Imani Gandy: Hello, fellow law nerds! Welcome to another episode of Boom! Lawyered, a Rewire News Group podcast hosted by the legal journalism team that is feeling pressured into watching WandaVision.

Jessica Pieklo: It's a really good show!

Imani Gandy: I'm Imani Gandy.

Jessica Pieklo: And I'm Jess Pieklo.

Rewire News Group is dedicated to inspiring you to own your relationship to sex, abortion, parenthood and power. And the #TeamLegal podcast is part of that mission. So a big thanks to our subscribers and a welcome to our new listeners. And Imani?


Jessica Pieklo: I'm sorry. I just, okay. I'm going to pull it together a little bit. I'm really excited because next week Rewire News Group is dropping its first special edition of 2021! And maybe you've picked up, I'm just a wee bit excited about it!

Imani Gandy: Just a smidge, I can tell. [laughter]

Jessica Pieklo: A little bit. I'm like okay, Jess pull together. Okay. So on Monday, February 8th, we're releasing the Future of Abortion Access, a Rewire News Group deep dive into abortion pills and self-managed abortion. We've got a bunch of great content teed up and hope you'll go over to rewirenewsgroup.com/abortionfuture on Monday and check it out. Don't go there now though, the link isn't live, but rewirenewsgroup.com/abortionfuture, check it out. Share the pieces, if you're so inclined, and please let us know what you think

Imani Gandy: Yeah, really, really do, because Jess is excited, but I'm excited too, even though I have to write a piece for it that hasn't been written yet. It's in my mind, it's percolating. It's coming out through my fingers, into the universe.

Jessica Pieklo: It's Athenian. It'll come fully formed, right?

Imani Gandy: I'll give birth to it like a babe from the womb, a baby from the womb. But yes, on Monday morning, please go to rewirenewsgroup.com/abortionfuture, and check it out.

So we're going to get into three topics today. The first of which is Alexandria Ocasio Cortez, who had a very intense Instagram live this week, where she discussed the Capitol siege. And you've probably read a lot about it. You may
have seen tweets about it, stuff on social media about it. But really listening to
her explain what it was like for her. As a survivor of sexual violence, she talked
about the fact that she was a survivor and said that this was the first time that
she'd really come out about that publicly.

And then she talked about the intense fear that she felt as she was hiding in the
bathroom in her office while these knuckle-dragging white supremacists were
basically storming through her office screaming, "Where is she? Where is she?"
And you could see her, just the fear that she was expressing that day during the
Instagram live, sort of evoking this horror that she felt on the day of the siege.

And there've been a lot of people on social media who have downplayed the
horror that she specifically felt. And people generally who have downplayed the
fact that this thing happened at all. The fact that there were insurrectionists
who literally tried to overthrow the government. And for some people, it's just
not registering how serious of an event that was.

So watching AOC talk about it, hearing her explain it, it actually brought me to
tears because I cannot imagine feeling as scared as she felt, and then having to
go to work with people who were literally trying to have her killed. That includes
other senators, people like Ted Cruz, people like Josh Hawley, who maybe didn't
specifically want to inspire murder, but the rhetoric that they put out there
inspired these people to want to kill members of Congress, including AOC. And I
think it is unacceptable that the Republican party has not moved to do
something about it.

Jessica Pieklo: Yeah, the whole event was just really something, and AOC is a master in digital
politics and this space. And I will confess, I actually have not watched it myself. I
can't. As a survivor of sexual violence myself, those things are extraordinarily
triggering, and I do not function in those spaces. But, being part of the
discourse, even just having this conversation, my hands are sweaty. And I just
have to say Imani, that it is kind of amazing, in this really terrible way, that the
response by Capitol police to the insurrection wasn't to arrest the
insurrectionists as it was happening. But they've put up a fence around the
Capitol and the Supreme Court, because you know what? That's going to fix it.

Imani Gandy: So that's the first thing that we're going to talk about today. We're going to talk
about this fence.

Jessica Pieklo: So Imani, I have to admit, on this issue I am honestly torn. I think that it's
because, and in an ideal world, people would be able to protest even as
ridiculous as that started, without, I don't know, assaulting folks or turning a
protest into a violent insurrection that targets lawmakers for assassination
attempts. That's how things should work, right?

Imani Gandy: Yeah.
Jessica Pieklo: So in response to the January 6th attack, both the Capitol and Supreme Court now have protest barriers. I don't know, in my gut, this just feels like the wrong response to what happens. The cops were cozy with insurrectionists. The answer then to me is to root out the white supremacists from law enforcement. A fence? I don't know. But then I'm like, have you been to an abortion clinic?

Imani Gandy: Right, right.

Jessica Pieklo: Abortion patients legitimately need protection from folks who are screaming in their faces and doing everything they can to try and prevent them from accessing health care. Those are places that are legitimately unprotected. Or like vaccines, like Los Angeles. What the hell? What was going on? Los Angeles has a vaccine distribution set up and we've got COVID deniers are harassing folks shutting that down like what we see that happens in front of abortion clinics. None of this is okay, we got to do something to prevent this.

Imani Gandy: Yeah. I agree with you that the fence is the wrong response, and that the right response is to root out white supremacists from law enforcement, but we both know that's never going to happen.

Jessica Pieklo: I mean, fair.

Imani Gandy: Law enforcement was predicated on white supremacy.

Jessica Pieklo: Yeah.

Imani Gandy: Early law enforcement was essentially slave catching. When enslaved people tried to escape, slave catchers would capture them and return them back to their, quote unquote, masters. So I don't understand how it can be that any institution that is born from this sort of white supremacy, that is born from the subjugation of black people, I don't know how an institution like that can be expected to turn around and treat black people with any sort of decency. And I agree that that offense is not the right response because frankly, 95% of members of Congress are fine.

They're not being targeted. They're not the ones who are being screamed about on right-wing media. They're not the ones who are being harassed incessantly on social media. So I wish there was a way we could just put protest barriers around the squad. Around Ayanna Pressley, around Alexandria Ocasio Cortez, around Ilhan Omar, and around -- who am I missing? Who am I missing? Cori Bush.

I think that should be it, right? Because after hearing AOC talk about the insurrectionists, screaming, "Where is she? Where is she?" Or hearing about Ayanna Pressley's panic button being sabotaged in her office, which is very, very frightening and speaks to an intentionality that I think Republicans are not willing to admit.
Jessica Pieklo: Completely.

Imani Gandy: Or, even after the fact, after this insurrection happened, Cori Bush, who's been in Congress for literally what? Three weeks? She was forced to change offices because white supremacist and QAnon conspiracist, Marjorie Taylor Greene and her staffers, were mocking and terrorizing Bush and her staffers. So Congress is already this extremely white institution, and I think a lot of these white members of Congress don't have much to worry about when they go to work.

I wish there was a way to protect the people of color who are making inroads in this historically white institution. Can't we protect them? Can't we get them their own Dora Milaje? Those black women who protected Black Panther in the Black Panther film? I want that for them. And I know that's not rational. So what are we going to do? White supremacy is the driving force behind all of this. It's the driving force behind these anti maskers who were protesting, as you said, at Dodger Stadium in Los Angeles, thereby making it impossible for people to get through and get vaccinated. White supremacy is absolutely behind these anti-abortion protesters, we've talked about that ad nauseum. So if we could just find a way to shoot white supremacy into the sun, I feel like that that would be great.

Jessica Pieklo: Elon Musk, get on that.

Imani Gandy: Right? Jeff Bezos, you're stepping down from Amazon, put some money into figuring out a way to shoot white supremacy into the sun. And then while you're at it, shoot yourself into the sun.

Jessica Pieklo: He wanted to do philanthropic work. [laughter]

Imani Gandy: Oh God. So all this talk of insurrection and white supremacy, it's very upsetting. So why don't we switch gears and talk about something that's a little bit more pleasant? Let's talk about the courts.

Jessica Pieklo: What?

Imani Gandy: And that's our second topic. The courts. Yeah, you know courts. You're familiar with courts, right Jess? [laughter] You might have a thing or two to say about the courts. And that's going to be our second topic today. Democrats and their plan to reform the federal courts. This plan that is starting to take shape. We're both doing jazz hands! Just inadvertent, visceral jazz hands. So we've spent a lot of time on this podcast talking about the ways in which Republicans have absolutely packed the courts with right-wing ideologues, as a way to guarantee that their policy agenda lives on beyond the Trump Administration. We're going to be stuck with these Trump judges, stuck with the stain of the Trump Presidency for years to come.

Jessica Pieklo: But listeners, there is good news on the courts front.
Imani Gandy: The hell you say!

Jessica Pieklo: Stick with me. I know, it's a brand new day. Senate Democrats, along with the Biden-Harris administration, are going to repair the courts according to Senator Sheldon “Rumpled Hotness” Whitehouse in an interview with NBC.

Imani Gandy: First of all, the rumpled hotness thing is never going to not be funny. So let's just get that out of the way. But second of all, I love this. I love the fact that Democrats are planning to reform the federal courts. Last fall, we talked about this ad nauseum. We had a conversation with Elie Mystal from The Nation. He has, what I think, are some truly genius ideas about how to reform the courts.

And the fact that this is actually starting to take shape is really a miracle to me. Because at the time, I was thinking, well, we're not going to be able to get anything done because there's no fricking way Senate Democrats are going to win Georgia. And then what happened? Black people were like, it's like, they heard me say that, and they were like, "Oh word?" And then decided to just get it done. Black organizers, particularly black women, we're talking people like Stacey Abrams, of course, Latisha Brown, Anoa Changa, who's written for us before, she lives in Georgia. She's an expert on voting rights. These people got something done that people said was impossible to do. So now we are in a place where we can actually talk about broad federal judiciary reform. And it just makes me tingley to think about.

Jessica Pieklo: And I love this too. Like Senator Whitehouse is out there with this phrase. And repair the courts is basically kind of the softer, gentler, way of saying, "Unpack the courts baby." Which, you know, I am all about. It's akin to the administrative procedure act for things that make me flush with anticipation.

Imani Gandy: I do declare. So what does, repair the courts mean? Let's talk about that for a minute. So a commission on big structural reform, shout out to Liz Warren, including expanding the Supreme Court, and hopefully the lower courts as well.

Jessica Pieklo: Okay. That's hot.

Imani Gandy: Boy, is that hot. It means an entirely different crew of judges. We're talking about, the Biden-Harris administration is reportedly looking at civil rights attorneys. Looking at public defenders. These are people, I know I said public defenders and you almost fell out of your chair. Because if there is anyone who understands the plight of low-income people, the plight of marginalized people, who find themselves stuck in the criminal justice system with basically no recourse than public defenders, and this is not any shade on public defenders, public defenders do not get paid enough to do the work that they do.

I don't want to say they're stuck because they go into this work because they want to help people. But judges give them cases for people who don't have any other recourse. They don't have money to hire Johnny Cochran, rest in peace.
They don't have money to hire a Gloria Allred, or some of these high stakes, big profile attorneys. So they get public defenders who just toil away in small offices with no windows, just trying to get the best results for these clients who don't have any money.

And the fact that they're thinking about putting these people on the bench, means that they will be putting people on the bench who understand what it's like for marginalized communities. When, when Sonia Sotomayor was elevated to the bench, we talked a lot about how her experience as a Latina, her experience growing up in the Bronx, meant that she understood shit just generally better than say a federalist society white guy who came up through Yale and through these closed door-

Jessica Pieklo: Like Georgetown Prep.

Imani Gandy: Exactly. It's exciting to me.

Jessica Pieklo: Senate Democrats, put Imani Gandy on the bench, you cowards. That's all I got to say to that.

Imani Gandy: I wouldn't be opposed, but then I wouldn't be able to do this podcast with you and that would be no fun. But jokes aside about putting my black ass on the bench, I thought Republicans had already filled all of the judicial vacancies. I don't understand what the Biden Administration can do if Congress doesn't enact structural court reform. So can we talk about that a little bit?

Jessica Pieklo: Okay. So this is what's just so great. After the inauguration, a bunch of judges announced that they were going on senior status.

Imani Gandy: Whoa, whoa, whoa, whoa. Ho, ho, ho, ho. What is senior status? And actually it's funny because my mom, the other day, actually asked me this question, what is senior status?

Jessica Pieklo: I love this.

Imani Gandy: So why don't you tell us?

Jessica Pieklo: So senior status is basically a semi-retirement. So the judges are still around if something pops up, but they are not actively hearing cases. And right now, at least 13 judges have announced that they are taking senior status, which may or may not sound like a big deal, but it really, really is. First of all, the Biden-Harris Administration has these seats to fill. So we're talking 13 judges out of the gates right away that are open. So that's excellent news, right?

Also, we've got some trial court openings that are still in place, and those are places where judges can make a big impact. Also, like you were talking about, civil rights attorneys, public defenders. You put a public defender on the federal
trial court and the ways in which those initial detention hearings, for example, are held, all of that changes. So that is super exciting. And I also just love the idea that there was a bunch of judges who’d really try historically to stay out of the public fray, who were like, oh, Biden sworn in, all right boom, hit send on that resignation letter. I’m out.

Imani Gandy: Right? Right? Exactly. Trial judges are critical, right?

Jessica Pieklo: Yes.

Imani Gandy: Because one of the things that has just bothered me for years and years and years, is the way in which junk science has been sort of introduced into abortion politics, introduced into abortion law. And generally there’s this idea that if a legislator or legislature, excuse me, passes some sort of legislation, and in the preamble of that legislation they write a whole bunch of crap that is just completely anti-science, that talks about, for example, fetuses being able to feel pain, or fetuses masturbating in utero, all of these-

Jessica Pieklo: Oh my God. Remember that?

Imani Gandy: Remember the masturbating?

Jessica Pieklo: Masturbating fetuses.

Imani Gandy: Ridiculous. But this is the sort of crap that has no place in a court of law, really. And so the idea that we’re going to have trial judges who know how to weigh this sort of evidence, and who can say to some of these anti-abortion litigators, "Yeah, we’re not going to talk about masturbating fetuses in my courtroom," that’s a big deal. I think in saying that, I do have to pull that back a little bit because yes, there are some times when appellate courts will just sort of mosey in and decide they don’t like the lower court findings of fact. Lower courts are supposed to engage in findings of fact, and then appellate courts are supposed to make sure that the law was properly applied to the facts. They’re not supposed to go in and supplant their judgment for the trial court’s judgment.

They’re just not supposed to do that. But guess what? They do it anyway. It’s what the fifth circuit did. Remember in June Medical Services versus Rousseau? But remember how the lower court judge held this entire trial and issued all of these findings of fact. And then the fifth circuit came in and they were like, no.

Jessica Pieklo: Yeah, it was five days of trial or something like that.

Imani Gandy: It was a very robust trial. And the Fifth Circuit said, no, we don’t like your findings of fact. I know we weren’t there, and I know we haven’t seen all of it, but we just don’t like it. So we’re going to supplant our judgment. You’re not supposed to do that, they do it anyway. Fortunately they don’t do it too often, so again, it’s a huge deal that we could get new trial court judges who will apply
actual science to the facts. Who will actually interpret the facts the way they are supposed to be. That just, that gives me a tingle down my leg.

Jessica Pieklo: I just had this image of the Fifth Circuit as like a white guy on Twitter coming into your mentions.

Imani Gandy: Oh my God. And they're like, well, actually. Oh God.

Jessica Pieklo: I'm so sorry. I'm just so not used to discussing pleasant things on this podcast, I think it's turning my brain a little bit. But I could get used to it. This is a nice change of pace. Let's try it for the third and final topic for today's pod, which is, how the Department of Justice’s moves on immigration signals. It's a brand new day at DOJ.

Imani Gandy: Oh my goodness. I can only imagine how relieved so many people of color, so many undocumented people, and documented people, because remember, Trump was going after everybody. It didn't matter if you had papers, you were up for deportation as well. So I think it's really heartening that there are people now who can breathe a little. Who can go out of the house and not be scared that every time they see someone in uniform, it means they may never see their family again.

Jessica Pieklo: Seriously. I feel like we need to breathe it in and breathe it out. And just sit with that moment. So here's what happened. This week, attorneys from the Biden-Harris Administration filed a motion with the Supreme Court asking if the justices could postpone arguments in two big immigration cases.

Imani Gandy: One of those cases involves the funding of Trump's obscene, preposterous, and absolutely absurd, border wall. Which by the way, Mexico never paid for it. What's up with that?

Jessica Pieklo: No.

Imani Gandy: I was promised that they were going to pay for it. Never did, weird. But the question in that case is whether or not the Trump Administration can get around Congress's refusal to fund construction of that wall by dipping into the defense department budget for construction. And the other, the other case, involves the Trump Administration's, quote, remain in Mexico policy for asylum seekers. So this was the policy, it's fucking ridiculous.

Jessica Pieklo: I haven't done a gas face in a while, but that policy deserves a gas face.

Imani Gandy: Under that policy, Trump basically said that any asylum seeker would be returned to Mexico if they were seeking asylum at the US, Mexico border. Which is just ridiculous.
If you're seeking asylum in the United States, then the policy is you get into the United States, and then you're put into this immigration system where you see an immigration judge and you have a social worker. And usually, at least in the non-Trump years, they would find someone, a family member, who could sort of vouch for you and make sure that you would show up for your immigration hearing. So you wouldn't have to be indefinitely detained in these horrible cages, in these horrible shelters. So this is exciting stuff. These are two big cases that, it seems to me, that the Biden-Harris Administration is going to switch sides, right?

Jessica Pieklo: Yeah, yeah. Yeah, absolutely. So both cases had been scheduled for oral arguments for the spring. But acting solicitor general Elizabeth Prelogar asked SCOTUS to pause the cases while the Biden-Harris Administration basically figures out what to do next. So you're right, Imani. That is a huge signal that they are planning on reversing these policies. They basically told the court, hold up, new folks in town here. We need to take a look at this and we don't think it's going to go the same way. And today, the justices did just that. They took those cases off the calendar for now. So that means within the first couple weeks of the Biden-Harris Administration, we are seeing a very different Department of Justice. And especially when it comes to immigration.

Imani Gandy: And that's just good news. That's just good news. Especially if you think about what? It was two weeks ago, four years ago, that Trump implemented the Muslim travel ban and it was just like a disaster and a mess. But here's another thing. We got to talk about Merrick Garland for a minute.

Jessica Pieklo: Okay.

Imani Gandy: So Merrick Garland is who Biden wants to be his Attorney General. And we did an episode a couple of weeks ago where I thought, I don't know about Merrick Garland. Then we talked about it and then I was like, Oh, okay, Merrick Garland. Because he's a guy that has a lot of experience when it comes to prosecuting domestic terrorists. And we got hella domestic terrorists right now just running wild. Hello. We were talking just earlier about AOC and these insurrectionists who were running through the fricking Capitol trying to find people to murder.

So it's important that we get an attorney general who's going to be focused on white domestic terrorism in a way that this country has never focused on white domestic terrorism before. But it looks like there's going to be a big fight over his confirmation. And we've heard this song before, right? We heard this song when Scalia died and all of a sudden it seemed like we needed to wait 10 months for him to be replaced. Because apparently it wasn't Obama's right to replace a guy 10 months before he was going to be out of office.

Jessica Pieklo: No. Imani, no, We are not going to do this. We are not having a fight to confirm Merrick Garland twice. We're not, sorry. Where is the manager? I would like to speak to the manager. This is what I can do. Right?
Imani Gandy: This is the white lady.

Jessica Pieklo: I'm a white lady, this is what I can do. I need to speak to the manager about the Merrick Garland nomination because this shit cannot stand.

Imani Gandy: And I just want to know, where did Merrick Garland hurt you? What did he do? What did he do to make you feel this way?

Jessica Pieklo: This is like the nicest dude around.

Imani Gandy: Because honestly, he just seems like a pretty plain old white guy. Not too offensive. I don't understand why other white guys seem to be, I don't know. What is the deal with these people's problem with Merrick Garland? I don't know. So what I do know is that there's going to be a pissing match over the February 8th start of his confirmation hearings. And I guess Republicans are really planning on blocking this dude twice.

Jessica Pieklo: They're really going to try. Stay tuned, we will keep you posted on the AG nomination because it's a big one. But regardless, DOJ is doing good things to start. So you know what? The Republicans can suck it.

Imani Gandy: They can suck it. My idea for how to get these people moving on Merrick Garland is that Biden should appoint Hillary Clinton as acting attorney general.

Jessica Pieklo: Oh, we'll have hearings real fast.

Imani Gandy: Could you imagine? McConnell would just come bursting into the set. "Oh yeah," like the Kool-Aid man, and be like, "We have to confirm Garland now." Because Republicans, I swear to God, I don't know, Hillary Clinton is just the boogeyman to them. She is absolutely the boogeyman to them, and to a lot of people. So yeah. Acting attorney general Hillary Clinton will give us attorney general Merrick, Garland, tout suite, as they say in France.

Jessica Pieklo: Make it so.

Imani Gandy: Make it so.

Jessica Pieklo: Oh amazing.

Imani Gandy: Yeah. That's going to wrap it up for us today. I mean, it was a relatively pleasant podcast.

Jessica Pieklo: I'm smiling.

Imani Gandy: The talk about the insurrection notwithstanding, it's just, I don't know what this feeling is. This feeling of, there's not going to be a crisis every day. This feeling of hope. I have to get used to it.
But while I'm getting used to it, you can talk to me about it on Twitter @angryblacklady. You can talk to Jess about it on Twitter @hegemommy, H-E-G-E-M-O-M-M-Y. You can and should follow Rewire News Group on Twitter and on Instagram. And join our Facebook group, Boom Lawyered, it's popping. Pop, pop, pop, pop, popping. People are asking questions like really interesting questions. I don't know, I love that Facebook group.

And also, just one more time, please check out our special edition that's dropping on Monday about the future of abortion access, about self-managed abortions, about medication abortions. It's going to be really, really exciting. What's the URL Jess? Give it to me one more time.

Jessica Pieklo: rewirenewsgroup.com/abortionfuture. I love that, abortion future.

Imani Gandy: Abortion future, it sounds so sci-fi. Like space force, except for not as ridiculous.

Jessica Pieklo: No.

Imani Gandy: And on that note, I guess we're just going to what?

Jessica Pieklo: See you on the tubes folks.

Imani Gandy: Yeah, we'll see you on the tubes. I guess we'll be chipper and cheery on the god damn tubes, and that's a weird thing to say.

Boom Lawyered is created and hosted by Jessica Mason Pieklo and Imani Gandy. Marc Faletti produces the show.