

BOOM! LAWYERED: REACTING TO THE ATLANTA SHOOTINGS

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 would like to express solidarity with the Asian American Pacific Islander community in the wake of the ongoing violence that has occurred. 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 Team Legal podcast is part of that mission. A big thanks to our subscribers and a welcome to our new listeners.

Imani Gandy:

We're going to be hitting three topics today. The first is the violence against the Asian American Pacific Islander community, which I will be referring to as the AAPI community for brevity's sake, in the wake of the racist rhetoric regarding the quote unquote China virus.

Jessica Pieklo:

We're also going to talk about Biden's efforts to undo the domestic gag rule that Trump implemented, which bans federal funding going to clinics that talk about abortion or even think about abortion.

Imani Gandy:

And then finally, we're going to get to some happy stuff, we're going to be talking about Biden appointing new judges. That's going to be exciting.

But first we need to discuss this distressing uptick in violence against Asian-American people, against AAPI people. There have been myriad assaults against AAPI people over the last several weeks with people just pushing elderly folks into the street, punching elderly women in the face and that all culminated in the murder of eight people, including six Asian-American women in Atlanta last night. And it's really hard not to draw the connection between all of this hate directed at that community as a result of the homicidal canned yam who used to be in the White House, constantly referring to the COVID-19 pandemic as the quote unquote, China virus. And this has sparked a discussion about allyship between Black and AAPI communities. And I just wanted to touch on that a bit because it's a very fraught issue and I'm seeing people on both sides sort of antagonizing each other in a way that I don't find particularly useful.

Imani Gandy:

Black and Asian folks in this country have been beaten down by white supremacy since we first got here. From slavery and the need to add a constitutional amendment to recognize Black people as full people and citizens, to this Chinese exclusion act, which explicitly barred Chinese people from immigrating into this country and then when they did immigrate into this country to build railroads and to help develop the economy, Chinese-American women were excluded from coming because they didn't want Chinese people building families here. And then of course we have the internment of Japanese-Americans during World War II—but not German Americans, which is nice.

Imani Gandy:

And so it's just clear that anti-Asian sentiment runs as deep as anti-Black sentiment and we don't really talk about it enough. And from a personal standpoint, I've been really distress watching the conversation play out on Twitter because I'm seeing a lot of finger pointing on both sides. I'm seeing Black people responding to this, to calls that Black people stand in solidarity with the AAPI community. I'm seeing Black people respond with, "Well, they're racist too and they're anti-Black too. And every time I go into a beauty supply store run by a Korean family, they always follow me around the store." And then I'm seeing people on the other side saying, "Well, in Oakland and in the Bay area, in certain areas of the country, the violence against Asian-Americans is perpetrated by Black people." And it's just these are stereotypes that I don't find particularly useful and I find it distressing that that's the tenor of the conversation right now.

Jessica Pieklo:

Precisely, because this is a white supremacy problem. As the white person in this conversation, this is a white conversation. This is a white problem to fix. It's not a question of groups better supporting each other in the face of white supremacy. That's carrying white people's water for us and that doesn't need to happen. And so, yeah, white people, this is our thing to fix.

Imani Gandy:

And part of this conversation, it all comes back to stereotypes. Why is it that when I walk into a Korean beauty supply store in Oakland, I'm followed around? It's because of stereotypes about Black criminality and where do those stereotypes come from? White supremacy. And so when we talk about when for example, the lawsuit that was filed on behalf of Asian-Americans against Harvard saying that Asian-Americans are discriminated against in affirmative action programs and that less qualified Black people are being let in to schools in place of Asian-American people. Well, that plays on this model minority myth. That Asian-American people came to this country and assimilated so well and they're highly educated and there are even people who say that Asian-Americans genetically have higher IQs, which is nonsense. Asian-American people feel this compulsion to assimilate and then their assimilation is used as a cudgel against Black people.

Imani Gandy:

"Why can't you do better? Why aren't you smarter? Why aren't you getting into better schools?" And that is a tool of white supremacy. White supremacy pits people in ethnic minority groups against each other in service to white supremacy. Because if white supremacists, if racist white people can keep Black people fighting Asian people, fighting Jewish people, fighting Latino people, then that's just better for white supremacy all together because that means white supremacy continues to thrive. I really would just like people to think about that when they are engaging in these conversations because this is a difficult time for the AAPI community. It remains a difficult time for the Black community in terms of police brutality and we really should be supporting one another, not pointing fingers at one another.

Jessica Pieklo:

Absolutely. Just to build off that point, it feeds into this mythology that the white community has created about a scarcity of resources and a scarcity of access to power. And that of course is designed to keep white folks in power and fully resourced. And so fellow white folks: knock that off. This is our time to step up and forcefully counteract those narratives because we're really the only ones that can do that.

Imani Gandy:

And along those lines, we're going to talk about a particular type of bill. It's called PRENDA, which is the Preborn Non-Discrimination Act. And we're going to talk about the ways in which Black and Asian women are particularly hurt by these stereotypes that we've been talking about and how they infect and infest conversations around reproductive rights. There's a Texas lawmaker who's introduced this bill, PRENDA. And this bill essentially bans race and sex selective abortions. I've talked at length about how absurd race selective bans are because I just, I cannot fathom a person who is giving birth to a baby and wondering whether that baby is going to be the same race as they are. That just doesn't make any sense to me. It's ludicrous.

Jessica Pieklo:

You can tell a white person thought of this by that very framing.

Imani Gandy:

Exactly. "I'm Black, is my baby going to be Black? Because if it is, I need to get an abortion." This is just not a conversation that ever happens. But I do want to talk about the sex elective portion of the ban. PRENDA bans abortions for certain pregnant people based on their reason for ending the pregnancy. Including for people who end pregnancies due to sex preferences. And this is a law that is rooted in truly pernicious anti-Asian American Pacific Islander stereotypes about child preference in Asian communities. These sex selective abortion bans operate on this extremely racist and xenophobic assumption that Asian immigrants in the United States are going to exhibit the same sex preferences for male children that may have existed in their countries of origin. And so the impetus behind this legislation is that Asian-American pregnant people, Asian-American women, in particular immigrant Chinese and Indian women, will prefer sons over daughters and therefore make reproductive care decisions based on the sex of their fetus.

Jessica Pieklo:

What do these lawmakers think Asian women are doing exactly? This isn't Sparta. Sincerely, the perniciousness of these kinds of bills when you follow the logic, leads to that kind of gallows joke. Because honestly, what the hell are they thinking?

Imani Gandy:

I don't know. I don't know. It's not Sparta. Asian women aren't giving birth to infants and then throwing them off of cliffs when they find out they're girls.

Jessica Pieklo:

Right. That's not happening, right?

Imani Gandy:

No.

Jessica Pieklo:

Tell me this isn't happening.

Imani Gandy:

It's absolutely not happening.

Jessica Pieklo:

Okay, good.

Imani Gandy:

Of course it's not happening. It's just, as I said, it's racist and xenophobic nonsense that is just false. And there are even studies to prove that it's false. There's analysis from the National Asian Pacific American Women's Forum, also called NAPAWF. It's N-A-P-A-W-F, you'll see that acronym, but it's the National Asian Pacific American Women's Forum. And they have analyses that show that foreign born Chinese-American, Korean-American and India-American women are having more daughters than white American women on average. More daughters.

Jessica Pieklo:

More.

Imani Gandy:

More.

Jessica Pieklo:

Not only is the thinking racist, it's racist and wrong. The bottom line is that AAPI people get abortions for all sorts of reasons and trying to control the biological sex of the child simply isn't one of them, despite what anti-choice numpties in Texas say about it.

Imani Gandy:

Right. The takeaway from this discussion is that sex elective abortion bans are racist and xenophobic. They serve absolutely no purpose and they simply ratchet up the sorts of stereotypes that folks believe about AAPI communities. There's a direct line from that sort of racialized misogyny about AAPI women to the type of violence that we're seeing against Asian communities right now. And I feel like that that is something that we should all think about. And that is something that we need to sit with as we support our Asian-American brothers and sisters who are really in crisis right now and who are struggling to deal with this gross uptick in violence against them.

Imani Gandy:

Okay, so we're going to move on from that heavy discussion and we're going to talk about some good stuff. Some good stuff that the Biden administration is doing. The first thing is, Biden and Title 10. Biden is just done with this Title 10 domestic gag rule stuff. Can you please talk to me about that, Jess?

Jessica Pieklo:

Yeah, this is exciting. In a late Friday night filing with the Supreme Court, the Biden administration asks the court to dismiss a set of cases involving the Trump administration's so-called domestic gag rule.

Imani Gandy:

Speaking of gag rules, can we talk about SCOTUS after dark. There's some serious Showtime, soft porn situation going on at SCOTUS where they're getting together.

Imani Gandy:
(singing).

Imani Gandy:
Getting together late on a Friday night, lighting some candles.

Jessica Pieklo:
Do some refiling.

Imani Gandy:
Filing some briefs.

Jessica Pieklo:
By candlelight.

Imani Gandy:
Maybe checking Westlaw for some cases. It gets real sexy after dark at SCOTUS. What is the deal with all of these opinions being dropped and these briefs being filed at the last minute on a Friday?

Jessica Pieklo:
We're going to release a whole new series called Supreme Court After Dark and it's going to be...

Imani Gandy:
It's going to be sexy.

Jessica Pieklo:
Sexy.

Imani Gandy:
A lot of smooth jazz. Slowing it down for the sisters.

Jessica Pieklo:
The smooth jazz element aside, let's remind folks what we're talking about here. The domestic gag rule, it's so bad. It's a rule that bars clinics that receive federal funding for family planning services from offering abortions or referring patients for abortions. They can't think about abortions. They can't say the word abortions. They can't even have nary an inkling that abortion is a thing they want to have in their wheelhouse. It is just not going to happen. The Trump administration enacted the rule in 2019. Providers sued and said the administration had rushed through the rule making process and didn't follow the administrative procedure act. We talked about that a little bit on this podcast. I maybe unzipped my sweater.

Imani Gandy:
Oh dear. The federal courts are split on whether or not the Trump administration followed the sexy, sexy APA when enacting the gag rule. And last month, the Supreme Court decided it would settle the

matter once and for all. But by then the Biden administration was in place and was all hold up. We're changing course. We think the gag rule is nonsense and we are going to oppose it.

Jessica Pieklo:

Yep. And by the time the Supreme Court decided to take the case, the Biden administration had already started to take some of those steps. They had directed HHS to consider rescinding the rule. Last week's filings makes that even more official. The Biden administration asks the court to dismiss the case under Supreme Court Rule 46.1.

Imani Gandy:

Wait, wait. The Supreme Court rule 46 point what now? What exactly is Supreme Court Rule 46.1? Please enlighten me and listeners.

Jessica Pieklo:

Let me push up my glasses.

Imani Gandy:

Oh boy, here we go. Nerd time.

Jessica Pieklo:

It's getting nerdy in here. Supreme Court Rule 46.1 is basically a docket cleanup rule. That tells lawyers how to just sort of do their administrative business. In this case, it tells the clerk of the Supreme Court to dismiss the cases from the court's calendar because effectively all sides agree. In this case that the Trump era domestic gag rule is bullshit.

Imani Gandy:

This is basically just an administrative thing. There's no point in the Supreme Court hearing a case between two parties when one of the parties has switched sides. You're just basically then just having a conference about how terrible the domestic gag rule is. And the Supreme Court isn't really in the habit of holding academic conferences.

Jessica Pieklo:

Right. The lawyers aren't there to high five each other. The Supreme Court is there to settle a dispute. What's great about this move is that the parties don't even need the justices' permission to get a case taken off the calendar. That means, for example, Amy Coney Barrett couldn't force the court necessarily to decide this case. If there's nothing to fight about, the case should go away. That's how it's supposed to work.

Imani Gandy:

Okay. You said supposed to work so that makes me think that's not actually how it works.

Jessica Pieklo:

Okay. There is one tiny hiccup here though. A group of states led by conservatives like the indicted Texas attorney general, Ken Paxton, had filed a motion with the Supreme Court to defend the Trump era gag rules because of course they can. Of course.

Imani Gandy:

But there's no case, so why?

Jessica Pieklo:

Hold on, I got you. I got you.

Imani Gandy:

Okay. Okay.

Jessica Pieklo:

The Biden administration anticipated this. According to their filing with SCOTUS, those requests don't prevent the court from agreeing to dismiss the case. Hopefully this case can go away. I'm only putting an asterisks there because it's abortion and there's abortion exceptionalism with the court all the time. But if the case doesn't go away, then it's real clear that the conservative majority on SCOTUS is excited to entertain any bad faith argument against abortion rights that they can and so that's something for us to definitely keep an eye on.

Imani Gandy:

If this wasn't an abortion case, if this was a maritime law case about ships in the ocean, there's really no way.

Jessica Pieklo:

Ships passing in the night.

Imani Gandy:

Ships passing in the night.

Jessica Pieklo:

Did you really just say the ships passing in the night?

Imani Gandy:

But if it were a case about something that's not a real cultural touchstone issue, there's no way the Supreme Court is going to hear a case where both sides agree because it's a waste of the court's time.

Jessica Pieklo:

It is. It's a waste of the court's time. This should just go away.

Imani Gandy:

Right. But because it's abortion and because the six, three federalist society, Amy Coney Barrett court has a bug up its ass about abortion, there's a chance that the court might say, "Oh well, Ken Paxton has some things to say about the domestic gag rule so we should hear him out."

Jessica Pieklo:

Precisely. They may decide just to give Ken Paxton an audience, in which case we know everything we need to know about how the court is going to handle abortion cases. We suspect that, but I am going to be optimistic that this case is going to be off the calendar. It's a waste of resources and that alone, there are plenty of cases lining up, but it's an abortion case so here we are not totally knowing.

Imani Gandy:

What I'm hearing from this discussion about whether or not this case is going to be dismissed because somebody wants to, I don't know, high five the domestic gag rule. It sounds to me like Democrats really, really need to reform the courts in order to prevent those kinds of shenanigans from happening otherwise any progressive policy goal is going to be dead on arrival.

Jessica Pieklo:

Yeah. And there may be even good news here, Imani.

Imani Gandy:

What?

Jessica Pieklo:

Honestly. Yeah. It sounds like the Biden administration is starting to get serious about its judicial picks.

Imani Gandy:

Okay, that's exciting.

Jessica Pieklo:

Hold Onto your butt.

Imani Gandy:

All right, I'm going to hang onto my butt because that's what we're going to be talking about next, which is the fact that Biden is starting to nominate judges. Woohoo. I don't know where that came from.

Jessica Pieklo:

CNN is reporting that Biden is getting real serious about this. And if CNN is out there, this is happening.

Imani Gandy:

Yeah. It's huge that Biden gets to pick any judges. That's always a good thing. As we've talked about, there are a lot of old judges who've been put on the bench by Clinton, they're 75, 80, they're thinking about they need to get off so they're going to take senior status essentially. Just sort of step back from duties to allow Biden to replace them. But it sounds like there are some instances where Biden has an opportunity to replace Republicans with Democrats. And that's what really gives me a tingle up my leg.

Jessica Pieklo:

Yeah. We at Rewire Newsgroup have reported extensively on the Trump judges, over 200. And so that's a huge mountain for the Biden administration to climb, but there are currently 69 eligible vacancies throughout the federal court system and 27 or so, that will occur down the line as some judges have

announced their intent to retire soon, that senior status thing that you talked about. And then there's Justice Stephen Breyer, he could retire soon. And let's not forget that Biden pledged to nominate a Black woman to the Supreme Court as soon as he could so that's super cool and sexy and exciting and fun.

Imani Gandy:

I just want to give it up to Black women. I want to give it up to Black lawyers.

Jessica Pieklo:

Me too.

Imani Gandy:

To Black women lawyers just shout out to all of you because it's hard out there for a Black woman lawyer, but this is exciting because it is long past time that we put a Black woman on the Supreme Court. And I don't know, there's something about Biden and his relationship to the White House. He was vice president to the first Black president and now he's president to the first Black vice president, first Black woman and Indian vice president. And then now he has the opportunity to replace a white Supreme Court justice with a Black woman Supreme Court justice. It seems like Biden's doing a lot of Black stuff.

Jessica Pieklo:

I'm a white lady, so sure. It's exciting to have a Democrat in the White House and we can talk about judges and I'm just hopeful that the Biden administration doesn't screw this up.

Imani Gandy:

Yeah. Yeah. Look, Biden and Harris have a ton of experience between them as they were both former members of the Senate judiciary committee.

Jessica Pieklo:

Fair.

Imani Gandy:

In addition to the just wildly experienced team that they pulled together in order to do this very thing. To figure out who's going to be the next Supreme Court justice.

Jessica Pieklo:

Oh, Biden's chief of staff, Ron Klain, I geeked out about him earlier.

Imani Gandy:

We love him some Ron Klain.

Jessica Pieklo:

I love me some Ron Klain. He's great. He helped put Ruth Bader Ginsburg on the court. Come on. And this is the six month anniversary of her passing. It was the anniversary of her birthday this week also. A lot of these stars are just sort of aligning for the Democrats to do good things on the courts if they keep their act together.

Imani Gandy:

Right. And just as a sidebar, over at Rewire News Group, we've been marking the six month anniversary of Ruth Bader Ginsburg's death this week so you should definitely go check out our website, our Instagram, our Twitter, for information about RBG and just our way of memorializing her. Because we didn't really get a chance to do that six months ago because reasons that have the initials ACB. But I do want to say that we don't have a list of names yet. We don't have a list of who Biden is expecting to nominate or even if he will nominate, cause Breyer has not retired yet. But according to CNN's reporting, the administration is said to be vetting civil rights attorneys, public defenders.

Jessica Pieklo:

What?

Imani Gandy:

And legal aid attorneys. Just that alone is remarkable. Because there's just this Yale Law to Supreme Court pipeline where you go from Yale Law and you're clerk for justice then you go to some big law firm and then you end up on the Supreme Court and these are smart people. I'm not saying they're not smart people, but these aren't people who have a lot of real world experience when it comes to issues facing marginalized people. And public defenders, white public defenders even, do have that experience. Because they deal with the sorts of clientele that the law just sort of shuffles off to the side. Public defenders have so many clients and they have to juggle all this work and they know what it's like so they could bring that to bear on the court. I think that's so important.

Jessica Pieklo:

It's so important. It's so exciting. And Imani, what if I told you it got even better?

Imani Gandy:

Oh boy, I don't think I can handle it.

Jessica Pieklo:

Senator Rumpelhotness.

Imani Gandy:

I do love that.

Jessica Pieklo:

AKA Sheldon Whitehouse, He is calling on Attorney General Garland, which hold on. Attorney General Garland. Attorney General Merrick Garland.

Imani Gandy:

That sounds interesting to say. A lot better than Attorney General Bilbo Bigot Sessions. Or Bill Barr. But yes, Attorney General Merrick Garland.

Jessica Pieklo:

AG Garland, that's just Attorney General Dad.

Imani Gandy:

Exactly.

Jessica Pieklo:

Senator Rumpelhotness wrote a letter to the Department of Justice and asked them to help facilitate the Senate judiciary committee looking into claims that the FBI investigation of allegations that Justice Kegan L. Dwyer. Remember those?

Imani Gandy:

I do.

Jessica Pieklo:

Those assault allegations around Christine Blasey Ford, that the FBI conducted basically a bogus background check and investigation into those claims. Senator Whitehouse thinks something was funny.

Imani Gandy:

Wow. That's surprising because I have say, I remember during the confirmation hearing, I was just losing my mind thinking that Democrats should walk out and people kept saying, "Oh well we could impeach him." And I just kept saying, "It's not going to happen. We're not impeaching a Supreme Court justice." I do like the fact that Whitehouse is trying to get this in motion to figure out, should this man even be on the bench? Was their shenanigans afoot with respect to the FBI investigation? And if there were, what does that mean for his position on the court? It's far too early to say, to even talk about something like impeachment, but the fact that that Senator Rumpelhotness, HRH hotness is sort of getting these wheels in motion. That's a big deal. It's a big deal, especially considering what's going on with Andrew Cuomo.

Jessica Pieklo:

Exactly. I think it's important to stay on this message. And when we talk about the need for court reform, it's not about court reform just for one person or just the Supreme Court. What we have seen is conservatives effectively politicizing the federal judiciary for decades now. And progressive's really waking up to what this reality means for their policy goals. Continuing this conversation about a bogus background check, a bunch of nominees that were rushed through in a political process without just the routine vetting that used to happen by both sides in sort of the normal course of business, that is an important conversation to keep in front of the American public I think.

Imani Gandy:

Absolutely. And if it leads to a more robust vetting procedure so that you can't ram a justice through in a weekend while people are already voting, which is what they did with Amy Coney Barrett, then that's a good thing.

Jessica Pieklo:

Exactly.

Imani Gandy:

That's a very good thing.

Jessica Pieklo:

Exactly.

Imani Gandy:

That's going to close up our episode for today. Again, really, really want to stress that it's important that we all come together when it comes to solidarity with the AAPI community because what's going on right now is horrible and it needs to stop. And it does require all of us, but mostly it requires white people. You all got to get it together because you made this mess, you got to clean it up. Really. We're willing to help, but we can't be the ones on the front lines. It doesn't even make any sense. And if you want to talk, I'm happy to talk about this or anything else. If you want to talk to me on Twitter, I'm @AngryBlackLady. If you want to talk to Jess, she is @Hegemommy, H-E-G-E-M-O-M-M-Y. You should absolutely follow @RewireNewsGroup on Twitter and on Instagram. And you can join our Facebook group on Facebook because that's where our Facebook group is. Good Lord. I need help. And on that note, we're just going to see you on the tubes, I guess.

Jessica Pieklo:

Take care folks and we'll see you on the tubes.

Imani Gandy:

Yeah. Take care of yourselves.

Imani Gandy:

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