

Boom! Lawyered 215: Kavanaugh Day One—Changing the Rules

Imani: Hello, fellow law nerds. Welcome to a special confirmation hearing episode of Boom! Lawyered, a Rewire.News podcast hosted by the legal journalism team that really should've started drinking wine at 6:00 AM this morning. I'm Imani Gandy.

Jess: And I'm Jess Pieklo. Rewire.News is the leading nonprofit journalism outlet devoted to reporting on reproductive and sexual health rights and justice. And the Team Legal podcast is part of that mission.

A big thank you to our subscribers, and a welcome to our new listeners. You definitely picked a hell of a time to join us.

Imani: Whew boy, did you ever.

So today, we are going to go over the very first day of Brett, or as Chuck Grassley repeatedly called him, Brent Kavanaugh. His confirmation hearing started today.

And for those who didn't watch, Jessica -- it was like a Herculean effort, watching her live Tweet these proceedings, starting at 7:30 this morning, which was like eight hours ago or whatever. Wow, that was a lot of tweeting.

For folks who didn't watch, Jessica, what did they miss?

Jess: Oh man. It was a full first day. So, typically, first days of confirmation hearings aren't really that exciting. It gives the members of the Judiciary Committee an opportunity to introduce themselves, say a few things on the record, then normally Chuck Grassley'll take a break, and then the nominee comes up and there's some folks who introduce him, say some nice things. And it's all very pleasant.

Today was not exactly like that, was it, Imani?

Imani: It really wasn't. I would call it a clusterfuck. That's the word that I would use to describe what happened during, I'd say, the first hour of these confirmation hearings. Just from jump, it was like ... you know that Elmo GIF where his hands are upraised and everything's on fire? That's like the GIF version of what the first hour of the proceedings were like, starting with the battle over the documents.

Jess, can you tell us a little bit about what that was about?

Jess: Sure. So it was really wonderful to see the Democrats come out united and willing to use the power of procedure to their own benefit. And one of the ways, out of the gates, that they did this was this fight over the Kavanaugh documents.

Now, Imani and I have talked about this some in another episode of Boom! Lawyered, when we were asking the very simple question of what Republicans are hiding in those documents. And it kind of sounds like maybe some of those members of the Judiciary

Committee listened to our podcast, because they were asking those very same questions.

So, for example, we have Senator Chuck Grassley insisting that Kavanaugh has released more documents than the history of any nominee.

Imani: So many documents!

Jess: Ever so many documents!

But that's just not true, is it?

Imani: They have released a lot of pages of documents. But as we mentioned in our last episode, 40,000 of those pages are Ginny Thomas's emails, so I'm not real sure if that's something that Chuck Grassley should be particularly proud of.

And also, we did talk about how there was some consternation about picking my man Brent for this nomination, because he has such a long paper trail due to his time in the Bush White House. And so there was actually some question about whether or not it would be smart to nominate him, because Democrats would rightfully so ask to see all of these documents.

And so Chuck Grassley's talking about, "Yeah, but we gave you so many documents. You know, I mean how many more documents could you possibly need?" But the point is, it's not the number, it's the percentage.

Kamala Harris mentioned that there were something like 6 to 7 million pages of documents, and Chuck Grassley only asked the National Archives for 10% of those, and then of those 10%, only provided less than that. It's amazing to me.

Jess: We have, based on the Senator's testimony today, a couple of numbers. They claim that approximately 96% of Kavanaugh's record has not been disclosed. It's either been claimed as some sort of executive privilege or they're just not disclosing it. We have 35 months of darkness when our buddy Brent Kavanaugh ... it's going to be Brent Kavanaugh and Neil Gorsuch forever now ... when our buddy Brent Kavanaugh was at the Bush White House 35 months, when he was working on things like same-sex marriage policy and federal abortion bans and detention and warrantless wiretapping ...

Imani: But Jess, but Jess, he was only the White House Staff Secretary. He was just a traffic cop. All he did was, he was just a guy. He was like a tollbooth. People put shit on his desk and he looked at it and he was like, "Yeah, let me go put this shit on George Bush's desk." That's it. It's not a big deal.

Jess: Just to show you how disingenuous it is, Republicans are insisting that Bret Kavanaugh as White House Staff Secretary was only a paper pusher, moving things along. But also simultaneously that the paper that he pushed during those 35 months of darkness is too

volatile, too important, too ... I don't know ... prejudicial to his nomination and therefore the American public doesn't deserve to see that. That's some shit.

Imani: And what else is some shit is the fact that Brent himself has said that his time during the Bush White House was some of his most formative years. That's when he learned some of the skills that he would bring to bear as a judge, as a judge on the D.C. Circuit Court. So how is it possible that he was just pushing paper around and making coffee for President Bush, but at the same time learning these skills that would impel him to become this great jurist that is probably going to end up on the goddamn Supreme Court?

Jess: Right. So we have Republicans here pushing through this nomination with an incomplete ... to say "incomplete," that doesn't even do it justice. Senator Booker said that he wouldn't even hire an intern if they had only disclosed 10% of their professional background, and I think that's probably being generous. The level ...

Imani: It's like turning in a test and expecting to get a good grade when all you did is write your name down. You know what I mean? Like, "Here. I've turned in everything I need. I wrote my name on this piece of paper." What are you talking about? What is happening?

Jess: That's a brilliant analogy for the way that Republicans are managing the Kavanaugh nomination. Like, "He's a white guy. This should just be good enough, right?" "Right." "Here's his name. What's the problem?"

Imani: "Why are we even having hearings? He's a swell guy. He's a carpool dad. All these lady clerks with their lady parts like him." Gosh, when they pulled that, that was amazing. "All these women like him so he's probably going to be pretty good at women's rights. Don't you think?"

Jess: Kennedy said that he knows how to use a semicolon, and so that got him his vote.

Imani: Jesus Christ.

Jess: So yeah.

Imani: So aside from this battle over the documents and the fact that Republicans are hiding a shit-ton of documents, not just from the committee but from the American people, what are some of the other big moments that stick out in your mind from this hearing, Jessica?

Jess: So you remember when Kavanaugh was nominated and there was a whole rush of op-eds and commentary pieces talking about what a swell guy he is, how he's so good at managing the carpool, he coaches youth basketball. So that same nice guy, this justice carpool dad and youth basketball coach, snubbed the parent of a Parkland victim today during the hearing.

Imani: Wait, he did ... he did ...

Jess: That was super swell.

Imani: Wait, so you're telling me Mr. Nice Guy, when offered a hand by one of the surviving parents of a Parkland victim, he just ignored it?

Jess: He kind of turned tail and was like, "Yeah, no thanks." And it's all over social media. I encourage our listeners to look for the picture, because it is really iconic. It captures not only just the contentious nature of the hearing, especially the Kavanaugh hearing, but just the smug disrespect that this man has for anybody who's not in behind his partisan interests.

Imani: And speaking of iconic images, there's another discussion that's hit social media. And that is about this woman, Zina Bash I believe is her name. Zina Bash, she was a former law clerk of Kavanaugh's. I believe she's on the president's SCOTUS team, where they're vetting nominees and basically shepherding Kavanaugh, our boy Brent, through the process.

So there's some video of this woman sitting behind Brent ... Brent, I'm really going to just call him Brent now. God ... sitting behind Kavanaugh flashing what some people have called is a white power signal. So if you do like an "okay" sign, but then you flip it down the fingers, the three fingers on your hand are supposed to form the W and then the O and then the middle finger is supposed to form the P.

There's some speculation as to whether that is or is not an actual white supremacist symbol. But over the past several months, the alt-right, these sort of Pepe the Frog meme loving, 4chan denizens of the world have turned it into sort of a joke. So you'll see pictures of avowed white supremacists making this symbol, and the joke is supposed to be on the media and on the public. "Are we just making an 'okay' sign, like, 'President Trump is okay'? Or are we in some way doing some sort of coded hand signal that signals to other people watching, other white supremacists, that, 'Hey, we're white power, too.'"

What do you think about that, Jess?

Jess: Oh god, is there a lot to unpack there. That is a symbol that is really difficult to make on accident. So the idea that this is something that was just like, "Oh, I don't know. Like, it was uncomfortable in the hearing room and she was a little cold, so she was, like, huddling up or something and just happened to, like, make this very specific symbol on her arm, exactly where the cameras were and could see it. Like, 'Oh gosh.'"

But regardless, the point that you made that's like, "Is it? Is it not?", the fact of the matter is, is that the Trump administration and his people know exactly what they're doing with this. They know that this is going to spark a conversation. And so at the very least, this woman thinks it's funny to troll with white supremacy. Like, "Ha ha. The Klan's super funny."

Imani: Right. And at a momentous event like a confirmation hearing, where we're trying to decide whether we're going to put this guy on the bench for a lifetime, his former law clerk is sitting behind him rigidly holding her fingers in this particular symbol that some say symbolizes white power. But even if she is not herself a white supremacist or does not subscribe to that ideology, certainly the fact that she thinks it's ho, ho, ho hilarious to be doing that at a confirmation hearing says a lot about this administration and says a lot about my boy Brent, frankly.

Jess: And especially when one of Senator Booker's guests for the hearing was a member of the Little Rock Nine, the group of students who were the first in terms of desegregation in the wake of Brown versus Board of Education. And the idea that Brown versus Board of Education might not even be settled law with Trump nominees is huge.

And so joke or no joke, I think it just is kind of a really disgusting display from the Right of their values and the degree to which they take these proceedings with seriousness, with soberness, and respect the issues that the country's facing right now.

Imani: Absolutely. And last but not least, as the cliché goes, is the fact that right from the beginning of the hearing Senator Blumenthal and others, including Senator Kamala Harris, moved to adjourn the proceedings in order to basically put a pause on this out-of-control train and say, "Wait a minute. Can we just have some time to look at these documents? Y'all dumped 40,000 pages of documents on us last night. And at a minimum, we should have enough time to go through them so that we can decide what we need to question Kavanaugh about, so that we can decide whether or not we should release some of this stuff to the public."

And in response, Chuck Grassley basically gave Blumenthal and Harris and others the finger.

Jess: And this is some really wonky shit, but I think it's worth it to walk through it just a little bit. So Blumenthal made this motion to adjourn the proceedings, to, as Imani said, put a pause on it and then move on. And he made a formal motion. So the rules of the Senate Judiciary Committee apply.

And he, Senator Blumenthal, was even able to cite to Chuck Grassley the specific rule that he was making this motion under, Rule IV of the Senate Rules of Procedure, and read the rule into the record, had a proper second for the motion. So like, "All my Robert's Rules of Order nerds out there, we were doing the thing as you're supposed to do."

And Blumenthal raised this motion at a time when a couple Republican members of the committee were out of the room. And he raised it for what's called a roll call vote. And that means that you have to be present at the time a roll call vote is called or you don't get to vote. So you don't get to rustle up your folks.

So he did this very smartly at a time when Democrats had more folks in the room and would have won this motion. And Grassley just said, "Screw you. I'm not going to

recognize it," because the Judiciary Committee isn't in, what he said, executive business session. That's like a meeting. But there's nothing in the Senate rules, as Blumenthal pointed out and asked Grassley to cite for him, that said these things apply to executive business sessions.

So what does that all mean? Grassley's changing the rules on the fly to get this nomination through.

Imani: And it was really remarkable. The Democrats were asking for a point of order, and in response Chuck Grassley just kept saying, "You're all out of order. You're all out of ... This whole court is out of order." He really was sort of feigning offense that they weren't letting him just go through and keep this confirmation hearing moving the way that he had done the Gorsuch hearing. He kept saying, "I just want to run the hearing the way I ran the Gorsuch hearing."

But we are at a different point in time. First of all, y'all weren't hiding millions of pages of documents about Neil Gorsuch. Second of all, Trump hadn't been basically an unindicted co-conspirator at the time Neil Gorsuch was confirmed. Essentially, Michael Cohen stood up in court and said, "This man, who is President of the United States, directed me to commit felonies." That wasn't a thing that was going on at the time that Gorsuch was being confirmed.

So we are in a different point in time, and you don't just get to make up the rules just because you're an old guy from Iowa and you feel like you've seen it all and you don't have time for people's bullshit. If you don't have time for people's bullshit, you need to step down.

Jess: Absolutely. And so for me, those are the sort of big three that really stand out from the hearing. It was one thing to have Condoleeza Rice up there and endorse Brett Kavanaugh the same way she endorsed the Iraq War, I guess.

Damning by faint praise, Ted Cruz was like, "I endorse Kavanaugh. We've been friends for 20 years." That's supposed to be good.

But as far as first days go, it was a rollicking first day in the Senate Judiciary Committee.

Imani: So that wraps up our first emergency reaction podcast to the confirmation hearings of our favorite dude, Brent Kavanaugh. You can find me on Twitter @angryblacklady. You can find Jessica @hegemommy. You can also follow Rewire.News @rewire_news.

Jess: And before you go, Rewire.News has two amazing seasons of our other shows coming out this month that I want to talk about real quick. We have our storytelling series CHOICE/LESS. Host Jenn Stanley put together an outstanding five-episode season on teens, parents, and what happens when the state tries to mandate communication about sex and abortion. You can even hear us on it. So subscribe now at Rewire.News/choiceless to listen to that.

Imani: Also, be sure to check out The Breach. On September 25th, host Lindsay Beyerstein is going to drop a three-part investigative series on a law that's putting pregnant people in jail, and almost nobody knows about it. This has been nine months in the making, and we promise you will not want to miss it. The trailer just came out today, so you can go give it a listen at [Rewire.News/thebreach](https://rewire.news/thebreach).

Jess: Boom! Lawyered is created and hosted by Jessica Mason Pieklo and Imani Gandy. Nora Hurley is our producer. Our executive producer is Marc Faletti and the Rewire.News editor-in-chief is Jodi Jacobson.