

Imani Gandy: Hello fellow law nerds. Welcome to our end of the year episode of Boom! Lawyered, a Rewire News Group podcast hosted by the legal journalism team that wishes you a Merry Christmas, a happy Hanukkah, a super sweet Kwanzaa. And that's it. And a happy Festivus for the rest of us, obviously I'm Rewire News Group's editor at large, 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 just be done with the year folks, it's been a lot. We got nothing left to prove, call it. All right, and the Boom! Lawyered podcast is part of that mission. So big thanks to our subscribers and a welcome to our new listeners and viewers.

Imani Gandy: Since the Supreme Court demolished the constitutional right to abortion nonsense around reproductive rights in this country is at an all-time high.

Jess Pieklo: Seriously, in our 10 years as the only national media nonprofit focused exclusively on this issue, we have never seen anything like it folks. It's bananas.

Imani Gandy: But thanks to you we've been able to continue delivering top-notch news and analysis on one of the most critical human rights struggles of our lifetimes.

Jess Pieklo: Now we're the experts but it's your support that makes our work possible especially at historic moments like this one. And we are counting on all our passionate and loyal audience to continue to power our coverage.

Imani Gandy: Just go to rewirenewsgroup.com/donate. That's rewirenewsgroup.com/donate to give what you can today please.

Jess Pieklo: Plus, if you give a hundred dollars or more you will receive one of these awesome 10th anniversary Rewire News group Messenger bags. Hold on, I got it. Check it out.

Imani Gandy: I love these bags, I want one of these bags.

Jess Pieklo: These bags are phenomenal. A hundred bucks gets you one of these. Like, check this out. It's legitimately really cool, hold on, like. That's a good bag.

Imani Gandy: That's a solid bag. That's not one of those cheap tote bags that you'll get from some of those other organizations.

Jess Pieklo: Not at all, like I use that bag. So thank you folks for your support. A little bit more gets you something like that.

Imani Gandy: Thank you. Thank you for listening, thank you for supporting us. It's been a wild year Jess, a wild year. I think we can both agree on that. And somehow Roe v. Wade being

overturned isn't the most bananas thing that's happened this year, right? Like how is that possible? It seems like that happened last year,

Jess Pieklo: I know

Imani Gandy: But it didn't, it happened this year.

Jess Pieklo: And I also think the fact that it wasn't the wildest thing might have something to do with the fact that, I don't know, Sam Alito is this like total conservative partisan hack who has gone off the rails and does things like leak opinions to his friends for funsies, right? Like, I don't know, like let's come over for a glass of wine and hey, have you seen the Roe opinion? Like that's what we have going on.

I mean like let's revisit this for a second, right? Because all year, you and I, the folks at Rewire News Group, we were ramping up, like we were on it. We said this was gonna be the year that the Supreme Court overturned Roe v. Wade. We weren't gonna get a coward's compromise. They weren't gonna do half measures. Like some folks in media were thinking they were really gonna go for it. And we were, we were braced for that.

Imani Gandy: And you were the first person to call it, by the way. I'm gonna, I'm gonna say that again because I was like did that happen this year or last year? No, that was literally, you were the first person to call it. This is the case that's gonna end Roe

Jess Pieklo: I was, I was

Imani Gandy: back in like 20 whatever year that was. I don't even know what, what is time anyway?

Jess Pieklo: it is a joke.

Imani Gandy: Can we stop with the time stuff? Why are we still keeping time? Let's just move on in different ways. Parallel universes, pocket dimensions.

Jess Pieklo: So do you remember like we were, we were our entire focus was on this moment.

Imani Gandy: Yes,

Jess Pieklo: in the summer we were like gathering our resources thinking really creatively about how we were gonna help folks through this moment. And then, the opinion leaked, like it

Imani Gandy: Just took the wind out of our sails.

Jess Pieklo: It just leaked, it just leaked. And like, I'm not saying Sam Alito leaked it but I am saying Sammy the leak isn't a bad nickname. As some of our law nerd and law podcast friends have said on Twitter, like Sammy the leak! Has a nice little ring to it right?

Imani Gandy: But let's talk about that because you know I wanna walk down memory lane a little bit, right?

Jess Pieklo: Do a little walk there.

Imani Gandy: Picture it. May 3rd, 2022.

Jess Pieklo: Oh my God.

Imani Gandy: Right? That's the day that you and I went to dinner with our boss, Galina Espinoza, our boss, fearless leader. We hadn't seen her since June Medical Services. Do you remember Jude Medical Services?

Jess Pieklo: Yeah.

Imani Gandy: In March, 2020, those oral arguments. That was the last time I've been on a plane.

Jess Pieklo: The last good day for abortion rights at the Supreme Court.

Imani Gandy: Yes, the last good day. And so here we are gathered at a nice restaurant in Denver, yucking it up having some drinks, talking about whatever it is that people talk about when they do such things. And then, your phone starts beeping. My phone starts beeping. Even Galena's phone starts beeping.

Jess Pieklo: Exploded.

Imani Gandy: And what did we see? Politico has announced that this opinion has leaked and I remember I think your first response was, we need a round of Port. So we got a round of Port. I don't even drink Port. I'm a fancy bitch, but I'm not that fancy a bitch. But I was that night.

Jess Pieklo: Look, some moments require a round of Port.

Imani Gandy: Yeah.

Jess Pieklo: We were at the dessert end of the meal anyway.

Imani Gandy: That's true.

Jess Pieklo: So it was really, it was a lot. But that's exactly it. I mean we were like, first of all, is this real very quickly ascertained, yes, it's real. And then took in the moment, which was there were the words on the page. You know, Roe was wrongly decided. So's Planned Parenthood versus Casey and we're throwing back.

Imani Gandy: It's so nasty

Jess Pieklo: And so nasty.

Imani Gandy: Well since then we've been going whole hog on preparing you for what's next. Right?

Jess Pieklo: We really have.

Imani Gandy: We're including talking about a [case about pork and how it had to do with abortion](#). We literally went whole hog.

Jess Pieklo: Oh my God.

Imani Gandy: Right? Okay.

Jess Pieklo: This year, this year folks.

Imani Gandy: Since then we've talked about you know, Merrill versus Milligan, the voting rights case. And we've talked about Moore versus Harper, the independent state legislature case. Students for Fair Admission versus Harvard and UNC, the affirmative action case, the ICWA case, Brackeen v. Holland, 303 Creative, the LGBTQ case. We've talked about all these cases. We've prepared you. We've explained to you how these cases that are gonna be ruled on in the spring form this like they're like patches on a white Christian quilt. You know what I mean? Like a white Christian, evangelical quilt.

Jess Pieklo: That's the worst, yes.

Imani Gandy: These cases are patches on the worst freaking quilt you could possibly think of.

Jess Pieklo: Oh, the good news is folks, we're not gonna talk about all of those cases in this episode because you know what? We've talked about them. We're kind of tired of talking about them right now. You're probably tired of hearing about them in the moment. You know, it's at stake right now. We will revisit them again throughout the series. We don't really wanna end the year with the doom and gloom of looking back. We're gonna bring some doom and gloom looking forward. No, I'm kidding. But we are gonna read some tea leaves and tap into our Cassandra of the court's psychic energy. Oh!

Imani Gandy: Why do you think I'm dressed as a fortune teller?

Jess Pieklo: This is as close to like witchy vibes as I get.

Imani Gandy: I'm giving fortune teller guys.

Jess Pieklo: I'm not in athleisure, please clap.

Imani Gandy: That's true, that's true. She's not in performance wear, so you know this is a big step forward for her.

Jess Pieklo: Alright, so you know Imani, I'm gonna go first, OK?

Imani Gandy: OK, OK, let's hit it.

Jess Pieklo: I've been thinking about this a lot and it was actually really helpful that we started with the Alito leak and sort of revisiting that whole time and the vibe because another part of the vibe of that opinion was just what a throwback everything in it is. Right? Like citing 1600 common law, like, right? In the year 2022. Like all of it was just very old school in the like colonial old school kinda way.

Imani Gandy: Ooh, colonial old school.

Jess Pieklo: Right? Sam Alito seems to be feeling himself in this space. So I think he is going to institute a rule cause he's functionally the chief justice now. I mean that's how he's behaving. I think he's gonna force both the justices and the advocates who appear before him to start wearing barrister wigs again.

Imani Gandy: No!

Jess Pieklo: Yes.

Imani Gandy: No.

Jess Pieklo: Yes, we're returning to the days of the white patter barrister wigs.

Imani Gandy: First of all I have some serious issues with barrister wigs. Vis-à-vis Black people, right?

Jess Pieklo: As you should.

Imani Gandy: Because A, Black people don't look good in barrister wigs. And B, I feel like Black people should be exempt from having to wear them. Like I know there are white people out there who think barrister wigs, like in the UK and Canada they wear barrister wigs and they think

it's embarrassing. You should have to wear them as a form of reparations to us. And we don't have to wear this because we're never gonna get any money.

Jess Pieklo: That's actually amazing.

Imani Gandy: We're not gonna get any money. So you guys have to wear the barrister wigs and Black folks get to wear, we can wear turbans, dreadlocks,

Jess Pieklo: Yes.

Imani Gandy: Cornrows. Like whatever, we can wear our hair the way we want to. Reparations, think about it. We could probably do congressional action on that. It doesn't cost a taxpayer anything.

Jess Pieklo: Nope.

Imani Gandy: Just saying

Jess Pieklo: You know, white folks like to do revolutionary cosplay. They'll put on a barrister wig. Are you kidding me?

Imani Gandy: You know what else white folks love to do?

Jess Pieklo: What?

Imani Gandy: Touch Black people's hair. So I'm gonna go, I'm gonna talk

Jess Pieklo: to you about my prediction. Oh, oh, wow. This is a pivot.

Imani Gandy: My prediction is KBJ and ACB are gonna somehow become friends. They're gonna form a friendship around black hair. Right? Because maybe ACB is gonna see Kate is gonna see Ketanji Brown Jackson's hair and think, wow, her, her braids are beautiful. Are those box braids? What kind of braids are those? And she's gonna ask questions. She might reach out, get her hand slapped down. Right? Right?

Jess Pieklo: Oh gosh.

Imani Gandy: But KJB seems like the kind of person who'd be willing to talk to a white lady about braids. Especially if she feels like she could be doing Amy's kids a favor, right? Because I don't think Amy's sitting at home corn rowing her kids' hair. Right? She's got Black children.

Jess Pieklo: Yeah.

Imani Gandy: What, what a nice moment it would be for the Barrett family to sit around the, the hearth, the fire and just cornrow some hair. I want this for Amy Coney Barrett's family. And I want Ketanji Brown Jackson to be the person who makes that happen for the Barrett family. And while that's happening while she's got her hands in her black kids' hair maybe her Black kids can talk to her about, you know affirmative action and about you know, white supremacy and some of these other things. Maybe, maybe we can make ACB go woke in the like right wing way of woke. Not, she can't go black woke. Black woke is still black woke.

Jess Pieklo: Yes.

Imani Gandy: But she can go white woke. I'm just saying, it all starts with hair.

Jess Pieklo: It does all start with hair. I am speechless. I love this image. Right? Like, it's, and I feel

Imani Gandy: Yes.

Jess Pieklo: like Amy Coney Barrett would be very receptive to this because it's, I it's maternal.

Imani Gandy: Yes.

Jess Pieklo: It's domestic.

Imani Gandy: Yes.

Jess Pieklo: It's calling in some proper roles of the family that still retain power. And thinking of the way braids were used in enslaved communities to like literally send messages of freedom to other folks.

Imani Gandy: That's some powerful stuff.

Jess Pieklo: Wow.

Imani Gandy: Yeah, yeah

Jess Pieklo: Okay.

Imani Gandy: Let that sink in.

Jess Pieklo: Okay, so I got another one for you.

Imani Gandy: Okay. Hit me.

Jess Pieklo: So, you know, I like the West, I like me some mountains and some of the trains and like that whole thing, right? And you know that I'm a little bit of a court nerd, folks. Like, I like that history, and I've been thinking about just truly all of the court reform that needs to happen. We've talked about needing to unpack the court right? All of this. What if though, Imani, instead of going to court reform that way, we looked back and said you know what justices, it's time to get you riding circuit again.

Imani Gandy: Oh!

Jess Pieklo: Like the old days, okay?

Imani Gandy: Circuit riding! Can we make them do it on horseback?

Jess Pieklo: Circuit riding, back in the old days, judges and justices used to literally ride the circuit. They would go from locality to locality to hear cases. And that's how we got the modern day circuit court system, judges were on horseback riding circuit. And so I wanna see Kyle Duncan on a horse, right? Riding from Houston to New Orleans. Make him do that ride. If he's gonna strip trans folks of rights, for example, like

Imani Gandy: Make the ride through the communities that they're decimating as they say, Hey gay folks, you can't have cakes baked for you or websites built for you. Yeah, I like, I like that image.

Jess Pieklo: It's that absurd. And let's take it a step further. We've got these like limitations on oral arguments at the Supreme Court. Screw it, they're not abiding by them anyway. Supreme Court oral arguments used to just be a free for all. Let's bring it back! Why did the affirmative action arguments last only one day. They should have lasted all the week. Why are we still not in oral arguments for 303 Creatives? We should still be listening to Sam Alito ask questions about Black santa. I'm kidding, it is a gift that we are not.

Imani Gandy: It really is a gift. But I kind of like that, you know, cause that's kind of a that's kind of in line with what my prediction is, right? Like just the court isn't really behaving the way the court is supposed to behave.

Jess Pieklo: No.

Imani Gandy: Right? The Court is taking cases it doesn't have to take, it's issuing advisory opinions. Remember 303 Creative? That lady's not even making wedding websites but she's like, I might someday and I would like the Supreme Court to tell me that I can discriminate at some point in the future, right?

Jess Pieklo: Yeah, yeah.

Imani Gandy: We've got the affirmative action cases. They've had oral arguments for literally five hours. Five goddamn hours, absolutely unnecessary. And part of the reason why is because the Supreme Court is just re-litigating the facts. Like listeners, the Supreme Court is not a fact finder. They are not a fact finder. But you know what, maybe they should be maybe we should have bench trials in the Supreme Court.

Could you imagine?

Jess Pieklo: That's sexy.

Imani Gandy: Could you imagine having to do a bench trial between those nine? Oh my god.

Jess Pieklo: Justice keg stand taking judicial notice of anything.

Imani Gandy: Oh God. Take judicial notice of this! Oh God. I mean, I can imagine him doing kegstands in, you know like as a sidebar, sidebar, kegstands. Let's turn it into a whole thing. Maybe this is a restaurant idea, actually.

Jess Pieklo: Well, we'll meet offline about that Imani. I mean, but truly though the one thing that this term has really driven home is the degree for the justices at least that the arguments really are about appealing to their ego, their sense of, you know sort of achievement and superiority for being a Supreme Court justice like the job folks. That is truly an accomplishment. But we're not getting to the meat of the matter in any of these cases anymore. And it's just a big ego parade.

Imani Gandy: Yeah. It is an ego parade. And it's like they're doing so many bad things and they're doing it so un-transparently like they're just in the shadows overturning rights. You know what I mean? Out of the, the out of the daylight, out of the sunlight.

You know, sunlight is a disinfectant. The Supreme Court is rotting from the inside. We need more sunlight in there.

Jess Pieklo: It really is, it really is.

Imani Gandy: Yeah.

Jess Pieklo: So I have a not so fun prediction. I have actually one that's serious. I know we're

Imani Gandy: OK, all right. Let's get serious.

Jess Pieklo: We're trying to do this. And look, first of all Imani thank you for at the upfront saying that I was the first journalist who say that Dobbs was gonna be the case that overturn Roe versus Wade. You are very good at writing for me like that. I appreciate it. Listeners and

viewers, I really think that we will see the possibility of the right to birth control being overturned this year, 2023, on the shadow docket of the Supreme Court.

Imani Gandy: On the shadow docket.

Jess Pieklo: On the shadow docket.

Imani Gandy: OK, let's talk about this. Where's the case gonna come from? Probably Texas? Yeah?

Jess Pieklo: It's gonna come outta Texas. I wrote about this case actually in the last episode or edition of The Fallout of the Rewire News Group's newsletter for the year. It's a case outta Texas, Deanda versus Becerra. And it is absolutely designed, it is a cooked up case to strike at the heart of Title 10 which is the federal family planning program that provides access to low cost sometimes free birth control and comprehensive sex ed where possible. There is a lawsuit cooked up by our friends at the Alliance Defending Freedom before Trump Judge Kacsmaryk—we haven't landed on how we say his name yet. We'll figure that out—that objects to Texas administering its Title 10 program on the basis of this Christian father's parental rights to raise his children free from the horrors of potentially accessing birth control.

So it's a religious rights and parental rights case attacking Title 10. There is a, there's an initial order in the case that says that this can move forward and there's briefing happening to say whether or not the program will get blocked.

This feels very much like SB 8 Imani and that is the Texas bounty hunter law that sort of came out of nowhere on the litigation docket and truly was the case that overturned Roe before Dobbs because the Supreme Court justices let it take effect on the shadow docket. So that's my, that's my real no fun one. And you heard it here folks.

Imani Gandy: Yeah. And you're probably right. You're probably right. And you know, a decade ago when I first got into this business I would've been like, that's insane, that's crazy. But I lived through the birth control benefit wars.

Jess Pieklo: Yeah.

Imani Gandy: Right? I lived through the Court saying, hey corporation you can express religious feeling. You don't have to provide birth control to your employees. So yeah, why not let a Christian father sue on the basis of religious freedom? It's preposterous but this is the world we live in now, right?

Jess Pieklo: Yeah, it is. It is, and this is one of the cases next year that we will be talking quite a bit about. There's another case also surprisingly enough, out of Texas in front of the same judge that looks to strike at medication abortion. So, 2022 is the year that overturned Roe versus

Wade. 2023 will be the year that conservatives really go for it in terms of the wild restrictions and trying to push fetal personhood.

Imani Gandy: Oh boy. We wish you a Merry Christmas and a happy New Year. Your favorite Boom! Lawyered nerds. Well look,

Jess Pieklo: It's gonna be great.

Imani Gandy: It's been a rough year, but we got through it.

Jess Pieklo: We did!

Imani Gandy: Like I feel like that deserves a round of applause cause we got through this year and it was bananas and it's still bananas. I mean, it's probably gonna go on being bananas right up until the end. So congratulate yourself, love yourself, love us.

Jess Pieklo: Seriously.

Imani Gandy: Love each other. I don't know, it's just have everyone love everyone. It's, it's the holidays, it's like the season of love and giving and also grievances. Don't forget about the grievances.

Jess Pieklo: Yes, and grievances.

Imani Gandy: You gotta have a balance. You gotta have a balance of love and grievances. Oh boy Jess, what are we gonna do with these fine listeners of ours and viewers?

Jess Pieklo: I just wanna say real quick thanks for riding with us this year folks. It's been, it's been one hell of a ride. Gotta say it.

Imani Gandy: It has been a hell of a ride. But also keep riding with us, don't forget about us.

Jess Pieklo: Yes!

Imani Gandy: No, don't forget about us. You should follow us. Well me, @AngryBlackLady, Jess at Hegemommy. H E G E M O M M Y. Follow Rewired News Group on Twitter. And on Instagram. And I was gonna say in your basement like we're in your basement for some reason. This is, this is the point which I, Jess, what? What? Yeah YouTube, YouTube.

Jess Pieklo: Follow us on the YouTubes.

Imani Gandy: Follow us on the YouTubes, youtube.com/rewireNewsgroup. What are we gonna do Jess? Get me off camera. What am I doing here?

Jess Pieklo: We are gonna see you on the Tubes folks.

Imani Gandy: See you on the Tubes, folks.