

Boom! Lawyered 208: Why Sonia Sotomayor Is an Absolute Boss

- Imani Gandy: Hello fellow law nerds. Welcome to another episode of Boom! Lawyered, a Rewire.news podcast hosted by the legal journalism team that is wearing Christmas socks in April because we don't play by the rules. I'm Imani Gandy.
- Jessica Pieklo: I'm Jessica Pieklo. Rewire.News is dedicated to bringing you the best reproductive rights in social justice news, commentary and analysis on the web, and the Team Legal Podcast is part of that mission. A big thanks to our subscribers and welcome to our new listeners.
- Imani Gandy: Yes, welcome to our new listeners. Hey Jess, I have a question for you.
- Jessica Pieklo: What's that Imani?
- Imani Gandy: We love Ruth Bader Ginsburg right?
- Jessica Pieklo: Oh my God, we love her so much.
- Imani Gandy: I mean, we love Ruth Bader Ginsburg so much that we have started calling her the Notorious R.B.G., which for those of you don't know, is a play on the Notorious B.I.G., a quite popular rapper from the '90s. When it comes to cultural appropriation, Black people aren't particularly in love with it, but we love R.B.G. so much that we all had a meeting and we decided we'll allow it.
- Jessica Pieklo: She's got, this woman has her own memes, she's got coffee mugs. She's swag galore.
- Imani Gandy: She really is. We love her so much that we really should start crowdsourcing organs and blood -- just in case, she's an elderly woman. My liver is shot, but I've got one good kidney and she is welcome to it. I'm just saying.
- Jessica Pieklo: That woman's tough. She's tough. I mean, you've done her workout Imani.
- Imani Gandy: Yeah. I mean, she is tough. She can do real push-ups. I can't. She's 82. I'm 43. She wins. But, we're not going to talk about Ruth Bader Ginsburg today. We're going to talk about Justice Sonia Sotomayor because America, you all have been sleeping on Justice Sonia Sotomayor and again, to harken back to the Black community, when I say y'all are sleeping on Sotomayor, I don't mean you're literally sleeping on top of her. I mean, you aren't aware of how amazing she is. Maybe she's flown under your radar for the past nine years. We're going to spend this episode talking about how amazing Sonia Sotomayor is. This entire episode is going to be, essentially, a love letter to her. We're going to talk about her so much, you might even be like, "Gosh, why are they talking about Sonia Sotomayor so much?"
- Jessica Pieklo: They're still talking about her. Really, she's fantastic. Ruth Bader Ginsburg deserves all the love. The woman has built an amazing career, but like Imani said,

there is another Justice that deserves some of that attention and we are going to give it to her. This episode, we're going to start off by talking about her confirmation hearing. Remember what a racist trash fire that was Imani?

Imani Gandy: Oh my God. It was awful. It was really, truly awful and it hurt my soul, watching what the media and conservatives put her through.

Jessica Pieklo: Right. I mean, I thought I remembered it, and then, as we were going back to prep for this episode, I really remembered it and oh my god, it's bad. We're going to talk about that. We're also going to highlight some of her most important work that she's done so far while on the bench, knowing that she's got a lot more that she's going to accomplish.

Imani Gandy: Then we're going to talk a little bit about Justice Sotomayor's work in the community and what a role model she's become. We're going to talk all of these things so stay tuned after the break.

Sean Hannity audio clip: And tonight in your America: Now, you've heard legal experts on the left and the right, comment on Obama's Supreme Court nominee Sonia Sotomayor, but what do the lawyers that have appeared in her courtroom think of her judicial temperament? Well, not much. The almanac of the federal judiciary solicits commentary from practicing attorneys about our federal judges. Now, here's what some of the lawyers who have argued before Judge Sotomayor had to say about her, "She is a terror on the bench. She is overly aggressive, not very judicial. She behaves in an out of control manner. She is nasty to lawyers."

Imani Gandy: What you just heard is Sean Hannity of Fox News playing into all of the racial stereotypes and dog whistles, so much so that I would even call it a dog vuvuzela. Jessica, you remember the vuvuzela's from the World Cup?

Jessica Pieklo: I have a vuvuzela. I do. We have one.

Imani Gandy: I mean, maybe we ought to bust that out because honestly, the way that Sean Hannity talks about Justice Sotomayor in that clip, and the way in which he brings to bear all of these other primarily white dudes who call her a bully and a terror on the bench, it's really very disturbing that this is the way that the media and conservatives decided to talk about the first female nominee, the first Hispanic female nominee for Supreme Court justice, don't you think?

Jessica Pieklo: I do. I mean, look, I expect this from Sean Hannity, right? He's the worst. In terms of playing really crappy racial politics, he's like the worst of the worst, even for Fox News. But. What is amazing to me, as we were going back and thinking and getting ready on the confirmation stuff is, it wasn't just like a little drip here, a little drip there, it was like a fire hose of every type of racial stereotype, every phrase you can imagine. We've got an interchangeable crew of grumpy old white senators talking about Justice Sotomayor as "a hot blooded Latina" and what that means for the bench, right?

Imani Gandy: It's so tacky. It's so incredibly tacky. I remember when she was going through this confirmation process, and just preparing for this podcast, I had really forgotten how awfully people treated her. I remember when people started talking about her involvement with La Raza and it turned out that this basically, advocacy group for Latina people was essentially the brown version of the KKK, and they talked about La Raza as if it was a legitimate terrorist organization.

Jessica Pieklo: Absolutely. The entire tenor of her confirmation hearing, which Hannity completely set up with all of that garbage and the senators just went and ran with it, was that she was going to be racist against white guys.

Imani Gandy: Ah, suffer the poor white guys. What will we do? White guys just don't get a chance in this country and I really feel. Maybe we ought to do an entire podcast about the ways in which white men just can't get a leg up in this country.

Jessica Pieklo: Especially in the legal profession. I mean, they've really faced barrier after barrier after barrier in the law.

Imani Gandy: I mean, if you look at law firms, all the partners are women and women of color. All the white dudes are working in the mail room. I mean, it's just unjust. Unjust! Who will stick up for the little white guy?

Jessica Pieklo: Well, when Justice Sotomayor was before the Senate, it was folks like John Kyle and Lindsey Graham and now attorney Jefferson Beauregard Sessions III. Bleh. Yeah, they were terrible.

Imani Gandy: They really were terrible. I recall at the time, when she was going through this, talking to some of my Latina friends. This was when I was living in Los Angeles. Talking to them about how frustrated they were about the characterizations of Sotomayor as sort of this "spicy Latina," this "hot tamale" and it draws on these racist tropes about Hispanic people, about the Latina culture. That's really disgusting and really deplorable, and considering the time at which she underwent this confirmation hearing, it was 2009. It wasn't 1950. There was no reason for them to be talking about her this way.

Jessica Pieklo: They really elided all of those stereotypes and tried to dress it up with this idea that there was a question about her temperament, and that this was that she was somehow not of a sufficiently rigorous legal mind for the job that she had been appointed for, as though she didn't have over, about 20 years of experience as a prosecutor and a judge before that.

Imani Gandy: Right. Right. That's just sort of the way that women of color in corporate settings and particularly in the legal profession, are treated. I'm a lawyer. I worked at big law firms and I can personally attest to the number of times that I was considered less than or not as smart as but on the flip side considered overly aggressive and too much of a bully simply because I'm a Black woman. Sotomayor, she went through that same sort of a thing. She had all of these stereotypes that were attributed to her and she wasn't allowed to just be a

person. She was supposed to be a daguerreotype of what a Latina judge is supposed to be and that's really frustrating.

Jessica Pieklo: Yeah. Look Imani, I expect the kind of stuff we heard from Hannity, from Hannity and I expect Sessions and all of those guys to do that. I mean, that's what pinched white dudes do is they-

Imani Gandy: Pinched white dudes.

Jessica Pieklo: You know what's really upsetting is, this is a history-making nomination and she got this crap from the left too.

Imani Gandy: Yeah. I mean, it wasn't just like anyone on the left. It wasn't like Johnny Jackass with the YouTube channel who's really just concerned about his subscriber list or his Patreon account. Not just like, even some small time journalist at some small time paper who wrote an op-ed about how Sonia Sotomayor thought she was hot shit and she really isn't.

Jessica Pieklo: Right.

Imani Gandy: Do you know who was a main person on the left who was criticizing Sonia Sotomayor in the most racist and misogynist terms?

Jessica Pieklo: I'm girding my loins for this. Who?

Imani Gandy: Lawrence Tribe.

Jessica Pieklo: No.

Imani Gandy: Lawrence Tribe.

Jessica Pieklo: Professor Tribe, what are you doing?

Imani Gandy: Professor Tribe, what do you do? WYD? That's African American vernacular English for those of you who don't know what I'm talking about but honestly, what the hell are you talking about Lawrence Tribe? Look, here's what Professor Tribe said, and it's bad and I'm going to read the quote and I might even read it again, just so it'll sink in as to how bad it was. This is what he said, "Bluntly put, she's not as smart as she seems to think she is and her reputation for being something of a bully could well make her liberal impulses backfire and simply add to the fire power of the Roberts/Alito/Scalia/Thomas Wing of the court."

Jessica Pieklo: What? What?

Imani Gandy: Yeah.

Jessica Pieklo: Okay.

Imani Gandy: First off starting, "She's not as smart as she thinks she is ..." I can't even tell you how many times as a woman of color I've had that sentiment lobed my way simply because I'm a smart Black woman and there are a lot of people who don't expect women of color to be intelligent.

Jessica Pieklo: Wait, wait. Why don't we explain, who's Lawrence Tribe? Maybe not everybody knows who Lawrence Tribe is.

Imani Gandy: Okay.

Jessica Pieklo: Just to give some context to this really horrible thing he said.

Imani Gandy: Really, really crappy. Yeah. You're right. That's a good idea. Lawrence Tribe is, basically, he's like a constitutional giant in terms of scholarship, in terms of academia, he's a professor at Harvard. If you've been following him on Twitter as of two years ago, or when was Trump elected? Has it been two years already or just one year?

Jessica Pieklo: Time is a flat circle. I don't even know.

Imani Gandy: Oh, time is a flat circle but he's very vocally anti-Trump and he usually has pretty decent opinions and ideas about constitutional issues, but in this case ...

Jessica Pieklo: Yeah, broadly speaking, he's a good dude.

Imani Gandy: Yeah. He's a decent dude, generally speaking, but in this case, it was like the white dudeness overcame him like a monster with these claws and he ended up just spouting this typical white nonsense about women of color. That she thinks she's smarter than she is and that she's a bully and she has bad judicial temper. What the fuck are you talking about, Larry?

Jessica Pieklo: Especially when he's serving at the time, as an advisor to President Obama, on his judicial nominees. Like what? Larry, no. No.

Imani Gandy: The thing is, at the time that Sonia Sotomayor was on the top of Obama's list, it had been already long overdue, long past due for a Latino or Latina justice to be elevated to the Supreme Court. The idea that Lawrence Tribe, who was actually mentoring President Obama and talking to him about his nominees is talking about one of Obama's top picks in these disgusting terms, it just ... Larry, WYD. Seriously. Fortunately, he did walk those comments back so that's good but the fact that he made them in the first place really says a lot about how white this profession is.

Jessica Pieklo: I mean, the two big ones and, not to hammer the point so much but it's something that's going to show up again and again and again and again in the conversation around Justice Sotomayor is that she's not as smart as she thinks she is and she's a bully. Those are huge whistles.

Imani Gandy: Those are really, really big whistles and those are whistles that are generally reserved for women and particularly, women of color. Women will get, "Oh, she thinks she's so smart. Blah, blah, blah, blah." Then women of color also get that added aggression, that added bullying.

Jessica Pieklo: Yeah.

Imani Gandy: My intersections have intersections, you know what I mean? It's just, I'm living at this intersection of Black and woman and it always ends up being aggressive, uppity, not as smart as she thinks she is, overly emotional, temperamental and this is all the shit that Sotomayor was thrown.

Jessica Pieklo: Yep. Right. We started out with that terrible Hannity clip and now we've got this terrible Lawrence Tribe quote and in between, is Justice Sonia Sotomayor kicking ass and making history.

Imani Gandy: Yep. The thing about the way in which she was treated in the confirmation hearing is that it basically set the tone for the way in which conservatives would view Sotomayor as a justice, and the way in which they would discuss her work on the Court. And coming up after the break, we're going to talk a little bit about her time so far, on the Court.

Jessica Pieklo: Okay, so after surviving that racist trash fire of a confirmation process, Justice Sonia Sotomayor was confirmed and all of the white dude's fears came to fruition. She enslaved them all, started her reign of terror on the court, instituted martial law, all of it.

Imani Gandy: I'm pretty sure she has a well of white men just in her backyard where she just keeps them.

Jessica Pieklo: Does she need help working on that? No, I'm kidding. I'm kidding. There's no well that we know of.

Imani Gandy: Look, I have this running joke of some friends of mine that I have a well of white ladies in my backyard where I keep them so they can be nice and safe and comforted from the world and every so often, I throw down a bottle of scotch or like a new Netflix DVD and it's very comfortable. I treat my well of white ladies very, very well, and I imagine Justice Sotomayor has a similar well of white dudes and I'm sure she treats them very, very well. She probably throws down copies of The Wall Street Journal every morning.

Jessica Pieklo: I'm pretty sure the National Review had something on that. Really, everything they said that was going to happen, that she would be reverse racist and that they would lose all of their power and status in society has clearly happened, huh?

Imani Gandy: Yeah, except for it hasn't.

Jessica Pieklo: No.

Imani Gandy: But what has happened is that Sonia Sotomayor has become an absolute boss when it comes to matters of racial justice. In particular, when it comes to the over policing of communities of color and the fourth amendment. Now, the fourth amendment, as you well may know is the amendment that basically says, cops can't search you, they can't seize you without probable cause. You basically should be free from unreasonable search and seizure. Well, we all know that that doesn't really apply to communities of colors. Sonia Sotomayor also knows that because why? She's a woman of color. Why? She grew up poor in the Bronx. She gets it.

Jessica Pieklo: Get out.

Imani Gandy: Yeah.

Jessica Pieklo: Get out. What you're saying is her experience here, has helped influence her judicial temperament and opinions?

Imani Gandy: Yes. That's exactly what I'm saying. It's to be expected. I mean, you've got a bunch of white dudes, some of which who grew up wealthy, some of whom who didn't grow up wealthy but here you have this woman of color, this Latina woman who grew up in the Bronx with her amazing, gorgeous Bronx accent. I love listening to her talk, and she grew up impoverished. Her mom was a nurse in a Methadone clinic, which I just learned this week, which is amazing and she really was a sort of pull yourself up by a bootstraps kind of person and that's exactly the same sort of rhetoric that white people tend to lob at Black people. She really understands the sort of Black plight in this country, and we need a justice like that on the court, especially at this moment in time.

Jessica Pieklo: It's really, I think, important to say that look, Imani, we exist in the law and we can sort of forget that it is over-intellectualized because that's the space that we're in, right?

Imani Gandy: Right.

Jessica Pieklo: Particularly when you're talking about at the Supreme Court level. This is the highest court in the country. Everything is at its most intellectual, rarefied and in the clouds and what Justice Sonia Sotomayor does and what we're going to really dive into in some more detail, is bring that experience into the law in a way that shapes the jurisprudence, the outcomes itself -- and not like in activist judging as conservatives love to roll around, but the idea that bringing your day-to-day experience in and interacting with the law is what makes it real.

Imani Gandy: Right. It's what makes it real. It's what makes the law living and breathing, people who are not religiousists, meaning people who are not stuck in 1770- whatever in a time where white dudes were wearing wigs and tights and Black people were three-fifths of a person. There are justices on the court like Thomas

and Alito who believe we should be stuck in that time. Sotomayor understands that there's shit that goes on now that the framers could not have contemplated and so she is one, if not the only, person on the court who seems to understand the ways in which the Constitution is affecting Black people's lives in this country.

Jessica Pieklo: Why don't we give folks a real solid example of that? Why don't we talk about a case or something so that we can really unpack that and they can see what this living judicial philosophy looks like?

Imani Gandy: All right. Let's do that. Let's talk about a case called Utah V. Strieff. Utah V. Strieff is, I would have to say that her dissent in this case is probably her breakout opinion when it comes to establishing herself as the, I guess I'll call her the social justice warrior justice even though that's kind of a mouthful. That's essentially what she is so let's talk a little bit about what Utah V. Strieff was. I don't want to get ...

Jessica Pieklo: What happened? What happened in this case?

Imani Gandy: I don't want to get too much into the weeds but essentially, there was a guy, and a guy went into a house where the cops thought there were some drug dealers. The guy came out of the house, where the cops thought there were some drug dealers, and the cops stopped the guy.

Jessica Pieklo: Wait, wait, hold on. I'm going to stop you here for a second. Is this guy a person of color?

Imani Gandy: Oh my God, how did you guess? How in the world did you ever guess?

Jessica Pieklo: I'm spit-balling here. I don't know.

Imani Gandy: Right.

Jessica Pieklo: I thought, maybe.

Imani Gandy: You had an inkling. This Black dude comes out of this alleged drug dealer's house and is stopped. The stop is illegal. The prosecution in the case admits that the stop is illegal.

Jessica Pieklo: Whoa. Okay. I'm pausing again there because maybe our listeners don't understand. The prosecutors never admit anything is illegal.

Imani Gandy: Never.

Jessica Pieklo: This is a big deal. The idea that a prosecutor would say, "Oh, yep, what the cops did was a bad stop."

Imani Gandy: Yeah.

Jessica Pieklo: No. Sorry. That just doesn't happen.

Imani Gandy: It really doesn't but in this case it did. The prosecution, they admitted that the stop was illegal but they went on to say that the information that the cop found out after illegally stopping this poor Black man, should be admissible and I'm just going to give you a guess as to what, what do you think the cop found out after he took this Black guy's ID, went back to his cruiser, checked the guy's ID to see if he had any priors or whatever? He had some "priors." What do you think that prior was?

Jessica Pieklo: Let's see, we've got a Black guy in a traffic stop with a cop getting a history run. I'm going with traffic priors.

Imani Gandy: It was a traffic prior. Actually, just to step back a little bit, it wasn't a traffic stop. This guy got stopped on the street. It was a street stop. It wasn't even a traffic stop.

Jessica Pieklo: Oh, damn.

Imani Gandy: The guy got stopped on the street, cop went and looked at his license and found out that he had an unpaid parking ticket and arrested him based on that.

Jessica Pieklo: Arrest on an unpaid parking ticket?

Imani Gandy: An unpaid parking ticket. The courts seem to think that this sort of behavior, this sort of over policing of communities of color was an isolated incident but Sotomayor saw it differently. She actually chastised the court for its racial myopia and the reason why she did that is because she understands from her personal experience that being stopped by the police is a serious matter. It's not just some inconvenience. It actually affects the dignity of a person. It's very undignified to be stopped illegally by the police and basically yoked up for no reason.

Jessica Pieklo: Again, the majority on the Supreme Court had said, "This is cool. We are okay with this."

Imani Gandy: Again, I want to point out, included in that majority is Clarence Thomas, who, for being the Black guy on the court, almost never seems to have Black people's back and that's why it's so important that Sotomayor is there because she has Black people's back. She seems to be, if you think of police misconduct as this huge ginormous beast, that is barreling down the hallway, Sotomayor is basically on the other side of those doors just with her back to the doors and just trying to hold them shut, basically by herself. That's really one of the things that makes her so amazing.

Jessica Pieklo: She's a former prosecutor so I mean, the idea that she's the one telling the state to slow its role and back off is also, I think, an important detail.

Imani Gandy: It really is. Maybe the most important detail about her dissent in *Utah V. Strieff*-

Jessica Pieklo: Yeah, let's talk about this.

Imani Gandy: Yeah.

Jessica Pieklo: This is a good one. Let's get into it.

Imani Gandy: Yeah. We really should because it's super important. Sonia Sotomayor's dissent came in four parts. The first three parts were the general, "The Supreme Court got it wrong. The majority got it wrong. The fourth amendment should actually prohibit this stuff." Yada, yada, yada. It was the fourth part that really just put some stank on it. It was in the fourth part by writing, "Writing only for myself and drawing on my professional experiences, I would add that unlawful stops have severe consequences, much greater than the inconvenience suggested by the name." The Supreme Court majority was just basically saying that, "It's just a stop. It's not that big of a deal." Justice Sotomayor was like, "Whoa, whoa, whoa. That is absolutely not the case." She proceeded to talk about police stops and police brutality and over policing of communities of color in such a way that, I think it's really going to be one of those sections of a dissent that is going to stand the test of time, that is probably be part of her legacy in the end.

Jessica Pieklo: Absolutely and she drew on so many different sources too. It wasn't as though ... I mean, she opens with, "From my own experience," and then she immediately puts it into this huge cultural conversation that was happening, right?

Imani Gandy: Right. At the time, we had just come off the Ferguson uprising where Black people took to the streets to protest the killing of Mike Brown. We were also fresh off the heels of the Baltimore uprising where Black people, again, took to the streets to protest the killing of Freddie Gray and at the time, the Department of Justice had opened up an investigation into the policing tactics of Ferguson, Missouri and had discovered that the same exact behavior that was at issue in *Utah V. Strieff*, essentially using outstanding parking tickets as a reason to arrest Black people, was going on in a large scale in Ferguson, Missouri.

They were using unpaid parking tickets and failure to appear at court dates as a reason to impose fines on Black people, which in turn, were not paid because plenty of these people are low income and they don't have hundreds of dollars to pay court fees and so that, in turn, led to more outstanding tickets and more outstanding warrants and it was just this feedback loop of Black people being pulled over and then being issued parking tickets and them going unpaid because of systemic racism and poverty, which led to them being arrested and it's just round and round and round we go.

Jessica Pieklo: Right. As she's drawing that out in her dissent, she's pulling from all sorts of really great Black thinkers and advocates and activists to do so. She's citing Michelle Alexander and Ta-Nehisi Coates and this is an important thing because yes, it's a dissent and a dissent doesn't have the force of law but a dissent is still

organized around a key judicial idea and what Justice Sonia Sotomayor does in this section in particular, is to build a record with citation to other sources than white folks talking about white law basically. Right?

Imani Gandy: Right. Right.

Jessica Pieklo: This is a big deal because other attorneys, other judges can look back on this. This is how the law actually changes. This is how the perspective in the context of the law actually changes is by drawing from the not-usual sources. This is a really big deal.

Imani Gandy: It's such a big deal. I mean, Michelle Alexander's book, the New Jim Crow talks a lot about the mass incarceration and the prison industrial complex. Ta-Nehisi Coates's landmark article on reparations that was published in the Atlantic a few years ago goes point by point about how it is that Black people have ended up in a situation where they are being over-policed, where they are being segregated into neighborhoods where white flight has taken a toll on these neighborhoods and the fact that those sources are now enshrined in the Supreme Court jurisprudence is extremely important because it means it's more likely that judges and lawyers, that predominately white judges and lawyers, may be reading those sources. And the fact that there might be some white lawyer somewhere who picks up Michelle Alexander's book, the New Jim Crow and reads it and maybe learns something about the way that Black people are treated in this country is a really positive thing to come out of all of this.

Jessica Pieklo: It is. I think that might be one of the reasons why I was so disappointed that Justice Ginsburg didn't sign on to that portion of the dissent -- because she didn't.

Imani Gandy: Yeah. She really didn't. I mean, she signed onto the first three parts and then that last part she was like, "I'm out" and Sotomayor was just like, "I'm still in" and she proceeded to just fucking knock it out of the park. I love R.B.G.. We talked at the beginning of the show about how much we love R.B.G. and I do. She's an 82 year old white lady and there's only so much we can expect from 82 year old white ladies when it comes to racial justice, and as far as 82 year old white ladies go, Ginsburg is right up there. She's always on the right side when it comes to like, abortion rights, which obviously affects people of color very, very strongly. She's been on the right side when it comes to affirmative action. But she also tends to go a little bit sideways sometimes because she's a little bit elderly and she may not be as hip to the times. For example, the NFL protest, the Colin Kaepernick protesting police brutality by kneeling. She at one point, said that she thought that protest was dumb.

Jessica Pieklo: Yeah. I had to write a piece and say, "No Ruth."

Imani Gandy: Yeah. You did. You were like, "I love you Ruth, miss you every day, but no."

Jessica Pieklo: Yes. Yes. It's disappointing that she wasn't sign on but again, I also think that there's something to the power of the section of the dissent standing on its own and in Justice Sotomayor's voice.

Imani Gandy: Absolutely.

Jessica Pieklo: There's also not a, "Hey, me also," jumping in. Maybe it'd be bandwagon-y. I don't know.

Imani Gandy: Yeah.

Jessica Pieklo: The point is that she staked out some really important legal turf and the effect of that dissent, while it didn't change the law immediately, we are going to see it play out.

Imani Gandy: Right because it's going to be more and more difficult to ignore the overwhelming evidence that Black people are under siege in this country by state violence.

Jessica Pieklo: Absolutely.

Imani Gandy: Sonia Sotomayor's dissent is the first step in a march towards fixing that problem, hopefully.

Jessica Pieklo: Yeah. She's real good on that and we're going to talk about some of the other areas that she's real good on when we get back from the break.

Imani Gandy: Because she is just real good.

We talked about how much of a boss Sonia Sotomayor has been on the fourth amendment, but she's also been real good in other areas -- reproductive rights and LGBTQ issues. I mean, this is just another area where she downright gets it.

Jessica Pieklo: She really does. We're going to talk about a couple cases that really illustrate this. I'm going to dig into the wayback files, Imani. Do you remember Hobby Lobby?

Imani Gandy: Oh my God. Do I remember Hobby Lobby? I have to say Jessica, that I think our friendship was forged in the fires of Hobby Lobby. I feel like this partnership that we have now, began six, seven years ago with Hobby Lobby.

Jessica Pieklo: It really did. It's probably like the only good thing that came out of that case.

Imani Gandy: Right, exactly.

Jessica Pieklo: But way back in the day, Imani and I would just get on and yell at each other and a couple other folks who'd join us and would listen about how ridiculous this case was and so, if you don't remember, this is a case that involved that craft

chain like, go get knitting needles and glitter, and they had an objection to the birth control benefit in the Affordable Care Act. This is a-

Imani Gandy: Wait, wait, wait. Since it's been a while, like several years now. Maybe we should just go back and explain what the birth control benefit is.

Jessica Pieklo: Oh right. The Affordable Care Act. Healthcare reform, Obamacare. Obamacare had this provision that said, "All preventative healthcare services need to be covered at no additional cost or co-pay and that includes birth control because it turns out that preventing pregnancy, is preventative medicine."

Imani Gandy: No shit.

Jessica Pieklo: Get the fuck out, right?

Imani Gandy: I can't even believe it. I am shocked I say, perfectly shocked.

Jessica Pieklo: So, Hobby Lobby and several other businesses got all upset about the idea that they would have to provide contraception coverage as part of their employer package of benefits.

Imani Gandy: I just remember how frustrated you and I used to get talking about this because it's just patently ludicrous, the idea that you can be a corporation and you can be offering your employees health insurance, but that you can pick and choose what portions of healthcare you want to cover and that you don't want to cover, it's ludicrous. Birth control is healthcare.

Jessica Pieklo: It's even more ludicrous than that. It's even more ludicrous than that because it's not like they were just offering real reasons for what they did. They claim that they, as a corporation, had a religious objection to this stuff so they are a corporate entity saying, "We have religious beliefs and rights," and so that's where the whole religious refusal, legal fight really sort of went on steroids. That's Hobby Lobby. This case, ugh. In *Strieff*, we were telling you about Justice Sotomayor's thinking and how that played out in her opinion. What is amazing in Hobby Lobby was her performance during oral performance. You think she's a boss in her writing, oh my gosh, in oral arguments, this woman is fire.

Imani Gandy: I can feel that coming off the transcript. I have not been blessed like you are, to see her in action. I can imagine she's amazing.

Jessica Pieklo: She really is. Hobby Lobby is such a perfect example of this. This is a case where everybody was pretty engaged, and Paul Clement is the attorney for Hobby Lobby and this guy is a Supreme Court regular. This is what he does, he goes in and argues all the big cases for conservatives and this is his bread and butter. *Citizens United*, *Shelby County V. Holder*. You name a terrible case for liberals and Paul Clement is on the other side of it. Hobby Lobby is no different. The arguments open up and right away, the female justices asked 28 of the first 32 questions.

Imani Gandy: What? 28? 28?

Jessica Pieklo: 28.

Imani Gandy: Jesus.

Jessica Pieklo: 28. Of those 28, Justice Sonia Sotomayor had 11 of them, just herself.

Imani Gandy: Oh wow. What kind of stuff was she asking?

Jessica Pieklo: She had Clement in the wringer. Yeah. She had him in the wringer. She started off by asking hard but really straightforward questions, which is what basically, she does. For example, she asked if corporations, if they can object on religious grounds, to providing contraception coverage, could they also object to say vaccinations or blood transfusions?

Imani Gandy: That's what I love about Sonia Sotomayor. She cuts right to the god damn chase. I mean, as lawyers, we talk a lot about slipper slopes, right? If you have a particular law or policy, you have to go down a slippery slope to see what the logical conclusion of that policy would be and sometimes it's something so horrible that you realize that the original policy's ridiculous. In this case, they're saying that corporations can decide not to provide birth control to their employees because it violates their religious freedom. Does that mean if, I don't know, Jenny McCarthy for example, is a noted anti-vaccer, if she opened a company and she offered health insurance to her employers, does that mean that she could say, "Oh, I'm not going to cover vaccines for your kids?"

Jessica Pieklo: Yeah. I mean, that was Justice Sotomayor's point and what she was trying to point out in the arguments and as we saw in Hobby Lobby, that went sideways. Turns out, that yeah, Jenny McCarthy probably can do that after the decision but that was just one example. She held Clement's feet to the fire on a couple other occasions too like for example she asked him "Well how the hell will courts ever know if corporations hold a religious belief to begin with? When and how are corporations going to launch these and what if it's just the beliefs of the leadership and not the entire company? What happens to nonreligious minorities in a company?"

Imani Gandy: Exactly. As we all know, corporations tend to be made up of shareholders and you cannot tell me that ... maybe Hobby Lobby because it's a very, it was a very, "closely held" corporation, which basically means it was a family run establishment. So sure, maybe everyone in that particular family believes that abortion is sin and contraception is abortion, which it's not -- but that's another conversation. But you can't tell me that a bigger company, for example, Starbucks, which was in the news for being racist as fuck, you can't tell me ... Let's imagine that Starbucks had a religious opposition to serving Black people. You can't tell me that every shareholder in Starbucks would also have that religious opposition. That's an absolute ludicrous proposition but that's

essentially what the court has allowed Hobby Lobby and other corporations to do when it comes to women's healthcare.

Jessica Pieklo: Right. In that case during oral arguments, her job was just to poke as many holes in Clement's argument and she did it. She was having none of it.

Imani Gandy: Another case where she was having none of it was one of the bigger cases and maybe our last really good abortion case, given where we are with the Trump administration and ...

Jessica Pieklo: I know.

Imani Gandy: It's sad.

Jessica Pieklo: It's probably true.

Imani Gandy: At least we got a really, really good one and during the Obama administration. Whole Woman's Health V. Hellerstedt.

Jessica Pieklo: Yeah. This is another one where, on the bench, Justice Sotomayor was just on fire and again, another case. The repro cases, the justices are in it. They are very engaged and this one, Roberts tried to have some control over our oral arguments and it just immediately fell apart. In particular, he kept trying to hem in the female justices and Sotomayor was just not having any of it. She blew right past him. She was not at all concerned that he was worried about the decorum. They were having a real, actual argument about these ridiculous Texas anti-abortion restrictions and she was not going to let the men on the bench control the terms of that debate.

Imani Gandy: That's what's really great about her presence on the bench is that she's not concerned about the fragile white feelings of white dudes. That's just not, that's not who she is.

Jessica Pieklo: No.

Imani Gandy: The thing that's so interesting about it is that, because she has not centered white dudes in her jurors' prudence, it's that which makes her seem like a bully and seem to be judicially in temperamental right?

Jessica Pieklo: Exactly.

Imani Gandy: Most of the judges and the lawyers are white men so they tend to center white men concerns and Sonia's like, "Not on my watch. Not today, bitch." You know what I mean?

Jessica Pieklo: Exactly. Exactly.

Imani Gandy: It's really frustrating to, on the one hand, read about Sonia Sotomayor, read her work, read biographies of her, watch her appearances and her speak and to see that she's just this warm, compassionate, would probably invite you over for cookies and tea and tell you stories about whatever, you know what I mean? She just seems like the kind of person you want to hang out with and learn from and these white men are treating her like she's some hell beast, some bully from God knows where who's here to destroy all white men. All men must die. She's like the Cersei Lannister of the Supreme Court in these dude's estimation and she's really not. All she's doing is standing up for the rights of vulnerable and marginalized people and those are the kinds of people that frankly, Alito, Roberts, Thomas, they don't give a shit about.

Jessica Pieklo: Yeah. She's just doing her job. In Whole Women's Health, this is the case that involved some of the restrictions that the Texas legislature passed, like admitting hospital privileges and the requirements that clinics have to meet the same architectural standards as a stand-alone surgical centers. Those were passed, the lawmakers said, to promote women's health or patient health and in reality, they were just trying to close clinics. And that's what the whole legal fight was about was, was this to promote patient health and how do you prove that and what not. And in oral arguments, Justice Sonia Sotomayor did this really amazing thing and I'm going to walk through it just a little bit and it doesn't really sound amazing but trust me, it is.

Okay. During oral arguments, she had Stephanie Toti, who is the attorney from the Center for Reproductive Rights and representing the clinics who are challenging the restrictions, walk the court through in very simple terms, in plain fucking English, different abortion procedures. What's the difference between a medication abortion and a DNE abortion? What stage in pregnancy do they happen? Who are people having these procedures? Where are they performed? What are the safety protocols and incidents of events surrounding them? All of this in zero stigma, zero shame, just talking about a medical procedure as a medical procedure and then connecting the dots to whether or not it is safe or unsafe and it really immediately just laid waste to the state's nonsense argument that abortions are super unsafe and therefore need this extra special regulation.

Imani Gandy: Yeah. I mean, I feel like what's really important about what Sonia Sotomayor did that day is that she, as you said, talked about abortion in real plain, matter of fact terms. She gave Stephanie Toti the space to talk about abortion as healthcare as opposed to this horrible thing that sometimes women of a certain nature have to go and get done and it's all very hush hush and we shouldn't talk about it because stigma and shame and blah, blah, blah.

Jessica Pieklo: Right.

Imani Gandy: It's absurd. She sort of demystified this idea that abortion is something that everyone should be ashamed of and opened up the court so they could hear about what these procedures, these varying kinds of procedures actually are.

Jessica Pieklo: It's really important when you have justices like Kennedy on the bench, for example, who will write an abortion opinion and who will use, basically, anti-choice talking points about so-called abortion regret syndrome and things like that and she had none of that. What the affect of that was like you said, to give Toti the space to educate the court and then we see that play out in the opinion that Justice Briar would write. Because Justice Briar, writing for the majority, struck the regulations and gave us this beautiful, nerdy, wonky, data filled opinion.

Imani Gandy: So nerdy.

Jessica Pieklo: It is.

Imani Gandy: So nerdy.

Jessica Pieklo: It's like, fan yourself with info.

Imani Gandy: Exactly but it's so nerdy because Sotomayor gave the attorneys from CRR the space to explain all of this stuff.

Jessica Pieklo: Exactly.

Imani Gandy: To explain how it is that Texas really wasn't concerned about health and safety but was trying to restrict abortion access because abortion is super safe and they had all the data and the statistics. And Briar loves data and statistics, and it turns out, Sotomayor may be emerging as data nerd number two. I mean, if you look at for example, *Shelby County V. Holder*, that's the case that gutted the Voting Rights Act. A bunch of Southern states were like, "Hey, we want to gut the Voting Rights Act and say Black people can't vote," and Sotomayor was like, "Hmm," opened up her little notebook, took a look at their records and they were like, "you all are still a bunch of fucking racists so no."

Jessica Pieklo: Right? She did something very similar too in *Master Piece Cake Shop* this term, which we've covered extensively so far on the podcast. Go back and listen to those episodes. They're real good. Cake's not speech. She gave this master class in breaking down the Alliance Defending Freedom's argument that baking a cake is some kind of special art form. I mean, she said the primary purpose of cake is to be eaten.

Imani Gandy: Right. Cutting through the bullshit once again.

Jessica Pieklo: There it is.

Imani Gandy: Just recently in the *NIFLA V. Becerra* case, which we also did an episode on, you should go and listen to that -- that's the case involving these lying, lying clinics that like to lure vulnerable women and basically terrify them -- Sonia Sotomayor was the only person to zero in on the fact these clinics were only targeting vulnerable patients. They were targeting people of color. They were targeting

low income people by making them or encouraging them, luring them into these fake clinics and no other justices really squared that circle. You don't square a circle. I guess you square a square. You circle a circle but you know what I mean. She was the one that brought all of that together and to make the point that the law is not just something that white dudes talk about. The law affects real people, and in this day and age, the way the laws are being made and adjudicated, they are affecting most people of color, low income people, lesbian people, gay people, bisexual people, trans people, all of these people who are part of marginalized identities who are being screwed right now. And the only bulwark is the Supreme Court and in the Supreme Court, the soul bulwark in terms of communities of color, is Justice Sonia Sotomayor.

She deserves all of the accolades and so much more respect than we give her, not that people disrespect her but like I said at the beginning, y'all sleeping on Sonia Sotomayor.

Jessica Pieklo: Right. Every single one of these cases that Imani and I have talked about, whether it's been a lot of talking or just a little bit of talking, what Justice Sotomayor is doing is standing there and bringing the people affected by the law into the center of the conversation. It's not allowing the law, the courts, especially the appellate and the Supreme Courts to exist in that 10,000 foot view anymore. She is absolutely making sure that the people who are impacted by these decisions and who come in contact daily with this stuff, are the ones that the Court is at least considering and she's making sure that that happens.

Imani Gandy: After the break, we're going to talk about the way in which she makes sure that happens in the community. She's not just important to lawyers and judges and the people who are affected by her opinions but to people who might not even be affected by her opinions right now, like children.

Jessica Pieklo: Okay. We just gave you a pretty good snapshot of how amazing a judicial mind and presence Sonia Sotomayor is on the bench. She is as equally impressive in the community. This is absolutely a woman who is out there living her truth.

Imani Gandy: Jess, you're absolutely right. She is living her truth. One of my favorite things about her is the fact that she's appeared on Sesame Street a couple of times.

Sonia Sotomayor: Hi, I'm Sonia Sotomayor.

Abby Cadabby: I'm Abby Cadabby.

Sonia Sotomayor: We're here to tell you all about the word career.

Abby Cadabby: Yeah. Career.

Imani Gandy: The reason I love those clips is, not only because it's Sonia Sotomayor reaching out to children and showing children that it's okay to be different, that it's okay

to aspire to be more, to be a lawyer, a doctor, or what have you. I find that to be really special about her.

Jessica Pieklo: It's so charming. Again, representation matters here. We had all of this build up about Justice Sotomayor being aggressive, being a bully, being mean, being out to destroy everything and here she is on Sesame Street. Imagine Justice Alito showing up on Sesame Street.

Imani Gandy: Oh for Godsakes. That would be so awkward.

Jessica Pieklo: They might cry.

Imani Gandy: All the Muppets would be crying.

Jessica Pieklo: I don't know. It's not the same. It's not the same.

Imani Gandy: It's not the same at all. I just want to relay a little anecdote to show the sort of compassionate person that she is. At the end of every Supreme Court term, the Supreme Court clerks throw on basically a little variety show for the justices. It's sort of like a roast but it's all in good fun and it's generally been the law clerks performing the show for the justices. Well, at the end of Justice Sotomayor's first term, at the end of the performances, she had clearly organized with her own law clerks to do a little performance of her own. She brings out this little radio and starts playing salsa music and starts salsa dancing.

Jessica Pieklo: I love that.

Imani Gandy: This sends a shock through the room because no one had ever done this before. This was always a sort of state event that was the clerks performing for the justices so she gets up and she starts dancing with her clerks. Then she starts motioning for the other justices to come and dance with her. She gets Anthony Kennedy up there and apparently, he doesn't really know how to salsa so he does like a little jitterbug move, which is adorable.

Jessica Pieklo: Oh, that's hysterical.

Imani Gandy: Right? Then she goes over to Justice Scalia and actually gets Justice Scalia to dance with her for a little bit. At the end of that little dance, Justice Scalia quipped, "Oh I knew she was going to be trouble," which is hilarious because yeah, she is trouble, trouble for white supremacy. Trouble for white fragility. Hell yeah. Then, she got Roberts to dance, who was apparently very embarrassed and then eventually she made her way over-

Jessica Pieklo: He's a conservative guy, just in his demeanor. I bet he blushed like purple.

Imani Gandy: I'm sure he did. I'm sure he did. Finally, she makes her way over to Ginsburg and Ginsburg was at the celebration, but her husband Martin had just died like I think earlier that week, so she clearly was grieving and mourning her husband.

Sotomayor goes over to her and beckons her to dance and Ginsburg says she doesn't want to dance. Sotomayor leans over and whispers in her ear, "Your late husband would have wanted you to dance." Ginsburg gets up and the two of them start salsa dancing together, just for a little bit and then Ginsburg turns to Sotomayor, takes her face in her hands and says, "thank you."

Jessica Pieklo: Oh God.

Imani Gandy: I mean, come on. I'm tearing up just relaying the story.

Jessica Pieklo: I'm like seriously. I'm glad I'm not on video at the moment.

Imani Gandy: Right? This woman is compassionate, she's caring, she's concerned about the most vulnerable people in this country in a way that not a lot of people are. Ginsburg is to an extent but when it comes to Black people specifically and Black Lives Matter specifically, Sotomayor, she is my jam. She is heaven-sent when it comes to that and I think her legacy is going to be something that is going to really reshape the courts, is going to reshape society, is going to reshape racial relations. I truly believe that and I think it's a blessing that she's on the Court.

Jessica Pieklo: There's no way that that is an act that she does. Right? There's no way that that was her putting something on for her colleagues at the start of a new job or anything.

Imani Gandy: Not at all.

Jessica Pieklo: I was lucky enough to see her speak at the University of Colorado here in Boulder and she was an absolute delight.

Imani Gandy: I can imagine.

Jessica Pieklo: She had this huge auditorium. CU's a big campus, big university and it was full of undergraduates, folks from the community, law students, all of us, journalists like myself were there. She was there talking about her experience as a justice on the Supreme Court, as a Latina woman in the legal community and talking about the interplay between civic engagement and personal identity. That's deep and that's heavy and that's not necessarily an easy thing to just walk in and out of. Here she is sharing personal stories and then transitioning into really difficult areas of the law, like getting into Strieff for example and then decides she's just going to get up and start walking around because she wants to see who she's talking to. And that maybe doesn't sound like a big deal, but this is a woman with Secret Service detail because she's a justice on the Supreme Court so the Secret Service is with her and all of a sudden-

Imani Gandy: They're probably losing their minds.

Jessica Pieklo: Oh, they start freaking out. Then she makes fun of them for freaking out about it in real time. She's like, "No, I want to see the people I'm talking to. I want to look

you in the face. I want to engage with the people," and there's these hulking shadows in the background scrambling and trying to like, "No, don't go down that aisle." All of this stuff. She just doesn't give a shit because she's there for the people and that's what she wanted to do.

Imani Gandy: Yep. Yep. She really is there. She's a justice for the people. Like I said earlier, she's a social justice warrior justice for the people.

Jessica Pieklo: She really is.

Imani Gandy: We need to stitch that on a pillow and send it to her.

Jessica Pieklo: Oh my God. I am not crafty. I am like the vortex of anti-craft. I can't do any of that stuff.

Imani Gandy: We can find someone.

Jessica Pieklo: Someone can do that and could make that happen.

Imani Gandy: Absolutely.

Jessica Pieklo: That's just a little snapshot of what an amazing person and legal scholar and just influencer in the community, Justice Sotomayor is and we hope that, as you've listened to this episode, you have come to love her as much as we do because we really love the hell out of that woman.

Imani Gandy: We really do. I really think that she needs to get all to more attention than she has been, especially now that we are in this sort of law and order phase of the Trump presidency where Black folks are being yoked up at Starbucks for no reason and just yesterday, a 26-year old father was shot down in a hail of bullet fire in a Walmart parking lot for no fucking reason. The situation with Black Lives Matter with Black death at the hands of the state is a real problem. And if there's one person who gets it and who is going to fix it at the jurisprudential level, it's Sonia Sotomayor.

Jessica Pieklo: We've seen that from the beginning, from the way she handled herself during that ridiculous confirmation hearing process to the way she's carried herself on the bench and her opinions and dissents and just the way she is in the world. Justice Sotomayor, thank you for being you. We appreciate you.

Imani Gandy: We do appreciate you and if you want to come on our podcast, we would love to have you.

Jessica Pieklo: Oh my God. We would love it so hard.

Imani Gandy: Could you imagine?

Jessica Pieklo: I don't know that I would be able to maintain. I would have to work hard on maintaining myself before we actually started recording.

But thank you all for listening and joining us on this little tribute to our favorite justice on the court, Justice Sotomayor. Please hop over to the Facebook group, Boom! Lawyered and continue the conversation there. We're always happy to hear from you.

Imani Gandy: You should be sure to track us down on Twitter. I'm @angryblacklady. Jessica is @Hegemommy. Ask us questions. Use the hashtag #teamlegal and we check that quite frequently and we try to interact with the people who are using it -- so thanks for listening.

Jessica Pieklo: Thanks for listening. We'll see you on the tubes.

Boom! Lawyered is created 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.