

Barb McQuade:

Welcome back to #SistersInLaw. I'm Barb McQuade. This week, we have a lot to talk about. We'll be looking at the revelations regarding the FBI and the Larry Nassar case, and whether it accounts for sexism at the FBI, then we'll see if the judge in Michigan will be banishing the Kraken and talk about how we can strengthen our voting rights. And as always, we'll be answering some of your questions at the end of the show.

Before we get started, though, my sisters, I have a question I want to ask all of you and it relates to kind of the way we organize ourselves in the digital world. And I try to stay abreast. I'm not one of these people who claims to be a Neanderthal. I certainly have lots to learn, but I find that I am really struggling to manage in the world of text messaging. When it comes to emails, I can flag for follow-up if I get a message I want to go back to, but when I get text messages, I find that you get something that comes in that maybe you need to follow up on, but then you get a bunch of other stuff, like I'm in some groups and somebody likes something, somebody else said, I mean the four of us are in a group where we text each other. So in all that madness of texts going back and forth, maybe there's one that says something like, would you like to meet next week? Which day is good for you? And I need to check my calendar before I respond to that.

So there's all those other likes and loves are coming in. That one gets pushed down in my list and I never get back to it or I forget about it. Do you guys have a technique for getting back to your texts? If not, I'd love to hear from our listeners on ideas for that. Do you guys have any solutions to my problem or other tips or challenges that you're facing with technology?

Jill Wine-Banks:

Well, you said you're not a Neanderthal and I know you all think I am because I'm still using an Android-

Kimberly Atkins Stohr:

Me too.

Jill Wine-Banks:

... which I love.

Kimberly Atkins Stohr:

I do not.

Jill Wine-Banks:

I worked for Motorola and I can't go to iPhone. I just can't. But I find that there is no way to mark it as unread, which is a real problem because once it's read, it's gone. So I use a technique that I have used since the days of Watergate, which is do it now. I have this mindset of DIN, which is don't put it off and don't read something twice. When you see it respond to it. If you do that, you save yourself the time of doing it twice because otherwise you have to reread the thing and now you have the complication of finding it. But I too would like to hear from listeners, if there is a way on Android to mark something as unread so that you can go back to it knowing you still need to answer it.

Kimberly Atkins Stohr:

Well, Jill, compared to me you are a technological genius because the battle, that I'm having that Barb is having as well just people will text me and if it doesn't stay front of mind, I forgotten about it, which is a problem because then people have said, "Hey, give me a call or let me know." So I have gone back. I bought one of those old paper desk calendars that sit, that show you the whole month and it's sitting right here on my desk. I just got it here this week and every time I get a text, an email or anything, I take out a pen, remember those? And I write it down on the calendar in ink. I have been doing this little color coded process at... My husband was astounded when he saw this, I don't think he's seen anything like it in two decades, but that's what I have to do because the technology has bested me. I can't keep up with my phone.

Jill Wine-Banks:

What about a to-do list on your phone? Or just putting it in your calendar on your phone?

Kimberly Atkins Stohr:

To-do list is right on the calendar, Jill, is right on the edge. To-do notes are on the side.

Jill Wine-Banks:

Right, right.

Kimberly Atkins Stohr:

I write them down. I need paper. That's how technologically challenged I am.

Joyce Vance:

I like paper too, Kim. I used to actually in the past like to bullet journal and do a little bit of sort of artwork in my journal, but I don't have time to do that anymore. And so I try to balance between Jill's strategy and Barb's throwing your hands up in the air. I do try to deal with things the first time, but I just can't always do that. Sometimes it's someone who wants to make an appointment and some other things need to fall in place before I do that. Other times I just get bombarded. We have a family text group and it's possible that sometimes it's sheer and utter nonsense. And because there are six of us, people get really excited and they start... that's dinging and somebody else is dinging about something that's more serious and I just really get underwater with it. So I hope our listeners will have good suggestions for us.

Barb McQuade:

I do use my phone for to-do lists, which I find pretty useful, in the notes section. Your paper is inspiring, Kim, but that requires that you actually get to the point of writing it down and I'm already behind when I get to that stage. So let's hope our listeners will be able to save us from the brink of a technological disaster. But it's one of the things about technology, it's great and it's efficient, but it moves pretty quickly and so you have to keep up and it's constantly changing, but I try to embrace it. So always interested in tips from others.

Well, all right, let's get on with our show from there. Shall we? The first topic we wanted to talk about this week is the inspector general issued a report earlier this week reviewing the way the FBI handled the initial report from the USA Gymnastics about allegations against Dr. Larry Nassar and Jill, I think you were going walk us through that topic.

Jill Wine-Banks:

Yes. To me is totally fascinating and raises so many interesting questions. The inspector general of the Department of Justice issued 119 page report on how the FBI badly mishandled allegations of sexual assault by USA Gymnastics national medical coordinator, who also worked in your state, Barb at MSU. You, our listeners, I'm sure have heard his name, Dr. Larry Nassar, and you know that he is now in jail sentenced to multiple sentences maxing out at over 175 years. He assaulted reportedly over 115 girls and he also was charged federally with possession of over 30,000 images of child pornography. But what is so astounding is that the US Gymnastics CEO brought allegations to the FBI field office in Indianapolis in July of 2015. He provided the names and details of three gymnasts who were willing to cooperate and testify, but the Bureau interviewed only one and did that by telephone, not even in person. And they didn't even write the report known as a 302 until 17 months after the interview. They didn't report the facts to the Lansing field office, which might've had jurisdiction or to any local law enforcement in the state.

When nothing happened, US Gymnastics then went to the FBI in LA, but not much happened there either. It wasn't until the press and the MSU police got involved in October of 2016 that action was finally taken. During all that time more gymnasts were assaulted by Dr. Nasser, assaults that could have been prevented if action had been taken promptly and appropriately. There are just so many issues involved in this and let's start, I think by asking Joyce two things, first, what possible federal crimes were there that might have warranted the FBI getting involved and where would that office have been that had the right jurisdiction? And then secondly, regardless, what you see as the most egregious failures of the FBI at both offices that were involved in this? Doing nothing, not even reporting the facts to local law enforcement or even to... In addition, I think there's some evidence they lied when they were being investigated by internal investigators. So what's the worst thing here and what possible crimes were there?

Joyce Vance:

Well, let me just start by saying this situation makes me really angry. I usually am able to separate my personal views from legal situations that I'm analyzing. Here I find that to be virtually impossible. This report dropped the day we had just gotten back from vacation, so I was still in my good vacation mood, and I'd walked down to the coffee shop in our neighborhood and had just sat down with a cup of coffee when this dropped. And I started reading it and I mean, I was still in the executive summary and I was so mad. Everybody else in the coffee shop must have thought I was having an episode because I think I was slamming stuff around. This is really... I don't think that we can stress how wrong what happened here was and how inappropriately the FBI acted.

But I'll answer your question about federal crimes this way, Jill. We know that there was a federal crime that could have been charged because Nassar was ultimately convicted of one. He's serving a 60 year federal sentence for possessing child pornography. He's 54 years old, so that's effectively a life sentence, pretty good federal prosecution. And while that charge might not have been obvious when USA Gymnastics walked into the FBI office in Indianapolis, I'll just put a sort of a footnote here that somebody else might want to pick up. I wonder why USA Gymnastics chose the FBI office in Indianapolis rather than the more logical one in Michigan, but anyhow, it might not have been obvious that there was a possession of child pornography charge that could be raised. But the problem is that if the FBI had taken the allegations with any level of seriousness, they would have conducted investigation. They would have pretty quickly realized that they had probable cause to execute a search warrant on Nassar's computers, which is what the FBI... Or rather what the state really got involved in

first, but the FBI ultimately realized that there were more than 37,000 images of child pornography on Nasser's computer.

So those charges would have become apparent, but on these facts, I would have also wanted to take a look almost immediately at 18 U.S.C. 2423, which makes it illegal to travel across state lines in order to have sex with a minor. Knowing that gymnastics coaches travel with the people that they're coaching, that's something that would have immediately popped into my mind as a prosecutor once these initial allegations were raised is something that had to be investigated. So the jurisdiction question is an interesting one. Obviously there was jurisdiction in the Western district of Michigan where MSU is located, but there could have been jurisdiction in any location where Nasser had engaged in this conduct. So if it had happened while he was traveling, if it had happened in the course of some of his other works even overseas in connection with the Olympics. In other words, if you're the Indianapolis agent and the special agent in charge when these complaints come in, this is not a case that you just sit in and listen in and then close it.

At a bare minimum they should have spoken with state officials and spoken with the FBI and other jurisdictions. And it's clear that they just didn't take these women's concerns seriously.

So your last question, what's most egregious here? I mean, it's just the whole thing. I find it really impossible to focus on one thing. It's the entire story here. The failure to follow FBI procedure and open a case, the failure to make sure that it was followed up on. It's great that the inspector general has now come up with new rules for making sure that there's follow-up, that shouldn't have been necessary. The FBI considers itself the premier law enforcement agency in the world. Allegations that young girls are being sexually assaulted just don't get missed in that kind of environment. And the icing on the cake is what you referenced, the special agent in charge in Indianapolis who lied to the inspector general, not once, but twice when they were interviewing him, because in the middle of all of this, he wanted to get a job from USA Gymnastics. He lied about that to the inspector general, but they ultimately found clear evidence that he had actually applied for a job. He didn't get it, but applied for it I think in 2017. This is just a level of professional misconduct and dysfunction in the FBI that is unacceptable.

And then, I'm sorry, but I have to say one more thing, which is we talked in the context of the Cosby case about how women became concerned that there was no point in coming forward because nothing would happen. This case is another piece, another link in that chain and it points to the fact that women have to keep coming forward. It's unfair that we don't get listened to, but we must be persistent in insisting that law enforcement to address these concerns.

Jill Wine-Banks:

I think I want to follow up with Barb about the job search by the agent in charge in Indianapolis. But I add to what you're saying, which is not only do women have to come forward, but people have to start listening. And I found it outrageous that not only did the agent not open a case, but that he didn't even record his notes, there is never been a case in any time I've ever heard of that the FBI does not officially form what's known as a government document 302, which is the typewritten interview report, but to not even have written up the telephone interview, to have done it by telephone is outrageous. And it was so obvious that there had to be a state sexual assault that they didn't do it. And the other lie he told was he said he reported it to the Lansing office, which was a lie. There's no evidence he did that. But Barb, would you follow up on the conflict of interest that seems to have been totally apparent?

Barb McQuade:

Yeah. For people who work in government, conflict of interest is hammered into your skull from the day you arrive. And so for some jobs maybe this isn't a big deal, but for somebody who has risen to the job of special agent in charge at the FBI he had to know what the rules were. So just a little background on what happened is that when the CEO of US Gymnastics, his name is Steven Penny reported these concerns to the FBI in July, later that that fall of 2015, the special agent in charge in Indianapolis, Jay Abbott met with Steven Penney at a bar and discussed with him some potential job opportunities with the US Olympic Committee. And so the CEO of USA Gymnastics, Steven Penney indicated he was willing to put in a good word on behalf of Abbott and Abbott did in fact apply for a job with the US Olympic Committee in 2017. He was ultimately not selected.

But while he was talking with the CEO on other occasions about the Nassar investigation, he would bring up his interest in the US Olympic Committee and at the same time he was working on this case at the FBI office. And so this intertwining of these two topics is completely inappropriate. In fact penny, the CEO expressed concerns to Jay Abbott, the FBI special agent in charge about how USA Gymnastics was being portrayed in the media after the Nassar case broke and asked whether he might be in trouble and the special agent in charge, Abbott, actually proposed to his FBI colleagues that they issue a public statement that would cast USA Gymnastics in a positive light. So not only was it a potential conflict of interest, it sounds like he actually made recommendations that may have been impacted by that conflict of interest.

And so the rules for all executive branch employees, including the FBI is that employees have an ethical duty that prohibits them from working on anything where they have a financial interest, engaging in outside employment or the prospect of employment that conflicts with their duties or engaging in any activity that might cause a reasonable person to doubt their impartiality. And in fact, if you're a federal employee seeking outside employment, there are rules about how you go about that, including consulting with the ethics official at your agency to make a decision about whether you need to be recused from the matter, so you're not doing both at the same time. So for example, when I was leaving the US Attorney's Office and I began negotiating employment with the University of Michigan, I consulted with the ethics official for the Executive Office for US Attorneys in Washington and I was recused from all matters involving the University of Michigan while those negotiations were ongoing, because it could create a perception of being less than impartial.

And so the reason for these rules is that you don't want to create the perception that a government employee is acting on his own behalf, in his own self interest at the expense of his duty to serve the public or pulling any punches. It undermines the credibility of the agency, here the FBI, and consequently, it makes them less effective in the long run. If people think that FBI agents just use their jobs for their own personal gain instead of investigating with impartiality and integrity. So it's not just a theoretical harm, it's a real harm.

Jill Wine-Banks:

It absolutely is. And that was a great description. And I want to follow up with you Kim on some of the recommendations that the inspector general made, fixes which don't really seem like enough for, as Joyce describes, the horror that happened and how totally inappropriate and wrong the FBI was in handling this. What did he recommend and what do you think the consequences should be for the bad FBI agents who were involved in this and what have they been?

Kimberly Atkins Stohr:

Yeah. And so I think I would agree with you, Jill, but let me walk through. The IG came up with four recommendations. At the end of the day I will sort of summarize them. One is for the FBI to reassess its

policies to more precisely describe what's required in terms of promptly contacting and coordinating with other state and local law enforcement agencies when someone makes a report, specifically when it's a crime against children, as is the case in this case, which seems important, it seems that those policies should have already been in place, but I'm glad that they will reassess and put those in place. Two is to clarify policies as to the type of approval required including who will be doing that approval when a supervisor conducts an investigative activity. Three is what we got to about the telephone, developing a policy describing the circumstances if any, under which telephone interviews of alleged child abuse victims are appropriate. And four, it's just training FBI employees on all of these various proposed policies.

To me and I've never worked at or with the FBI, but just to me it seems that much more is required. I think Christopher Wray should be conducting a stem to stern audit of the workplace to really look for more systemic issues that are at play that have been revealed by this report. And you don't have to have worked with the FBI. Anybody who's worked in a workplace knows that sometimes an incident will happen that is problematic and in investigating that incident, we find out that there is a workplace problem, there is a culture problem, there is a systemic problem. And then you do a greater evaluation of that workplace to really get to the heart of it and prevent it. It seems that these recommendations to me are aimed at fixing this specific case after it's already happened, whereas they should be focused on preventing future things from happening and really cleaning up that workspace.

And one thing I think could be at the heart of this, the FBI has had some trouble with sexism and gender discrimination and gender inequity. And I think perhaps if there were more women in those FBI offices, things may have turned out differently. According to recent statistics, 80% of FBI agents are male and only 20% are female in leadership. That difference is even more stark. So I don't know, in the limited time we have left, I would love to hear y'all's thoughts on it since you have worked a lot more closely with FBI folks.

Barb McQuade:

I'll chime in on that point, Kim, and just say, the men and women I've worked with at the FBI have been quintessential professionals, dedicated tireless, public servants. But I do think representation matters and I agree with that last point you made about by being 80% male, is the FBI missing an important perspective? I don't think it's for lack of trying. I know they work hard to recruit, to improve the diversity in all types of diversity, but when you have women at the table, their lived experience is different usually often than the lived experience of men and so they may bring a different perspective to allegations like this, about sexual assault. I know if you ask a random group of men whether there is sexism in a workplace or they've ever experienced sexual assault, they'll say absolutely not. No, never. It doesn't happen here.

And if you ask women in the organization, they'll say, oh, yes, it's happened to me. I think that just that lived experience helps every organization make better decisions. And I think the FBI would benefit from an improvement in its diversity. I know it's trying, I know it can be difficult to attract diverse candidates to jobs where the workplace is already so skewed. Like sometimes women don't want to work in a place where you've got 80% men, but I think that we need to do some things to make sure that people are encouraged to work there so that the organization can become stronger.

Joyce Vance:

Barb is being a little bit more gracious about the FBI than I think I would be in this regard. Although I really have great esteem for the institution and for many of the people that I worked with and I do think that there is a push by FBI's leadership over the last decade, certainly to do better. The culture is still

very misogynistic in many ways. I think this is one example how you could simply ignore these allegations and have so little repercussion for so long, almost as though they didn't expect for there to be repercussions. So the FBI has never had a woman in the top job as the director. I think that matters, but there need to be women across the organization, women running offices, there are still too many of them, women agents and something that caught my eye here was that one of the agents involved in this initial work in Indianapolis actually was a woman.

And I think what FBI needs to do is to put on a full effort to create a culture where this sort of dismissiveness towards women and girls is no longer accepted, sort of a Me oo movement for the FBI.

Kimberly Atkins Stohr:

Hey Barb, are you still eating Magic Spoon?

Barb McQuade:

I am. For me, cereal is a late night treat. When I miss dinner, I love to eat cereal. And I find that Magic Spoon is not only delicious, but also very healthy. How about you?

Kimberly Atkins Stohr:

I am. I am really enjoying it. I like it on yogurt. It's really quick. It's a great breakfast or a great snack. I've may have been known to sprinkle some of the peanut butter on ice cream, I will not confirm or deny that, that is good too. But it's great to have around. What about you, Jill?

Jill Wine-Banks:

I find that I like protein in the morning, and even though Magic Spoon is called a cereal, it's really a protein. And so it gets me filled up and it lasts in terms of feeling that way for a long time because of its high protein content. So I love it. Plus it tastes really good. I eat it in the morning and occasionally I have it just by the handful as a snack. And of course I try to limit the quantity, even though it tastes delicious, just so I don't go over my calorie count, but it is wonderful, low calorie, no sugar, no gluten. And it is tasty. And Joyce, are you using it too?

Joyce Vance:

I am. I've been really focused on eating in a more healthy way as we come out of the pandemic. So the most important thing for me about Magic Spoon is that it has zero grams of sugar. That's a really important piece of it to me.

Kimberly Atkins Stohr:

Yes. Magic Spoon does indeed have zero grams of sugar. It has 13 to 14 grams of protein and only four net grams of carbs in each serving. It's only 140 calories, a serving. It's keto friendly, gluten-free, grain-free, soy-free, low carb and GMO free.

Barb McQuade:

And besides all that scientific stuff, I just like building my own custom set. With Magic Spoon you can build your own box or get a variety pack with available flavors like coco, fruity, frosted peanut butter, blueberry, and cinnamon. You can even mix and match to create amazing snacking and meal combos.

Joyce Vance:

You too can be like Kim and enter the group of folks who refuse to affirm or deny that they are sprinkling Magic Spoon on their cereal if you go to [magicspoon.com/sister](https://magicspoon.com/sister) and grab your delicious cereal and try it today. And be sure that you use our promo code Sister at checkout to save \$5 off your order. Magic Spoon is so confident in their product it's backed with a hundred percent happiness guarantee. So if you don't like it for any reason, they'll refund your money, no questions asked.

Jill Wine-Banks:

Join our happiness group and remember to get your next delicious bowl of guilt-free cereal at [magicspoon.com/sister](https://magicspoon.com/sister). And use the code Sister to save \$5 on your order.

Kimberly Atkins Stohr:

I think Barb is eating some right now.

Barb McQuade:

Well, our next topic has to do with a hearing that occurred right here in Michigan, where I am at the moment, a case that is part of this series of cases known as the Kraken and Kim, I think you're going to walk us through that one.

Kimberly Atkins Stohr:

Yes. Kim's going to walk us through the Kraken. So Michigan judge, as you said, may soon crack down on the Kraken lawyers. This week, Sidney Powell, Lin Wood and other attorneys appeared in federal court in Michigan to essentially defend the indefensible, the baseless claims that they have been making since the election about fraud, not only to the public, but to the courts. And so I want us to break down exactly what is going on here. So first I will turn to my fellow native Michigander, Barb, to explain what the state of Michigan and the city of Detroit are alleging that these lawyers unleashed.

Barb McQuade:

Yeah, thank you for letting me talk about the Kraken because I spent almost six hours of my life watching that hearing on Zoom the other day.

Kimberly Atkins Stohr:

Oh my God.

Barb McQuade:

This on YouTube. I had to step out for another matter for a bit of it, but I came back and it was still on and it went on for many more hours. It was a very lengthy, but this lawsuit initially alleged widespread voter fraud in Michigan in the 2020 presidential election, which has since been debunked by a Republican led Michigan Senate committee that investigated all of these claims, dead people were voting and the machines automatically switched the votes from Trump to Biden and they debunked all of them. And so in December Judge Linda Parker, former AOSA, by the way, in the Eastern district of Michigan wrote an opinion denying the plaintiff's motion for a temporary restraining order to invalidate the vote, pre-certification, pre electoral college vote. And she found that the lawsuit was based on theories, speculation, and conjecture without any factual support. So she found that the plaintiffs were unable to show any likelihood of success on the merits and the plaintiffs later dismissed their lawsuits.



In that opinion, she not only said is this lawsuit frivolous, but she wrote that the lawsuit seems to be less about achieving the relief plaintiff seek and more about the impact of their allegations on people's faith in the democratic process and their trust in our government. So she came out swinging there. Afterwards the lawyers for the state of Michigan, Attorney General Dana Nessel, and the City of Detroit, an attorney named David Fink was hired to represent the city are seeking sanctions under Rule 11 of the federal rules of civil procedure for filing a frivolous lawsuit. We can talk a little more in a minute about exactly what Rule 11 provides, but it says that there can be penalties if you violate the rules of a good faith pleading filing something for an improper purpose and you don't have a factual basis or basis in law for your claims.

And so at this six hour hearing, Judge Parker handled the hearing like a deposition and as she would... spent a lot of time going through these affidavits that were submitted in support of the lawsuit. The plaintiffs kept saying, "We supported our lawsuit with 600 next number of pages." And she went through each one methodically, walking through each one and asking the witnesses or the lawyers, whether there was any probative value to them and whether anyone had actually talked to these witnesses before attaching them to their complaint. And the answer was no. They used words like a witness said he believed that votes were being changed, but he didn't explain what the basis of that belief was. Another said that he was perplexed by what he saw. Another said he saw a plastic bag full of documents at the conference center where votes were being counted. That quote could have been ballots. Even if you assume all of these statements were literally true, they didn't have any probative value to allege voter fraud. And so that was what I think she exposed.

She asked repeatedly whether anyone had made a factual inquiry into the basis of these affidavits and then when she would hear none, she finally asked, how could any of you as officers of the court present this in an affidavit? So she ended by giving the lawyers 14 days to submit supplemental briefs, but I think that she is really bending over backwards to give them an opportunity to answer her questions and make their case. And I would really be stunned if she does not end up assessing sanctions which are designed to deter lawyers from abusing the court system for an improper purpose.

Kimberly Atkins Stohr:

And Joyce, the attorneys, the Kraken attorneys argue among other things that since they didn't have to file affidavits at all, right? The fact that these affidavits were riddled with lies and speculation, and as Barb said, contained absolutely no probative value at all is... It doesn't matter. But that is not, if I recall my Rule 11, which I am a Rule 11, I think I've mentioned this before, I'm a Rule 11 nerd. That's not how it works, is it? Tell us how it works.

Joyce Vance:

No, I mean, you're exactly right. This is Federal Rule of Civil Procedure 11. You guys should all take a look, but I'm going to read a little bit of it for you because it's ridiculous for lawyers to try to duck their clear obligation of candor to the court by even making this absolutely ludicrous argument. They killed off any shred of credibility that they might've had remaining with the court by doing this. Here's what Rule 11 actually provides. It says, by presenting to the court a pleading, written motion or other paper, whether by signing, filing, submitting, or later advocating it an attorney certifies that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances. And then there are three things that the attorney is in essence certifying, that they're not filing the pleading for an improper purpose, like delay or harassment or unnecessarily increasing the cost of litigation. Secondly, that the claims defenses and other legal contentions are warranted by existing law or by a non frivolous argument for extending the law.

And thirdly that the factual contentions have evidentiary support. So essentially I think the Kraken lawyers managed to ring all three of these Rule 11 bells that would entitle the court to sanction them. I hope the judge will sanction them. It will be very disappointing if she doesn't. She went to a lot of trouble to question them for instance, about the fact that they had really not engaged in any meaningful investigation into the factual allegations to ascertain that they were true and clearly they weren't based on what folks knew at this point. But beyond sanctioning the lawyers under Rule 11, I hope she will also refer them to their respective state bars for further action. Really their state bar should consider whether they even deserve to keep their licenses to practice law.

Kimberly Atkins Stohr:

Well, on that point, Jill, as we said, the judge has taken this into consideration. The attorneys can make their filings, but a ruling will come in the next couple of weeks. So what potential sanctions do the Kraken lawyers face? And what does it mean, not just for the court, Jill, but in terms of combating the big lie, which all of this nonsense was in service of?

Jill Wine-Banks:

So first let me say, I think that what Joyce just mentioned is really important, which is lawyers can be disbarred for doing this kind of misrepresentation and lying, but in terms of the federal rules and Rule 11, particularly, the sanctions can be anything that will prevent a similarly situated party from doing this again. So the court has pretty much freedom to do whatever it thinks is necessary to stop this kind of conduct. It can include monetary sanctions. It can include non-monetary directives, such as you have to withdraw this pleading, you have to go public with what the truth is. And it's anything that the judge thinks is warranted. And they can also direct payment to the other party of all of their reasonable attorney's fees and other expenses resulting from the violation, which in this case would be every single cent that was spent in defending this frivolous lawsuit.

So it could be a quite high amount of money. And even that I think would not be enough. I think that looking at them never being allowed to practice before that court, or maybe before any court is something that has to be looked at in the context of this. In terms of the big lie it's so hard to say what will make a difference? People who are paying attention to the facts already know that every court has thrown out any kind of fraud complaints that have been filed. They also know that Sidney Powell, one of the people involved here has said, "Well, who would believe me? This is so totally ridiculous." We can't forget that. So what will it take to persuade those who believe this big lie to not believe it? It's one more step. It's one more piece of evidence that the lie is a lie, that there is nothing supporting it.

If the sanctions are heavy enough, maybe that will get people's attention. If it's not the cult that follows these conspiracy theories, at least it might stop other lawyers from filing these kinds of complaints, because they would realize that they too might have significant sanctions and costs imposed on them.

Kimberly Atkins Stohr:

And I just want to underscore that point about attorneys just in case more attorneys may think in furtherance of the candidate of their preference, they can engage in shenanigans like this. It is so important for the people who go before the court, making claims, representing people, no matter who. I'm not saying that people including the former president aren't entitled to representation. They are. But when you do it you have to do it truthfully and ethically, it is important. You're wasting... You are damaging the institution of the judiciary and you're wasting the time and resources. A lot of these filings that were being made, remember it was in the middle of a raging pandemic. People were coming into

courthouses and having to process and deal with this nonsense, putting their own health at risk. It was really horrific what was happening in real time.

All three of us practiced law for a long time. It's really easy to go through your entire legal career and never be brought up on ethical... charged with ethical sanctions because you were lying all the time or doing nonsense. I'm not talking about making a mistake. This is egregious. So I really hope that this judge comes down and makes it explicitly clear to other attorneys and to the public in general, what nonsense this is and how this can not be tolerated.

Jill Wine-Banks:

Kim, that's such an important point and I want to make our listeners aware that it's very different than saying a person deserves a defense and deserves for you to push the law, the boundaries of what existing decisions are, as opposed to making up information to support-

Kimberly Atkins Stohr:

Correct.

Jill Wine-Banks:

... a claim. So yes, we can push the law to where it hasn't been, but we can't make up facts. Of course, I started my career as a prosecutor. When I went to the other side and was a defense lawyer, I worked with one of my Watergate colleagues, Jim Neal, who was a much older, more experienced lawyer and his first piece of advice to me was never say something to the court that you don't know to be true on your own information. You say, my client tells me, and that has been very good advice that I think has protected me and many other lawyers from ever misrepresenting to the court. You can say what your client said. You can't say it's true. And I would never argue to the jury in closing arguments that something is true, that I didn't think I had support for it being true. And those are important rules for lawyers to protect the legal profession and our reputation and our integrity and the court system.

Joyce, have you been loving your Helix mattress?

Joyce Vance:

I really am. I took the Helix quiz when I picked it out. I wanted a firm mattress and I got precisely what I wanted. I was really impressed with how well the test matched me up with what I needed. How about you?

Jill Wine-Banks:

I took the quiz and I didn't know what I wanted. I had a firm mattress, but I wasn't sure. And it actually said that according to how I sleep and how my husband sleeps, we needed a less firm mattress and it is very comfortable. So I was glad that I took the test and was matched with the Helix Midnight Mattress, because that's what felt really good for me and it can tell you, depending on how you sleep, whether it's on your side, your back, your stomach, or whether you move around a lot, the test will tell what you need.

Joyce Vance:

Y'all can go to [helixsleep.com/sisters](https://helixsleep.com/sisters) to take their two minute quiz, just like Jill and I did, and get matched 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. Helix mattresses come with a 10 year warranty and you can try it out

for a hundred nights risk-free. It gets delivered right to your door and they'll pick it up if you need for a return.

Jill Wine-Banks:

Helix is offering up to \$200 off all mattress orders and two free pillows for our listeners. Go to [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. We thank Helix for sponsoring this episode and we thank you, our listeners for supporting Helix.

Barb McQuade:

All right. And our final topic for today is voting rights. This week, President Joe Biden gave a big speech on voting rights and so Joyce wrote an interesting piece in MSNBC Daily about that. Joyce, why don't you take us through that topic?

Joyce Vance:

So let's dive right in and talk about what's going on with voting rights and why they're at the top of everybody's radar screen right now. President Biden did give a major speech. He called the issue that the country is facing with voting rights, the issue of our time and in an unusually straight forward manner for a politician, he called out the big lie and said we were on the verge of the worst crisis since the Civil War. He didn't really hold back.

Kim, let's start here. We all understand after living through the big lie that there's no widespread fraud in our elections going on that corrupts the results, but Republicans continue to use fraud as the justification for laws they're passing that make it more difficult for people, often black people and other minorities to vote. Some of the laws the states are passing are just plain crazy like this Georgia law that says church groups can't give water to people when they're waiting in long lines, but don't we need some sort of rules to prevent fraud ID act maybe that require you to offer an ID before you vote? You need an ID to get a passport or to open a bank account. So maybe that would be appropriate. Are Democrats being too aggressive when they criticize all of the measures Republicans are taking as unwarranted?

Kimberly Atkins Stohr:

Yeah, I am glad you asked that question, Joyce, and asked it in that way, because so often in our history, when we have seen laws that have a discriminatory effect, they went into place, but they sounded very reasonable when they went into place. And this is by design, right? So you think about ID, I need ID when I order a glass of wine in a restaurant, or I need ID to board a plane. I would first point out that there's no constitutional right to have a glass of wine or a board a plane, but in this case, there certainly is a constitutional right to vote and federal laws protecting that right. But when you look at where these voter ID laws are being implemented and the way they're being implemented, it's easy to see how they target black and brown people. Recall that case in North Carolina that the judge found that the voter ID law there was implemented with quote, nearly a surgical precision, end quote, directed at black and brown folks, because it can often be more difficult for them to obtain it.

So for example, according to the ACLU minority voters are disproportionately prone to lack the kind of government photo ID that is necessary. Up to 25% of black citizens for example lack a photo ID compared to only 8% of whites. And also you have the idea of, okay, you can say, all right, well then get an ID. An election is coming, go get an ID, be ready. Well, the underlying documents that are required to

obtain these can often be really difficult. And I want to give you an example to sort of crystallize it. My dad professional guy, raised the family, headed a union for years and years. He has an ID, but this is the point about the underlying documents say if he or someone else didn't have one. Lives in Michigan, but he grew up in rural Arkansas and he needed a copy of his birth certificate, which he didn't have. Well, it turns out he contacted the state of Arkansas and they didn't have a record of his birth certificate. Keep in mind, he grew up in a town with a population of 400 people in the thirties.

Often places like that, birth certificates aren't issued the way they are now. Birth records are written in a Bible or in a family book and so the state wouldn't have a record of this. So he needed a birth certificate. So I was helping him try to navigate through the process of trying to get it and I was told, "Okay, well, if you can present some other records, like school records, we can use that as documentation to issue a birth certificate." Well, my dad went to a one room K through 12 school house in Arkansas, which burned down in the sixties. So we could not go to the school. I was told that these records are kept in the school. He couldn't go back to the school for these records. So weeks of investigation turn into months. I find out from someone, a historian, that sometimes these records are kept at the Education Department. And so I went, they searched through microfiche-

Joyce Vance:

Wow.

Kimberly Atkins Stohr:

... and found my dad's third grade report card. First of all, it was awesome.

Joyce Vance:

How did he do?

Kimberly Atkins Stohr:

He did good. He did good. He did very good at school, had a tiny bit of a behavioral thing happening. He didn't always behave, but he did very well academically, but we ended up getting copies of his third grade report card on microfiche in order to be able to get his birth certificate. This is somebody who is not a poor, who isn't without means, but it was still that hard. I can tell you also, because I'm still in the process of engaging with a bunch of government agencies to change my name. It is not easy to deal with government agencies. So to say, this is a minor thing. Everybody has one. It is not true. And the people who are pushing these laws know that it's not true. They know that it will make it harder for particularly black people, poor people and other people who are more likely to vote Democratic to vote and that's why they're doing it.

Joyce Vance:

I'm so glad that you personalized it that way, Kim, because I had a similar problem with my mom when she moved to Alabama. She was older and when I went to get a copy of her birth certificate, she was born in Missouri, they had no record of her birth and like you, I had a lot of resources to bring to bear and had a former law enforcement friend who actually went over to the courthouse to figure out why there wasn't a record. And it turned out they had redrawn their county lines and the hospital that she was born in was in a different county now than it was in when she was born and he was able to untangle it and I got her birth certificate, but those obstacles are insurmountable for so many people.

And in 2016 in Alabama, I remember being horrified by the story of a veteran who was in his nineties, who had voted in every election before then, but who because Alabama's ID Act had gone into effect was unable to vote. He didn't have a driver's license. He was poor. He lived in a rural county where it was tough to get the state issued ID and so his voting rights were actually defeated. The notion that fraud is more important than suppression I think is really out of whack with the reality. And so Jill, that takes me to my question for you. Biden seemed very much focused on this issue of voter suppression and he insisted that the Senate needs to pass both of the voting rights bills that the House has sent to it, both H.R.1 and H.R.4. Can you summarize those bills and explain to us whether you think that the duality is necessary, do we really have to have both bills?

Jill Wine-Banks:

I think we need not only both bills, but we may need even more because these bills really address the suppression. And there's now a lot of subversion giving the states the power to undo your vote by saying, "Well, we don't like the outcome and even though we can't prove fraud, we're going to cast the election to a different candidate." So I think we may need more, but yes, we certainly need both For the People and the John Lewis Voting Rights Act. And let me try to summarize them because they're very detailed bills. The For the People Act of course has passed the House in a very close partisan vote 220 to 210 in March, but it faces a filibuster in the Senate. So we don't know what's going to happen to it.

But in summary it would create a nationwide floor on federal ballot access, not states. It means states could still do whatever they want in their local elections, although practically speaking, unless they have two separate elections, the results would be that it would create a floor for access for all voters. And it would nullify many of the voting restrictions that are being passed and it would change the way political districts are drawn and it would also undo some of the damage of Citizens United, which undid the Watergate legislation, post-Watergate laws were put into place to change campaign finance. So how does it do that? One, in the For the People Act, it expands voter registration by mandating online registration, by mandating automatic registration whenever you visit a state agency, unless you specifically opt out and it would also allow same day registration.

It would also mandate that there be mail ballots in all 50 states and it would require states to pay postage and have tracking to let the voters know that their ballot got there and also to let them know if there's something wrong with their ballot that needs fixing, and it would require a minimum of 15 days of early voting. And on this ID issue, it would allow a voter to sign an affidavit swearing to their identities rather than showing an ID exactly because of the reasons that have been mentioned, which is that these ID laws are being put into place to make it harder for people of color, people without the means. I mean, if Kim and you, Joyce had the kind of problems you had, you can imagine what people who aren't lawyers and don't have these facilities available to them, how much trouble it would be.

So it would also let universities register students, which would help students voting. It would prohibit purging voter rolls just because you didn't vote in one election. And it would, as I said, improve campaign finance rules. It would prohibit for example, spending by foreign nationals, like the Ukrainians Lev Parnas and Igor Fruman. And also remember Maria Butina who worked with the NRA, who was a Russian agent. So there's a lot of undoing of Citizens United that could happen here. And it would also help in the re-districting. It would require independent commissions instead of letting partisan state legislatures do the re-districting. And it would solve some of the problems like the Arizona rule about precincts. It would require that you get at least a one week notice of change in your polling location. It will restore felons to voting rights and it would also add DC statehood, which seems a little unrelated, but it gives a right to vote to a lot of people-

Kimberly Atkins Stohr:

It's important, Jill.

Jill Wine-Banks:

Having been a resident of DC I know.

Kimberly Atkins Stohr:

Same.

Jill Wine-Banks:

Kim, yes. So you would get to vote. [crosstalk 00:54:21]

Joyce Vance:

We all have that in common, right? Everybody who's ever lived in the District feels passionate about this.

Jill Wine-Banks:

Right. Exactly, exactly. So that's the For the People Act. The John Lewis Act hasn't passed the House yet, but it does a lot to undo the damage done by the Supreme Court to the Voting Rights Act, the original Voting Rights Act of 1965 Shelby County, Holder versus Shelby County and Brnovich, so that it would recreate a pre-clearance that Holder killed, not Holder. Terrible. Let's call it Shelby County, Holder v. Shelby County. And it would solve the problem that the Supreme Court raised by saying, okay, it would apply to all states, not just to the identified states that had a bad history. And it would also allow citizens or the federal government to challenge new voter laws that infringe on minority voting rights and require notice of any changes. Particularly it looks at those things where things like changing the number of at-large elected positions.

And you might say, "Well, what does that mean?" Well, that means that instead of having a minority empowered district, that elects a particular candidate, their vote is diluted by making it a statewide election. It also deals with the ID requirements and complaints about things like an NRA card's okay, but a university ID isn't. So it would also solve one of the problems that mentioned in Brnovich, which is it would require the state to pay for polling places on Indian reservations, which was one of the issues that was really big in Brnovich where because the mail ballots couldn't be collected by anyone, but a family member or a caregiver people were not being allowed to vote because they don't have home mail delivery and they don't have post offices near them and they don't have cars.

So I think that both laws do slightly different things and both are necessary and our democracy depends on empowering people to vote and allowing people to vote. And anyone who thinks that people shouldn't vote, I don't know what to say to them, but any Republicans who are opposing these laws really should rethink it and their constituents should think about what it means to them if their vote can be suppressed and subverted.

Joyce Vance:

Yeah. I think that that's so right. I mean, you read these bills, it's measures that are designed to make it easy for people who are eligible to vote. It's hard to figure out how people oppose that. And something that I've seen argued on the John Lewis Voting Rights Act, versions of this bill have passed prior Houses.

Currently, they're still working on it and here's why, in *Shelby County versus Holder* the court didn't actually say that the Section 5 provisions that you hear so much about were unconstitutional, that's the pre-clearance that keeps bad state laws from going into effect. What the court did was it overruled the pre-clearance formula in Section 4 of the Act in large part, because it said that there had been a failure to offer evidence of current discrimination. Justice Roberts, and look, *Shelby County Alabama* is the next county down from me, so I've always found his analysis to just be absolutely incredible.

He said, "Oh, discrimination's old. It was in the past. It's not happening anymore." And so fully cognizant of the failure to create a good record in that case, legislators are being really careful with the current incarnation of the John Lewis Act to go out across the country, to develop evidence of existing discrimination so that there won't be any problems when this law hits the Supreme Court. Barb, that takes me to you in this notion that we have a clear problem, we've got two bills designed to address it, but we know that Democrats have a problem. They've got this slim majority of 51 votes if you count the vice-president in the Senate, but because of the filibuster, they need 60 votes to pass these bills. We've talked about the filibuster in the past. Some people are found, some people aren't. It has a history of being used as a tool for discrimination, but some Democrats, some of the moderate Democrats believe that it's a necessary tool if we're going to preserve bipartisanship.

What do you think? Is Biden going to be able to get the important work that he's identified here done despite that 60 vote threshold?

Barb McQuade:

Joe Biden is very much a creature of the Senate. He spent a lot of years serving in the Senate and I think as such, he has a lot of respect for the institutional traditions and so that includes the filibuster, but he said something interesting lately, and Joyce, you pointed this out in that piece you did for MSNBC Daily where he said, where's the effective? We have the tools. The question is whether we have the will. And so does that suggest that the tool he's talking about is removing the filibuster, the tool and being a simple majority vote in the Senate? Senator Clyburn from South Carolina has suggested maybe just a limited carve out for the filibuster for voting rights because of the importance of voting rights in protecting every other right. I think this elimination of the filibuster is a really interesting and important issue, and I'm not sure it's as easy as many people say. I think sometimes people are very shortsighted in saying, "Well, let's just eliminate the filibuster and then Democrats can get what they want." Because you live by the sword, you die by the sword.

And so if Democrats eliminate the filibuster, that means if, and when the Republicans gain the Senate back, then they could enact their laws on a simple majority as well, maybe reversing voting rights or removing that carve out and making it apply to all laws so that they can enact laws that ban abortion or ban teaching about slavery in public schools or whatever. It would be the scariest legislation you can imagine. The filibuster is what prevents one party from having a stranglehold on the Senate by requiring sufficient compromise to be able to get 60 votes to lure some people from the other party to support it. But I think I'm coming around to the idea that maybe it is time to have at least the carve-out that Senator Clyburn is talking about. The best response that I've heard are two. One is that if Republicans win back the Senate, they'll probably end the filibuster anyway.

Joyce Vance:

Correct.

Barb McQuade:



So Democrats might as well do it now and take advantage of the majority that they have in the Senate while they have it. It's an interesting period-

Joyce Vance:

Democrats would finally quit bringing a glass of lemonade to a gunfight, right?

Barb McQuade:

But the other one, I think that is persuasive, maybe to me at this point is the right to vote is so fundamental that if the filibuster is allowed to prevent the passage of these two statutes that Jill has just talked about then all is lost anyway, right? If you can dilute the vote such that Republicans will win every election then they're going to control the Senate and the House and the presidency because they have suppressed the votes of likely Democratic voters. So we're already at break glass moment and so there's really no future to worry about with regard to the filibuster, when it comes to voting rights.

Joyce Vance:

Amen, sister.

Barb McQuade:

Hey, Kim, have you heard about Policygenius?

Kimberly Atkins Stohr:

I have. I've been doing a lot of things lately after getting married, there's moving, there's other things that require you to think about being insured and it's good to know that there's a one-stop shop in all of your busy-ness to go to to help you compare quotes about the kinds of insurance you might need and to make a good decision. Or what about you, Barb?

Barb McQuade:

Yeah. They can't make your decisions for you but they can help you gather all of that information in one place. And so by making it easy to have that information at your fingertips, it certainly provides some efficiency. Policygenius makes it easy to compare quotes from over a dozen top insurers, all in one place. You can save 50% or more on life insurance by comparing quotes with Policygenius. That means you could save \$1,300 or more per year using Policygenius to compare policies.

Kimberly Atkins Stohr:

They have licensed experts ready to help you navigate the shopping and buying process with the service that has earned Policygenius a five star rating across thousands of reviews on Trustpilot and on Google. Getting started is easy. Just head to [policygenius.com](https://policygenius.com). You can be insured in under a week with a simple phone call, no doctor visit required. And in minutes you can work out how much life insurance cover you need or compare quotes to find the best price. They never sell your info, doesn't add on fees and even handles the paperwork for free.

Barb McQuade:

Head to [policygenius.com](https://policygenius.com) to get started right now. Policygenius, when it comes to insurance, it's nice to get it right. Find the link in our show notes.

As always, we've received some great listener questions this week. If you have a question for us, please email us at [sistersinlaw@politico.com](mailto:sistersinlaw@politico.com) or tweet using #SistersInLaw. If we don't get your question during the show, please keep an eye on our Twitter feeds throughout the week where we'll answer as many of your questions as we can. So, first we have a question from Sammy from Joliet, is Brittany Spears any closer to getting her freedom back?

Kimberly Atkins Stohr:

Well, Sammy, it seems that that is possible. We still don't know. So this week she won a victory in that a judge allowed her to select her own attorney to represent her in this conservator case. Now, one reason she hasn't been able to select her attorney is how conservatorships work. When someone is deemed unable to take care of their own affairs, they can't do things like enter into a contract, which is what an attorney relationship is. Also, when you have conservatorship rules it requires in most states that when an attorney withdraws, an attorney representing the person under the conservatorship withdraws the law provides that only the judge can appoint a successor, not the actual person themselves, not the parties in the case. So in this case, she overcame that hurdle and so now she has an attorney who will file the necessary paperwork to begin trying to end the conservatorship. So we don't know exactly what's going to happen, but she's one step closer.

I wrote this week about how aside from Brittany Spears' case, I have really found it astonishing how few people, including members of Congress, really knew or understood about conservatorships or how they work. 1.3 million people are under conservatorships or related state rules in this country. So I think that's something that we should be looking out for and learning a lot more about it.

Barb McQuade:

Our next question comes to us from @fuzzymas, can the Supreme Court just decide to revisit a past decision or does there have to be a recent lower court ruling that brings it up to the Supreme Court? Joyce you're the appellate lawyer? Why don't you answer that one?

Joyce Vance:

This is such a great question, because Barb as you pointed out to me, this is something that lawyers take for granted, but that's not widely known. So there's a requirement that courts only hear actual cases and controversies. And the way that legal language plays out for the Supreme Court is they only hear a case if it comes up to them, either through one of the circuit courts of appeals or through the highest court of a state, they can't just arbitrarily pluck an old decision out of the air and decide they're going to revisit the ruling. That doesn't mean, of course, that there's not a great deal of gaming the system and lawyers trying to position new cases so the court can revisit old decisions. We'll see that next term, frankly, in the abortion ruling in done, but the court must have an actual active case before four of the nine justices can vote that the case should be heard on [Sasurari. 01:06:56]

Barb McQuade:

Thank you for listening to #SistersInLaw with Kimberly Atkins Stohr, Jill Wine-Banks, Joyce Vance, and me Barb McQuade. Don't forget to send in your questions by email to [sistersinlaw@politico.com](mailto:sistersinlaw@politico.com) or tweet them for next week show using #SistersInLaw. This week's sponsors are Magic Spoon, Helix and Policygenius. You can find their links in the show notes. Please support them as they really help make the show happen. To keep up with us every week follow #SistersInLaw on Apple Podcasts, Spotify, or wherever you listen. And please give us a five star review. We'd love to read your comments. See you next week with another episode, #SistersInLaw.

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On to the refrigerator repair man [inaudible 01:07:49]. Okay. Go ahead. I'll be right back.

Kimberly Atkins Stohr:

But it was while she was talking to.

Barb McQuade:

[inaudible 01:08:03].