

Jill Wine-Banks:

Welcome back to #SistersInLaw with Barb McQuade, Joyce Vance, Kimberly Atkin Stohr, and me, Jill Wine-Banks. Hope you've all seen us in our amazing SistersInLaw merch. It's time to order. Go to [politicon.com/merch](http://politicon.com/merch), where you can get yourself a SistersInLaw T-shirt, hoodie, and so many other items.

Today we'll be discussing the events of January 6th, one year on, the vaccination mandate argument that was taken up at SCOTUS this week, and the verdict against Elizabeth Holmes of Theranos. And as always, we look forward to answering your questions at the end of the show, that's always one of our favorite parts, but before we start our more serious conversations, I want to say congratulations to Kimberly. She won Room Rater's best room of the year, and you can see why, if you just check her out. So Kimberly, what do you say?

Kimberly Atkin Stohr:

Yeah, it was such a treat, a very unexpected one. During the pandemic, all four of us certainly have been learning how to do TV from our homes. And I've done that now, I'm on my second home in the pandemic, since I got married and moved in with my husband, and now we have combined in my space, which is in the basement of our house and uses mostly my furniture, but some of his too.

Jill Wine-Banks:

That's your basement?

Kimberly Atkin Stohr:

That's a basement.

Jill Wine-Banks:

That's gorgeous room is your... Oh my God.

Kimberly Atkin Stohr:

It is a basement.

Jill Wine-Banks:

The best room in my house doesn't look like that. [crosstalk 00:01:42]. That's amazing.

Kimberly Atkin Stohr:

Yeah, he cleared out.

Jill Wine-Banks:

Kim, I have such room envy. It's gorgeous. The color [crosstalk 00:01:48].

Kimberly Atkin Stohr:

Thank you.

Jill Wine-Banks:

The color, I think is a big part of it. What's your secret there, Kim? What advice would you give to the rest of us with our subpar rooms?

Kimberly Atkin Stohr:

Yeah, don't be afraid of color. I've always wanted my room just to feel bright and happy. I, for a long time, lived in a space that had a lot of wood, a lot of dark stuff, and it was beautiful, but I realized that it felt very dark and heavy. And so a while ago, now maybe 10 years ago, when I got an apartment, I decided to decorate it with really bright colors and it made me happy. And honestly, I don't know if listeners realized this, I didn't set up the room for TV. This was what my home looked like.

Jill Wine-Banks:

Oh, this old thing? Really? Come on.

Kimberly Atkin Stohr:

I had a lot of bright colors in my apartment.

Jill Wine-Banks:

Oh, hello, I didn't see you come in.

Kimberly Atkin Stohr:

This is my actual desk where I work. It's my actual home. And so it's not for show. It's just what I really like. One funny thing. I got a comment that I got on Instagram was from somebody. You don't think about how much people pay attention to what's in your house when you're on TV. And a woman is like, "A while back, didn't I see a Vogue sewing book on your book shelf? Do you sew?" And I was like, "Oh my God, yeah, there was." And looking around, it's no longer there, but it's like, "A, you pay attention to everything, and B, you have a good memory." So when you let people in your home, you really let people in your home. So you need to be prepared that they'll comment on anything.

Jill Wine-Banks:

So that fan didn't know that you are someone who not only sews, but you have a professional clothing line. You design your own clothes-

Kimberly Atkin Stohr:

Well, I did. Yeah.

Jill Wine-Banks:

...You made your own wedding dress.

Kimberly Atkin Stohr:

I did make my wedding dress. Yeah. It's sort of dormant in the pandemic, but yes, I did make my wedding dress. My mom's a seamstress. So I've been sewing all my life.

Jill Wine-Banks:

And I should note that the SistersInLaw sent you a wedding gift that was picked specifically to match your color scheme. It was the sort of yellow and orange and bright colors that match your color scheme.

Kimberly Atkin Stohr:

It does. It's really beautiful. I didn't want to put it in the basement. So it's not actually in the screen, maybe we'll put it. Maybe I'll move things around and put it in view.

Jill Wine-Banks:

Got to move around. It was meant for that room, because that was the room that we all know.

Kimberly Atkin Stohr:

My husband's never down here, so I didn't want to hide it away. It was a gift for both of us. And it was beautiful. I really do appreciate it. [crosstalk 00:04:16].

Barb McQuade:

That's what I say about my wedding gifts too, Kim. Your gift was so beautiful that I don't want to put it out. [inaudible 00:04:21] it in a box. I wouldn't want anything to happen to it.

Kimberly Atkin Stohr:

No, that's not what happens. That's not what happens. It's upstairs.

Joyce Vance:

Well, every time I look at your room, Kim, I'm super grateful that I have a big green screen where I sit to do television rather than letting everybody see, because this is my actual desk that you guys can see when we're taping the podcast-

Kimberly Atkin Stohr:

With the yarn.

Joyce Vance:

Well, that's it, right? I have yarn every place because I have way too much yarn. So I don't have books in my bookshelves. I have yarn literally all over. At some point, you're going to have to promise to come down and give me lessons into how to make a room as pretty as yours.

Kimberly Atkin Stohr:

Oh, you are all very sweet, thank you so much.

Jill Wine-Banks:

Well, it's going to be hard to go from that joyous conversation to our first topic, but maybe we should move on to that.

Barb McQuade:

Well, this week marked the one-year anniversary of the January 6th attack on the U.S. Capitol. The investigation in Congress seems to be heating up and this week we heard some significant speeches

from some of our key leaders. President Biden and Vice President Harris gave some very forceful speeches. But the one I want to focus on with my sisters here is the speech by Attorney General Merrick Garland on January 5th. He talked about the more than 700 people that have been charged relating to the January 6th attack. And although certainly they've done a lot of work, those have mostly been individuals who storm the Capitol. And there's been some concern that DOJ isn't doing enough to address the planners, the masterminds, the Trump allies who led the Stop the Steal movement. Garland gave an important speech on this topic. And I'm really interested in asking each of you what you thought of the speech. So Joyce, I know you wrote a piece in Time magazine with your reaction. Can you share with us what you thought about the speech?

Joyce Vance:

Sure. I think Barb, you and I started at the same place on this. We really had not heard much from Garland about the January 6th investigations before Wednesday. And particularly, we had not heard about a potential part of the investigation that would involve people who led, organized and funded everything that happened that day. And that frankly for me, was caused for a lot of concern. We know and like a lot of the top leaders in the department, I have great faith in the deputy attorney general and the associate, but a year in with no signs that key witnesses were being interviewed or that there was a grand jury investigation underway, at least for me, it was becoming increasingly difficult to keep the faith.

And I should say that I've always viewed January 6th as the culmination of Trump's failed efforts to overturn the election using The Big Lie, not just as one day in January, right? The Mike Pence view, oh, January 6th was just one day in January. That's just not the case. So it would make sense for me that there would be investigation into that whole ball of wax, not just the insurgency at the Capitol. And Garland's speech actually gave me a lot of peace. It confirmed for me... I think others disagreed with me, frankly. Larry tried, I think took offense at what I had to say in this piece in time. But I thought Garland confirmed that he would vigorously investigate all of it. The Big Lie, the run into January 6 and January 6 itself. And he said these words that I thought were important that DOJ remained committed to holding all January 6th perpetrators at any level accountable under law, whether they were present that day or were otherwise criminally responsible for the assault on our democracy.

That language, I think lands differently on my ears as a former prosecutor, because one thing that you do at DOJ is you never want to over-promise. You never want to say too much. The tradition is to be understated. So this language coming from any prosecutor, but especially from the attorney general, those words have precise meaning. And so when he says things like, "Whether they were present or not, people who were responsible for the assault on democracy," that language looms pretty large.

And so that's all good, right? It doesn't answer lingering questions about where DOJ has been for the last year, but at least now they're present and they've committed to the investigation and it was right to promise investigation. It would've been wrong to promise prosecutions before all of the evidence was in because DOJ has to wait until investigation is complete. It has to look at possible charges, decide whether there's sufficient admissible evidence to prove any charges it selects beyond a reasonable doubt, make sure that there are no legal issues that could cause cases, could cause potential convictions to be reversed on appeal. All of that consideration can only be made once investigation is done. So Garland made a good starting commitment. I was happy with the speech. Now I'm looking to see whether he follows through on it.

Barb McQuade:

Mm-hmm (affirmative). How about you Kim, as a journalist? I'm curious. Joyce talked about how she heard it through a prosecutor's ears, wondering what you might have been listening to hear. Was there anything that you did or didn't hear that you were looking for? Were you reassured by his pledge to investigate those responsible at any level? Or would you like to have heard something more?

Kimberly Atkin Stohr:

Yeah, I mean, I think overall, if we were giving grades, I would've given him maybe a B-plus, I think. Listen, and I'm not criticizing his style of speaking. He's a very different kind of speaker than say an Eric Holder or someone like that. He's just a different person. And I wasn't looking for him to suddenly turn bombastic and inspire all and everybody. But I really wanted him to give a sense of urgency, more of a sense of urgency. Everything that Joyce said is absolutely 100% true. And I think as a journalist, yes, there's the legal process, which I think always takes longer than the general public thinks it does. Especially criminal investigations, they take a long time. But it feels that the year, the past year, since January 6th has been a long time already. And I would've liked for him to see a lot of urgency.

I think he was also speaking to a lot different audiences, right? I mean, Joyce, the passage that you read from that speech that at any level, I think in a way, yes, it was addressed to the public to let them know that this is a fulsome investigation underway and that it's going to take as long as it takes and they need to be patient. It's letting other people who haven't been charged yet know that they are not off the hook. But I think I thought about the judges, remember the judges in a lot of these lower cases that have been complaining that the sentences that they are meeting out, they may be within the guidelines and reflective of the misdemeanors or lower felonies that they're charging and convicting folks on, but they don't reflect the seriousness of what happened that day. It doesn't seem like justice is being done.

I think he was talking to them too and saying, "Okay, it's not over yet. That's just a part of this, you hold on to that too." So like I said, about B-plus. I would've liked to see more... One last thing that I'll say, is I was very glad that he drew a direct line between January 6th and the voting access laws that were seeing being passed across the country. I thought that was very important.

Barb McQuade:

Yeah. I agree. I thought that was a really interesting point that made it clear that this was about a bigger assault on democracy than just January 6th. What about you, Jill? I know in some of our preliminary back and forth, you raised this issue about whether it was clear that Garland was pledging to investigate people. He said at any level, but did he mean just those involved in the January 6th attack itself per se, or did you hear it the way Joyce did, which is all of the things going back to Stop the Steal, everything about that effort, the big picture, what's happened in Georgia and the efforts by Jeffrey Clark to persuade states that they could throw out the electoral votes in their states. Did you hear it in that broader sense or did you think he was more likely focusing narrowly on January 6th?

Jill Wine-Banks:

I saw it as way too narrow. I did not see it. I think that the sentence that Joyce is relying on, the assault on democracy phrase, is a very slender read on which to draw a conclusion that he meant more than January 6th, the event itself. And so who would've thought I'd be the hard grader? We have two professors here. And I thought I was a pretty-

Barb McQuade:

Joyce is a pushover [crosstalk 00:13:24].

Jill Wine-Banks:

...when I taught trial practice. [crosstalk 00:13:27]. I thought I was an easy grader when I taught trial practice at Columbia. But in this case I wouldn't give him even a B-plus. I would be in the C, C-minus range. I mean, he said in a way, everything he could say about, we're not done yet, and we will go higher up. And that gives me some pleasure and confidence that justice may be done. But I think there's a lot more than January 6th that is threatening our democracy. I agree with Kim, I'm very happy that he mentioned voting suppression voting rights, because that is something that is very much on my mind. One of the reasons I need my Helix mattress so that I can sleep and my Calm so that I can meditate away from the news of the day. But I don't give him that high a mark because I really wanted to hear more about all of the other threats that we are facing.

Barb McQuade:

Do we get paid double for product placement in the middle of our [inaudible 00:14:35]?

Joyce Vance:

It is scary though, how much all of these products have become a part of our lives, right? I mean, we don't just advertise them, we live them.

Jill Wine-Banks:

I know. We live them.

Barb McQuade:

Well, Joyce, I want to come back to you then. Both Kim and Jill have mentioned this idea that they were gratified to hear Merrick Garland mention threats to local officials and voting rights in the same speech where he was talking about January 6th. Do you think that by combining all of these three things, he was suggesting that this is not just about January 6th, this is about a larger assault on democracy and DOJ is on the job, in his broadest sense as we hope?

Joyce Vance:

I think that it does point that direction. Look, I think that Kim and Jill's criticisms are fair. He could have been more direct and more explicit. Of course, it is not in the nature of attorneys general to be direct and explicit about investigations, to some extent, because they're legally constrained, for instance, by rules about grand jury secrecy and otherwise by practice and concerned that if you say too much, or a Tish James, who now faces a lot of criticism, because she said too much about Trump when she was running. So I hope that now that Merrick Garland has found his voice, he will find that sweet spot, where he can navigate between telling the American people enough so that he can restore some of their confidence and trust in DOJ without going too far.

I think the way for him to do that is to talk more about process. He did a good job of that in the speech. He talked about the way investigations worked. And I thought that that was very interesting, saying, "We do this, we start at the bottom, we look at the evidence." We need to do more of that kind of education. But this point that Barb makes that by talking about voting rights and really connecting January 6th in essence to The Big Lie and Trump's effort to overturn the election, that's another clue

that the investigation that Garland has now committed to run is about more than just what happened on January 6th itself.

Jill Wine-Banks:

But those are just clues. Can I just say? I mean, I think those are clues. I think he could have gone further in making it clear than he did. We're picking it apart and hopefully our audience will be comforted by the fact that we are finding clues that he meant more. And I'm a prosecutor too, I value grand jury secrecy, and I value the rules of the Department of Justice of not commenting on. I'm as critical of Comey as anyone has ever been for violating those rules and saying things that led to really bad outcomes. So I understand the balance that has to be achieved. I just don't think he achieved that balance in this. And I hope you're right, Joyce, that he will find the sweet spot and speak out in a way that does not violate any of the secrecy that must happen at the Department of Justice, but that comforts people so that they do feel that something is going on and that there will be accountability.

We also talked last week about why prosecutors make unpopular decisions, why Mimi Rocah and now the Albany DA did the same thing saying bad awful thing, but it doesn't meet all of the criteria for prosecution. The elements of the crime have to be there. And we're in uncharted territory with these crimes and defining exactly who did what and what crimes they have violated that exist. Congress can pass new laws, but it's not going to be used for anything that's already been done. So it has to fall within existing laws. And I admit it's tricky. I just think he didn't quite meet my standard for what you would call the [crosstalk 00:18:35].

Joyce Vance:

So Jill, can I ask you a question? Because I think that's a really fascinating point. And you talked about DOJ guidance, which I think I've heard Barb reference this on television. There's a provision in what's now called the justice manual that says, "But in cases where there is a lot of national controversy or whether it's a matter of significance locally, you can acknowledge the investigation. You can talk about the contours of it." So I agree with you, nobody should ever go full Jim Comey. But Jim Comey was the director of the FBI. Here, we're talking about the attorney general, what would you like him to do? And Merrick Garland, if you're listening, I hope you'll pay attention to Jill, who has deep broad experience in this area.

Kimberly Atkin Stohr:

And can I just add one point to this question to Jill? It's not just Jim Comey. It's Bill Barr who told people, "Hey, it's totally fine for you prosecutors, it is totally fine to publicly announce investigations into voting fraud before they're concluded." I'm sure that's on AG Garland's mind too, as he's being very careful and circumspect.

Joyce Vance:

But let's give him advice, jill, what should he say?

Jill Wine-Banks:

I think that what he should say is the things that are already known to the public, things are in our face. It's not like people think there isn't something to investigate. You have Congress saying, "We might make a referral of criminal conduct." But Congress, A, doesn't have to do that. Justice can go ahead and investigate on its own. And B, the reason they're doing that is because it's all public anyway. And so it

concerns me that this isn't one of those cases where he could have at least said what activities are under investigation, not what people are under investigation, but why couldn't he have said, "And we're looking at the phone call to Brad [Raffensperger 00:20:27]." Well, of course everybody will know that at least Trump and Meadows were participants in that call, but okay, fine. We all know that call was made and the general public believes that it was a crime.

It may not fall within any criminal law and all the elements, but why couldn't he have said, "And we're looking at that." I think that would not have violated any grand jury secrecy to have said, "It's not just that we're looking at the people who broke into the Capitol and desecrated it. We're looking at the people who paid for the buses that brought them there, we're looking at the people who incited it by their speeches, we're looking at..." Whatever else he wanted to add to the type of activities that are concerning the American public and whether there is going to be accountability. So I think that's my only advice is he could have gone a little further than he went.

Barb McQuade:

Hey, Jill, let me push back on that a little bit. We often reference your experience in Watergate and this is a moment I think when it's really pertinent. In fact, Merrick Garland referenced Watergate in his speech. And I think in part, he did so to remind the public that after Watergate, we had this erosion of public trust and the justice department as a part of his responsibility here is restoring that trust in independence. And I think if there's one reason you can point to why President Biden appointed Merrick Garland to this position was to restore trust in independence. If he goes as far as you are suggesting, is there some risk that he appears to be just as partisan as Bill Barr? And could he perhaps have been invoking Watergate just to remind people why it's so important to give the appearances of neutrality?

Jill Wine-Banks:

Well, I think there are a lot of reasons that he might have invoked Watergate. One is that it had a just outcome. There was accountability. So in a way, I take assurance from his reference to that, because maybe he's saying there will be accountability for it, but again, that's a broad and vague way of saying it. The reason people lost trust in the Department of Justice is... We could take a lot of time on, but let me give just some examples, aside from fact that the attorney general of the United States, in his office at the Department of Justice, before leaving to become the head of the committee to reelect the president, known as CREEP, had a meeting at which he approved the break-in. So he was involved as attorney general in the actual break-in. He got indicted and convicted for his role in the obstruction of justice.

So there's a reason why you wouldn't trust the Department of Justice. The attorney general was a criminal. And Kleindienst was also indicted who became later attorney general. So there are a lot of reasons why you wouldn't trust it. There were also no rules that prevented the White House from having direct conversations with the department, which of course would not be allowed now. John Dean was getting information about the investigation from the man who was my boss at the Department of Justice, Henry Peterson, a man who was greatly respected and admired until I found out about his role in getting sucked in, I would say, he didn't realize what he was doing. The president wants information, he gave it, but it was clearly wrong.

So there were a lot of things that happened in Watergate that aren't happening here, that aren't part of this. And I think we're closer to the Comey episode of saying too much about an ongoing investigation and Barr telling people, "Oh, go ahead and do it and announce it right now." That's not what I'm saying. I'm not saying, let's say we're investigating A, B and C for X, Y, and Z. But I think you can talk about topics that you are investigating and show that you are going further than looking up the



chain. I know how to build a case and yes, it's true. You start with the smaller easier fruit, and then you try to flip them, but it's been a long time now and it's a year.

And so I think that I'm losing patience. I think a lot of Americans are losing patience and that you could be starting to focus on specifically higher up people. If Congress, with its limited resources and limited jurisdiction can get the kind of information they're getting, then I am assuming that the Department of Justice has the same information. Well, they certainly have it, because it's public anyway, in the same way that you and I can read the letters that lay out the evidence saying, "You're being called in because..." And it lays out why. The Department of Justice has that too. And they have his tax returns and all of the rest of that stuff. So I'm still thinking that I was hoping for more than I got.

Barb McQuade:

Yeah. I do wonder to what extent the justice department will piggyback on all of this investigation that the congressional committee has done? Because they've clearly amassed a lot of information. Well, it's great to hear your perspectives. I think that they're all a little different from mine. I was very satisfied with the speech. I thought just the fact that he gave the speech was critically important because the last thing we had heard on this issue was back when it was acting U.S. Attorney for the District of Columbia, Michael Sherwin, who said, "We're investigating January 6th and everybody else up to and including sedition." But we hadn't heard anything in a year. So I think it was very important for Merrick Garland to speak to this. I am sure that they sat around by committee and went through every single word and wanted to give those breadcrumbs to people who are listening for it at any level and including the threats to local officials and including the assault on voter rights and using the phrase assault on democracy. So I was very satisfied.

I understand, Kim, you're concerned about the lack of urgency and it would've been nice to hear just something that says, "I get it. This has already gone on for a year and we got to move." But I also think his reference to Watergate was saying, "I understand that I represent the whole country here, not just those who want Trump's head on a platter, but we have to make sure that everybody comes along with us." And so I've been involved in investigations where I got similar, a lot of media pressure to indict, indict, indict already. And we worked slowly, methodically, carefully, and came out with a very sound case on more than one occasion. So these things take sadly frustratingly a lot of time. You send out a grand jury subpoena and it could take 90 days to get the records back.

And then you need that to find out, here's 10 more accounts I need to get. And then it takes another 90 days to get those back. And then you ask the witnesses about them. So it takes a long time. Robert Mueller took 18 months. It would not surprise me to see this case take years. That's why the statute of limitations is five years. So I know that's frustrating for people who want to see the results before the mid-term elections, but I would be absolutely stunned if it happened that quickly. I think we're going to measure this in years and not even months.

Jill Wine-Banks:

I just was going to add, since we're talking about what he said about Watergate, let me just read his quote because I think in part, aside from the original reason I offered, I think it is saying no one is above the law, but he said, "Over 40 years ago, in the wake of the Watergate scandal, the justice department concluded that the best way to ensure the health of our democracy is to have a set of norms to govern our work. The central norm is that in our criminal investigations, there cannot be different rules depending on one's political party or affiliation. There cannot be different rules for friends and foes, and there can not be different rules for the powerful and the powerless." So I think that is a powerful

statement of, no one is above the law and will pursue this where it goes. And I take great comfort in that. And again, I hope our listeners will too.

Joyce Vance:

Barb, I was going to echo your comment about how long these investigations can take. I mean, even diligently working prosecutors, it just takes a while. But I once had the experience of having a case where we were down to the wire. We were about a week out from indictment and we were just getting butchered in the media, "The U.S. Attorney's office isn't doing anything about this." And we would just laugh every day as we went into the grand jury and lined up the witnesses ahead of the vote on indictment. And then to my shock and horror, the guys in the media patted themselves on the back. And they were like, "All that pressure we put in place, that's what got DOJ to act." I wonder if we're going to see some of that here. I mean, I wonder if Merrick Garland will face those allegations that, well, he was successful [crosstalk 00:29:31].

Barb McQuade:

That's okay. You know what? If people want to take credit, that's fine. And then how about Biden's speech? What did you think about that one? Kim, what did you think of Biden's speech?

Kimberly Atkin Stohr:

See, I give that one an A. That one actually exceeded my expectations because I think he very much echoed the urgency that I was looking for from Merrick Garland. I understand they have different jobs and Biden's in a different place and he needed to do that, but not just the very forceful defense and the very forceful linking of voting rights and what that means for democracy and why you need to protect that. But also being very clear about who he thinks is responsible. He never said Donald Trump's name, but he said the former president, and he was very clear that this goes right up to the top to him as far as he is concerned and not just a potential criminal liability, but in pushing The Big Lie that is damaging democracy. I think he also did it very skillfully. He did it in a way that he called the former president a loser. And you know how the former president feels about losers.

Barb McQuade:

Mm-hmm (affirmative). Yeah, I'm sure that was also intentional.

Kimberly Atkin Stohr:

He said it without saying the word loser, he was like, "Hey, you lost." And then talked about his ego being bruised. And just over and over again, just pushing this idea that, "I beat you, 80 million people, I beat you." And then like within minutes, a statement came out from the former president and I thought, you know what? A hit dog hollers. He heard it and it landed. So I thought it was a great speech.

Jill Wine-Banks:

I thought it was a great speech too. And I especially liked the references to the former president, and the best of all, the defeated former president. And saying, "You lost." I thought it was a great speech and that it hit all the right notes and was delivered really well.

Kimberly Atkin Stohr:

Really, he couldn't have insulted Trump more unless he told him that he's also broke. He just really hit him where his soft spot is.

Barb McQuade:

Yeah, how about you Joyce?

Joyce Vance:

I liked the fact that they stayed in their lanes. Merrick Garland talked about law and Joe Biden talked about politics. And I thought that the speeches were powerful as a one, two punch giving us a path forward now that we're a year out from January 6th.

Kimberly Atkin Stohr:

How about you Barb?

Barb McQuade:

Yeah, I thought it was a really powerful speech. I also thought it was important to be there at the Rotunda. He gave the speech where that attack occurred. We're a secular country, but if there is a sacred place in this country, it is the People's House where the elections and democracy unfolds. And so I thought taking it to that spot was really important. So I thought it was a terrific speech. And I thought he really met the moment.

Jill Wine-Banks:

I was very impressed when he mentioned something I didn't know, which is that, that was the spot where Congress used to meet and before the Civil War and that Abraham Lincoln, as a member of Congress, sat in seat number 191 in that very location. So I thought that was all really just well done. And Kim, to your point about his bruised ego, Mary Trump last night was I think on with Lawrence and was talking about his bruised ego and how hard this would be to listen to this. So I thought that was really interesting.

Joyce Vance:

So longtime fan of meditation here, but this has been such a calm, relaxed week. There hasn't really been any stress in any of our lives and no need to meditate, right? But the Calm app, which I am a huge fan of for meditation, it's really great. Have you all had a chance to explore it yet?

Barb McQuade:

I have not. I want to hear more about it. I think mindfulness is really important, but I haven't had a chance to use the Calm app. Can you tell us about it, Joyce?

Joyce Vance:

It's really wonderful. It gives you this opportunity for guided meditation. What I like about it is I keep it on the home screen on my phone. And when you're hitting a point in time where you've got five or 10 minutes, you can do a walking meditation or a sitting meditation. I'm a big fan of walking meditations. And it'll accommodate you and get you through those times and put you on the path to feeling comfortable with your ability to meditate. Barb, you and I have both talked about our concern when we

meditate, that we breathe wrong, right? I mean, it's like, "I'm breathing wrong." Calm really helps me with that. It's one of my favorite meditation apps. What else about it? What do you think, Kim?

Kimberly Atkin Stohr:

Yeah. I agree with you. I also like that it gives you a way to meditate in your own way too. Like walking meditations, I find that to be a lot more useful for me than just finding a place and sitting silently. A lot of emotion surface during the holiday season. We all experience that. And with everything that's been going on this week, happiness, sadness, joy, excitement, stress, the list goes on. So remember to take time for yourself and make sure you keep your mental wellness in check. Take a break with the Calm meditation app.

Jill Wine-Banks:

We've partnered with Calm, the number one mental wellness app to give you the tools to improve the way you feel. And we certainly all need to feel better in terms of the news these days. So clear your head with guided daily meditations, improve your focus with Calm's curated music tracks and drift off to dreamland with Calm's imaginative sleep stories for children and adults by joining over 100 million people around the world. That's 100 million people around the world use Calm to take care of their minds, sleep more, stress less and live better with Calm. And right now, if you go to [calm.com/tgog](https://calm.com/tgog), you'll get a limited time offer of 40% off a Calm premium subscription, which includes hundreds of hours of programming, and new content is added every week.

Kimberly Atkin Stohr:

For listeners of the show, Calm is offering a special limited time promotion of 40% off a Calm premium subscription at [calm.com/tgog](https://calm.com/tgog). Go to calm, C-A-L-M, .com/tgog for 40% off unlimited access to Calm's entire library. That's [calm.com/tgog](https://calm.com/tgog) or look for the link in our show notes.

The U.S. Supreme Court on Friday took up two challenges to vaccine mandates imposed by the Biden administration. Ironically, two of the attorneys representing the challengers to those mandates had to argue the case remotely instead of showing up to court, because, wait for it, they tested positive for COVID. One challenge involves an OSHA rule requiring employers of more than 100 people to require their employees to either be vaccinated or test negative. And the other is from CMS and other federal agency, and it's a mandate for medical personnel at federally funded facilities.

We've already talked about how these challenges or shadow docket cases that came out of the shadows, before the merits process they were being argued in a public way. So now let's talk about what the arguments themselves were. Barb, I want to start with you. So this is one of those cases that's really important. Everybody understands vaccine mandates and challenges to them, but the law is pretty dry and it's based on legal principles, like the non-delegation doctrine and the major questions doctrine, and the challengers are targeting what they call the administrative state run amok. Okay, so can you make it make sense for us in English? What is the court actually deciding in these cases?

Barb McQuade:

Yeah, so this idea of the non-delegation doctrine basically says that it's Congress that's supposed to legislate, right? They're the legislative branch, and they're not supposed to delegate their legislative powers to anyone else. But of course they do create these federal agencies like OSHA, the Medicare and Medicaid program, and they allow them to regulate and make rules in their space. So that question is on the table. And then the other, you talked about the major question doctrine, that's this idea that the

courts should decide what the law is when we have these major questions about vast economic or political significance, we should not defer to agencies to decide what the statutes mean. So essentially, it is you here are the statutes OSHA, those passed in 1970 that says, OSHA is the organization that gets to implement rules in workplaces to protect workers from grave risks to their health.

Similarly, the Medicare and Medicaid programs say that they have to make sure they are protecting all of the patients in the care of healthcare workers who are funded by the Medicare and Medicaid programs. And so those agencies have said, "Well, we've got this pandemic and we need to protect workers and patients in these situations. And so we're going to implement this rule that says you have to, either in the OSHA case, either be vaccinated or wear a mask and test weekly, and in the Medicare and Medicaid case, they say, you must get vaccinated because you're dealing with patients and you're coming into people's homes and you're working in healthcare spaces and hospitals and the like." So the question really isn't about the merits. Is this a good policy, or is this a bad policy? It really is about, who has the power to do this? But what's so interesting is, they can't help themselves. They start devolving into, is this a good policy or is this a bad policy?

Kimberly Atkin Stohr:

Yes, we actually saw a good deal of that. And I think as is often the case, we can kind of glean a little bit about what the justices might do based on what they were asking. And Joyce, I want to turn to you, I know you were listening to the arguments. What stood out to you from the three... By the way, it was three and a half hours of arguments in the case, it was really unprecedented in a lot of ways. It was very, very long. But what stood out to you? One thing that stood out to me that had nothing to do with the argument itself is the fact that Justice Sotomayor heard the argument telephonically from her office because she's usually the only justice when there are in-person arguments to wear a mask since they resumed in-person arguments. She's also a type 1 diabetic. So I think it's really clear that she is not messing around and she was not going to risk being in that courtroom itself. So that tells you something. But on the arguments themselves, Joyce, what stood out to you?

Joyce Vance:

So it was really interesting. I think Barb is dead on the money when she talks about the subtext for this argument, which had little to do with vaccines and a lot to do with this long-term goal that conservatives have had to convince the Supreme Court to dismantle the nanny state. But that said, you focused him on the fact that this is a hearing on a preliminary injunction. This isn't the merits argument. This is just about whether the court should preliminarily enjoin OSHA and CMS from imposing these rules about vaccines and masking. And I was surprised early on in the OSHA argument, I actually thought the government was doing pretty well. It seemed to me that there was a little bit more favorability towards the government's position than I had expected.

Of course, you would expect Justice Breyer to be on the side of the government. And he was saying, "How can it be in the public interest to enjoin right now when there's near high rates of hospitalizations?" But more surprising to me, with some of the comments from some of the other justices, Justice Gorsuch indicated at one point that the major questions doctrine only applied if the statute was ambiguous and that had become a big point of contention, there is even a comment from Justice Kavanaugh who was saying, "But in an emergency," right? He was saying, "As I understand it, you invoke the major questions doctrine and the statutes, but here we're in an emergency." And so I thought, well, maybe there's some chance here for the government, but of course, as the argument went further on, it became increasingly clear that there was the predictable hostility, at least to the OSHA case, the government may come out a little bit better.

Medicare imposing rules for CMS is a little bit more akin to the military where maybe you can impose order. And here, this is an area where we're talking about government spending power and the ability to do something. So I'm a little bit less certain that the government loses there, but ultimately at the end of the day, when the court gets to the merits consideration, this is going to be all about dismantling the nanny state for once and for all. And we should point out that that will have implications down the road. If you're talking about what Congress can and can't delegate to the executive branch, there could be implications in a lot of different substantive areas, immigration for one.

Kimberly Atkin Stohr:

Yeah. And I think that's a really important distinction that this is about preliminary action in this case, not a final determination on this, because this rule is set to go into effect on Monday. It doesn't mean that people would be fired on Monday. They have a certain period of time. Employers have a period of time to implement the full mandate starting in 30 days. So 30 days to require employees to at least get the first dose of the vaccine, I believe 60 days for other doses beyond that. So it's not a final decision that the Supreme Court will be making now. At one point, Justice Alito asked several times, "Well, what if we just put a hold on this? What impact would that have?" Certainly the solicitor general, Elizabeth Prelogar, was saying, "This is life or death. COVID is very serious. It is the worst pandemic, the worst health crisis in our nation's history. This is urgent. We really need to get this in place right away."

And Alito was saying, "Hey, what if we just put it on hold?" Which made me think, I was like, "Oh, you could have also put that Texas abortion law on hold, but you didn't do that. You didn't do that. You let that go into effect. So I digress." Jill, I want you to talk about the real-world implications of this. Yes, it is preliminary, but it will make a big difference as Omicron is raging, as to whether these mandates will be able to be implemented or not. And in courts below, we have seen different outcomes, right? When it comes to, for example, a different mandate, the mandate for federal employees and members of the military, those have largely been upheld. But on the other hand, you see mandates involving federal contractors. Those have largely been struck down as being an overreach by the executive branch. What do you expect will happen? And how will that affect people? I mean, the cases heard today affect nearly half the workforce, for example.

Jill Wine-Banks:

Well, I think basically the answers that we've already had kind of summarize the answer that you're asking for now, because this is only a stay, it's a temporary thing, and it doesn't get to the merits, which I think we can predict based on the arguments, as Joyce pointed out, that at least OSHA sounded like there probably aren't enough people in support. You have probably at least three, six, but maybe there's four who would go for allowing this to continue. I think with the Medicare or Medicaid CMS, that may prevail that the healthcare issue. And we've seen all the warning signs, as you pointed out where federal courts are saying, federal contractors, now the federal government can't control that. This would affect half of all the employees in America, we're talking maybe more than 40 million workers could be impacted if this mandate could stay, if they had to be vaccinated.

And that would help greatly in terms of real-world implications for what's going to happen to all of us dying and being continually exposed to the virus. And as the solicitor general pointed out, Prelogar, it means people will live if we are allowed to enforce this. But I think the biggest issue really is what's going to happen to the regulatory state if the Supreme court is allowed to do this, then what other regulations are going to be deemed to be not within the agency's powers and that have to be congressionally mandated? And that could change a great deal. I mean, I'm old enough that I actually started practicing law before there was an OSHA. Because I graduated law school in '68 and OSHA

started in '70. And so I know the dangers that America faces if agencies who are the experts in the field aren't allowed to do what they're supposed to do, what's going to happen to the equal employment opportunity commission?

And I think, Kim, you mentioned something that of course bothered me enormously listening to this, which is, my body, you get to control, but not when it comes to asking me to take a vaccine that will protect not only me, but will protect you. And although the agency relied mostly on, it will protect the unvaccinated and not surprisingly, the conservative justices said, "Well, they've made that decision to take the risk, it's up to them. And they can always undo that risk at any time. So why should the government stop them from that risk?"

Kimberly Atkin Stohr:

Right. Their body, their choice.

Jill Wine-Banks:

Right. Exactly. But not my body, my choice. I don't get to make that choice. So I was pretty upset about that. And I'm sorry, the government didn't make the argument when it was making these rules that it also protects the vaccinated, because we know that there are breakthrough cases of people who are fully vaccinated and boosted. And I think for the first time, this pandemic is hitting my friends. I know a lot of people who have, they don't know where they got it. They've been extremely careful. They're fully vaccinated, boosted, wear masks. Don't do things indoors without a mask. And I want them protected as much as I want the unvaccinated protected. And I want to be protected from the unvaccinated. We know that they can contaminate me. And so I want this to be upheld in the worst way for everybody's protection.

Barb McQuade:

Can I just respond to something that Jill said? Jill, you mentioned that OSHA was created in 1970, which I think is absolutely right. One of the things that I heard today from Justice Gorsuch, and it's so frustrating to hear lawyers masquerade their policy preferences for legal doctrine. And I absolutely believe that is what is going on here. He created, for those of you who are debaters, or just want to win an argument with your friends and family members, think about this, the straw man argument. Justice Gorsuch loves the straw man argument. And so he gives this little lecture about, "What about polio? We all forget about polio, who remembers polio? Only I remember polio." Like, "No, we all remember polio. We are talking about [crosstalk 00:49:48]." And what he says is, and here's the straw man argument. And he says, "Well, when polio came along, we didn't have any agency creating some rules saying we had to have mandatory vaccines for polio, now, did we?"

As if to say, "You're right, Justice Gorsuch, you win. We didn't do it for polio, so that was a terrible disease. And so we shouldn't do it for COVID either." Except, OSHA didn't exist when polio was a problem, before the vaccine, it only was created in 1970 and people were getting the polio vaccine back when that was discovered. And it's because we didn't have crazy people opposing the polio vaccine, everybody got in line and got their polio vaccine. So that's a straw argument. Make up something fake and knock it down. And so it was very disappointing to see that just play out that way.

Joyce Vance:

He's the master of that though. I think we could do an entire segment on straw man arguments that have been set up by Justice Gorsuch.

Kimberly Atkin Stohr:

Yeah. And I think one point that both Solicitor General Prelogar and Justice Sotomayor made is that, look, we have a regulatory set up for a reason. Yes, there is the initial job is of Congress to make these laws and pass these laws and decide what should happen. But the reason that we have these agencies is that you have experts in place. A congressperson from New Jersey may not be in the best position to decide what is the best way to address a pandemic, but perhaps the experts that you have set up at these centers for Medicaid and Medicare services know a little better, or people who are in place that knows how can we keep from having an outbreak in a factory? They're in there for a reason, they have the expertise, they understand what needs to be done. That's why we have regulation. That's how it works.

So we'll see what happens. One last quick question I have, and it's more rhetorical is, I wonder to whatever extent we're talking about real-world consequences. The fact that one of the justices did not feel safe enough to hear arguments in-person with the other justices. The fact that two people had to call in because they had tested positive for COVID. I wonder how much that will weigh in on this decision.

Joyce Vance:

I love what Justice Kagan said in the CMS argument. She said, "Shouldn't it be okay for the government to require people administering federally-funded programs to not kill their patients?" And I think you're right, Kim, that sort of thinking is not lost on the court when they've got lawyers out and one justice sequestered inner chambers, it'll be interesting to see.

Jill Wine-Banks:

As busy as I've been this week with the news, I take great joy in being able to take a break and use my very special HelloFresh meal packages. You get great quality and interesting recipes and you end up feeling like you are serving a restaurant quality meal that looks and tastes fabulously. What about you?

Kimberly Atkin Stohr:

Yeah. I really enjoy HelloFresh, especially this week, D.C. was hit by a snowstorm. And when that happens, the shelves at grocery stores are cleared because people go into panic mode and I was just really glad. It's like, "We have HelloFresh." So we had everything that we needed to make a delicious nutritious meal that was really fast to make. So I was particularly grateful for it. What about you Barb?

Barb McQuade:

Yeah. I know you'll be stunned to know that I'm not really much of a cook, but I find with HelloFresh it's great because I don't want to go out and eat. I want to cook at home, but I'm not so great about having all the ingredients here and measuring things out. And so I love the fact that it's all there. It's all healthy. I get a lot of fish, I get a lot of vegetables and I feel like I'm just eating a lot better and it's quick and convenient and my family really likes it. So I love it. Joyce, what about you?

Joyce Vance:

I have the opposite problem, Barb. I love to cook and I can spend the entire afternoon making a meal. That's great when you're on vacation and you've got time, but now that we're all back to work, I mean, we're all doing a million things, right? I've been grading exams and getting ready for the podcast and



trying to do some reading and get my lectures in the works. I don't have three or four hours to make a meal. I love being able to put it together with fresh ingredients that come out of the box.

Barb McQuade:

The New Year's a great time to focus on what's most important in your life like nutrition, finances, and your health. So whether it's saving money by ordering less takeout, learning to cook, prioritizing your wellness, saving time, HelloFresh is a delicious meal service here to help with endless options. They make cooking at home simple and enjoyable.

Joyce Vance:

HelloFresh cuts back on time spent in the kitchen, so you can spend it on your other resolutions with meals ready in 30 minutes or less. The quick and easy meals including 20-minute recipes and low-prep and easy cleanup options provide an even faster route to putting homemade food on the table. You can easily customize your order on the app within minutes with fresh high quality ingredients that go from the farm to your kitchen in less than a week. And best of all right now, it gets delivered straight to your door.

Barb McQuade:

We've had snow here in Michigan and there are tracks leading from the road to my house. And I realize it's from all the delivery people who've been coming and going. So including the boxes of HelloFresh. So don't wait to get started. Go to [hellofresh.com/sisters16](https://hellofresh.com/sisters16) and use code SISTERS16 for up to 16 free meals and three free gifts. That's [hellofresh.com/sisters16](https://hellofresh.com/sisters16) and use code SISTERS16 for up to 16 free meals and three free gifts, or get the link to America's number one meal kit in our show notes. That is true about the tracks by the way. I was just out.

Joyce Vance:

I believe it.

Barb McQuade:

I'm like, "Who's been going up to our door? Oh yeah."

Joyce Vance:

On Monday, a Northern California jury returned a verdict in the first of two trials involving Theranos, a Silicon Valley startup that promised potential investors and consumers comprehensive diagnoses based on just a fingers prick worth of blood. So after convincing a very impressive array of people, one was Rupert Murdoch who invested in the company. Others came onto her board, Jim Mattis, Henry Kissinger, and George Shultz. Stanford drop out, Elizabeth Holmes saw her business completely fail. She was indicted on federal charges along with her ex-boyfriend, Sunny... Oh, I can never say his name. She was indicted on federal fraud charges along with her ex-boyfriend, Sunny Balwani, and he will face charges later this year.

But the verdict in the case against Elizabeth Holmes came in and that verdict after nearly four months of trial was something of a mixed bag. So Jill, talk to us about the split baby that the jury delivered, convicted on some counts, acquitted on others and hung on three counts. Even though the judge decided to read what's called an Allen charge to the jury after they told him that they were hopelessly deadlocked. Can you explain for our listeners what an Allen charge is and why it's used?

Jill Wine-Banks:

Absolutely. But let me first say that the split decision, I think helps to uphold the validity of what the jury did, because it shows that they were very careful in considering the evidence on each of the counts. So that's an important point, I think. The Allen charge is intended to help break a deadlock. And it is something that in 1896, I think, it was approved by the Supreme Court, that was to encourage a deadlock jury to continue deliberating until it reaches a verdict. And it's a really tricky phraseology because you don't want the jury to feel pressured to give up their justifiable opinions about guilt or innocence, and you don't want to coerce them with it.

So there's been over time phraseology that's been developed that encourages them to reach a verdict because they've heard all the evidence, they know it the best and that why would any other jury have an easier time with it than them and they've already had so much time and effort and money spent on this prosecution? So they should be encouraged. It's sometimes called a dynamite charge, which is intended to get them moving. And so that's what it is. There are still some states that don't like it a lot, but it is constitutionally approved.

Joyce Vance:

So Kim, what charges did Holmes end up getting convicted on?

Kimberly Atkin Stohr:

So she was convicted of four charges. Three of them were wire fraud in connection with representations that were made about the technology that Theranos claimed to employ. And one was on conspiracy to defraud investors. And I think on the point that Jill made, that the split decision reflected the jurors being very careful. I think it also may have reflected the decisions being made by the prosecution, because she faced charges based not only alleging that she tried to defraud doctors and patients about the effectiveness of these machines that should be able to run all these blood tests based on just a pin prick of blood, but also that she defrauded investors from whom she got hundreds of millions of dollars to invest in this company. She was only convicted as to the investors, she wasn't convicted on any of the charges as to the patients.

And in this very, very long trial, during which Holmes herself testified for seven days, the prosecution spent almost all of its time, focusing on the investors, what she told investors, her representation to investors, spent very little time on the patients. In fact, there are only three witnesses called with respect to the charges about defrauding the patients or the doctors. And two of those witnesses were also witnesses to the case being made about defrauding the investors. So, I mean, you guys are the prosecutors. To me, that sounded like the prosecutors weren't as confident in those charges that they could make those charges stick. I would question then why they brought them, but are there times that you move forward to trial and don't really focus on some of the charges? What reasons why might that be? I found that fascinating here.

Joyce Vance:

Your obligation as a prosecutor is to only bring charges if you believe you have sufficient evidence to obtain a conviction at trial and to get it affirmed on appeal. So I think that the prosecutors believed in their case when they indicted it, the reality is that sometimes the evidence doesn't come in exactly as you expect it to. In a complicated case like this, there can be a lot at work. I don't have a good hard answer for your question, but I don't think that they went into it thinking that the charges were weaker. It's interesting though, to think about how this all comes out in the wash. The biggest question that I

have about this case going forward is what does the sentence look like? And Barb, you've written a really great piece about that. Why don't you clue us in?

Barb McQuade:

Yeah, thanks Joyce. Well, the other night we were crunching the numbers, you and I and some friends, former prosecutors were texting each other. What about this? What about this? And I think we all landed that the sentencing guidelines range would probably be somewhere between 14 and 17 years, but I'd actually be very surprised if she gets a sentence of that length. What's really interesting, I'm sure you've seen this, Joyce, but it was very common in my district. You'd prosecute somebody for some white collar crime. You would calculate the sentencing guidelines and you'd go into sentencing. And the judge would say something like, "Oh, the guidelines are just too high." What? And the defense would argue that. They're clearly just way, way too high, artificially high. Well, what do you mean? I mean, we don't get those kinds of arguments in other kinds of cases, cases for street crime.

And this is not a case where there are mandatory minimum sentences, like we might see in a drug case or a gun case. So the judges have a lot of discretion to [inaudible 01:02:35] all the way down to probation if they want to. Now, I'd be surprised if that happens, but it wouldn't surprise me to see here get something like half of the sentencing guidelines. And part of the reason I think is the implicit bias that judges see in a wealthy well-to-do, person of means, who's college educated like Elizabeth Holmes. I think there's some bias in favor of women that I've seen in cases.

I also think that one of the great disparities in the criminal justice system is that when you're wealthy, you can have a body of good works that you can point to, that can help mitigate your sentence, like service on boards or charitable contributions, or other kinds of things that a person who's indigent just doesn't have the means to acquire, nor do they have the lawyers who can amass letters of support on your behalf from prominent members of the community to say what an upstanding character you have.

So I think all of those reasons play into the disparities that we see in the criminal justice system between the haves and the have nots. And so her guidelines are 14 to 17. I would expect the prosecutors to advocate for something in that range because of the massive amount of fraud and the harm that we saw to these patients. Even though she was acquitted on those charges, the judge can still consider that information in imposing sentence under what's known as relevant conduct, even if it's acquitted, if the judge believes by a preponderance of the evidence that those counts were proven. But I would expect something that's like half of the guideline range, so we'll have to wait and see.

Joyce Vance:

So those like three months you spent at Princeton count for something?

Barb McQuade:

Sometimes.

Joyce Vance:

I'm sorry.

Barb McQuade:

Don't be sorry.

Joyce Vance:

I mean, I'm going to speak from the heart for a second and echo what Barb said and say that I sometimes found it disturbing in white collar cases to have judges in sentencing, you could just see the thought process. They would look at the defendant and the defendant looked too much like them, or maybe in this case too much like their daughter for them to want to hand out a really heavy hitting sentence. And I've always thought that in some sense, our sentencing calculus is a little bit out of whack. These people who have so much going for them should be punished more heavily than people who maybe start with less to work with. But I guess that's a question for another day. Barb, thanks for the assessment on that. I think we'll be talking about Elizabeth Holmes a little bit more.

Jill Wine-Banks:

Just before we started this recording, the verdicts of sentencing or the sentencing of the Arbery murderers came down. All three of them got life. Only one of them has a chance of parole. So I think that's an interesting outcome. And the judge was very careful in how he assessed their guilt and their remorse. And that was one of the things that weighed heavily. The reason that Bryan, who was the one who drove the car, but didn't have a weapon, although he used his car as a weapon, why he got the chance of parole, whereas neither of the others got even a chance of parole.

Kimberly Atkin Stohr:

You know what? I have had a terrible time sleeping as of late. And I'm thinking maybe could it be my mattress, Barb? Do you ever have trouble sleeping?

Barb McQuade:

I never have trouble sleeping, Kim, because I have a Helix mattress. No, I sleep like a baby, but did you know I was helping my daughter with her homework the other day. She has a psychology class. Do you know about sleep paralysis? I never knew about sleep paralysis. When we sleep, we lose all muscle tone. And sometimes people wake up during sleep paralysis and they freak out, understandably, because they can't move. And so it's what prevents us from acting out our dreams or from sleepwalking. But I digress because with a Helix mattress, you can sleep soundly like a baby and never worry about these things. What about you, Jill? You use a Helix mattress, don't you?

Jill Wine-Banks:

Wow. I'm still listening to this [crosstalk 01:06:44]. That is so fascinating.

Barb McQuade:

I'll send you an article. We'll put an article in our show notes for her.

Jill Wine-Banks:

Please do [crosstalk 01:06:51].

Barb McQuade:

High school textbook.

Jill Wine-Banks:

Yeah, I mean, I took the Helix sleep test and I was very surprised because I matched with the Helix Midnight mattress, which wasn't as hard as I thought I needed, but boy, was I wrong? It was exactly what I wanted. Something it was just right for me. And so why buy a mattress made for someone else?

Joyce Vance:

I love our Helix mattress and I like it so much. I'm getting ready to redo one of my kid's rooms. And he's about to get a larger bed. He believes he's too old and mature for a twin bed. And so I'm going to go ahead and get him a Helix mattress too. He really likes ours. You too can get a Helix mattress, just go to [helixsleep.com/sisters](https://helixsleep.com/sisters) to take the two-minute quiz jill was talking about, that'll match you with a customized mattress that will give you the best sleep of your life. From soft to firm, plus size and cooling, they've got it all. Not to mention that Helix has doctor and chiropractor recommendations. Helix mattresses come with a 10-year warranty and you can try it out for 100 nights, risk free. It gets delivered right to your door and they'll pick it up if needed. So you never have to go to a mattress store again.

Jill Wine-Banks:

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

Now we get to the favorite part of this show, which is listener questions. We love hearing from you and taking your questions. So if you have a question for us, please email us at [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tweet using #SistersInLaw. If we don't get to your questions during the show, keep an eye on our Twitter feeds throughout the week where we'll answer as many of your questions as we can. And today's first question, I'm going to ask you Joyce. It comes from Allison and Nick, two separate questions, but both similar. Could you clarify the meanings of mandatory, maximum and minimum sentencing guidelines and why those do not appear actually to be mandatory to us non lawyers?

Joyce Vance:

This is such a good question. I think what Allison and Nick are trying to get at here is the difference between statutory sentences and guideline sentences. When Congress passes laws that include crimes, they will set a sentence within the statute or within that chapter of the code. And typically, it's phrased as something like, up to 30 years, but occasionally those sentences will have mandatory minimums. And so the judge will be directed that they can't charge less than two years or less than 10 years or less than 30 years. But those are statutory sentences. And those mandatory minimums carry the force of law. You actually have to follow those except in some very narrow circumstance. But sentencing in those other cases where the statute says, up to 30 years or up to life, that involves guidelines sentences. The guidelines were adopted by the courts in the late 1980s. Is that right? The late '70s or the late '80s?

Jill Wine-Banks:

Sentencing guidelines act of 1984 implemented in 1987.

Joyce Vance:

Thank you. The guidelines were adopted in the 1980s, and it was an effort to create some uniformity in sentencing so that you would be sentenced the same for a crime, whether you committed it in Texas,

California, Maine, or Alabama. It's a little bit cumbersome. It's a regulatory mechanism. But in essence, what it does is it gives the judge a range of conduct that they have to start by considering at sentencing. It's not mandatory, but they have to look at that range first and decide whether they want a sentence within it, or whether there's a rationale to go above it or below it.

Jill Wine-Banks:

Well, we're out of time now. So thank you for listening to #SistersInLaw with Kimberly Atkin Stohr, Barb McQuade, Joyce Vance, and me, Jill Wine-Banks. You can send in your questions by email to [sistersinlaw@politicon.com](mailto:sistersinlaw@politicon.com) or tweet them for next week's show using #SistersInLaw. Go to [politicon.com/merch](http://politicon.com/merch) to buy some of our fun swag. This week's sponsors are Calm, HelloFresh and Helix. You can find their links in the show notes. Please support them as they really help make this show happen. To keep up with us every week, follow #SistersInLaw on Apple Podcasts or wherever you listen, and please give us a five-star review. It really helps others to find the show. See you next week with another episode, #SistersInLaw.

Just before we started recording this... I don't know if you can hear it. My dog is playing with his favorite new toy. Can you hear?

Joyce Vance:

Yes.

Jill Wine-Banks:

It's a playing [inaudible 01:12:24]. I made it out of clay. Sorry. Oh my God.

Joyce Vance:

That's awesome. We need to see the toy. Is it [Eldorado Joy 01:12:33]?

Jill Wine-Banks:

It's Eldorado.

Joyce Vance:

Oh my gosh.

Jill Wine-Banks:

I bought it in Washington in Alexandria, Virginia. It is the cutest thing and he loves it.

Joyce Vance:

He found a dog toy that's Eldorado? I love that.

Jill Wine-Banks:

It's Eldorado. Yes. Yes. Sorry.

Joyce Vance:

Bella is jealous. Bella needs one now.

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