to the combat commander. And that's just the way it is. So, do we need to look at, for example, the nuclear launch code rules and say, do we want the president, whoever it is, and remember, the issue of stability was raised in the last days of the Nixon administration in the same way that it has been here for the Trump administration.

Jill Wine-Banks:

There's two examples in my lifetime, where there was fear that there might be that Wag of The Dog movie come to life. And so, maybe we need to look at it. The rules for nuclear launch were based on a cold war where we thought there might be an immediate need where you had minutes to respond. That's not the world we're living in right now. And I think that maybe it's time to relook at those rules.

Joyce Vance:

Well, I think everyone knows that Barb isn't with us this week. She's off with one of her kids for a sports event. Do you think she's wearing her Third Love bras while she's on the road? What do you think, Kim?

Kimberly Atkins Stohr:

Well, I know she loves talking about it.

Joyce Vance:

So much.

Kimberly Atkins Stohr:

So, if she is, I'm sure everyone will know. What do you think, Jill?

Jill Wine-Banks:

I think she is because comfort is the real thing with Third Love bras. And we know that Barb really values her comfort.

Kimberly Atkins Stohr:

Even Prispy.

Joyce Vance:

Prispy loves comfort too.

Jill Wine-Banks:

Exactly.

Joyce Vance:

It's unanimous. The thing I always think about Barb is, if you could put a pocket on a Third Love bra, she'd never wear anything else.

Kimberly Atkins Stohr:

You're absolutely right. Third Love creates high-quality underwear, sleep, and loungewear. Cup sizes range from double-A to I including exclusive half cups, and lounge and sleepwear in sizes extra small to 3X. So get ready to feel good. If you don't love it, exchanges and returns are free. Third Love gives gently used return bras to women in need, donating over \$40 million in bras so far. That I know Barb really can get behind.

Joyce Vance:

So do I. I really like everything about Third Love, I love the bras, they're super comfortable. I love that they're socially conscious. Now, you too can take the easy fitting room quiz. And Third Love does all the rest, focusing your fit on size, shape, current issues, and your personal style to deliver underwear that's perfect for you. They even have stylists on standby to help. I like Third Love's washable silk PJ's with a soft like a peach touch. It's a machine washable luxury.

Jill Wine-Banks:

So when Third Love says current issues, I don't think they mean the news we talk about. But Third Love knows you deserve to feel comfortable and confident 24/7. So right now they are offering our listeners 20% off the first order. Go to thirdlove.com/sistersinlaw now to find your perfect fitting bra and get 20% off your first purchase. That's thirdlove.com/sistersinlaw for 20% off today. Look for the link in our show notes.

Jill Wine-Banks:

I want to thank all of our wonderful listeners for always sending in such great questions. We really love this segment of the show, and look forward to answering. If you have any questions for us, please email us at sistersinlaw@politicon.com or tweet using #SistersInLaw.

Jill Wine-Banks:

If we don't get to your questions during the show, keep an eye on our Twitter feeds throughout the week. That's where we'll answer as many of your questions as we can. And today's first question comes from @BarbgalW, "Why is it always wire fraud or mail fraud that people are accused of? Isn't there just a plain vanilla fraud?" Joyce, you want to answer that one?

Joyce Vance:

This is a really great question. And it gives me the opportunity to say that criminal law is statutory law. So, you have to actually be charged with a crime that Congress or your state legislature or other legislative body has created and has put on the books. So you've got notice in advance that it's a crime before you're charged.

Joyce Vance:

In the federal system, fraud and wire are two of the most commonly used fraud charges. They're very expansive. There are bank fraud charges and other fraud charges that are narrower. But really, when

you think about our computer-driven lives, wire fraud captures a lot of the deceptive thefts that go on. So that's why you see those charges brought the most.

Jill Wine-Banks:

Good answer, Joyce. And it's a fraud case that was brought against Holmes in the Theranos case. So, there's a live example.

Joyce Vance:

That's right.

Jill Wine-Banks:

Our second question comes from @jtilt3. I hope IL stands for Illinois. The question is, "I thought Mueller had prepared an obstruction case against Trump and his investigation was complete for the DOJ to prosecute. Why isn't the DOJ bringing charges? What's taking so long?" Kim, you want to take that one?

Kimberly Atkins Stohr:

Yeah, I want to start now. But I also want to hear my sister's take on it too. So yes, Mueller did prepare obstruction cases. He actually prepared 10. In his report, there were 10 instances of obstruction of justice.

Joyce Vance:

I didn't think that they were all good, maybe just six or seven of them.

Kimberly Atkins Stohr:

Yeah, well, there are more than one. So, what that preparation was actually for was Congress, it was to give Congress a basis, if they were so to choose to bring impeachment charges against President Trump at that time, and they chose not to. I think that was the more direct audience more so than the DOJ. But I want to hear what my sisters say about that.

Jill Wine-Banks:

Well, I agree with you. But I want to add that I think that what he was really saying is, if I could indict a sitting president, these are what I would indict him for. But since I am bound to follow the Office of Legal Counsel opinion that says I cannot indict a sitting president, that's why I'm turning to Congress to impeach him for these things.

Jill Wine-Banks:

However, I would change the listener's question to he's not the sitting president anymore, why isn't DOJ taking some action on that? And also, what about his audit? What's going to happen with that?

Joyce Vance:

So Jill, I'll take a stab at the question you pose, he's no longer a sitting president. Mueller actually took the step of preserving evidence contemplating that he would at some point, hopefully, be a former president.

Joyce Vance:

There are a couple of reasons that DOJ might not have chosen to indict. And primarily, they fall into two buckets. One is they think that there's an evidentiary failure. They've looked at the evidence, and they've decided that they don't have sufficient evidence to obtain and sustain a conviction on the 10 charges that Mueller lays out are some of them.

Joyce Vance:

And then the second possibility is prosecutors don't indict every case where they've got evidence of a crime. There has to be some priority setting. Well, you would think a case involving a former president who engaged in serious misconduct, that that would be a high priority.

Joyce Vance:

Sometimes there are decisions that are made that it's not in the national interest to prosecute certain cases. This could be one of those situations where DOJ might make a decision that it would be too divisive or just not in the national interest, like the torture cases at the end of the Bush administration.

Joyce Vance:

Jill, I think I know where you and I are both on those charges. I think that they appear to be sustained by the evidence and that it's important to bring those sorts of charges. You cannot have a president in office who obstructs justice and not hold him accountable. So I think our listeners' question is a really good and a really important one.

Jill Wine-Banks:

Thank you all for listening to #SistersInLaw with Joyce Vance, Kimberly Atkins Stohr, and me, Jill Wine-Banks. Barb McQuade will be back with us next week as usual.

Jill Wine-Banks:

Don't forget to send in your questions by email to sistersinlaw@politicon.com or tweet them for next week's show using #SistersInLaw.

Jill Wine-Banks:

This week's sponsors are Helix, Hello Fresh, and Third Love. You can find their links in the show notes. And please support them as they really make this show possible.

Jill Wine-Banks:

To keep up with us every week, follow #SistersInLaw on Apple Podcasts or wherever you listen. And please give us a five-star review. We do love to read your comments. See you next week with another episode #SistersInLaw.

Jill Wine-Banks:

I'm going tonight, I'm very excited. I'm going to the ballet outdoors at Ravinia which is our outdoor venue.

Kimberly Atkins Stohr:

Oh, that's beautiful.

Joyce Vance:

Which ballet?

Jill Wine-Banks:

The Joffrey Ballet.

Kimberly Atkins Stohr:

Oh, God.

Jill Wine-Banks:

We're subscribers. My husband and I both adore ballet.

Joyce Vance:

Me too.

Jill Wine-Banks:

This is a way that I feel safe seeing it because it's outdoors.

Kimberly Atkins Stohr:

That's perfect.

Jill Wine-Banks:

I am so thrilled.

Joyce Vance:

How wonderful.

Jill Wine-Banks:

I'm beside myself. Now I have to go do my hair and get dressed up to go.