

Boom! Lawyered 107: 'The Handmaid's Tale' Is Coming to Life

- Imani Gandy: Hello, fellow law nerds. Welcome to another episode of Boom! Lawyered, a Rewire Radio Podcast hosted by the legal journalism team that is joining the war on Christmas by wishing everyone a happy holidays, and that's it. I'm Imani Gandy.
- Jess Pieklo: And, I'm Jess Pieklo.
- Imani Gandy: Happy holidays, and that's it.
- Jess Pieklo: Rewire.news is dedicated to bringing you the best reproductive rights and social justice news, commentary and analysis on the web, and the Team Legal podcast is part of that mission. Support for Rewire and Boom! Lawyered is provided by ...
- Imani Gandy: You! Seriously, you, small dollar donations power our reporting, our commentary, our investigations and you guessed it, this podcast, which is your favorite podcast. You can admit it to us. We won't tell anybody. You can make a donation to Rewire by going to rewire.news/december right now.
- Jess Pieklo: Do it. [Rewire.news](https://rewire.news).
- Imani Gandy: Slash December. Happy holidays!
- Jess Pieklo: This episode, we're going to talk about The Handmaid's Tale come to life. Marching Toward Gilead is a Rewire Radio documentary about the radical Christian activist group Operation Save America and these folks are terrible.
- Imani Gandy: They are terrible.
- Jess Pieklo: So bad. They've got this dystopian world view that includes re-criminalizing abortion, basically ignoring any law they don't agree with and even rising political influence with Trump. Plus their name, it's the stuff of nightmares.
- Imani Gandy: Their name is about as annoying as "Make America great again." Operation Save America, save America from what?
- Jess Pieklo: From ourselves apparently and I'm guessing, they're joining forces with Concerned Women for America.
- Imani Gandy: And the Susan B. Anthony List and Democrats for Life. Oh, my God! Get out of my uterus, people.
- Jess Pieklo: Democrats for Death really. Seriously, what are people doing with these names?
- Imani Gandy: At any rate, we are psyched to have our amazing colleagues and the force behind the documentary, Jenn Stanley and Sofia Resnick, here to talk with us about their work. But before we do, Jess and I are going to give you a background on the laws intended to protect abortion clinics and patients, and the arguments that these

radical activists are making to challenge that access and in some cases, trying to get away with murder, like literal, actual murder.

Jess Pieklo: For real murder.

Imani Gandy: Straight up murder.

Jess Pieklo: All right. So let's start with the federal law. What is the FACE Act?

Imani Gandy: Is it an act that requires people to stay the hell out of my face?

Jess Pieklo: Pretty much.

Imani Gandy: Yes.

Jess Pieklo: It is. You're sincerely not that far off. The Freedom of Access to Clinic Entrances or FACE Act, was signed into law in '94 by President Bill Clinton and it essentially requires people to stay the hell out of the faces of folks trying to access reproductive health care and facilities. Like I said, Imani, you are not too far off at all.

Imani Gandy: What does it do exactly?

Jess Pieklo: Specifically, FACE makes it a federal offense to do a couple different types of things, like use force or threats of force or to physically block access to reproductive health care facilities. That includes things like gluing clinic locks shut, which activists have done, forming human chains in front of clinics, which activists have done, stealing and posting patient records online, which activists have done, to even mailing letters telling doctors that they might find a bomb under their car if they keep providing abortions, which-

Imani Gandy: Wait, wait, wait. Let me guess. Activists have done that, too?

Jess Pieklo: Can you believe it?

Imani Gandy: I'm shocked. Basically, anything that could intimidate patients, providers and their companions out of getting to a clinic.

Jess Pieklo: Yeah, it covers all of that. Who can bring a FACE Act claim? A state attorney general or the Department of Justice, they can bring either civil or criminal claims or both. Now, individuals like patients or providers or escorts, they can bring their own civil lawsuits. In other words, FACE has both criminal and civil penalties. Only the state can bring criminal charges and individuals can bring lawsuits in their own name as well.

Imani Gandy: What are the difference between the criminal and the civil penalties?

Jess Pieklo: A civil claim is one for money damages. Criminal penalties include things usually

like jail times and sometimes some kind of money penalty, too, but it really focuses on locking folks up and things like that. In theory, this should give people two different avenues to protect their rights under the FACE Act, but that doesn't always happen.

Imani Gandy: It's good to point out that there's actually fair criticism of the FACE Act, even though it's a very important and useful law. For one thing, the penalties are not severe enough and it's a remedial statute. And the remedial statute, that's a play on the word remedy, that means that the bad thing already has to happen before the law can step in and remedy that bad thing.

Jess Pieklo: Totally. When you're thinking about threats, for example, one of the issues that will come up is when is it actually a threat and when is it just free speech? We see anti-choice activists making this claim all the time, and providers and patients have said, "Well, we're scared early on," but the law has said, "Too bad you're scared. Something hasn't really happened for us to step into it." That's a big criticism of it.

FACE is also supposed to work together with local protest ordinance like the kind we saw in play in Rewire's award-winning documentary, *Care in Chaos*, but like that film also showed, the law is only as good as it's enforced. Here's some shocking news for you. The Bush administration sucked at enforcing FACE Act. The Obama administration got better. The Trump administration with Jefferson Beauregard Sessions III is probably going to be a total trash fire. Who knows how local law enforcement is going to act in any given place at any given time? Then why do we need FACE?

Imani Gandy: Because these people are fucking terrorists.

Jess Pieklo: Hey, Imani, can you give us a brief rundown of some of the history that got us the FACE Act to begin with?

Imani Gandy: It would be my distinct pleasure. In March 1993, Michael Griffin murdered Dr. David Gunn in Pensacola, Florida specifically because Gunn provided abortions. Griffin waited outside the clinic and shot Gunn in the back three times, and he reportedly shouted "We need more babies." He then waited for the ambulance so he can make sure that he was caught.

Jess Pieklo: I'll give it to these folks. At least Griffin was right out there in the open about his motivations, right? More babies. And waited around to get caught. He wasn't being shy about it. He wanted folks to know.

Imani Gandy: He had the courage of his convictions. I guess we can say that for him. His attorney argued that John Burt, who's the regional director of Rescue America, had brainwashed his client. Burt was a former KKK member, lovely, and he was later convicted of sexually abusing teenagers at a shelter that he founded for unwed mothers. If you could imagine a more shitty person that would actually found a shelter for unwed mothers and then sexually abuse their kids?

Jess Pieklo: Wait, wait, but that sounds kind of familiar? Like maybe Roy Moore?

Imani Gandy: Sure does. Roy Moore has definitely been alleged to be a creeper and he was banned from a mall in the '80s, which is very difficult to do if you have any idea of the sort of shenanigans that were going on at malls in the '80s. Seriously. We're children of the '80s, Jessica, you know I'm right.

Jess Pieklo: Seriously, malls were like, oh, I mean the source of all potential trouble.

Imani Gandy: Yeah, really. Back to Griffin. Griffin, his conviction of first degree murder and his life sentence was a mobilizing call for these anti-abortion extremists. One movement leader, Paul Jennings Hill is his name, would end up issuing a statement signed by over 20 other movement leaders that embraced justifiable homicide of doctors who perform abortion. Now what the fuck is justifiable homicide, you may be asking? We're going to get to that in a second, but first, Jess is going to tell you a little bit more about Paul Hill.

Jess Pieklo: Now Paul Hill, this guy's great. He's also a convicted murderer. In 1994, he murdered Dr. John Britton and Britton's bodyguard outside his clinic in Pensacola, Florida. As you can imagine, Pensacola, Florida during this time is a hot bed of radical anti-abortion extremism. Hill was sentenced to death by lethal injection and eventually executed in 2003. During his trial, he represented himself and also tried to argue justifiable homicide, and the court wouldn't let him. That doesn't mean the idea didn't pick up steam with other anti-abortion activists.

Imani Gandy: Like Scott Roeder, for example. In 1999, Scott Roeder murdered Dr. George Tiller at Tiller's church in Wichita, Kansas. Like the others, he wanted to get caught and like the others, he also tried to argue justifiable homicide. And like the others, the courts refused to let him. Roeder is still in prison serving a life sentence.

Jess Pieklo: Thankfully. Then also, we have most recently, Robert Lewis Dear. He's the guy responsible for the November 2015 Colorado Springs Planned Parenthood shooting. That's the one that left three folks dead and nine others wounded. He's facing 179 felony counts related to the siege, but so far, no FACE Act claim. Now why that's the case? I don't know. Maybe or likely because the prosecutors think a conviction and the penalties are stronger against Dear under state law. We don't know. In part, because he's currently being held in a Colorado mental health facility because the court doesn't think he's competent to stand trial, because he said such things as, "No more baby parts," when he went in shooting, which is weird given the others, but I guess that's probably a different episode. Dear has made it clear, though, that if he gets the chance to stand trial, he intends to argue that his actions were justified under the law. With that kind of set up, what actually is justifiable homicide? We're going to get to that next.

Imani, can you explain this idea of justifiable homicide for us because it sounds kind of bananas?

Imani Gandy: Sure. It's a defense theory in criminal cases that says, basically, your crime, in this

case murder, is excusable under the law because it was done for the better good, in this case, saving babies, as is the refrain from these folks. It works in part with another terrifying idea that these folks are pushing, and that is the idea of "lesser magistrate." Now lesser magistrate says that any government official, including law enforcement, doesn't have to enforce laws that they have a moral objection to, like, for example, the FACE Act.

Jess Pieklo: Right. So effectively what we have argued from the far right here is that they can choose the laws they like, and choose the laws they don't like, and nobody can do a damn thing about it. Now, all these jerks feel emboldened with the Trump win and Sessions as Attorney General, and we're seeing that play out in very real and very terrifying ways right now.

Imani Gandy: In late July, Operation Save America launched an intentional challenge to the FACE Act by re-instituting the rescue missions that helped lead up to the law's passage in the first place. The group descended on the last remaining clinic in Kentucky for a week of protests very similar to the 1993 Summer of Mercy Protest in Wichita, Kansas with a single goal, they wanted to close the clinic in Kentucky.

Jess Pieklo: They weren't going to stop in Kentucky either. Most recently, they've even descended on the clinic in North Carolina that's featured in Care in Chaos by the thousands and the singular goal is to cause chaos, to get arrested and to scare people from coming into the clinics.

Imani Gandy: Our colleagues, Jenn and Sofia, will tell us about these protests and the scary as shit world that Operation Save America folks want to usher in for all of us.

Jess Pieklo: In Marching Toward Gilead, Jenn and Sofia take a deep dive into the group, Operation Save America. Now this is a group with some of its members that were once viewed as so extreme the FBI investigated them for a violent conspiracy related to their anti-abortion activism. Jenn and Sofia are going to take us through how in the age of Trump this group has entered into the political mainstream, which is terrifying. Jenn and Sofia, thank you so much for joining us.

Jenn Stanley: Thanks for having us.

Sofia Resnick: Yeah, thanks for having us.

Imani Gandy: How did this happen? Can you tell us what the inspiration was for this documentary?

Jenn Stanley: I was first planning to go down to Louisville in the summer for Operation Save America's national event. They hold it every year in a different city. About two months before this event, Operation Save America blockaded the clinic, EMW Women's Surgical Center. It's the last clinic in Kentucky and it seemed like they might be challenging the FACE Act and returning to old tactics. I reached out to Sofia, who's an investigative reporter and she'd been covering the Department of Justice a lot, and I wanted to know what her take on this was. She had been

covering the religious right for a long time and we just decided that this might be a bigger story than we thought, and we teamed up, and that's how it all began.

Jess Pieklo: That actually goes perfectly into my question for both of you, which is, you've both been covering anti-choice activists and the politics around their movement for a while now. Sofia, I'll start with you, why do you think we're seeing a resurgence of the rescue mission particularly now?

Sofia Resnick: I think there's this general feeling among many in the anti-abortion movement that not enough change in their favor has been made. They've been working for the last 40 plus years to overturn Roe v Wade and make abortion illegal, and it just hasn't happened. Although, they certainly have gained a lot of victories in their camp, very much restricting abortion and limiting abortion access throughout the country, but they won't be satisfied until it is a crime. I think that there is this sense of urgency among a lot of people that more needs to be done. We can't just focus on incremental changes in the legislature and waiting for the Supreme Court to make decisions here and there. We just need to take action. We just need to let's start stepping in front of these abortion and let's not let people walk in.

Imani Gandy: Ideas like "lesser magistrate," which is this notion that essentially you can ignore the law if God tells you to, those ideas seem really out there, but they're not anymore, are they?

Sofia Resnick: When we talk about lesser magistrate, I think we sort of have to step back a little and say that it's not just a religious concept, right? For example, sanctuary cities is an example of this idea of interposition or this idea of lesser magistrates intervening in what they think is immoral or unjust, right? In the case of the Christian right, and specifically people like members of Operation Save America, they think that there is only one moral authority. And they think that they are the only ones who know what the correct interpretation of the Bible is and that man's law has to be applied thusly. For example, with same sex marriage, they think that it's time. God is calling. County clerks like Kim Davis and former state supreme court chief justices like Roy Moore to intervene in this immoral law and by intervening, they mean by violating the federal law saying that same-sex marriage is legal and denying people the right to marry.

Jess Pieklo: Jenn, I'm wondering if you can share some thoughts, particularly since you have a lot of experience covering this area too, on what it means, what's the significance of having someone like Roy Moore run and at least as of this recording maybe even be a US Senator?

Jenn Stanley: Yeah. Roy Moore wasn't even really on my radar when we started doing this story. The Roy Moore thing really drew a wrench in our story because we could not comment on it, especially given his very close ties to Operation Rescue, Operation Save America. When we started thinking there was more going on here than just the effort to close down the clinic in Kentucky, we were looking into lawmakers that Operation Save America was meeting with, and you'd be surprised by how many there have been. We were surprised. We were surprised by the people at the

state level who were taking meetings with Operation Save America, aligning with Operation Save America, drafting legislation with Operation Save America. Roy Moore, regardless of if he won or not, the fact that he was running as such a major candidate I think is just evidence of all of the concerns that we bring up in this piece.

Sofia Resnick: Yeah. I think what surprised me about the whole Roy Moore thing is that, yeah, it was just crazy that to think that if Operation Save America had wanted to craft their ideal candidate to get up to the US Senate, I don't think they could've created a better one than Roy Moore. But then the fact that then he's accused of these very significant sexual assault allegations, sexual assault and sexual misconduct against minors, and not only that, but in this climate where we're finally caring about sexual harassment and sexual assault, and all of these very popular politicians and artists and actors are losing their jobs—the fact that if he doesn't win, it will be by the very skin of his teeth. That is just kind of mind blowing to me.

Jenn Stanley: I don't know as a reporter for sure if these members that I spoke to who continue to support Roy Moore after the sexual assault allegations came out, if the reason is that they don't believe the women, or that maybe they don't even think it's that big of a deal given the importance of male headship in the evangelical movement. We had Flip Benham, who used to be the leader of Operation Save America, at the press conference in support of Roy Moore said, "If you dug up my past, oh, I'd be in a lot of trouble," and then kind of doubled down on those statements later in a radio interview in which he's saying that Roy Moore had to go after younger women because he was coming back from Vietnam and all the other women were taken, or having sex, and he needed a pure bride and so the younger women were the only options.

Yeah, so I do think that it also shows just some kind of this acceptance of these really, really scary views of male headship and to put that on a national level right now just as women are getting more momentum and getting more seats in Congress is really frightening.

Jess Pieklo: Jenn and Sofia, in terms of what you would like the audience for Marching Toward Gilead to take out of your documentary, is there a nugget or two that you think are really of things that are really significant or really important to storytellers that you want to make sure the audience hones in on?

Jenn Stanley: Yeah, this is Jenn. I think it is easy to dismiss the actions of groups like Operation Save America and other more ... Now I feel like I'm backing off of the word extreme, but more in your face anti-choice activism, the fundamentalist Christian activism, but the fact that ... I genuinely found a path to power for these people doing this reporting. I found things that surprised me. It was a bigger story than I thought it was going to be, and I think that people really need to be aware. I think one of the things maybe people are missing, too, is we forget about our state government. We forget about state elections. We forget about the state legislature. That's where a lot of people with the most far right views are, and they're passing the laws that are affecting people's lives in those states, that

they're passing the laws that affect people day to day.

I hope that people come away with this realizing like oh, really need to pay attention and really take it seriously that there is a path to power, and that we can't just keep writing this off as extremism—that maybe to some extent writing all of these things off is just extremism is part of how they were able to advance without people noticing.

Sofia Resnick: I just want to emphasize that this is not just a story about an "extreme" fringe organization and here are the extreme things that they're saying. These are people, too, right? We try to get at who they are. We try to show really human moments. They're warm and nice to us and funny at times, but they're very open about who they are and we are just trying to show the world that hasn't really been paying attention why what they're saying could be concerning.

Jenn Stanley: When I go down the rabbit hole of thinking about what their world looks like, after talking to them, after the literal things that they've said to me, it just sounds exactly like Gilead from the Handmaids Tale, exactly like it, and it's frightening.

Jess Pieklo: When you guys talked about the strategy, it made me think of the discussion that Imani and I had a few episodes back about Ohio and their 20-week ban versus 6-week ban, and how Imani really broke it down, but how the politicians played off of one another so that the 6-week ban seemed really extreme when then Kasich signed the 20-week ban because "oh, this is a much more reasonable restriction on abortion rights, not like that 6-week ban, which is clearly bananas." I'm wondering if you guys have any thoughts if that's happening now with the Operation Save America folks being given much more leeway and what would normally be considered mainstream Republican lawmakers or candidates kind of caving for them?

Sofia Resnick: I would say that the analogy, the 20-week ban to the 6-week ban, is like Operation Save America's focus on abortion rights when what they really want is totalitarian theocracy. We spoke to somebody who used to be a member of Operation Rescue when she was a child and she's since left the movement. Her name is Kathryn Brightbill. She's featured a lot in the story, but she talks about how by the time she was in college, and she went to an evangelical college, what she was learning at the evangelical college was that what they really wanted was something much bigger than that and that chipping away at abortion rights was one way to do it, almost a distraction because it's not the end goal of what they want at all.

It's almost like, maybe people can swallow- if they don't know how they feel about abortion, they can be on board with this with limiting abortion access. But they're not really thinking about the fact that this is actually just taking all rights away from women and making them respond to this male figure in their life, this male authoritarian figure in their life, whether that be their husband or every person in government, who they believe should be male. I don't know, does that make sense?

Jess Pieklo: Sure. It's kind of like in the Wizard of Oz, don't look behind the curtain, right. Here's a show going on and then oh, behind the works is actually this larger thing.

Jenn Stanley: Exactly.

Imani Gandy: That's interesting that you say that because that's something that I've heard from people like Pamela Merritt with respect to abortion politics in Missouri, how over the past couple of years, there's been this sustained effort to clamp down on abortion access, but a lot of times, these bills get introduced but never passed. And she said that's because they like to just sort of maintain this sort of base level of outrage when it comes to abortion. Meanwhile, they're doing all of this other horrible stuff in the background, so that's interesting.

Jess Pieklo: Thank you both so much for joining us. Can you tell us where folks can find Marching Toward Gilead?

Jenn Stanley: Yes. You can find Marching Toward Gilead at rewire.news/gilead and we're so excited for you to hear it.

Jess Pieklo: Listen to it everyone, seriously.

Imani Gandy: Please do.

Jess Pieklo: Thanks so much guys.

Imani Gandy: Thanks, guys.

Jenn Stanley: Thank you.

Imani Gandy: That's it for us, y'all. We'd like to wish you a very happy holidays and let you know that we will see you in January, but while you're on vacation or on break with your family opening presents, why not take the time to listen to our first seven episodes?

Jess Pieklo: They pair nicely with egg nog and booze.

Imani Gandy: They really, really do. That's it for us. Thanks very much for listening and have a happy holidays.

Jess Pieklo: Happy holidays.

Imani Gandy: Happy holidays. Boom! Lawyered is created and hosted by Imani Gandy and Jessica Mason Pieklo. The show is produced by Nora Hurley. Our executive producer is Marc Faletti and Rewire's editor in chief is Jodi Jacobson.