

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 enjoys the fact that we joined a plant of the month club. And that we go and get plants once a month. It's lovely. 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 pick up a new hobby, like plants. It's so good for the soul, truly. And the Boom! Lawyered podcast is part of that mission, so a big thanks to our subscribers, and welcome to our new listeners and viewers. So, woo.

Imani, we're in it for this one. Today we're gonna talk about Jonathan Mitchell, the conservative lawyer and architect of Texas' bounty hunter law. Now, this fucking guy, do you wanna know what he's up to now?

Imani Gandy: This fucking guy!

Jess Pieklo: You wanna know what he's up to now? He's filed a lawsuit on behalf of a Galveston County man named Marcus Silva. Get this, it's a wrongful death lawsuit against three women who helped their friend, Silva's ex-wife, get an abortion and leave her marriage.

Imani Gandy: But first, Jess, I have to ask, what kind of man believes he is so entitled to his wife's body, that he would sue his wife's best friends for helping her, you know, achieve that bodily autonomy that we're all striving for.

Jess Pieklo: I mean. Res ipsa loquitur, right? The thing speaks for itself.

Imani Gandy: I love it. Did you just hit out listeners and viewers with a res ipsa loquitur? You actually did.

Jess Pieklo: I did just hit everybody with res ipsa loquitur. I did.

Imani Gandy: Oh my goodness.

Jess Pieklo: That means the thing speaks for itself. And you know, as Imani suggested, this is more than a one-off case about some guy who's big mad at his ex-wife for making decisions about her own body. It is part of a coordinated campaign by the anti-choice movement to end access to abortion pills, specifically. And that's because they know that access to abortion pills makes their crusade to end abortion entirely impossible. They know it. Abortion pills, they're here.

Imani Gandy: They're queer, get used to them. Sorry. So, first thing we're gonna talk about, what is this case about, right?

Jess Pieklo: Hoo, fuckery.

Imani Gandy: It's about fuckery and a douchebag. But Marcus Silva, the douchebag in question, is suing his wife's friends, his three wife's friends. Their names are Jackie Noyola, Amy Carpenter, and Aracely Garcia. And he's alleging that they conspired to murder his child. Conspired to murder his child. Now if you read the text messages between this group of friends, it reads like just really close friends trying to help another friend out of a failed marriage, and out of a relationship that seems less than ideal, we'll just put it that way.

According to the complaint, Brittini Silva found herself pregnant in July '22. She divorced Marcus in February 2023, just last month. Now listen to a snippet of these text messages, like, tons of text messages, that Silva clearly got from his wife's phone, or his ex-wife's phone, and added them to the complaint. This is from her friend Amy. "Brittini, this is just another obstacle to overcome. Stop fucking Marcus. And if you fuck anyone else, get a Plan B."

She's not wrong. "I know you know that, but I can't leave it unsaid." Brittini responds, "100%. I'm so lucky to have you all. Jackie, your help means the world to me, really. And yes, no more of that. I was stupid to be doing it at all, I didn't think this would happen, since it hasn't happened in seven fucking years either, but it's still on me. I know I fucked up. Not letting that shit happen again." Amy chimes in, "Mistakes happen. You can't spiral. Hopefully this is the slap in the body that you need to remove yourself from him." The slap in the body, not even the face. This is a full body slap. And Brittini says, "Yeah, it is for sure. Can't risk shit like that generally, especially with him."

Jess Pieklo: Okay, first of all, protect these women at all costs, we all need friends like these.

Imani Gandy: Ride or die.

Jess Pieklo: Ride or die. These are absolutely the hide the body friends.

Imani Gandy: Exactly. I got a trunk, you got a body, let's go.

Jess Pieklo: Those texts though, all jokes aside, do read like someone desperate not to have a child with a man that she would end up divorcing nine months later. And again, all jokes aside, we know that abortion bans can be weaponized against people seeking care to keep them in bad situations. And we also know that reproductive coercion is a real thing, so this is bad.

Imani Gandy: It is bad. And it really does sound like Brittini Silva was terrified. And so Silva, you know, flexing his power, is suing his ex-wife's three friends for a million dollars in damages, each. So that tells you right there, that this lawsuit has, is just nonsense, right? Because he knows damn well that these three women don't have a million dollars each. It's a lawsuit about sending a message, not a lawsuit about his, in his quote unquote injury. And aside from that, once he can figure out who manufactured the abortion pills that Brittini took, he plans to sue the manufacturer, too.

Frankly, the lawsuit reads like Operation Rescue fanfiction, right? It refers to assisting self-managed abortion in Texas as a quote, act of murder, and notes that the abortion took place post-Dobbs, and after Texas' trigger ban was allowed to go into effect. So essentially he's saying that abortion was criminalized, and therefore that gives him the right to file this lawsuit. But you have to remember that self-managed abortion is not criminalized in Texas, right?

Jess Pieklo: Right.

Imani Gandy: But set that aside for a moment. The lawsuit also repeatedly accuses the women of conspiring to quote, murder his quote, unborn child with quote, illegally obtained pills. And it also accuses his ex-wife of concealing the pregnancy and deciding to quote, unquote, kill the unborn child without Marcus' knowledge or consent. Now, to support allegations that assisting a self-managed abortion in Texas is an act of murder, the lawsuit cites penal code sections defining deadly weapons.

So I guess the theory is that abortion pills are a deadly weapon, and by helping this woman get abortion pills, that the three friends somehow committed some homicide, or assault with a deadly weapon. Also, the lawsuit cites the section of the penal code regarding criminal homicide and criminal negligent homicide. So abortion is criminalized in Texas, right. Silva is right about that.

Jess Pieklo: Yeah, but self-managed abortion is not, he's not right about that. And that's also why this guy can't sue his ex-wife directly, and is instead abusing the legal process to harass her friends. Because you know if he could put her on this lawsuit, he would, all right. So Silva is represented by Jonathan Mitchell, as we said, the architect of SB 8, that's the bounty hunter bill that conferred standing on, that's ARM standing as we have called it on this podcast, right? That's Any Random Motherfucker can just go, and sue, and collect a 10,000 bounty, right? \$10,000 bounty. So when I tell you that Mitchell's presence in some random wrongful death lawsuit should be a five alarm fire, his involvement in this is a huge red flag, listen.

Imani Gandy: You know, I don't wanna give Jonathan Mitchell any props, 'cause I don't like the man, right? I just, I don't like the man, he's a bad man. But I have to, I have to give him like, like a half a prop, because he came up with this system, he's the architect of this new legal rubric whereby you just confer standing upon any random motherfucker, you remove enforcement capability from the state, so that you can't find a person to sue. Remember, that's what happened in SB 8. Advocates were just scrambling around trying to find a person to sue, couldn't sue the Attorney General, couldn't sue the Department of Health. So do you remember, they sued every clerk and every judge in the state of fucking Texas, which at the time I was like, that's bananas.

But also, what else are you supposed to do? You're supposed to be able to find a remedy, and frankly, you gotta hand it to Mitchell for literally breaking the brains of the Supreme Court justices, right. That case went up to the Supreme Court, and the justices were like, well, gee whiz, I don't know, this seems bad, this seems like it's not something you should be able to do,

but we don't know what to do. We're the highest court of the land, sure. But guys, we're at a loss here. And so that's why they let SB 8 stay in effect, and that's how abortion was criminalized in Texas, a full year before it was criminalized across the nation.

Jess Pieklo: Yeah, this guy Mitchell is bad news. if you take one thing away-

Imani Gandy: B-b-b-b- bad.

Jess Pieklo: From this podcast, is that he's a bad man. And that his presence alone tells us more to this lawsuit than meets the eye. But, oh, Imani, there's more.

Imani Gandy: Of course there is.

Jess Pieklo: There is more. Silva is represented also by, and this is his real name, Briscoe Cain.

Imani Gandy: Briscoe Cain, woo-hoo, my name is Briscoe Cain, and I own a ranch, I'm a Texas cattle rancher, I'm also a member of the Texas House of Representative. Woo-hoo.

Jess Pieklo: I do not know why I go full Yosemite Sam whenever I hear his name.

Imani Gandy: 'Cause it's Briscoe Cain, Jess, that's his name, that's Briscoe Cain.

Jess Pieklo: For listeners and viewers, Briscoe Cain is an anti-abortion ding dong, and member of the Texas House of Representatives. So, I mean, Imani, doesn't that just smack of fuckery afoot?

Imani Gandy: Of course it does. Why is Briscoe Cain, who's got a goddamn job, right? Like, you have a job, my guy. Why are you also representing this guy in his wrongful death suit, if not for fuckery afoot that you're not willing to really share with us yet? But Jess and I know what you're up to. We know what you're up to, Briscoe Cain, whoo!

Jess Pieklo: We got your number, Briscoe Cain. And so, folks, when I say he's a ding dong, here's what I mean. In an interview published with the "Texas Observer," this is what Cain said about the lawsuit. I almost tried to go into a voice, but I'm not gonna be able to keep it. "Anyone involved in distributing or manufacturing abortion pills will be sued into oblivion," said Cain. "That includes CVS and Walgreens, if their abortion pills find their way into our state."

Imani Gandy: I like the idea of abortion pills, like with a little bindle, you know what I mean? With like a little stick and a handkerchief, just like. We're goin' to Texas, guys.

Jess Pieklo: Hitching on the I-5, or what. Oh God. But truly though, that right there tells us that this case is about more than some shitty ex-husband trying to terrorize his former partner, abusing the legal process against her friends along the way. And that's what we're gonna talk about next.

Imani Gandy: We're gonna talk about how this is part of a larger campaign. This lawsuit is part of a larger campaign, right. This wrongful death lawsuit is the first of its kind under Texas' abortion ban. And could set the stage, obviously, for intimidating people out of helping their friends to provide care. Intimidating abortion funds, intimidating mutual aid systems that have sprung up in the wake of Dobbs. Antis are pushing very, very hard to remove abortion from the state of Texas entirely. They're even trying to remove people in Texas' ability to find information about abortion on the internet.

Jess Pieklo: Right. Right. I love the idea that we're just gonna memory hole health care, right?

Imani Gandy: We're gonna memory hole health care. Like, what? That doesn't exist, don't know what you're talking about.

Jess Pieklo: Abortion? Don't know her.

Imani Gandy: Never heard of her. Oh my god. Texas is also itching to jail people for abortions, right. We know this.

Jess Pieklo: I mean, that's, I truly, that's why I think Briscoe Cain's presence here is really alarming, right. Like, at the very least, it's gotta be about building a case to end the self-managed exception, you know, 'cause as I said, they'd sue the ex-wife if they could, and you remember they already tried to bring charges against some broad.

Imani Gandy: Lizelle Herrera, we'll put it, [we'll link that episode of the podcast that we did in the show notes](#). They yoked up this lady for self-managing an abortion, and then like a day later, let her out of jail because they were like, oh yeah, oops, we don't actually have a penal code, like, are you for real? They're like, ah, we didn't mean it, it was just a mistake. Not a mistake, just an effort to see what people's stomach was for throwing preggos in jail, essentially.

Jess Pieklo: Yeah, call it a trial balloon, because that's what it was. So that's all bad. And I just wanna point out too, that there's no way it's a coincidence that this lawsuit was filed after the lawsuit that we have pending, challenging the FDA approval of mifepristone. Like, it's just no coincidence that these things are happening, and that Jonathan Mitchell is involved. And so I think we need to read those two lawsuits together.

Imani Gandy: Yeah, yeah. We said earlier in this episode that eliminating access to abortion pills was a critical point of the anti-choice strategy. But it's not that easy, thank the Lord, thank the old Gods and the new, it's not that easy. So let's think about what needs to happen for anti-choicers to be able to eradicate abortion by also eradicating medication abortion. One way they could succeed is by making sure that the pills can't be made or distributed, right. Like, go after the manufacturers. But how do you force a manufacturer to stop making a product, especially when they make a ton of money off that product, which generally conservatives love big business,

they love big pharma. Not here apparently. But how do you convince a manufacturer to stop making money off of a product?

Jess Pieklo: Imani. Through litigation and increased risk. We're gonna talk about the tort system. I don't know why I just shimmied.

Imani Gandy: These torts are not delicious. So Jess, you're gonna have to explain what the tort system is, and you're already excited about it. You're already excited about it.

Jess Pieklo: I love this. So listeners and viewers, torts are basically personal injury type claims, and they result only in money damages, right. Wrongful death claims like the one Silva is trying to assert here, it's tort. Think of everything from like, a negligence claim in a car crash, to class action.

Imani Gandy: That movie.

Jess Pieklo: So good. Everybody watch that movie, it's so good. At the heart of the wrongful death claim, here, is an allegation that abortion pills killed a baby. It's a murder claim, basically, if we were in criminal court, and it's a "personhood" claim, right. Someone should be alive, but for the wrongful act of the defendants, his ex-wife's friends here.

Imani Gandy: The people that he's going after are the friends who helped this lady get an abortion, right. That's just.

Jess Pieklo: Right. Right. So, we've got that, okay, and then now we've got this other lawsuit pending that we're waiting to hear about, right. And at the heart of the lawsuit challenging the FDA approval of mifepristone, is a claim that that drug is dangerous, and shouldn't have been approved. ♪ Dun dun dun ♪

Imani Gandy: I know, really, like big "Law and Order" hammers. ♪ Dun dun dun ♪

Jess Pieklo: So right now we have a wrongful death lawsuit asserted against some individuals. But Imani, what if there was a way for antis to make a wrongful death claim against the manufacturers and distributors of abortion pills? It could scare them out of making or distributing the pills in this country altogether.

Imani Gandy: Okay, all right, Jess, I get all that. But mifepristone isn't dangerous. Mifepristone is not dangerous! It was approved 20 years ago, 23 years ago, right, in the year 2000. Over the course of those 23 years, there have been something like 5.6 million abortions, 5.6 million abortions, 28 deaths. There've only been 28 deaths. And those 28 deaths, I read the literature, couldn't all be attributed specifically to the mifepristone. Like one of those deaths was a homicide, and quite frankly, I'm not sure how you commit homicide with mifepristone unless you're like, pelting pills at people's faces, like, just dropping them slowly on their forehead, like Chinese water torture. Could you imagine just getting like a virulent anti-choicer, and just

dumping abortion pills on their head? That sounds really fun to me. But you know, this is all according to court documents, right, and other shit that I've read. Mifepristone is safer than Tylenol, so what gives?

Jess Pieklo: But mife kills babies, Imani.

Imani Gandy: Oh, for fuck's sake.

Jess Pieklo: No, I'm serious, that's their argument.

Imani Gandy: No! No!

Jess Pieklo: That's their argument. That if you include the 5.6 million babies that were murdered in the course of those 5.6 million abortions, it is clear that mife is a very dangerous drug.

Imani Gandy: No, I refuse. I categorically reject this because the mife is doing what it's supposed to. Mifepristone induces abortions. You can't say that it's a crime for a drug to do when it's meant to do, when that drug was approved 20 years ago by the FD goddamn A.

Jess Pieklo: Yeah, it's killing babies, It's doing what it's supposed to do, Imani, it's killing babies. All right?

Imani Gandy: I can't.

Jess Pieklo: We are in the upside down. So wrongful death lawsuits like these open up manufacturers to increased risks of big damage awards, and if every terminated pregnancy via their product is considered the murder of an unborn child. The antis' claims that mife is a lethal chemical. They can point to the 5.6 million abortions that have occurred since it's been approved. Like, that's the gift, right. Briscoe Cain said they wanna sue everybody they can into oblivion and beyond!

Imani Gandy: Honestly, can you just shoot me out of a cannon into oblivion and beyond, 'cause I can't take this. Like, I legitimately cannot take it.

Jess Pieklo: But you know we should believe them. We need to take them at their word.

Imani Gandy: Absolutely, and you know, if, okay, if this becomes about mifepristone and big pharma's manufacturer of mifepristone, then don't we have to start talking about products liability?

Jess Pieklo: We do. Okay, we do. It's more torts. It's more torts, only this time with a side of contracts.

Imani Gandy: Oh, you did finger guns. Why are you excited about contracts? Contracts is the worst.

Jess Pieklo: I mean, it is, it is. I taught it throughout Spain, and like don't, is all I would say about that. So products liability is basically, listeners and viewers, consumer protection law. It's a hybrid of torts, which we just talked about, and contract law, which I refuse to talk about right now, like, that's just not happening.

But what you need to know is that products liability is the main tool for holding businesses, especially big ones like pharmaceutical companies, responsible when their products cause harm to folks. Cars blow up, it's products liability case. Your IUD's made of copper, that's a products liability case. McDonald's coffee scorches your crotch, products liability case.

Imani Gandy: Right, okay. But let's talk about products liability in Texas, specifically.

Jess Pieklo: Okay.

Imani Gandy: 'Cause I looked this up, cause I was fascinated by this. Under Texas statutory law, there is a rebuttable presumption that a drug manufacturer is not liable for failing to warn about the risks of a product if the FDA has approved the warnings and information that is furnished in the sale of that product. That was a lot of words, let me go ahead and repeat that. There's a rebuttable presumption in Texas that a drug manufacturer can't be liable for failing to warn about the side effects and the issues that go along with this drug, if the FDA approved the drug, and approved the warnings and the information, you know, you get that little sheet when you get new drugs. If the FDA has approved that, then there's a rebuttable presumption that the manufacturer of the drug is not liable for any harm, right.

Jess Pieklo: And I mean, that makes sense, because truly, who do we trust more here in this process, the scientists at the FDA or Briscoe Cain?

[Both] Woo-hoo!

Imani Gandy: So a plaintiff can rebut this presumption. I'm gonna do that again, 'cause there was a ding, Sorry about that.

Jess Pieklo: Now, a plaintiff can rebut this presumption by establishing that the manufacturer withheld from or misrepresented to the FDA, required information relevant to the performance of the product, and that the manufacturer's act was causally related to the plaintiff's injury. Again, that was a lot of words, let me say this again.

If it turns out that the manufacturer lied to the FDA, perpetrated some fraud on the FDA, didn't tell the FDA all the information, then yeah, a plaintiff can rebut the presumption that they're not liable by saying, "Hey, motherfuckers, you lied to the FDA, and I got sick, you owe me some damages." I have a harm that needs remedying. But also with torts, there's a lot of talk about



causation. So doesn't there need to be a chain of causation that can be linked back to the manufacturer? Like, obviously Silva doesn't know which manufacturer sold the abortion pill, so he can't just sue all of them, 'cause that would be weird. Also, what if there was something that happened in between the time the manufacturer distributed the pill, and the person ended up in the hospital over the computation or whatever. There's gotta be some connection back to the manufacturer, and we don't necessarily have that here.

Jess Pieklo: No, no, no, no. At all. And I mean, first of all, shocked face.

Imani Gandy: Shocked face, right. Like, essentially, this provision of statutory law in Texas acts as a liability shield from manufacturers from state tort claims, the exact kind of claims that are at issue here. So what gives? Why isn't the manufacturer gonna be shielded from liability here?

Jess Pieklo: I mean, they should be, right. But what happens if that liability shield is undermined? I mean, Imani, that might be what is absolutely up to, or what Texas is up to here with this nonsense. I'll politely call it nonsense. We have a record of abusing the legal process, creating law like new, outta whole cloth to the extent that the Supreme Court is like, I don't know, man. Too hard, pass. Right? It's bad, it's bad. I don't trust these guys.

Imani Gandy: All right. We spewed a lot of words at you today. So let's just do a little takeaway. Let's just say, if somebody asks you what the hell is going on right now with this wrongful death lawsuit in Texas, here's what you can tell them. You can tell them that self-managed abortion is not a crime in Texas.

Jess Pieklo: Nope.

Imani Gandy: So the fact that Marcus Silva is suing these three women, his ex-wife's friends, for a million dollar each, alleging they quote, conspired to murder his child, that's nonsense, right. Like, sure, Texas will make self-managed abortion a crime as soon as it can, but how can you conspire to commit a crime that's not a crime, right. That doesn't make sense to me. So that's one thing you can take away.

Jess Pieklo: Another thing that you can take away is that Jonathan Mitchell is a very smart, but very bad man, and his buddy Briscoe Cain, the two of them together, the Tweedle Dee and Tweedle Dum of anti-abortion fuckery that starts in Texas and spreads nationwide. If we are witnessing trial balloons of finding ways to hold friends and third parties accountable for other folks' abortions, we've got that. So we have intimidation there. We have coordination, in terms of campaigns and arguments against the efficacy and safety of medication abortion. Any time these two guys show up, and we're talking about abortion, it's bad.

Imani Gandy: And the third thing you can take away is that antis can't end abortion until they end medication abortion. And they know that, because medication abortion is the future of abortion access, as we've said umpteen times at Rewire News Group. So what they're doing is targeting manufacturers of mifepristone, and alleging that they are somehow responsible for

Marcus Silva's injury, whatever he considers that injury to be. So we've given you the information, now go forth and tell your friends about all the fuckery that's afoot in Texas.

If you have any questions about said fuckery, you can find me on Twitter @AngryBlackLady, you can follow Jess on Twitter @Hegemommy. H-E-G-E-M-O-M-M-Y. You should and could, could and should, might and would. Follow Rewire News Group on Twitter and on Instagram, and sign up for our YouTube channel, 'cause that's how you're gonna know that our podcast is coming out. And if we may be so bold, if you listen to this podcast, it's probably because you care about making a difference.

Jess Pieklo: And I mean, because you like the pod, and us.

Imani Gandy: We're very likable. You love us!

Jess Pieklo: So if you want to make a difference and keep the pod going strong, please consider becoming a recurring donor. Even like \$5 a month really helps.

Imani Gandy: You give us a little help, we say on top of all of the massively critical news moments and court decisions, like all of the legal chaos surrounding abortion pill access, for example. It's win-win. You win, we win, everybody wins.

Jess Pieklo: Well, I mean.

Imani Gandy: Well not anti-choicers.

Jess Pieklo: And the legal decisions, we're not, really-

Imani Gandy: Well, we're not winning that. In terms of sharing information, and you know, friendship and love, that's how we win.

Jess Pieklo: Yeah, community.

Imani Gandy: Community, exactly. So, you know, all the more reason to help us stay on top of this shit, on top of these bozos because- Bozos! We need to bring the word bozo back. ♪ I'm bringin' bozo back ♪ ♪ Yeah ♪ Before we go completely off the rails, head to [rewirenewsgroup.com/donate](https://rewirenewsgroup.com/donate) and give what you can today. That's [rewirenewsgroup.com/donate](https://rewirenewsgroup.com/donate). Dig into your pockets and give us what you have, please.

Jess Pieklo: Thank you everyone. We are so grateful for your support, too.

Imani Gandy: So grateful.

Jess Pieklo: Truly.

Imani Gandy: So grateful. And what are we gonna do, Jess?

Jess Pieklo: We are gonna see you on the tubes.

Imani Gandy: See you on the ding dang tubes.