

# **Boom! Lawyered: Prepping for the Abortion Fight of a Lifetime—An Interview With Repro Rights Attorney Jenny Ma**

**Imani Gandy:**

Hello, fellow law nerds. Welcome to a very special episode of Boom! Lawyered, a Rewire News Group podcast hosted by the legal journalism team that hopes you took this weekend to engage in radical self-care. I'm Rewire News Group Senior Editor of Law and Policy, Imani Gandy.

**Jess Pieklo:**

And I'm Jess Pieklo, Rewire News Group's Executive Editor. Rewire News Group is the one and only home for expert repro journalism that inspires you to stay in the fight. And the Boom! Lawyered podcast is part of that mission. So a big thanks to our subscribers and a welcome to our new listeners. Wow, it's been a little bit of a week, and then some.

**Jess Pieklo:**

Imani, we've been pretty busy. We've been doing some coverage. We've heard some really great stories of folks at the court in response to what we've been doing. And I just want to, first of all, say thank you to everybody for all of that support. And also, to remind you all that that's what makes this possible. So if you can, donate a little bit, keep us going, [rewirenewsgroup.com/donate](https://rewirenewsgroup.com/donate). It's how we do what we do folks. Thank you for the support.

**Jess Pieklo:**

We are joined by Jenny Ma, Senior Staff Attorney at the Center for Reproductive Rights, and one of the attorneys involved in the biggest abortion rights fights in decades, Dobbs versus Jackson Women's Health Organization. Jenny, welcome to Boom Lawyered. Thank you for your time. How are you doing?

**Jenny Ma:**

Well, first, thanks so much Imani and Jess for having me on the show. I will just say as an avid listener, but also as a reproductive rights attorney, this is very cool, and I feel very honored. So thank you for having me. I wish we weren't talking about the most significant abortion decision in decades, but we find ourselves here. And I'll just say, how I'm feeling is a little... Like trying to situate myself on what day it is, what time it is. Like yesterday, I was like, "Wait, did the argument happen this morning?" Or, "What was that?"

**Jess Pieklo:**

Right.

**Jenny Ma:**

It was just a lot inside the courtroom and outside the courtroom. And obviously, from our perspectives, our team at the Center for Reproductive Rights have just been preparing for this and working long hours and giving the presentation that we gave. And so it's been a long process.

**Jess Pieklo:**

Talk a little bit about that process. And also, the scene outside the court. I mean, we're going to talk about what happened inside the courtroom plenty, in just a minute. But I don't know that all of the folks who listen to the show and who tuned in for arguments and who really activated, really understand what the scene was like, and also just what that means for abortion patients, providers, people who support access.

**Jenny Ma:**

Yeah, I'll start with your first question on the prep.

**Jess Pieklo:**

Yeah.

**Jenny Ma:**

June Medical Services, which was not the last time, actually. I usually say the last time, but because of SB8 and the Supreme Court taking up that case, it was like two times ago. Julie Rikelman who argued the Mississippi case, that was the last argument that the court heard before the pandemic. So the movement was there together. I was in the courtroom with our team. It was packed. Justice Ginsburg's last argument in person was there. So it was a totally different feeling. And then the pandemic hit, and we've been remote and working remotely. So it is actually really hard to prepare-

**Jess Pieklo:**

Wow.

**Jenny Ma:**

... for any case remotely. But certainly, a Supreme Court case where you just want to have an idea, or you've read something and you want to just barge into each other's offices to talk about it. And we're just living in the Zoom world, it's just been a little different in that way. So there are certain challenges there, but we've just been burning the midnight oil, preparing and getting to the court. And I know we're going to talk about that. And again, because of the pandemic, the Supreme Court greatly limits who gets to go inside the courtroom. So actually, Julie was only able to bring one person. And so the most unfortunate part about that actually, is that our clients were not able to be in the courtroom-

**Jess Pieklo:**

Wow.

**Jenny Ma:**

... for themselves. I think that's actually pretty devastating for our clients who have been fighting this fight for so long. But also, for everyone who has a case before the Supreme Court. We all know, right? Like they don't take every case, it's really actually pretty special to be there. And that whole experience being taken away from both petitioners and respondents. But very different with pandemic rules, which meant that our team were outside with all the advocates, as well as the antis. And it was very extra outside. We had a lot of supporters, so it was great to be surrounded again by the movement and our clients and my colleagues, and just the entire movement who showed up.

But from the antis perspective, they had bussed tons of folks. There was a lot of fetal imagery that was very incessant and meant to disturb. And I think even from having been there, both during the Texas argument just a month ago, as well as June Medical, there's like an emboldened heightenedness to the approach that antis are taking. And it just made me feel so much like, this is what our clients go through every day when they try to provide essential healthcare, right, to their patients. And it just made me respect and love all of them more that they have to face this every single time they step into work. And it was just a version of that like on steroids.

**Jess Pieklo:**

That's heavy.

**Imani Gandy:**

I have a question about, sort of dovetailing on what Jess was saying about the pandemic creating these very unique situations, whereby as you said, your clients weren't even able to be in the courtroom, which has got to be devastating. So in terms of the process of arguments, it's different now because of the pandemic. Everyone's asking questions, Justice Thomas has got a lot to say these days! And sometimes we wish he wouldn't, but he does. So do you have any thoughts on how the way that the questioning, the procedure of how the questioning is being undertaken—do you have any thoughts about how that could affect the case?

**Jenny Ma:**

That's interesting. I think one of the benefits were, we weren't the first one out in the pandemic. So we had a little bit of leeway. We were like listening in and taking notes about what was going to happen. And so, of course, because it's abortion, anything could happen, right? But we were like, "Okay, Justice Thomas is going to ask the first two questions, most likely." And part of preparing and being over prepared, and the A-plus student that Julie and our team are, we really try to guess out all of the different scenarios. So I think in terms of preparation, we kind of shifted to what we expected were to happen. So we kind of were like, "Okay, let's have some folks during moots play Justice Thomas and play

Justice Alito and play Justice Kagan. What could potentially happen?" So in that aspect, I think we were best prepared. But again, we were prepared for anything to happen because of what we practice in.

**Jess Pieklo:**

Do you draw straws to see who has to play Sam Alito?

**Imani Gandy:**

Oh, my goodness.

**Jenny Ma:**

Actually, it's a hot ticket, so.

**Jess Pieklo:**

I bet. I bet that you folks might have fun. I'm sorry, Imani, you were going to say?

**Imani Gandy:**

Do you get the sense that you were deprived of fully briefing and fully presenting the case about why abortion is so critical to the lives of women and pregnant people? And why it is that the value of precedent is such that this case shouldn't be overturned, because of the way that the case made it to the court, right? Because Mississippi didn't ask the court to overturn Roe and Casey in its petition for cert. They switched after Ginsburg died, and Amy Coney Barrett was up on deck, as they say in baseball. So do you get a sense that there was some sort of shenanigans that precluded you from really making this an argument about, we are going to overturn 48 years of precedent on this constitutional right that a quarter of women need and use. That seems like a big deal. And I didn't get the sense that the arguments were really tailored to that because of the way the question was presented.

**Jenny Ma:**

Yeah. So I know your listeners are avid SCOTUS docket watchers, but just to kind of highlight Imani's point, right? When the governor of Mississippi signed this bill into law in 2018, all these states that passed bans at 15 weeks, six weeks. And just to be extra, Mississippi has bans on bans on bans, right? Because it has a 15-week ban that everyone knows was heard in SCOTUS, a six-week ban that we blocked in court, *and* a trigger law ban. And that they're not the only state that has this type of ban. So when they pass these unconstitutional laws, they kind of are... These are test cases. They're hoping that SCOTUS gets it, and that was 2018, which seems like seven lifetimes ago at this point. And it makes its way through the court. And there is absolute uniformity, like as you guys said in your last podcast. All the lower courts understand that these are unconstitutional bans. [singing] Pre-viable abortion bans are unconstitutional!

**Imani Gandy:**

Exactly.

**Jenny Ma:**

That's very clear.

**Jess Pieklo:**

That's the song. I love it.

**Jenny Ma:**

Just jingles, right? Like anthems, acapella, all the things. Even Judge Ho in the Fifth Circuit who is certainly no friend to this issue, that was a uniform unanimous decision. And so, I'll be honest, it was a surprise to us, and I think everyone-

**Jess Pieklo:**

Mm-hmm (affirmative).

**Jenny Ma:**

...that the court decided to take it. As, again, the court takes such few cases, they sat on it for 11 months. That is very unusual. You get a kind of answer soon after or at least a few months after. And I think we tried to figure out if we were the longest ever, or like we're either the longest ever or the second longest that the court has sat on a cert petition. And look, the timeframe works out. There was a switch in Justices. I don't know what that means. I would have loved to have been a fly on the wall on those discussions.

But they decided to take the case, and then Mississippi totally did a 180. And we made that argument, or one of our amicus briefs makes that argument about whether or not this question was improvidently granted because of the switcheroo. Because normally, when you ask the court to consider overturning any precedent, let alone one that's been in place for 50 years, let alone one that one in four pregnant people rely on, let alone one that's been in place for two generations on reliance, and one that's a fundamental right of this magnitude, you make it clear as possible.

**Jess Pieklo:**

Right.

**Jenny Ma:**

And the QP was not encompassing of that. And so it was a surprise to get their brief in the way that they did it. I always liken it to candy in a cookie, like cookies in a cookie jar. Like, you see it and you got to grab it. You can't take it away. Mississippi couldn't resist. It was a little bit like the marshmallow test, where you give a kid a marshmallow and you say, "If you wait, you get two." But some folks will just grab it. So

Mississippi went and grabbed it. And I think that we were in the weird position of being respondents here because usually, as you all know, in Texas and in Whole Woman's Health, and in June Medical, we are the ones asking because we've lost below in that Fifth Circuit Court of Appeals.

This time we got to say, "Hey, we're going to make our robust arguments against this." And I think we were able to do that in the brief. And we had limited time in the argument, but we got all of the points across that we wanted. This is 50 years of precedent. All of the reliance that people have been depending on this, and how fundamental it is. And again, the great benefit of having the United States come in on our side, and Elizabeth Prelogar and Julie Rikelman giving such a great presentation, I think together. We powerfully presented the key issues in the case.

**Jess Pieklo:**

Man, Mississippi. So Imani and I went through and clearly listened to the arguments, did our commentary, the things that jumped out. Justice Sotomayor doing all the work in these arguments, those were some highlights for us. But I'd love to hear, what were some of the moments for you folks that really stood out because we're sitting here being like, "Wow, that was a really tough day." But there were some moments of brilliance and areas that I think folks can really hold on to, that we found and I'd love to hear what they were for you.

**Jenny Ma:**

Yeah. So I just want to be clear, we knew who was on the court. And so we actually anticipated every single question except for the first one, to be frank.

**Jess Pieklo:**

Mm-hmm (affirmative). Wow.

**Jenny Ma:**

So we knew all of... Look, so I just want to say like, as much as it was jarring to hear, like safe haven laws were argued in Casey. And that argument's been around, it was made in an amicus brief in support of Mississippi. So we knew that could potentially come up. I mean, obviously, we knew about this argument about neutrality of the constitution. So we knew that could potentially come up. All of the precedent, and stare decisis arguments, the reliance questions.

So I want us to be optimistic in the sense of like, we knew what the range of potential questions were out there so we had prepared for almost everything. And indeed, everyone, except for the first one about cocaine. Cocaine babies by Justice Thomas, which honestly I think if we had prepared for another year, we might not have thought that that would be a question that would be raised first up. So I want listeners and the movement and folks to just know that we did anticipate it. And we can talk a little bit more about the specific ones that especially stood out, but we were very prepared.

**Jess Pieklo:**

But yeah, Justice Thomas coming in hot with fetal personhood. Like truly that's what that was, right?

**Jenny Ma:**

Yes.

**Jess Pieklo:**

Okay.

**Jenny Ma:**

And so I want to echo your guys' commentary on the cringeworthy question eliding Brown versus Board of Education and Plessy versus Ferguson, which is just that comparison is so offensive. I think the public and the Justices know better to say something that broke away from precedent to grant new rights-

**Jess Pieklo:**

Yeah.

**Jenny Ma:**

... and provide equality, is very different from taking away a right that has been fundamental and has been in place for this long and affects *everyone*. The way our families are constructed, and whether or not you've individually accessed an abortion. Like how we think about our families and marriage, and who we sleep with, and child-rearing and all of that. That to me really felt difficult to bear. And I think along the same lines, the question of neutrality from Justice Kavanaugh-

**Imani Gandy:**

Ugh, Please.

**Jenny Ma:**

...because it's not neutral to make a woman be pregnant by the government. Like literally, that's what that is. And for someone to remain pregnant, for someone to bear a child against their will, to go through childbirth. And it was said in the argument, but it is 75 times more dangerous in Mississippi to bear a pregnancy versus having an abortion. That's crazy. Normally, it's 14 times nationally, but 75 times because of the hideous maternal mortality and infant mortality rates in this state.

So I think that was a tough one to hear that as an attorney, and hear that as someone who believes that abortion rights are human rights, and that... Women are people too, deserving of liberty under the constitution. So it would really mean that women would not have an equal claim under the constitution to believe that principle. And I'll just add one more thing. Sorry, I know I'm yammering on a lot, but just cause there was a lot-

**Jess Pieklo:**

No. Yammer away, please.

**Jenny Ma:**

I really thought it was quintessential as my role as a reproductive rights attorney to hear that question about the data in support.

**Imani Gandy:**

I was just going to ask you about that. I really was, because John Roberts was like, "Yeah. Okay." But setting all that aside, I mean it was... Yeah, please, go on.

**Jenny Ma:**

Exactly, Imani. No, no, it was just so funny because I've had that experience so many times in court where we're like, "Okay, the American Medical Association, the American Bar Association, top leading economists, every social science expert, people who write tons of studies about this." Like all of this mounting evidence. And I just would urge folks to even just take a look at the facts. Facts are facts. And like, if you look at the quality of the briefs, the amicus briefs in support of our side versus the arguments being made on the other and who signed them, I urge everyone to just take a look. There's a huge difference and a giant gap. And so to hear that, which was, "Okay, what data do you have?" "Okay, I hear you, but putting that aside," was just something that I've just heard a lot as a repro rights attorney and I was like, I don't think there is anything more quintessential than that.

**Imani Gandy:**

Can I just ask you a bit of a jokey question because as I was sort of preparing for Wednesday, I was flipping through the lists of amicus briefs, and I came across a brief that was filed by a "former frozen embryo." And that just seems to just distill the absolute madness that we are dealing with here, where someone is filing a brief and calling themselves, not a person, not a human, not a woman, but a former frozen embryo. And to make some kind of argument that all embryos deserve life when I guarantee that you, former frozen embryo, were plucked out and a bunch of other ones were discarded. So does this make sense to you or is it just one of those, "My God, what the heck is going on?" sort of situations?

**Jenny Ma:**

I mean, I will say that being in repro and being a repro rights lawyer really makes you be like, okay. Like I have to suspend disbelief sometimes. And I'll just one-up you Imani, not only was there an amicus brief, that frozen embryo asked for argument time.

**Imani Gandy:**

Oh my God.



**Jenny Ma:**

And so that's... I just say that because it's in the public record, and so it was denied by the court. But like...

**Imani Gandy:**

Can you imagine, thinking?

**Jenny Ma:**

I don't know what that would've looked like.

**Imani Gandy:**

That's shocking. That's hysterical.

**Jenny Ma:**

We're in the world of the absurdists, so.

**Imani Gandy:**

We absolutely are. I mean, it would be funny if it weren't so dangerous and tragic. Do you know what I mean? And which is why Jess and I have been trying to find those moments of humor in all of this, because otherwise, we'll just be crying and just stabbing everything around us all of the time. And we don't want to do that. We don't want to actually harm people.

**Jenny Ma:**

Same. Same.

**Imani Gandy:**

So whatever the outcome of this case is going to be, and I think we all kind of understand what that is going to be, but let's pretend we don't or let's pretend that doesn't matter. Where do abortion rights supporters go from here, irrespective of the outcome?

**Jess Pieklo:**

Yeah.

**Jenny Ma:**

Yeah. So I don't think the outcome is written on the wall. And you could call me an optimist, but I really think, you know, we've been here before. Our team really obviously grappled with all of the precedents before. And there's like an eerie similarity to Casey a little bit. And when you look back at Casey, everyone walked out of there being like, holy crap. And a lot of the newspaper headlines are similar. But at the end of the day, when you grapple with this, with all of the real arguments that were made on our

side and the strength of those arguments, there is no principled line other than viability. And no one in 50 years has come up with one. And Mississippi certainly didn't come up with one. And every argument Mississippi made was rejected and carefully considered in Casey as well.

So when you really sit with that and when you combine all of the other things, like legitimacy and the arguments. And I, having done a lot of work on history and tradition and common law, and looked at Locke and Blackstone, all of that is actually on our side. And I really urge the movement to take back that narrative, because I think there has been some slippage there. So science, facts, common law, natural law, history, tradition. It's precedent on precedent too. So I think when you... Look, I don't know what's going to happen and I'm not going to read tea leaves and I don't have a crystal ball, but I think that when push comes to shove, I think it's going to be a lot more difficult for everyone. So I just, there's a lot of room between oral argument and decision day.

So I urge people to keep up the drumbeat. So the movement and what we could do, I'll just say our providers are kick ass and resilient and creative, and they are back at work. Our Mississippi provider, Shannon Brewer, was at the argument and she's back providing care for Mississippians and other folks and the Texans that are coming to the clinic. So they are so inspirational, and just continue to provide and show up for their communities. So they're doing that. And through their strength, I think we can all find like, just to keep up the conversation and to alert the public of what is real, like just keep up the drumbeat. Because I don't want, like, everything to go away after oral argument. I think it's really important to point out the facts, to be clear that anything other than upholding the viability line is the same as uprooting Roe completely.

I think that's really important because, as you guys have said, and we see some of this mishigas out there about middle ground, there's just not. And I think that just needs to be clear, because if the court's going to do it, then they better do it in the shining bright light so that people understand what's been done here. 7 in 10 Americans support abortion rights in every single state. No matter how anti-abortion the legislators are, the majority of folks in that state support abortion. There's not a single state that's not, so I just want to be very clear that we are the people. We are the people majority in power.

And then I think just pay attention to state and local legislatures and what they're doing, because they've gotten away with a lot of bills on bills. And this year, it was unprecedented. There was a hundred bills passed, which was the most since 1973 and Roe was decided. But like, it would be great to have this people power and the attention on this case, shine more light into what these legislatures are doing on the local level because they are creating so much harm. And for people to be like, "Hey, let's stop these laws in their tracks." So that we don't have to go to court. Like we don't have to spend years litigating these absurdly unconstitutional laws.

**Jess Pieklo:**

Jenny, thank you, and the center for all that you folks do day in and day out. I mean, you're heroes, we owe you a debt of gratitude.

**Imani Gandy:**

100%.

**Jess Pieklo:**

Truly. And thank you for giving us time in this week, of all weeks, especially for us, for our listeners to help process and understand what's going on in this really important moment. And I think most importantly, to remind us all that the fight is still on. There is no reason to think that the game is over. And so no matter what happens, the fight stays on and we have reason to hope. And I think that is probably the best thing that you could leave our listeners with. And so for that, I truly say thank you.

**Imani Gandy:**

100%

**Jenny Ma:**

100%.

**Imani Gandy:**

Did we both just say a hundred percent at the same time?

**Jenny Ma:**

A hundred percent echo.

**Imani Gandy:**

But yeah, I just really wanted to say just those last few minutes of the things that you said about, you know, we've been here before and we thought it was going to be this bad and it ended up not being this bad. That actually gave me a little spark of hope.

**Jenny Ma:**

No, it's a long fight, you all. And I really urge us to look at other fights for justice and the ups and downs. And I think it's a crazy rollercoaster trajectory, but we have to push forward.

**Imani Gandy:**

Absolutely.

**Jenny Ma:**

And you have to know that, think of our providers who are showing up and feeling these feels and going to community and providing care. And I just say, get your rest and have the feels, but then pick yourself up and fight again because we're not going home and we're not packing up our bags. So neither should you.

**Imani Gandy:**

Absolutely. Wonderful. Thank you so much, Jenny.

**Jenny Ma:**

Thank you guys. It was a dream to be on, so lovely to have you guys.

**Jess Pieklo:**

Anytime.

**Imani Gandy:**

Anytime. Come back anytime.

**Jenny Ma:**

Yes.

**Imani Gandy:**

Feel your feelings with us.

**Jenny Ma:**

Yes.

**Jess Pieklo:**

Jenny Ma. National Treasure, everybody.

**Imani Gandy:**

We would just like to once again, thanks Jenny Ma for joining us. She is amazing, and we are very lucky to have had her come and speak to us about this momentous occasion.

**Jess Pieklo:**

True.

**Imani Gandy:**

And if you would like to talk to us about anything that happened in Dobbs, or anything at all, if you want to just feel your feelings with us on social media, I'm @AngryBlackLady, Jess is @Hegemommy, H-E-G-E-M-O-M-M-Y. You should follow all of Rewire News Groups' social channels on Twitter and on Instagram. We have been crushing it. We have such great coverage on our Instagram feed, videos with rallygoers outside of the court, our president Galina Espinoza was out there talking to people. It was just a really amazing sight, so please go check that out. And on that note, what are we going to do, Jess?

**Jess Pieklo:**

We're going to see on the tubes, folks.

**Imani Gandy:**

We are going to see you on the tubes, folks.

**Imani Gandy:**

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