

Joyce Vance:

Welcome back to #SistersInLaw. I'm Joyce Vance. This week we'll be discussing the first set of demands The January 6 Commission has made two executive branch agencies for evidence, the Supreme Court's shadow docket, what it is, what's important for you to understand about it, and the latest on sanctions imposed on the kraken lawyers by a judge in Michigan. As always, we look forward to answering some of your questions at the end of the show, but first, I need to get caught up with my sisters. I was off dropping off my youngest kid at college last week. I listened to the show and I missed you guys so much-

Kimberly Atkins Stohr:

We missed you-

Barb McQuade:

We missed you Joyce.

Joyce Vance:

There's so much going on and I need you guys to process it.

Barb McQuade:

Joyce, I needed you desperately to do the ads for undergarments. [crosstalk 00:01:01]-

Joyce Vance:

I died when I got to that ad, Barb. I am here for you. I will do all of the bra commercials for you. It's my commitment to you. So y'all, this weekend is an important down anniversary for the March on Washington. and there will be a 2021 version of that. There will be a voting rights march in Washington this Saturday to impress upon Congress and mostly the Senate the need to pass new voting rights laws to protect our rights to vote in the face of everything that's going on in state legislatures. It makes me wonder, have you guys ever been so motivated by the importance of an issue that you've gone out into the streets to exercise your first amendment rights? What about you, Jill?

Jill Wine-Banks:

I definitely have and this goes back a long way. I think the most dramatic protests were during the Vietnam era, when we had lots of candlelight marches and I had very long hair and it was always a fear that if I flicked my head to hard, I would catch my hair on fire. There was also the risk because part of this was when I had first started at the Department of Justice and by that, President Nixon had taken over.

I was hired prior to his inauguration. So I was marching against the government in effect, and I knew there were FBI agents in the crowd undercover. So I always sort of worried, well, this could mean my job, but I was so committed to the cause, that I thought it was worthwhile. I have never regretted that, and I have never been prouder than, for example, marching the day after the Trump inauguration with all the women.

That was one that really inspired me and I'm looking forward to the marches in support of this new voting rights act. Because nothing right now, to me is more important. I am totally recommitted to that and we'll be participating virtually in the marches this Saturday.

Joyce Vance:

Kim, what about you?

Kimberly Atkins Stohr:

Yeah, well, I exercise the First Amendment at demonstrations in a different way by covering them as a journalist, which is also really important and it's something that you learn a lot about, and how important it is. I, obviously as an attorney, understand, and as an American and understand the importance of the First Amendment right to expression.

Protests come right out of the part of the First Amendment that's meant for seeking redress from your government. It's something that each and every one of us has a right to do and a right to demand and it is heartening to see people so inspired that they take to the streets. It's also interesting, as a journalist seeing sometimes the different treatments of different protesters.

For example, I saw clashes with police at times when it was protests over police brutality and black lives matter in a way that I didn't see at the Women's March, which, I also attended that to Jill, but as a journalist, and it was just so peaceful. It was really no problem.

You had hundreds of thousands of people all crammed into Capitol Hill, downtown Washington, DC, and I believe at the end of it, there were no arrests. In part, it was because of the spirit of the protesters, but it's also important to remember that those protesters were treated differently by the police and those around them than other protesters have been. So it's also something to remember when we recall the March on Washington and all of the pushback that the leaders of the civil rights era in the 60s and those today often face when they do protest. What about you Barb?

Barb McQuade:

The first one I ever participated was in law school during the 1991 Persian Gulf War. There was a student protest on campus and Jill like you, we had the candles, the candlelight vigil and those things, and I can remember having a conversation with a fellow student at the time, who kind of ridiculed like, oh, right, President Bush, as Bush 41. President Bush is going to care what a bunch of law students in Ann Arbor, Michigan are doing and that's going to make a difference in his decision making.

I don't know what my response was at the time, but my response today would be, yes, and it isn't just my protests, but the collective protest of citizens across the country. I think politicians do take note. We are a government of by and for the people. So if the people are upset about something, dissatisfied about something, want something, are disturbed by the pace of something, then public demonstrations can raise awareness for their fellow citizens, and also get the attention of decision makers.

We rely on information to persuade us to make decisions. So when you see that people are discontent with something then I think it does influence policy. So I think the right to protest is among our most dear as US citizens.

Joyce Vance:

I really agree with that, Barb. I think in addition to what you're talking about the impact of the protest, it can also catalyze people that are participating in it, and make them appreciate that they're not alone, and that there are other like-minded people that they can work with to achieve goals. I was raised in a family that was very involved in turn of the century, not this century, but the last century, labor movements in New York City and my great grandparents who were Russian-Jewish immigrants were tailors.

They were involved in issues around the Triangle Factory fire and organizing workers for better conditions. So that right of assembly that you're talking about, I think when people try to lay out what are all the first amendment rights, sometimes assembly and the right to petition the government gets overlooked, but it's really a big deal in my mind.

What drove that home to me, well, of course, the protests of the Trump era, but my husband and I took our kids to an anti gun protest in Birmingham, Alabama. We all went together as a family, because that issue was important to us. We're gun owners, but we're sensible gun owners, and we wanted to see an end to the violence that was ravaging schools, as did our kids. That opportunity to protest as a family is an experience that was very-

Jill Wine-Banks:

I got to add something to what Barbara said, because it really reminded me. When I was in law school, there was a serious protest that took over the campus and led to my graduation being under armed horse guard because of the protests, but the Bar Association said that if the law school participated in sit-ins or in staying away from classes, they would not certify us to take the bar exam.

That made us returned to class. We did not stick that out, but also to the impact that it can have. I saw firsthand the impact of protests during Watergate. Richard Nixon said, I will not give you the tapes. He fired Archie Cox, he abolished our office, he fired his attorney general, his deputy attorney general. Within three days, public protest had its impact and he turned around, he did a U-turn.

He said, "I will give you the documents you're requesting, the tape recordings of my conversations. I will appoint a new special prosecutor and you're back in business." So that was a really quick turnaround that was based on public protest. So never underestimate the power of the public and politicians.

Joyce Vance:

Well, we need these protests to be successful this weekend, the voting rally in Washington, but also the ones across the country. There's just nothing more important going on in terms of our basic rights. Barb, I think you're leading our conversation about the first steps taken by the House Select Committee investigating the January 6 events and I'm interested to hear what questions you have for us.

Barb McQuade:

Yeah. Well, this week we saw some action from the January 6 committee. They issued some sweeping requests for documents from the National Archives, and several federal agencies and just today, social media companies as part of its investigation into the attack on the US Capitol. You'll recall so far the only public hearings the committee has held was that one in July, that very moving hearing where the four police officers those who were on duty on January 6, testified and told their story.

This has been the next public action from the committee. I will note, Joyce, that this comes after the recent appointment of our friend, former US Attorney, Tim Hafey to serve as lead-

Joyce Vance:

Congrats Tim.

Barb McQuade:

Who's serving as lead counsel for the committee. So I think it is no surprise to see him come in and really hit the ground running with this very rigorous request. So Jill, let me start with you about investigating complex matters. First, can you tell us what kind of documents that the committee is seeking from these various sources?

Jill Wine-Banks:

Yes, the documents that the committee is seeking cover a very wide range of information from a large number of agencies and while they all relate to the events of January 6, they are very detailed, and show exactly how much the committee already knows and that's a really interesting fact for me. They ask for communications with people who you would think are obvious.

The acting Attorney General, the Acting Secretary of Defense, but they get down to the detail of the Chief of Staff for the Acting Secretary of Defense and they asked for very specific information. So that is a good place to start because from those documents, they will have evidence that will enable them to ask questions of witnesses that they couldn't do if they didn't have those documents. So it's a great place to start and they've done a very, very good job of identifying what they need.

Barb McQuade:

Yeah, I agree. When you've got a complex investigation, I think getting your arms around the documents is the most important start and as you say, the breadth of this really shows that they mean it when they say they're going to leave no stone unturned. Kim, let me ask you a question. These aren't subpoenas, right? These are document requests. Why do you suppose they're using this approach? Is this just a courtesy based on tradition?

Jill Wine-Banks:

So you're absolutely right. These are document requests, they're not subpoenas. We've mentioned before, that this committee absolutely has subpoena power, so that they can subpoena potential witnesses if they wanted to. I think this gets both to the point that Jill was making, and also a point that we made when we were talking a while back about negotiating.

You don't always want to come in hot and what can happen is if you start with subpoenas, that can set you up in a bit of an adversarial position where the default is to try to defend against this subpoena, and really put forth all the ways that they shouldn't have to adhere to it. That could go to court, and that will have the effect of actually dragging out this as opposed to speeding it up.

So I think when you send these requests, what can happen is some of these agencies in particular, can come back to the committee and say, "Look, what you're requesting is really voluminous. Can you help us out? Tell us exactly what you're looking for. We can see if we can put that together, deliver it to you. You can take a look at it." and it really facilitates the kind of negotiation, if you will, that can actually help the lawmakers get this information faster, get it in a more efficient way and not have to take it to court in order to battle over subpoenas.

So I think that it's smart. Of course, if any of these agencies, if any of these folks refuse to comply with this request by the deadline, a subpoena could follow at any time, but I think that this was the right way to go.

Barb McQuade:

Yeah, and of course, we're in a new administration. In the last administration, we heard President Trump vow to fight all the subpoenas and his executive branch did that. Now, that we've got a different

administration that supposedly, presumably, wants to comply with the law and its legal obligations will protect the institutions where necessary but also produce documents where that's appropriate.

Joyce, that brings me to something that President Trump has said. He's actually hired a lawyer, and its former Georgia representative, Doug Collins, who was last seen harassing us, among others at the House Judiciary Committee. He chose to run for Senate, did not win that election. Those seats were won by Jon Ossoff and Raphael Warnock in Georgia.

So he is now a lawyer in private practice and in his letter to the committee, he said that President Trump may assert executive privilege to prevent the disclosure of some of these documents, but here's the question. He's not the president anymore. We just said now that we have President Biden, we have his administration. Can a former president like Donald Trump, assert executive privilege to prevent the disclosure of documents even after he leaves office? Why isn't it President Biden's decision as to whether to assert executive privilege?

Joyce Vance:

It's a really interesting question, and the law isn't entirely settled here. In fact, there's really not clear legal guidance but if you consider the constitutional context that the privilege is derived from, I think the weight of the argument suggests that only a current sitting president has the ability to assert executive privilege.

It's an article to power and of course, a former president no longer has any constitutional authority. So when you think about this question of who can assert executive privilege, the decision about whether to release information is sort of a balancing a proposition. You have to keep in mind whether or not the information is sufficiently in the public interest that it warrants releasing it, despite the fact that this is the sort of information that presidents want to hold close in order to protect their ability to get good information and clear, fair, honest guidance from the people around them.

The court has already decided one issue. That's the issue of whether executive privilege survives in documents that were generated by a previous administration once it's out of power. The answer is yes, there is still executive privilege. So the only real question here is who can assert it, and of course, a sitting president is incentivized to get the decision, because if he goes away and gives away everything that was within his predecessor's ambit, for maybe political reasons, then he might find that same sort of conduct visited upon him.

So I don't think that there should be concerned here that if Biden is making the decision, he'll just hand everything over out of political animus. I think that we could expect him to really fairly make that decision based on what the scope of the privilege should be, and what documents it's in the public interest to turn over.

Barb McQuade:

Jill, I wanted to ask you, you've got experience with executive privilege from the Nixon case during Watergate. Do you have concerns about the pace of the investigation here? I know Tim Hafey just got on board. So no fault to him, but this committee has been around for over a month now and they're just now asking for documents. There's this specter of privilege out there and we don't even have subpoenas yet. Do you have any concerns about the pace of the investigation?

Jill Wine-Banks:

The concern really is because the American public is concerned. The number of people who are asking What's taking so long is of concern, but these are tough investigations and they take a lot of time. Watergate was a different era. We requested documents, rather than subpoenaing them.

We were turned down and within a few days, we subpoenaed them and the same thing was true with testimony. The Senate committee started having witnesses almost immediately after they were appointed, and those were critical witnesses that really set forth before the public, what was going on. This topic is of such great importance to the American public that they need to know what exactly happened, who was behind it, who caused this to happen.

The documents requested all go to those questions, and to giving transparency so that Congress can take action to make sure that this never happens again. So they're well within their subpoena powers, and will obviously get to subpoenas if necessary.

In terms of executive privilege, as you mentioned, of course, there is a very legitimate reason for executive privilege. We want the president to get advice from all sorts of people that he knows can be confidential, but there is a very clear set of exceptions to that. Conversations that are part of a criminal conspiracy are not covered by any privilege, in the same way that attorney client privilege doesn't include criminal conversations.

So to the extent that Congress would have to go to court to get these under a subpoena, they have to be able to show that conversations that involve the executive branch, and remember, some of these are not executive branch, but almost all of the agencies, not the social media companies that have now been requested to turn over documents, but all the other agencies are executive branch agencies.

So any conversations could fall within executive privilege, but not if it was in terms of fomenting a disruption of our election process, fomenting any kind of disruption of congressional powers to confirm the electoral vote. So I think they will have and I think, by the detail of their requests have shown that they have enough evidence that they would be able to make an argument as to why these fall outside of executive privilege.

Barb McQuade:

Let me ask one final question, because I know we're running out of time. Kim or Joyce, either of you if you want to chime in on this, do you think that in some ways, this perhaps, could give Merrick Garland and DOJ, some cover and some time? We don't know whether they have started any sort of criminal investigation. It's quite possible that they've done so without saying so publicly.

That would be appropriate, but there's the concern that if you do launch a criminal investigation or file criminal charges, that there will be those who claim that it's politically motivated. Might they be waiting to see what Congress can uncover and if something is so egregious, they'll say, "Well, we have no choice but to file charges."

Joyce Vance:

It's an interesting idea. I don't think DOJ needs to be in the business of requiring political cover before they open a properly predicated investigation. So I'm going to go out on a limb here and say, if the evidence that suggests DOJ should be investigating exists, and I think it does, probably on multiple sorts of criminal situations, then they ought to just go ahead and do it.

Of course, I understand that there are political realities in Washington and there is the need for DOJ to make sure that the public perceives its operations as fair. That's perhaps more critical now than it's been in modern history. So maybe they do feel the need for that, but at the end of the day, they should just chase the facts on the line and go for it if they would do it in any other case.

Kimberly Atkins Stohr:

Just one other minor point. One of the agencies from which the committee is seeking documents is the Justice Department.

Barb McQuade:

Yeah, that's really interesting. I also think that the Inspector General's work, the Inspector General investigates fraud, waste, and abuse, and can refer cases if they discover evidence of a crime. So that's another place that could give Merrick Garland cover, should he want it, Joyce. I hear what you're saying. I agree that there's no need to do it. In fact, I think they've got more than enough predication to have begun an investigation yesterday, but as you say, there are legitimate reasons to protect the independence and non partisanship of the Department of Justice.

So maybe that evidence ... Let the Inspector General do his thing, and then see where that leaves you and if there are crimes, evidence of crimes, you could charge them then. Well, we'll leave it there. The work of this committee will continue, and we will update all of our listeners on significant events in the investigation as we progress.

Jill Wine-Banks:

Barb, if I can before we completely leave the subject. It isn't impossible for the two to happen simultaneously. The Department of Justice and Congress can go at the same time, in the same way that the Watergate special prosecutor went forward with investigating and having grand juries at the same time as the Senate hearings were going on. You have to be careful that the Senate for example, or the Congress doesn't immunize a witness that you want to prosecute, but other than that potential conflict, there's no reason why the public hearings can't go on, and it won't interfere with a possible criminal investigation.

This has certainly been a very stressful week, and I for one, am using Headspace to help relax me. Anybody else trying it?

Kimberly Atkins Stohr:

I definitely have been using it too. I really like that I can listen to it no matter what I'm doing. I always thought of meditation as something you have to sit down in a quiet room and do but with Headspace, you can do it when you're out on a walk or when you're doing other chores, or if you do want to do a more traditional meditation, it's got you covered too. What about you, Joyce?

Joyce Vance:

I'm a brand new Headspace user. I've only been using it for about the last month, and I really like it. I have a long time yoga practice. It's been languishing a little bit really for the last year because I had rotator cuff surgery and it's been tough to get back in, but Headspace has really convinced me to jumpstart meditation. I've also found it really helpful.

Sometimes you wake up in the middle of the night, especially when you've got a busy week ahead of you or at least I do. So now with the start of school and the podcast and kids and parents, I occasionally have those anxiety moments and Headspace has these wonderful guided meditations and also just music that I really like, and I find I just drift right back to sleep. Barb, how about you?

Barb McQuade:

I am also sort of new to meditation and I'm a high energy doer kind of person. So the idea of meditating to be calm and peaceful has never appealed to me, but I did find one to be very useful. When you talk about Joyce, helping you to overcome anxiety. My husband took me on a kayaking trip down a nearby river, that included going through cascades, which are like little waterfalls.

So I listened to a Headspace meditation for fear of flying. I'm not afraid of flying, but it mapped on well to my upcoming kayaking trip and not only did I make it through the cascades by utilizing the mantra of keeping my feet grounded, but we even flipped into the cascades and throughout the whole thing, I kept my head about me, and I credit my Headspace meditation.

Jill Wine-Banks:

That's amazing.

Barb McQuade:

And I didn't kill my husband. So it's all good.

Jill Wine-Banks:

Great story. My husband tried teaching me to meditate because he is a practicing Buddhist and meditates daily, and it never worked, but Headspace does. Headspace makes it easy to build a life changing meditation practice with mindfulness that works for you, anytime, anywhere, to give you a daily dose of guided meditation in an easy to use app.

Joyce Vance:

If you're overwhelmed, having trouble falling asleep, have wild kids, Headspace has a three minute SOS meditation for you. Their approach can reduce stress, improve sleep, boost focus, and increase your overall sense of well-being and even get you through that kayak trip, and is one of the only mindfulness apps validated by clinical research.

Kimberly Atkins Stohr:

Headspace's benefits are even backed by 25 published studies 600,000 5 star reviews and over 60 million downloads. You deserve to feel happier and Headspace is meditation made simple. Go to [headspace.com/sisters](https://headspace.com/sisters).

Joyce Vance:

That's [headspace.com/sisters](https://headspace.com/sisters) for a free one month trial with access to Headspace's full library of meditations for every situation. This is the best deal offered right now. So head to [headspace.com/sisters](https://headspace.com/sisters). Look for the link in our show notes.

Well, Kim, our next topic for today is the Supreme Court's shadow docket. I really like saying that. It sort of sounds like a spy novel or something. Can you help us understand what the shadow docket is and what impact it has had on some really important issues lately?

Kimberly Atkins Stohr:

Absolutely. So this week, the US Supreme Court was busy and yes, I know it's summer, and the court is technically in recess. We won't even hear oral arguments again in any of the new cases until October and summer is usually a very sleepy time for the court, but in recent years, there's one aspect of the



court that has remained busy year round, and that is the shadow docket. That refers to orders that are handed down by the court in pending matters that have not been fully argued or briefed like merits cases, but they can have major implications.

So again, twice this week that happened. Once, the court stopped President Biden's attempt to end the remain in Mexico policy for asylum seekers at the southern border that former President Trump had put in place and again, the justices stopped President Biden's extension of the pandemic-related eviction moratorium. So Jill, first, let's start there with the eviction moratorium order. What did the court do, and did they explain why they were doing it?

Jill Wine-Banks:

They basically vacated a stay, which means that the district court, the federal district court had ruled in favor of the realtors, the Alabama Association of Realtors, who had sued saying that they were being damaged severely by the moratorium. They were suffering financial consequences, and needed to hold the moratorium, illegal unconstitutional.

The court basically said they thought that they had a good case and ruled in their favor, but stayed that order, which would have ended the moratorium and it ended up going to the court of appeals and then to the Supreme Court and the Supreme Court vacated the stay, meaning the order is now enforceable.

So the order was that you cannot put a moratorium on evictions in private residences from landlords. Because of how this happens, it wasn't after a full briefing, full oral argument, but it had been before many courts, including them before. I think they were snide when they said, "The case has been thoroughly briefed before us--twice." I thought that was kind of their way of saying, we don't need to hear any more of this.

They also concluded that the applicants were virtually certain to succeed on the merits, which is one of the tests of whether you allow a stay, and in this case, they said they're going to succeed, so there's no reason to stay the order in their favor. So they did explain it.

There is a very lengthy dissent, written by Justice Breyer, which says, "I don't think they're right. I don't think that they were that likely to win." He particularly points to a sentence that I flagged as I was reading the majority opinion, which is the powers that the CDC has to issue this order, which the court said only allows them to do things like fumigate and disinfect and sanitize and pest control, not an eviction moratorium.

The last sentence of that says, "And other measures," as in his referring to the Surgeon General's judgment may be necessary. In this case, it was preventing people from moving out into more congregate facilities and spreading the coronavirus. I think that's a large part of why the dissent said, no, it's not so clear that the interpretation of the statute that the majority is putting forth is correct, and we think that there is at least a reasonable likelihood that the government will prevail but right now, landlords can start evictions.

Kimberly Atkins Stohr:

So I'm going to get back a little later about what fully briefed actually means and does not mean, but first, Joyce, why don't you tell us about the remain in Mexico order that came out earlier this week? What happened there and do we have a clear understanding of what the court was thinking behind preventing President Biden from reversing this Trump policy?

Joyce Vance:

That's a joke, because you said shadow docket in the same sentence as, do we have a clear understanding, and those two concepts, they don't belong in the same universe. This is such an annoyance to me as an appellate lawyer, because my whole need is to understand why the court is making decisions so I can apply them to future cases and the shadow docket really keeps us from doing that.

The remain in Mexico policy required people who were applying for asylum in the United States to remain in Mexico for the many years that the Trump administration would take to make those decisions. People were there. They were in horrible conditions, they were subject to crime. It was an early target for the Biden administration to end that policy, and they did, and Texas and Missouri whose governors were really interested in returning to some of the immigration policies that had been put in place by the Trump administration, sued Biden over this decision.

They filed a lawsuit where they wanted to reinstate this policy that people who were seeking asylum had to remain in Mexico, and a district judge in Texas ruled in their favor. That's how this case arrived on the shadow docket. So what the Supreme Court did in this sort of classic late at night fashion, unsigned opinion that doesn't really tell us very much, they reinstated the policy saying that the Biden administration's decision to end it, that the memo justifying it had been arbitrary and capricious.

There's a little bit of an effort to tie that up with the decision that the court had made in DACA, where they actually permitted DACA to stay in place using that same sort of an arbitrary and capricious to the challenge analysis. It doesn't give us a whole lot of guidance and ultimately, we're left with the feeling that the court, this very conservative court is making policy in a way that the Republican minority in the legislature cannot and that the court is overstepping its bounds to some extent here.

Kimberly Atkins Stohr:

I thought, in this case, even, there were dissenters. So one of the problems with the shadow docket is we don't even know who voted for what because these decisions, these orders are unsigned. The only way you can figure it out is if the dissenters make themselves known and in this case, the three more liberal-leaning justices did, but they didn't file a dissent. They didn't say why they disagreed with this, which would have been important for the public just as much as it would have been important to understand the reasoning of the majority.

That's one of the reasons why, and I wrote a piece in the Boston Globe this week, which will be in the show notes about the shadow docket and the reason that is problematic. It's not just because of the outcome. It's because of the process. When you have a case that goes before the Supreme Court, first of all, before it gets there, somebody has to file a petition for certiorari.

Ask the Supreme Court, will you hear this case, and in order for the court to take it up, four justices, four of them have to agree, yes, we should take up this case. Then at that point, they will begin the process. When it comes to these kinds of emergency orders, it's made to one justice, and that one justice decides whether to forward it to the rest of the court.

So that's already a backdoor into the supreme court as it starts. With merits cases, back to merits cases, an argument schedule is set up, each side has many months to prepare their exhibits and to put forward an argument. Then it goes before the justices and is argued in court. Now, it's a public argument. Public, I'll put in parentheses because you have to be there in the court and be one of the lucky couple 100 people who make it into the courtroom that day to hear it, except over the last 18 months, they've been live streaming it because of COVID.

So it's become even more public. I hope they keep that aspect of it, but at least the public can get an understanding of what's happening. There's no oral argument when it comes to the shadow

docket. There's barely a full briefing that takes place, and it's up to the discretion of the court. Then finally, at the end of a regular case, you get an opinion, which is signed, exactly which justice voted which way and they have to give reasons behind why they did what they did.

Sometimes these orders in the shadow docket, these orders are one sentence long, with absolutely no explanation. Finally, most importantly, they are setting policy just as Jill enjoys pointed out. It would be one thing if they were just deciding, all right, we're going to put a stay in a matter just until we decide it so that everything stays status quo until we can render a final decision.

That's how these orders used to be used, but now in this case, the effect of just the two that we just talked about means that thousands of people can risk becoming homeless in the middle of a pandemic, and thousands more people are stuck in Mexico after having fled deplorable conditions in their home country, where they have been reportedly been victims of everything from kidnap to sexual assault, to physical assault, where they are in Mexico in deplorable conditions.

It's making it difficult for ... It's having an impact anyway, on immigration policy in the way that the Supreme Court isn't supposed to do anyway, but it's doing in a really unusual way, and it's not just this. The shadow docket has been the main place where executions days are decided, which means the Supreme Court is setting capital punishment policy in the shadow docket in a way that doesn't have full transparency.

It's become the way that religious rights have been expanded when they are made in opposition to some policy. In this case, it's with COVID restrictions. We've seen a slew of churches and other religious organizations go and say, "Nope, nope, we shouldn't have to be subject to these COVID policies that require distancing or masking or outdoor services because it impedes on our religion."

By and large, Supreme Court decided with expanding religious rights in a presidential way, at a time when they're being used to oppose LGBTQ rights and other rights in a way that is really merit. This is something that should be argued and put out in public view, but it's happening behind closed doors and in rulings that like this week, both of these rulings came out at night.

It's just really not the way the US Supreme Court is supposed to work. So whether or not you agree with the outcome, it's really important to understand that this was never intended to be the way these cases were decided. So I want to move to you Barb after my rant.

One thing I want to ask you is, what I don't understand is that the Supreme Court has long held that the executive that the presidency, the White House has the authority to make decisions on things like immigration. That was the rationale for upholding a lot of things that the previous administration did when these shadow docket cases were going. President Trump was usually victorious, but now President Biden is 0-2. What do you think is going on?

Barb McQuade:

Kim, the point you make about the lack of transparency in the shadow docket, I think is what contributes to this. The short answer is we don't really know, but that's problematic, because it tends to create this impression that the court is just one other organ of the political machine. That it is just doing the bidding of the party of the president who appointed them and that is not good for the credibility of the court.

There's a statement that Justice Louis Brandeis once said, that, "Better that the law be settled than that the law be settled correctly." Joyce, that goes to your point about being an appellate lawyer. One of the really important reasons we write appellate decisions and their brief so extensively and they're argued, is so that people know what the law is, and it's really important to be able to parse those opinions and to draw distinctions.

This one's different from that one for this reason, but when we lack that sort of detailed briefing, and oral argument and detailed opinions, then we don't understand what the difference was between them. To draw loosely on stereotypes, the conservatives who now make up the majority of the court, by a six to three margin, generally favor a strong executive and as you say, Kim, that should mean that Joe Biden gets to call the shots when it comes to most immigration matters, and what's the deal with the different outcomes here?

So I think that without the ability to explain themselves in extensive detail, or even have those kinds of debates among themselves, that have to be reconciled in written opinions, it leaves some sloppy decision making and it gives the public I think, reasonable grounds to doubt that they're basing these decisions on facts and law, as opposed to politics.

Kimberly Atkins Stohr:

So I think the summer is still young. I think we will still continue to see the shadow docket being very active, and we will have more of these cases to discuss in the future. Hey, Jill, have you been using Noom?

Jill Wine-Banks:

I have. I have been a faithful adherent, and I'm even at a point where they're saying to stop paying attention to them, and to do it on my own, so that they can wean me off total reliance on them. I've taken a long break and I actually got an SOS message from them saying, "Just to make sure," and check in with me.

It really has given me a whole new way to approach what I feel about food and I love it. So I think it's just been very helpful and I know Joyce and Barb, you've been using it as well. Joyce, why don't you tell us about it.

Joyce Vance:

I still really like Noom and in fact, my husband is on it with me. We were just in Boulder, Colorado for a week to drop off our youngest kid at college in what was a thinly disguised trip that let us explore Boulder. We spent a lot of time in the really great restaurants out there and we both came home a couple of pounds lighter, because we were using Noom and that meant that we were thoughtful. If we had a drink, we didn't get dessert, but it worked really easily. I never felt deprived. I tasted great food at great restaurants. I am hooked on Noom. What about you Barb?

Barb McQuade:

I've lost like 30 pounds on Noom and I agree with you. It's just changed the way I approach food. I may have added a few too many during COVID, but it's nice to be back at what I think of as my fighting weight. It really is because of, as you mentioned, Joyce, just sort of that mindful eating. I used to be pretty good, like five or six days a week and then have some calorie bombs on the weekend and wonder why I was having a hard time losing or maintaining weight.

You got to be mindful all the time and that's one of the things I think that Noom really helps with, the app that lets you look up and log your calories and just learning how many calories really are in a lot of things has been very eye opening to me. Who knew there were so many calories in bread.

Kimberly Atkins Stohr:

I think I knew but I think now I understand better how to balance that with everything else. It's not about what you eat. It's about how you eat and understanding why you make the choices you make. The Noom app is easy to use and a really powerful tool that shows you how to understand your cravings and build new habits to reach your goals.

Joyce Vance:

Noom shows you how to pursue the goals you set for yourself, and it makes sure that you reach them. Focusing on motivation and improvement, not diet, teas and airbrushed expectations, because who really wants to have to rely on being airbrushed? So no food is off limits. It's about finding your personal balance.

Jill Wine-Banks:

If you're like us, you're busy. So I love that Noom only asks for 10 minutes a day. Over 80% of Noomers end up finishing the program, and more than 60% of users lose 5% or more of body weight and 60% keep the weight off for a year or more. That's really impressive.

Joyce Vance:

Start building better habits for healthier long term results. Sign up for your trial at [noom.com/sistersinlaw](https://noom.com/sistersinlaw). That's N-O-O-M.com/sistersinlaw to sign up for your Noom trial. You can also look for the link in our show notes.

One decision made by a district court this week, I think is also likely headed to the Supreme Court, but I don't think it will show up on the shadow docket. That's the Michigan decision imposing sanctions on some of the kraken lawyers. Jill, can you start us off on that.

Jill Wine-Banks:

This week, a federal judge in Michigan, in Barbara's home state issued a scathing 110 page decision, sanctioning nine pro Trump attorneys for filing a suit to de-certify Michigan's election results under false pretenses that ballots had been manipulated fraudulently to make Joe Biden the winner. US District Court Judge Linda Parker said, and I'm going to quote this because it's, I thought powerful. "This lawsuit represents a historic and profound abuse of the judicial process. It is one thing to take on the charge of vindicating rights associated with an allegedly fraudulent election," she wrote.

"It is another to take on the charge of deceiving a federal court and the American people into believing that rights were infringed without regard to whether any laws or rights were, in fact violated. This is what happened here." In one of her most powerful sentences, Judge Parker wrote, "This case was never about fraud. It was about undermining the people's faith in our democracy, and debasing the judicial process to do so."

After the lawsuit failed, the state of Michigan and the city of Detroit asked the judge to sanction the nine attorneys. She agreed on Wednesday, ordering them to pay costs incurred by the state and the city to defend against this legal action. Plus, she ordered them to have 12 hours of legal education, six of which will focus specifically on Election Law.

She also referred the facts to each lawyers' State Bar Association so they could face possible further action in their own home states coming forward. So Barb, as our Michigan expert, Judge Parker held six hour hearing about the validity of the claims these lawyers filed about how well they had written their pleadings. You watched all of that hearing. So I'd like to start with you and ask you what

you learned about who these attorneys were and what they did or didn't do that got them sanctioned. What were their errors in pleading this case?

Barb McQuade:

So Jill, this sanction hearing was held last month, via Zoom and I watched most of it. I did not have the stamina of Judge Parker, who went all six hours without a break. Even her court reporter was asking for mercy. I had to jump off from time to time for other matters, but I watched most of it, the vast majority of it. The main reason it took so long is she questioned them affidavit by affidavit.

One of the things they had done is, and kept referring to in saying that their lawsuit was based on a factual basis and that they intended to develop the facts as the case proceeded. These affidavits were all completely lacking in any evidentiary value. So she very methodically went through each one of them, as she asked about the basis.

Just to give you an example, they said things like, "A witness believed ballots had been altered." Those aren't facts. That's someone's speculation. Some witness had written an affidavit saying that he was perplexed by what he had seen, because plastic bags looked as if they contain papers that could be ballots. What is that? It's nothing, it's meaningless.

Judge Parker went through each one of these and noted in her questioning, the total absence of any probative value in these affidavits that were just expressing subjective conjecture. She repeatedly asked during that hearing whether the lawyers had made any independent inquiry into the factual basis for each of those affidavits, and at one point, again, and again, the answer was no.

She said, "How could any of you, as officers of the court, present this in an affidavit? Lawyers have a duty ethically and under the court rules, to make sure that your legal claims are well grounded in fact, after an investigation." So she, I think exposed the fact that they didn't. I think one of the most absurd arguments that was made that day by these lawyers was that they had a First Amendment right to say these things.

As she wrote in her opinion, she addressed this one in particular, that like all rights, our First Amendment rights are not absolute, otherwise, we'd have no laws against perjury. Coming into the courtroom means you are agreeing to certain rules. As a lawyer, you are an officer of the court. You have taken an oath to present truthful information to the court. So your First Amendment rights are abridged by your duties as a lawyer and she made that point.

So I thought she made it very effectively, and wrote a very powerful opinion. The reason it took 110 pages is because she went through methodically detailing the failure of each of these affidavits to provide any evidentiary value whatsoever.

Jill Wine-Banks:

She has been called the poet laureate of poetic justice, and I think she has well earned that by her very careful analysis of all the fraud that was committed by the plaintiff's attorneys. You've made a point here that maybe you have further opinion on because she left open, I would say, the possibility that lying to the public as part of politics, that's okay. It's just you can't lie in court documents if you're a lawyer. So can a lawyer go on Fox News and make these illegal claims?

Well, there is defamation that's involved and huge lawsuits about that, but what about politicians? Are they restricted in any way? I guess she left that question open. So let's just go on to Kim and say ... Before I get to a really serious question, this case is known as the kraken case and I've seen on Twitter a lot of people say, "Kraken? What's kraken?" I say go Google it, but just for our audience, go ahead Kim and tell us what a kraken is.

Kimberly Atkins Stohr:

What is kraken Jill? So the kraken, these cases are called the kraken cases because at one point in one of her, and this is my own opinion, nonsensical rants, Sidney Powell promised to release the kraken in these frivolous nonsensical, baseless lawsuits that she was filing and that term actually comes from the film Clash of the Titans. Do you guys remember that? This-

Joyce Vance:

Release the Kraken!

Kimberly Atkins Stohr:

Release the Kraken! In the film, that happened when I believe Liam Neeson played the character, and when he said this, this squid like monster was released. Well, what ended up happening, it's supposed to be this scary moment. What ended up happening is in most of the theaters where this played, it elicited laughter. It was unintentionally funny and the fact that unfortunately, Sidney Powell used this would have also been funny, but for the fact that it was so awful and dangerous to democracy.

So that's the origin of the phrase itself, and I will just say, just to your last point, quickly Jill about what this means for politicians. It's important just to remember that this was a case that was about holding lawyers accountable. It didn't address the question of what happens with politicians. Generally what you say, there's not a real cause of action for a politician to lie to the public.

So much so that it's almost assumed that politicians lie for one point or another, but the accountability there comes from the voters. You have to be someone that the voters ... You have to elicit the trust of the voters for them to vote for you, and if they think, generally speaking. Not always the case, as we've learned. If they think that you're lying to them, they're not going to vote for you. So that's usually what should at least give the appearance of honesty to a politician, but this is a court of law dealing with judicial misconduct.

Jill Wine-Banks:

So moving from the sea monster that made the audience laugh, let's look at how important Judge Parker's decision is. It was intended to stop future abuses of courts, but could it be even more important in terms of setting the record straight, and convincing the former president to stop lying and to persuade his supporters that the election was free and fair, and that he lost it freely and fairly?

Kimberly Atkins Stohr:

So yes, and no, Jill. So again, this doesn't really bind the former president or anybody who was not a party in this case, in any way. In my time of covering the former president, from the time that he descended that escalator in Trump Tower, there has been nothing that has prevented him from having a propensity to completely disregard the truth when it served him. So I don't think it's going to change anything with him.

What I think it very well might do, though, is discouraged lawyers who actually want to continue practicing law after they deal with him from filing these sort of baseless claims, because just go through the kinds of sanctions that were listed against these attorneys. You have to pay attorneys fees, they have to go through legal education courses, and they've been referred to all of their respective bar organizations for potential disbarment.

There are other states that are opening up their own investigations now into these attorneys. When it comes to engaging in their profession, more or less, I think that their names are all mud in this

case. So I think any attorney who wants to keep their name clean and to continue to make money and practice law, are going to be really discouraged from doing the things that these particular attorneys did.

Jill Wine-Banks:

So Joyce, I want to turn to you as our appellate expert, because it is planned that the attorneys are going to appeal this decision about sanctions to the Sixth Circuit. The lawyer for the city of Detroit, who was one of the defendants who has brought this action, said he was confident that Judge Parker's decision would be upheld. I'd like to know whether you agree with that and what in her opinion, makes you feel so strongly about that. I want to just throw in one additional question as to whether you think that in the 60 or so cases that have been thrown out of court as being frivolous, all of the defendants in those cases should seek sanctions against the plaintiffs lawyers in those cases?

Joyce Vance:

Well, last question first. The standard for seeking sanctions is whether the litigation was frivolous. That's federal rule of civil procedure 11, and we've talked in the past about the fact that the courts are very hesitant to impose these sort of sanctions. They really want to reserve it for the most egregious cases.

That said, Jill, what was exposed in this hearing by Judge Parker is that this was egregious misbehavior by attorneys, and there may be some reason in other of these cases for these same sorts of sanctions to be pursued, it would have to be a case by case consideration. As far as this case goes, this absolutely gets affirmed in the Sixth Circuit.

Part of that is how meticulous the judge was in handling the proceedings and this goes back to Barb's comments. Six hours of hearings, she goes affidavit by affidavit. What she does is she builds a record that's absolutely bullet proof. Here's why that matters on appeal. On appeal, the Sixth Circuit will apply a standard of review as they evaluate the district court's decision that says that they should affirm her unless she abused her discretion.

It's a very deferential standard towards the decision made by the district court, and in this case where she's documented her decision so very thoroughly. I think it's just not possible that this could be considered an abuse of discretion. So her sanction should be affirmed. The more interesting question in my judgment is whether this case might not move on to the Supreme Court, and the reason I have that question is because there's actually a split in the circuits on the standard of review on appeal that's applied in considering these sanctions cases.

The Sixth Circuit is in a group of circuits that applies the most deferential standard to the district courts. In other circuits, they're more willing to scrutinize the trial judge's decision in this regard. Oftentimes, the Supreme Court will take a case on appeal to resolve a split in the circuits. It's by no means clear that they would take this one and in fact, they could just refuse to take it and affirm with no opinion, which would, in essence, say that this approach that this judge took was okay and that unless she abuses her discretion, she's entitled to impose sanctions. So we'll have to wait and see if it moves past the Sixth Circuit.

Kimberly Atkins Stohr:

I hope the kraken stays out of the Supreme Court.

Jill Wine-Banks:

Or at least off its shadow docket.



Barb McQuade:

I just want to add one thing about Judge Parker. I just want to say how proud I am of her as a judge from Detroit. I guess I see some reflected honor there in what she has done. What she did took, number one, a lot of work to meticulously go through all of these affidavits. It's a lot of time and a lot of work. The six hour hearing, 110 page opinion but it also took a lot of courage. I think it's very rare that you see lawyers get sanctioned, and I think it's because it's a headache.

The judge has to go through all of this stuff, and it takes some guts to say to a lawyer, a group of nine lawyers, that what you did fell short, and she knows there will likely be an appeal and her work will be scrutinized and she will be second guessed. So it takes some guts, it takes some courage. So I just think that as a lawyer practicing in this community, I'm just really proud of her work and her courage.

Jill Wine-Banks:

Absolutely agree with you, but let me ask you as a Michigander, is there any inside information on what you think the costs are going to total? Know anybody from the city or the state who is totalling that up?

Barb McQuade:

I don't know anything inside. One of the things she directed the parties to do, in her opinion was to calculate the number of hours that they devoted to this case, and a reasonable fee that would be affiliated with that work, but the idea is let's reimburse the taxpayers for the money that they had to allocate to this work and not allocate to other things that these lawyers could have been working on, on behalf of the citizens of Detroit and Michigan.

Jill Wine-Banks:

Any opinions on how likely disbarment is based on Judge Parker's decision and the facts of this case? Not all the lawyers are from Michigan, they're from all over, but the standard should be similar in every state. Anybody have an opinion on that?

Joyce Vance:

I think the fact that they're all from different states really complicates this because every state bar has its own disciplinary proceedings. I think we could possibly see inconsistent results here, but I hope we won't. I hope the state bars will respond and show the same courage that Judge Parker showed.

Kimberly Atkins Stohr:

Yeah, I agree, and I think and we've mentioned this before that state bar licensing boards are usually dealing with things like people stealing clients' money, and that's usually the way that people get disbarred. For just about everything else, they're given a ton of opportunities to make right whatever they did wrong, and it's actually pretty hard to get disbarred. I think in this case, because they cannot make right what they did wrong, the disinformation that they spread, I hope that that creates a new precedent in these licensing authorities that that too, becomes a standard by which people can expect to lose their licenses.

Jill Wine-Banks:

A good night's sleep is really important. Even though we may not get enough hours of sleep, at least when you sleep it should be really good and Helix mattresses really offer you the perfect mattress for

whatever way you sleep. I took the test to get identified for what was the best mattress for me, and it really is great. What about you, Kimberly?

Kimberly Atkins Stohr:

Yes, I took the quiz too and I was really pleasantly surprised at how easy the quiz was and how it was able to identify the type of mattress that was best for me. I've mentioned before I have insomnia. When it's hard to sleep, it really can be difficult. So having a really good mattress is so important. How about you Joyce?

Joyce Vance:

I have this terrible problem sleeping. My husband snores like a banshee. So I need all the help that I can get, and for me, having a firm mattress is apparently really important but I never knew that before I took the test and it identified me as needing a very firm mattress. So that's been a big improvement. Bob still snores but at least mattress is firm. Barb, what about you?

Barb McQuade:

The idea that different people need different mattresses was something that hadn't occurred to me before, but like everything else, one size doesn't fit all. The other great thing about Helix mattresses is that it gets delivered right to your door.

Jill Wine-Banks:

And the delivery is pretty amazing because one would think, how could I ever bring in a mattress, but it comes condensed in a way that's quite amazing and you can easily carry it anywhere in your house. I think like us, you should all take the Helix quiz and get matched with the Helix mattress that matches exactly your needs. Get the mattress that's just right for you.

Joyce Vance:

Go to [helixsleep.com/sisters](https://helixsleep.com/sisters) to take their two minutes sleep quiz to 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 have it all.

Jill Wine-Banks:

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 will pick it up and take it away if you don't love it.

Kimberly Atkins Stohr:

Helix is offering up to \$200 off all mattress orders and two free pillows for 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. Look for the link in our show notes.

Jill Wine-Banks:

As always, we've received some really great questions from our listeners this week. If you have a question for us, please email us at [sistersinlaw@politican.com](mailto:sistersinlaw@politican.com), or you can also send a question to us on twitter by using the #SistersInLaw. If we don't get to your question during the show, keep an eye on our Twitter feeds during the week because we try to answer as many of them as possible there.

Today our first question is from Diana Shellenberger. Kim, this one seems good for you. She asks this. "On eviction moratorium, can Congress legislator round this? Can Congress demand that states that have not spent funds earmarked for rent relief returned the money? Can it distribute rent relief without uncooperative governors and their administrations?" What do you think?

Kimberly Atkins Stohr:

So it's a great question. What Diane is actually asking are two different things. One is the eviction moratorium, which we mentioned earlier, which was part of the shadow docket, which the Supreme Court struck down Biden's ability to extend that. Really the only way, you're right on the money. The only way to fix this is for Congress to act. In fact, this wouldn't even have been on the shadow docket had Congress acted to impose this in the first place.

They've had a ton of time to put this in place as part of the relief that they've granted so far, and it has not been a part of it. So some members of Congress again, after this Supreme Court shadow docket ruling, are calling for that to happen, but it could have happened already. So you're absolutely right there. Now the other thing we're talking about is rent relief, which was afforded to states and cities to help people pay their rent. Actually to distribute cash payments to help people who qualify to pay their rent.

So what is happening there? Congress isn't a part of this, but these cities and states which have only distributed so far, unfortunately, a fraction of the nearly \$50 billion that have been set aside for this. If they don't distribute that money by September 30, the Treasury Department can go into these cities and states that have not distributed at least I think it's two thirds of the amount of the money yet, take that money back and distributed to places where they have been giving it out and they need more.

So this is important, not only to encourage people to get that money out, because it's not like they can use it elsewhere, but also, sometimes this money isn't being spent because there may not be a need in a certain place as great as in other places. So this allows the Treasury Department to take this money where there isn't as much need and give it to the places where there is a considerable need. So yes, Congress and the Treasury can act to give some relief to folks.

Joyce Vance:

I would just add to that, that Barb's and my former colleague, Vanita Gupta, who's now the Associate Attorney General, sent a letter out to state courts nationwide encouraging them to consider practices that could be used, that were fair to the people who were looking for the rent that they received from their properties, of course to make their own living, but for policies that were also fair to people who were struggling to pay rent during the pandemic.

There are a lot of resources available to people who are in trouble and who are behind on their rent payments. Of course, their state courts might be able to help them because they have this information from DOJ. Other government agencies as well. So please, if you're in this difficult situation, reach out and look for information that can help you rather than finding yourself being evicted.

Jill Wine-Banks:

Our next question comes from @MarleyKD on Twitter. Marley asks, "Could Facebook be liable for allowing disinformation, especially with regard to the non quote, treatments of COVID that are making people ill to continue to be posted as well as groups to continue to form and accept members? Also, are there legal actions versus Texas and Florida Governor's that could succeed?" Anyone want to take a stab at that question?

Barb McQuade:

Well, I'll take one stab and that is I think, at the moment know that there is nothing that can be done against Facebook or other social media platforms, who allow this information to appear on their platforms. There's a statute, section 230 of the Communications Decency Act that has been referred to as the 26 words that invented the internet. That essentially gave all these internet service providers and social media platforms the out, the immunity from being sued.

They say, "We're just a platform. We just put the information up there. We don't judge the content, we don't vouch for its accuracy," and that's the way the law is today. In some ways, it's a good law, because it is what has allowed the internet to really grow and thrive in all kinds of interesting and exciting ways, but at the same time, I think we are now reaching a point in the lifespan of social media where really need to rethink that.

Just as the FCC regulates communications, what's on television, and what's in print, and what's on the radio in terms of advertising, false advertising and can revoke licenses if false advertising is put on the air. In the same way, I think it's time to really start rethinking what we allow social media and internet service providers to put on their platforms, because we are seeing, whether it's disinformation about COVID treatments or about election fraud, it has a really destabilizing effect on our country.

So I think we were at one point of the opinion in this country, that the marketplace of ideas would prevail and that better ideas would replace worse ideas, but that requires that we all agree on the same set of facts. When we have all this false information churning out there, I think it's really difficult for us to reach any sort of an agreement. So I think in coming years, we should look for more regulation of social media companies.

Joyce Vance:

So I think Barbara has said it very well. I maybe would have said, yes, if. That is yes, they could be held liable if laws are changed, because under our current legal system, Barbara is correct. They cannot be, and as the power of social media overtakes that of what is the more traditional mainstream media, it's becoming more and more apparent that we need to have control. The other thing that needs to be done is we need to be teaching media literacy, including social media, to students and critical thinking skills.

I'm not talking about critical race theory, I'm talking about critical thinking skills, because unless people can analyze and come to some real conclusion about the weight of the evidence and what is true and what isn't, we're going to continue to live in the silos of information where some people believe things that have absolutely no factual predicate.

Joyce Vance:

Our last question comes from Ashley Montague. Ashley asks, "Wondering why conditions placed on indicted insurrectionists seem so lax. The latest is an active Marine who will still have access to firearms." This question, I take it is about the conditions that accompany the release of many of these defendants' pending trial. Do you agree with Ashley, that they seem a little bit lax and if so, what do you make of it?

Jill Wine-Banks:

Well, I'll start. Yes, they do seem lax. They have been treated very liberally, especially when compared to other defendants, particularly defendants of color. I may get in trouble for saying this, but this does seem to be a result of white privilege, because almost 100% of the defendants on January 6 are white. Many of them members of white supremacy groups, and all supporters of course of Donald Trump.

I think that there is a huge number of people who are there and so the process tutors are having to deal with just a volume they've never had before, and that that is leading to some of this leniency. I think it's time to re-look at that and to think about how people can stop getting their organic food when they request it, which most jail inmates won't get, but which the shaman got, and that would be very helpful to stopping future repeats of anything like this.

Joyce Vance:

It's a really interesting question. I watched the first couple where they seem to get good terms. There was the woman who was able to travel to a business trip out of the country, and that seemed explainable. Perhaps she was cooperating with the government. I kept looking for those explanations and we knew many of the prosecutors in DC who were involved in these cases, they're really good straight up people, but my impression over the bulk of these cases is that these defendants are getting some pretty favorable conditions of release. I wonder, Jill, if it's, as you say, because they're just frankly, out of resources and swamped in that court.

I suppose that could explain it, but increasingly, I'm starting to wonder about it and I think we should watch this very carefully in the coming weeks. Thank you for listening to #SistersInLaw with Barb McQuade, Jill Wine-Banks, Kimberly Atkins Stohr and me, Joyce Vance. Don't forget to send in your questions by email to [sistersinlaw@politican.com](mailto:sistersinlaw@politican.com), or tweet them for next week's show using #SistersInLaw.

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Barb McQuade:

I want you all to know that I am now drinking sparkling water with a touch of natural lime.

Joyce Vance:

I just got two cases of LimonCello LaCroix water. We consume LaCroix in great quantities.

Kimberly Atkins Stohr:

So I was not a fan of the fizzy water, which is what I call the stuff that my husband drinks, but he got some. It was mango flavored, which I enjoyed that. It was refreshing on a hot summer day. So I too may join the [crosstalk 01:17:41]-

Jill Wine-Banks:

I haven't seen LimonCello, but LimonCello sounds yummy.

Kimberly Atkins Stohr:

I already told you how I'm scarred by LimonCello. I can't do it.

Joyce Vance:

I've been drinking low sugar kombuchas lately too, which are awfully good and they're supposed to be good for your gut and all of that stuff.

This transcript was exported on Aug 29, 2021 - view latest version [here](#).

Kimberly Atkins Stohr:

I was a member of a farm share that was pushing kombucha on me so hard that I never tried it.

Barb McQuade:

I've never had it. I know it's like fermented and so that's supposed to be good for you?

Jill Wine-Banks:

Yes.

Joyce Vance:

It tastes nice. I think it's a little bit of an acquired taste, but our farm share is not good like that, Kim. Our farm share showed up yesterday with this beautiful braided loaf of bread and these huge chocolate chip cookies and I confess, Noom, please don't listen. I ate one of those chocolate chip cookies all by myself last night. So I'm drinking kombucha today to feel better about myself. It was a really good cookie.