

Imani Gandy

Hello fellow law nerds. Welcome to a special episode of Boom Lawyered, a Rewire News Group podcast hosted by the legal journalism team that thinks abortion providers are the real heroes. I'm Rewire News Group's editor at large, Imani Gandy.

Jessica 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 think an abortion provider today. And the Boom Lawyer podcast is part of that mission. A big thanks to our subscribers and a welcome to our new listeners. So today we're going to take a little respite from the legal news to talk about abortion provider appreciation day. And then we're going to interview two fixtures of the abortion rights movement, one a sociologist and one a law professor who have written a new book that looks at the post-Dobbs era from the viewpoint of abortion providers. Now, technically, we are a few days late in celebrating Abortion Provider Appreciation Day, I'll admit it. This episode drops on March 13th and Abortion Provider Appreciation Day is March 10th. But here at Boom! Lawyered, we celebrate Abortion Provider Appreciation Week and we all know that time is a trick anyway. So, And this is a thing that we just made up. So it's great. Go with it.

Imani Gandy

But seriously, there's a need to actually celebrate people who are keeping essential healthcare running while dealing with all the nonsense that gets thrown at them. So let's give a round of applause. The people who open their clinic doors every day knowing full well they'll have to dodge protesters—

Jessica Pieklo

I do.

Imani Gandy

deal with hostile politicians, and try to make a living without a personal bodyguard. And if that's not dedication, I honestly don't know what is. Every morning they unlock the door, probably taking a breath, thinking, will today be the day that protesters finally learn what personal space means? Will today be the day that they realize screaming, baby killer isn't going to deter me from providing necessary healthcare to my patients?

Jessica Pieklo

Truly.

Imani Gandy

They're not only offering compassionate care to those who need it most, they're also battling a slew of people who seem to think, beliefs should control your body, is a winning argument when we all know that's a load of horse shit. But these providers keep showing up and honestly, they deserve some kind of superhero title, if not for the medical expertise they bring, then definitely for the mental fortitude required to handle the chaos that surrounds them.

Jessica Pieklo

Let's not sugarcoat this. The work is hard and it's getting harder. In many places, abortion care is either now banned or severely restricted. Some clinics have had to close and others have pivoted to provide other essential services because remember, abortion is healthcare motherfuckers. States keep coming up with a different set of hoops for them to jump through and abortion providers keep jumping through them in order to provide abortion care.

Abortion providers are constantly adapting, constantly finding new ways to help people because they understand that this isn't about politics. It's about people's lives.

Imani Gandy

And they do all of this while being treated like villains in a soap opera, right? Like, do you remember David Daleiden and the baby parts scandal? That jamokes who tried to convince people that abortion providers were selling fetal baby parts on the black market for pennies on the dollar. Remember all the state investigations that found nothing? And remember the uptick of violence it caused for abortion providers, some even having to flee their home? That happened a decade ago.

Jessica Pieklo
right?

Jessica Pieklo
Mm-hmm.

Jessica Pieklo
Yep. Yep.

Imani Gandy

And still providers persisted in delivering care. They haven't folded. Even after the Supreme Court said there's no constitutional right to abortion anymore in the Dobbs v. JWHO case, remember when we used to do JAY-WHOOP? I missed that. They were, right? But even in the face of all of that, abortion providers haven't quit. They show up every day.

Jessica Pieklo

Those were the days, man.

Jessica Pieklo

I mean, some of those baby parts, pseudo scandal peddlers have even found their way into the Trump orbit shocked, right? And with his announcement that the Department of Justice was basically not going to enforce the FACE Act, his pardoning of a bunch of clinic harassers, well, it is a precarious time to provide abortion care in this country. So for this episode, we're going to talk to two people who have quite a bit of insight into the plight of abortion providers in this country.

Jessica Pieklo

David Cohen and Carol Jaffe have written a new book together called *After Dobbs, How the Supreme Court Ended Roe but Not Abortion*. In *After Dobbs*, law professor David Cohen and sociologist Carol Jaffe interviewed 24 people across different fields and state political environments to uncover how the abortion-providing community and its allies prepared for and then responded to the momentous event of Roe's reversal. Taking place across three intervals, pre-Dobbs in early 2022, right after Dobbs, and then six months after that, these interviews showcase how the never-ending work of providers, supporters, activists, and volunteers has ensured not only that most people who want abortions are still getting them, but also that abortion numbers are going up, even without Roe.

David and Carol, thank you so much for joining Boom! Lawyered.

David S. Cohen

Thank you for having us.

Carole Joffe

Thank you.

Jessica Pieklo

And congratulations on the book. So, Imani and I wanna dive right in. And one of the things that immediately stood out to me as I was reading this is the importance of storytelling when it comes to abortion access and advocacy and really all of it. And you both come from very different professional backgrounds, right? Sociology and the law. And I was wondering if you could each speak about the role of narrative and abortion storytelling in writing this book from your particular disciplines.

Carole Joffe

In sociology, it's a very well accepted thing. We interview people and they tell us their stories and then we take their stories and write about them. For me, one of the great pleasures of working with David on this book and our previous one is that I was working with a person whose profession is not necessarily known for telling stories in a user friendly way.

Jessica Pieklo
Yeah.

Carole Joffe

So, I mean, we both, think we're both very much on the same page. Nothing makes the point better than having people tell in their own words what it means in this case to have abortion so under threat.

David S. Cohen

And for me, think, you know, as lawyers, we are usually representing clients and we need to tell their stories to win our case, to get them the relief they want. So it's a different version of that. But I think what Carol and I did in this book and what we've done in previous work, we really focus on storytelling from providers and supporters and advocates. There's a whole different group of people and we are not those people who do abortion storytelling with respect to their own abortion stories.

And they have really done incredible work, especially in the past couple years. And after Dobbs talking, people just out there telling their story of what they've needed to go through to get an abortion in a post-Dobbs America. That's not what we do in this book. We tell the story of the people providing the abortions or providing the support, because to us, their stories are so important in showing that the Supreme Court can say one thing, but there are people out there who are going to fight it tooth and nail and try to make it have as little impact as possible. And those are the stories that we tell in this book.

Carole Joffe

And I would say one more thing about storytelling. I mean, people like us can't tell a story unless people are, to say the obvious, willing to tell them. And I think Dobbs presented such a crisis that people who perhaps in the past would have been more hesitant. It's not so simple to be quote, out there as either an abortion provider or an abortion patient or even an advocate.

The sense of crisis has been so extreme with respect to Dobbs that people are saying, you know what, I'm gonna use my name. And I should say that in sociology, it's not necessarily the custom to use real names. mean, most of my writing before I met David and started working with him was using made up names, which is part of...

Jessica Pieklo
Mm-hmm.

Carole Joffe

sociological tradition, I've been very moved. We asked everybody we interviewed, can we use your real name? It's fine if we don't. Everybody said yes.

Jessica Pieklo

That's fascinating. do you see some, mean, you hinted at that, but it sounds like some of that willingness to be more public facing as a result of jobs. And that is a different sheen for providers and people providing direct services now who face a different type of threat, right?

Carole Joffe

Yes? Um... Yeah?

David S. Cohen

Yeah, I think the people that we talked to, you they didn't frame it this way, but in a way they're part of a resistance movement and they feel like they need to be out there and have no shame in what they're doing and want to be proud of what they're doing. I think, in work we've done in the past, both together and separate people have wanted their names held back. And we totally respect that. The people we were talking to said this time, at this moment in time,

Jessica Pieklo

Mm-hmm.

David S. Cohen

They're going to have their names out there and they're going to shout at what they're doing because people need to know the effect of Dobbs, but also what people have done to try to mitigate the effect of Dobbs.

Jessica Pieklo

That really segues nicely into the next question we have, which is really broader than the subject of your book, but ties really into it, which is the threats to abortion access in the second Trump administration. They are many. As we have talked about on this podcast, as each of you have noted in your own fields, for each of you, what are the top two things that our listeners should be informed of right now. Because one of the things that Imani and I are trying really hard not to do is just to create doom and panic. But there are some very real threats that are here now. I think creating sort of a table of contents, if you will, in a way to help folks strategize and organize their thinking and approach to them. And so from your perspectives, what are those things that should be on our listeners' radars?

Carole Joffe

Do you want to go ahead David or do you me to go?

David S. Cohen

So I think the number one thing, the thing that keeps me up at night is the Comstock Act. Because it's a way for the anti-abortion movement to get around needing to pass a new law, get around the filibuster, get around public opinion even. They can just say, hey, this law

from 1873, which in its text says it bans the mailing of anything that can produce an abortion.

Jessica Pieklo

Yes, I knew you were going to talk about Comstock. Thank you.

Imani Gandy

Mm-hmm. Yes. Thank you.

Carole Joffe

I knew it too.

David S. Cohen

Although its history is much more complicated and is not as the anti-abortion movement reading it now. It's not consistent. This was an obscenity law about medicine and things mailed outside of the medical profession. So abortion care with a doctor should not be covered by the Comstock Act, the history shows. But the anti-abortion extremists are reading it to mean anything that can produce an abortion, whether it's pills, equipment, supplies can't be mailed and if nothing can be mailed then no one grows these things in their backyard. So it would shut down abortion if their reading were adopted. And so it's really scary to think of the Department of Justice, the Federal Department of Justice just turning on a dime and saying this is now our reading of the Comstock Act and we're going to go after anyone who's mailed anything that can produce an abortion.

And just to be clear to all listeners, it also applies to United States Postal Service and private services like FedEx, UPS, etc. That's really scary. And I think that the biggest thing that people can do about this is talk about it and talk about it's like the it goes so much beyond abortion. People probably learned about maybe learned about this around contraception. That was removed in 1971. So it clearly doesn't apply to contraception. But it also does still have language about immoral and indecent purposes, anything for immoral or indecent purposes. So it can go, you know, they could go after AIDS drugs, they could go after gender affirming care treatment through the mail. They can go after anything related to sexual health and reproductive health. They could go after lingerie and sex toys. You know, anything that Pam Bondi thinks is immoral or indecent or the people who work underneath her.

Jessica Pieklo

Hmm?

Carole Joffe

I'm just...

David S. Cohen

And that's really scary and people should be talking about this extreme reading and the abuse that it can be put to beyond just abortion. Because I think it has been effective in talking about this, that in what we are 40 days into the Trump administration, I don't think anyone in the administration has talked about Comstock. And that's really good, for all I know tomorrow could change but...

Jessica Pieklo
Mm-hmm.

David S. Cohen

So far they haven't and I do think that's partly because people have been out there talking about how terrible this would be and we need to keep it up and eventually repeal it. The conditions are not present to do that right now but when those conditions are present this law needs to be repealed.

Jessica Pieklo
Amen. Carol?

Carole Joffe

Well, for me, one more thing about the Comstock law, just to show you how bizarre it is. For about 20 years, I've been teaching a webinar on the history of abortion and contraception to fellows and family planning and abortion. And I always have a slide on Comstock and I talk about it as this weird historical thing. Now, I mean, to try to explain to young doctors how crazy this is, that this religious fanatic from the 19th century is now possibly the vehicle to overturn abortion. It's surreal. But in terms of the things that people should be very worried about, I mean, what keeps me up at night, among other things, is... is the Trump administration has not done all that much about abortion. mean, they haven't, as David just said, touched Comstock yet, but they did make it clear that they are not intending to enforce the FACE Act. And that's sort of been under the radar. know, junkies like us, of course, pay attention to that. I mean, if you think about that,

Jessica Pieklo
Yeah.

Carole Joffe

in combination with that they released all the January 6th people, renamed them patriots. I mean, if you think about that, it's not hard to conclude this may become open season on abortion providers. If you have an administration that valorizes criminals, And that's basically saying, I forgot the exact wording, except in extreme cases, would not enforce it. I mean, just to make sure your listeners are all on the same page here, the FACE Act is freedom to access to clinic entrances. And it was put in place by Bill Clinton and signed by Bill Clinton in the 90s and had a huge effect in really making clinics more safe. mean, before the FACE Act, if you go back to the 80s, there were these huge seizures of blockades of clinics, and the FACE Act had a huge, huge impact. But now if people were

gonna blockade themselves to clinics, they were gonna be arrested and sent to jail, and a certain number have been.

Carole Joffe

David, did you want to say anything more about the FACE Act?

David S. Cohen

One other thing that we haven't mentioned is the reevaluation of mifepristone approval at the FDA. That could have really dire effects, whether it's just reinstating some of the restrictions that were removed during the Biden administration, like allowing it to be mailed and going back to in-person requirements, or going all the way back to 2000, saying this is no longer approved. On this one, there is...

Jessica Pieklo

Mm-hmm.

Imani Gandy

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David S. Cohen

There is a workaround that is not as, you it's not perfect, but the, you know, abortion pills are a two-drug regimen, mifepristone and misoprostol. And around the world, misoprostol alone is used to provide abortions. It's not what's done in the United States. It's these two drugs. If they reevaluate the mifepristone requirements, providers in this country could shift to misoprostol by itself.

Jessica Pieklo

Mm-hmm.

Jessica Pieklo

Mm-hmm.

David S. Cohen

And I know a lot of them have been thinking about this planning on this because of the case that was in the federal court, still is in the federal courts, but went to the Supreme Court last year. So providers will adapt the best they can. I mean, that's the message of our book, right? Providers will do everything they can until they can't, but until they can't, they will. And so if they have to move off of mifepristone in order to get pills distributed widely, they will.

Jessica Pieklo

Mm-hmm.

David S. Cohen

You know, there are more side effects. Some people say it's less pleasant experience, but it's effective and it's safe. And so people will probably move to that.

Jessica Pieklo

Yeah, that's what I've heard.

Imani Gandy

Do you not think that, oh, I was just gonna ask, do you not think that there would be then regulations that would turn and start to target misoprostol and given the fact that misoprostol is used for like IUD insertion and other things, do you think there's just going to be a sort of cordoning off of what it can be used for what it can't and how would that even be enforced?

Carole Joffe

It's just, oh, yeah, go ahead.

David S. Cohen

Yeah, I mean, that's a really good question because misoprostol is a drug that was FDA approved for ulcer treatment. And so they would have to go back to that approval to change it. And no one's challenging its effectiveness and safety for ulcer treatment. It has a bunch of off-label uses, some of which you just mentioned and what we've been talking about in terms of in conjunction with mifepristone for abortion.

Jessica Pieklo

Yeah.

Imani Gandy

Hmm.

David S. Cohen

It would be hard for them to go back and try to regulate misoprostol because of its other use. And off-label use is generally allowed. It's not regulated by the FDA, and states generally allow it. Now, certainly, there will be states like Louisiana and Mississippi and Texas who might try to restrict misoprostol, but abortion is already illegal there anyway. And people who are mailing pills into those states already have issues around violating those states'

Jessica Pieklo

Mm-hmm.

David S. Cohen

So I don't think states adding, the states that would add something about misoprostol, I don't think that will deter anyone. And I don't think the FDA would be able to because it's approved for ulcer treatment. That being said, in a world without laws, which, you know, for

the past 40 some odd days, it seems like maybe that's where we are. You know, I can't ever predict the future and say they wouldn't go after misoprostol, but it would be a lot harder.

Carole Joffe

Yeah, I agree that they probably wouldn't be able to ban misoprostol. And as David says, it does give a backup, but there's several problems. David already mentioned harsher or more unpleasant side effects. But for me, the real...

The real problem and the reason I hope it really doesn't happen is it gets a little bit more complicated to administer. As we know, much of abortion now is taking place through telehealth, which itself is at risk. If you want to put us in the hierarchy of worries, that's one thing to another thing to worry about. But my understanding, and it gets a little bit in the weeds here,

Jessica Pieklo

Mm-hmm.

Carole Joffe

But if you're doing just a misoprostol abortion, you may need repeat doses. And that makes the whole telehealth, I mean, it doesn't make it impossible, but it just makes it more complex. You have to re-contact the telehealth provider, and that's not always all that simple. So it is not a slam dunk.

Jessica Pieklo

Mm-hmm.

Carole Joffe

Good replacement. And mifepristone is also used for other things like miscarriage management. the targeting of mifepristone is the poster child of inappropriate meddling for political reasons and what should be good obstetrical care.

Jessica Pieklo

Absolutely. just one of the things that I've also heard as a concern or a thing to be considering very soberly in misoprostol only regimen is the additional dosages create additional points of contact potentially for surveillance and law enforcement too. So that if folks are understanding the process differently than the normal two-pill regime if they're experiencing bleeding that for them may seem irregular or whatever. Any point in time where there is an additional sort of break in that chain creates an opportunity for surveillance and law enforcement intervention that I know advocates have expressed their concern with around as well. But I think to your point, providers need to be able to do what they need to be able to do because people need to be able to access health.

Carole Joffe

Yeah, good point.

Jessica Pieklo

You both had mentioned a couple things that are keeping you up at night and what can our listeners do, for example, to agitate around the Comstock Act? David, you had mentioned it's good that we're talking about that, but our listeners very much like to their action focused and they want to know what they can do for the things that you folks have identified as concerns. Where are good places for them to start to feel useful?

David S. Cohen

Um, you know, the short term is just try to make sure people are aware of its effects to that maybe that will stop the Department of Justice from enforcing it and enforcing it broadly. Um, longer term, you know, listeners who, especially listeners who have Democratic representatives and senators need to be talking to those offices about getting on board the train to repeal it.

Because again, that's not happening right now, but maybe it can in four years. And the Democrats were not all on board with the idea of repealing Comstock last year when there was a proposal in Congress. So we need to make sure that the moment we win back the House, the Senate, and the presidency with pro-choice majorities, that those pro-choice majorities are ready to and will repeal this law. You know, I tell my students all the time that the first law that Obama passed was the Lilly Ledbetter Act because people are so clamoring and upset. And if we get the situation where we have a trifecta again with pro-choice voters, members of Congress and a pro-choice president, it needs to be the first thing they do. Like no waiting, like get rid of the Comstock Act. And that will only happen if constituents are spending these years talking to their representatives and saying, this is what really bothers me and you need to make it happen the second you can. And I also love the idea of you know, encouraging representatives and senators to introduce bills, even though they know they're going nowhere, force the anti-abortion folks to be on the record that they want Pam Bondi judging what's indecent and moral in your mail, and, you know, force the issue, even if you know the ultimate issue is going to lose right now, because it can move public opinion and maybe even move some moderates in the Republican Party if they exist anymore to feel like they are actually not comfortable with this law that gives such leeway to prosecute federal prosecutors to judge what's immoral and indecent.

Carole Joffe

Yeah, I think it's a very good strategy to talk about the potential of Comstock. I don't think most people realize it could, mean, most people, well, most people probably don't know what it is, but those who know what it is think it's just about abortion. used to be about contraception, but they got rid of that. The idea that, As David put it, Pam Bondi can see what kind of mail you get is beyond the pale for most, as it should be for most, for everybody. But I took your question to be what can people do not just about Comstock, but in general? Yeah. Well, in general, know, these things sound lame because they're so obvious and people are probably sick of hearing them, but give money.

Jessica Pieklo
Correct. Yeah.

Carole Joffe

Support clinics. We have a whole chapter in our book about the, well actually throughout our book, the incredible importance of advocates. mean, the people running the abortion funds, the navigators who, you've got somebody on a plane to Denver for her abortion, but oh, there's a snowstorm in Denver.

We re-routed to Las Vegas. I mean, that's a story that a doctor told us, you know, with admiration. So people should support their funds, perhaps join their funds to say the obvious every time there's a local, any election, not just a national one or a Congress one. If there's an election for a local, maybe not dog catcher, but zoning, know, zoning is really important.

I mean, it's boring, it's weedy, who thinks about zoning? On the other hand, that establishes whether or not new clinics can be set up there. So as a voter, you have to examine every single race and assess whether it has potential to affect the abortion issue. You obviously have to vote pro-choice. And then there's... there's other things, writing letters to the editors, writing letters to local papers are really important. Going, if Republicans still have them, going to town halls and asking the representative, do you support getting rid of abortion all over this country? And if the person hams and haws, you say, well, do you support the Comstock Act or not?

So those are the kinds of things that people can do. None of them sound very novel or dramatic, but that's what we have to do.

David S. Cohen

Yeah, and just one thing to add to that, The role of volunteers in clinic escorting has been around a long time, but practical support organizations are a newer phenomenon, and they've played such a huge role in the past two and a half years, almost three years now, in terms of driving people to places and getting them housing, getting them childcare when they need it during an abortion appointment, food for people who are travelers.

Jessica Pieklo
Mm-hmm.

David S. Cohen

You know, we've gone from one in 10 people traveling across state lines to one in five people. So it's doubled the number of people who are traveling across state lines to get an abortion. And everyone who travels across state lines, right, travel is something that just it's burdensome for a lot of people and almost impossible without support and money. And so,

you know, some people who are thinking, I don't have much money to give. If you have some time and you have a car.

You can drive people to appointments who aren't able to do that themselves. For a lot of people traveling, getting around locally is hard in a new place, so you can support them that way. And there are organizations all over the country that are looking for volunteers to do that real practical reality of getting some person from point A to the abortion clinic and then back home because they can't do it themselves.

Jessica Pieklo

Yeah.

David S. Cohen

There have been so many people stepping up and doing that since Dobbs, people doing it before Dobbs too, but so many more stepping up and doing that post Dobbs. And that's been a big part of the story and it needs to continue, right? It can't just be for the year that we're all angry about Dobbs. It needs to be until we have a national right to abortion again. And beyond that, until abortion is real and accessible for everyone, not just legal for everyone.

Carole Joffe

That's fun.

David S. Cohen

So this kind of volunteer work is going to be needed for a long time and now is a great time to get involved.

Carole Joffe

All kinds of things. A lot of people drive from one state to another with their families. Single mothers drive with their children. Often you hear stories of kids waiting in the car. Watching children while their parents get, while their mother's getting an abortion. I mean, that's something people can do. I mean, so it's...

Jessica Pieklo

Mm-hmm.

Carole Joffe

Just to echo what David said, it's absolutely essential. It really helps answer one of the most interesting questions since Dobbs. How come since Dobbs, when everybody expected disaster, the number of abortions actually has risen slightly? Not a lot, but it has risen. There's more abortions after Dobbs than the immediate year, two years before Dobbs. One big answer to that question is exactly what David was just talking about. The phenomenal networks of people helping people get to abortions. The other answer to that question is the huge influx of money that happened right after Dobbs. The expression often

used is rage spending. People were so angry about Dobbs they just gave a ton of money to local funds, to the National Abortion Federation, to Planned Parenthood, to a local clinic. That raged spending, unfortunately, has dropped off. It's not disappeared. We had an election. A lot of people gave their money to the election, I mean, to different candidates. But without this money, I mean, as David said, we end our book on a quite sober note saying that if these kinds of spending and volunteer efforts are not sustained, it will be a very serious situation.

Jessica Pieklo

Imani, did you want to jump in?

Imani Gandy

Um, yeah, I do want to talk about shield laws for just a moment. Um, because I was just actually rereading your article that you wrote, um, David, the abortion, the new battleground and you know, what, what is your take on what's going on with Louisiana and Texas and Dr. Carpenter? Do you have any idea about how you think that's going to go or how, or what is the best way for this all to shake out? I'd just be interested in your thoughts, given your work in that area.

David S. Cohen

Yeah, so shield laws are one of these great stories post-Dobbs of 18 states, pro-choice states have passed laws that say we're going to protect providers in our state who care for patients no matter where they've come from and through various legal mechanisms we don't have to get into now. But eight of those states allow providers to mail pills across state lines, even if they don't have a license in the state where they're mailing pills to. And that's really novel.

And there aren't that many providers in the country who have taken advantage of that part, those telehealth shield laws. We interview one in our book and she talks about the importance of what she sees as these kind of shield laws to expand access post-Dobbs. And that's what we've seen. You know, it's around 10,000 packs of abortion pills are mailed every month by telehealth shield providers. And the vast majority of them are in two states where abortion is illegal.

Jessica Pieklo

Mm-hmm.

David S. Cohen

And so people are getting abortions through these shield laws. Now there's this doctor in New York, Dr. Maggie Carpenter, who's one of these shield providers, and she's been caught up in two different legal situations, one in Texas and one in Louisiana. In Texas, the attorney general has sued her on behalf of some guy who's not identified in the complaint as the boyfriend or ex-husband or whatever, just some guy who says he had, you know, is the father of this baby, his words, not mine, that this woman aborted. And so had an

abortion and he's upset about it. So he went to the attorney general because that's what you do apparently. And the attorney general has sued the doctor who provided the pills, which they claim is Dr. Carpenter. Now she's in New York, the lawsuits in Texas. It's hard to force someone in New York to participate in a case in Texas without the New York courts participating, but the shield law says, we're not gonna participate. So the New York courts have not been able to force her to participate in that lawsuit. There was a default judgment a few weeks ago, meaning they said, okay, Texas, you win because she didn't show up. Now Texas is going to have to go to New York to enforce this judgment. It's for over \$100,000, attorney's fees. And so the New York courts under the shield law, are probably not going to enforce this judgment. And then there, you know, depending on how far the Texas Attorney General pursues this, there will be a battle over this in state court in New York, maybe into federal court. I think the shield law, and certainly I'm biased, I helped work draft the New York shield law and lobbied for it.

Jessica Pieklo
Mm-hmm.

David S. Cohen
But I think New York's on very good grounds here because there's an exception under the, generally states have to recognize each other's judgments, but there's an exception when the judgment is penal in nature, meaning punishment instead of compensatory. And so this lawsuit is not saying, well, this woman who took these pills was injured and we need to, like normal tort case, we need to compensate her for her injury. It's basically just, we're pissed off that you sent these pills to Texas and now we're suing you.

Jessica Pieklo
Great.

Imani Gandy
Right.

David S. Cohen
right? And we want to find you basically through the civil court system. That's punishment. That is not required to be recognized under the Constitution. And that's been around for a long time, century plus, in terms of doctrine. Now, we all know that the Supreme Court can overturn whatever it wants. So if it wants to overturn that, it will. But under the law as it exists today, she's on really solid ground that she will not have to pay this judgment. It's a similar story, but different in Louisiana.

Jessica Pieklo
Yeah.

David S. Cohen

The claim is that she provided pills to someone who had an abortion. Somehow the authorities found out and they filed a criminal case against her. So they're prosecuting her. Part of the shield law is that the governor of New York cannot extradite someone for mailing pills to someone when that person has been compliant with New York law and Dr. Carpenter has been. So Louisiana wanted to extradite Dr. Carpenter and get her or have her extradited to Louisiana—

Jessica Pieklo
Mm-hmm.

David S. Cohen
because you can't try someone criminally without them there, physically there. And so they wanted New York to send her to Louisiana and New York has refused. And again, will Louisiana press this in state or federal court? Probably, but I don't know for sure, right? And if it does, I think again, New York's on solid ground because generally you do have to extradite, the constitution says you have to extradite someone—

Jessica Pieklo
Mm-hmm.

David S. Cohen
who was physically present in the state when the alleged crime took place. So if Dr. Carpenter had been physically in Louisiana at the time of, you know, she provided the abortion pills, New York would have no, they couldn't pass a shield law. They have no discretion because the constitution requires extradition, but she wasn't. She was in New York. The constitution doesn't say anything about that. So it's optional for New York to, under the constitution for New York to extradite her.

Imani Gandy
Interesting.

Jessica Pieklo
Mm-hmm.

David S. Cohen
But the shield law says no. So state law says she won't be extradited. And that's what's happening so far. That's where we are. We're in this standoff with New York saying we're not extraditing, Louisiana saying please extradite. And so far there hasn't been any further proceedings. But again, Supreme Court jurisprudence on this is super clear, has been for a long time, over 150 years. And so, you know, again, they could change it, but As the law exists today, and this is very much based on the text of the Constitution too, New York does not have to extradite her, so she's safe there. That being said, there's an extradition request out for her, and if it were me, I wouldn't leave the state of New York,

because there's risk that if you go somewhere else, they might extradite you, so I would stay in New York if this were me.

Imani Gandy
Right.

Jessica Pieklo
Yeah.

Imani Gandy
Yeah.

Carole Joffe
Even to another shield-loss state.

David S. Cohen
Yeah, technically the shield law of so Vermont has a shield law. Vermont shield law applies to people who have Vermont licenses and were acting in accordance with Vermont law in Vermont at the time and she was not. So is it a risk? Is it a high risk if she goes to Vermont? Probably not, but it's more of a risk than staying in New York.

Imani Gandy
Right.

Imani Gandy
Right. Are there other sort of bright spots when it comes to, you know, abortion law, abortion politics right now, in terms of aside from the shield laws, but are there other sort of mechanisms in place to protect abortion access that you see as worth mentioning to our listeners?

David S. Cohen
So the one thing I'll mention, has been really beyond shield laws, which has been a really bright spot, is that advocates like all of us have been angry for years before Dobbs that all these states had all these restrictions in place, like saying only doctors can provide abortions, 24-hour waiting periods, minors requirements. And we've been clamoring for those to be removed, especially in states that are liberal pro-choice states that kept them. And the states just, you know, a lot of them just didn't feel the urgency, didn't decide they want to do that. Dobbs really lit a fire under a bunch of states. And there have been a lot of states that have gotten rid of restrictions that we've known for a long time have been harmful. And Dobbs, you know, because it's such a terrible thing, a bunch of legislators in pro-choice states said, what can we do? And one of the things they did was take an inventory of their state laws around abortion.

Jessica Pieklo

Mm.

Mm-hmm.

David S. Cohen

and rid of restrictions and even put in place some funding mechanisms like added Medicaid funding or just direct funding to clinics and abortion funds, which they should have been doing decades ago, But, know, Dobbs brought this about and, you know, better late than never. it's, you know, any other, any states that are out there that are, you know, have pro-choice legislatures that still have restrictions on the book, they need to get rid of them.

Imani Gandy

Right.

Jessica Pieklo

Mm-hmm.

David S. Cohen

Take the opportunity now, get rid of them, people are pushing. And that has been, I think, bright spot legally post-ops.

Carole Joffe

I mean, the governor of California before Dobbs, but when it was clear that it was probably gonna happen, convened a group called the Future of Abortion in California, it's called FAB, and all kinds of measures passed with funding, a task force to make sure, I mean, to sustain,

Jessica Pieklo

Mm

Carole Joffe

clinics, for training, for...

Carole Joffe

non-physician providers like nurse practitioners and midwives. So some states, I mean, just, I'm just giving you an example of a just tremendous amount of activity in California. That's the good news. I mean, the bad news is California's far. So the place is most affected by Dobbs, the South and the Midwest.

Jessica Pieklo

Mm-hmm.

Carole Joffe

I mean, even with funding, it's hard to get to California. But when people get here, there are services awaiting them.

Jessica Pieklo
Mm-hmm.

Jessica Pieklo
Yeah, we've seen some of that here in Colorado as well. Our lawmakers, I think, did some really forward looking legislating around the Reproductive Health Equity Act early on in terms of really shoring up against encroachments on fetal personhood in addition to striking down some abortion restrictions. And I know that they have a sort scaffolding strategy in attacking some of the other restrictions that remain in place in Colorado. So I do think it's good to highlight that because I mean, to your point, Carol, yes, it's not, those aren't activities that are happening in banned states, but the more of those states that where it can happen, we can create robust access care networks if we can get folks to them. And that's better than nothing.

Carole Joffe
Well, Colorado, I mean, it was obvious to us doing this work, what an important role Colorado was playing. I mean, you are very strategically, relative to California, very strategically placed. In our book, we cite the numbers of out-of-state people who've gone to Colorado and Illinois. It's huge.

Jessica Pieklo
Mm-hmm.

Jessica Pieklo
Yeah.

Imani Gandy
All right.

Jessica Pieklo
I never think of our geography as strategically placed, but that's a really lovely framing. Now I'm gonna adopt it.

Imani Gandy
Hahaha!

David S. Cohen
Thanks

Carole Joffe
Please don't.

David S. Cohen
You

Jessica Pieklo

Well, I want to be mindful of time. do have one more question for you folks. What surprised you the most writing this book?

David S. Cohen

So when we went into this, so what we did, we interviewed people three times over the course of 2022. We knew Dobbs was coming, right? Just like all of us. We interviewed people in January, so six months before the decision. We interviewed people right after the decision. So within a couple of weeks. And then we interviewed people six months later. The same people, right? We had no idea exactly where these interviews would go. What was the story? And we kind of thought the story was going to be sort of, the impact of a decision in devastating abortion access. So what surprised me, I can say, is that at the same time that we were really reviewing all our interviews, the numbers started coming out. And the numbers were showing something that we were starting to talk amongst ourselves about, which is, look, yes, we interviewed people in states where abortion clinics shut down.

And those stories, it's terrible what happens to the patients, to the community they serve, and to the people that work there, right? But a lot of our other stories, a lot of the other people we interviewed were telling stories about how they made things work. The hoops they jumped through, the creativity they had, the back and forth they had with the law, but they still made it work. And as we were seeing that theme in our book, in our research, the numbers started showing up.

And the numbers were surprising to me, surprising to Carol. We thought abortion would go down 100, 200,000 a year. So the numbers were shocking to us while also confirming what we were seeing was the pattern in our interviews. So that was probably the biggest surprise to me is what the quanti- you know, we're qualitative researchers. We talk to people, we tell stories. The quantitative researchers, the people who study the numbers, what they found was so surprising.

Jessica Pieklo
Definitely.

David S. Cohen

but at the same time confirmed what we were seeing in our book. And that's really sort of the overarching story of our book, which is that the numbers went up and here are the people who made it happen, the people we interviewed.

Carole Joffe

Yeah, same for me. I mean, was not surprised having studied providers for many, many years. I was not surprised that people would do their best and would do what they could. I was surprised how much they could do. I mean, just echoing David, that the numbers went up.

For the last, before Dobbs for the last several years, abortion numbers steadily went down. For a long time, a million, I mean, right after Roe and then the years after that, I mean, a million, a million two, a million five, I think in 1982 was the high point, but don't quote me on that.

But the numbers have started to go down. think before Dobbs, was maybe something like 880,000, something like that. And then after Dobbs, it went past a million again. I mean, that's just so counterintuitive unless you talk to the people who we talk to.

Jessica Pieklo

That's fascinating. Where can folks find your book?

David S. Cohen

Well, it is available as of March 25th. It can be pre-ordered on all of the websites, IndieBound, bookshop.org, are certainly two of them. But, you know, your favorite place that you buy books online. absolutely.

Carole Joffe

and Beacon Press itself.

Jessica Pieklo

And we'll have a link in the show notes as well. David, Carol, thank you so much for joining. It's been entirely too long since we had the chance to catch up with both of you.

David S. Cohen

Yeah, thank you both. And thank you both for always providing such incredible information and also entertaining information about a depressing topic sometimes. The work you do is incredible. Thank you.

Jessica Pieklo

Oh, thank you so much. I don't know if either one of you are planning on being in D.C. for the Planned Parenthood Medicaid arguments, but we are now going to do a live podcast with Liz Winstead's group after the argument. So if you are around, come get your gallows humor on with us, please.

Imani Gandy

Thank you.

Carole Joffe

Oh, good, good.

David S. Cohen
Always fun.

Imani Gandy
Yeah. Boom buzz killed. Should be great.

Imani Gandy
If you want to join us in showing abortion providers some love and, oh, and support, you join us. I was like, what? I don't understand that sentence. Love and support, it's like a thing. Got it. If you want to join us in showing abortion providers some love and support, you can join us on social media, generally, Blue Sky. We're on Blue Sky, we're on threads, we're on Instagram, and we're on TikTok. And also you can find us on Reddit.

Imani Gandy
So if you're a Reddit person, go check us out on Reddit. We would also like to encourage you on April 3rd to come and see us in Washington, DC at the Black Cat where we are doing a live show with the hosts of Feminist Buzzkill, right? With Liz and with Moji and it's gonna be so dope. It's gonna be so fun. So please come and see us if you are in the DC area. Again, that is April 3rd at the Black Cat.

Jessica Pieklo
April 3rd at the Black Cat, doors at seven, show at eight. Imani and I are gonna be up way past our bedtime.

Imani Gandy
Way past our bedtime. But we're going to do it for you and it's going to be a really good time. So please check that out. And on that note, what are we going to do Jess? We'll see you on the tubes folks and hopefully in DC.

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