

Boom! Lawyered 219: The Kavanaugh Allegations

- Imani Gandy: Hello fellow law nerds. Welcome to another special confirmation hearing episode of Boom! Lawyered. A Rewire.News podcast hosted by the legal journalism team that really can't believe we're still here talking about the goddamn confirmation hearings because things will never stop happening and this is Jessica's and my lot in life. I'm Imani Gandy.
- Jessica Pieklo: And I'm Jess Pieklo. Rewire.News is the leading nonprofit journalism outlet devoted to reporting on reproductive and sexual health rights and justice, and the team legal podcast is part of that mission.
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- Jessica Pieklo: Yes, please do. You can support us at rewire.news/donation.
- Imani Gandy: That's rewire.news/donation.
- Jessica Pieklo: Thank y'all so much and a big thanks to our subscribers and welcome to our new listeners in this seventh circle of hell we have called the Kavanaugh confirmation hearings.
- Imani Gandy: I feel like we need to, I don't know, offer cookies and milk, maybe protective eyewear for our new listeners because if you're coming in hot and heavy on this episode, you got to go back. Go back! You got to go back about of four or five episodes to really understand the nature of the ... I'm going to say fuckery that is going on right now on the hill in Washington, DC; where the Senate Judiciary Committee is now trying to decide whether or not to put essentially someone who's been accused of rape and sexual assault on the Supreme Court for life.
- Jessica Pieklo: Yeah. Unless you've been under a rock for the past week, you've likely heard about the allegations that Dr. Christine Blasey Ford has launched against Brett Kavanaugh and they're real serious. I know that when I first heard about them ... Well, when I first heard that Senator Feinstein had this letter that raised concerns enough for her to forward it to the FBI, I know my reaction to Imani was, "Oh boy. What is this going to be?" And we all thought, maybe had that gut reaction, of what it could be? But then when we heard from Dr. Ford herself in her Washington Post piece -- that was something and so we're talking about very serious allegations against Brett Kavanaugh.
- The Senate Judiciary Committee is apparently going to give them an airing on Monday.
- Imani Gandy: I have to say if you're a Gen X or older like Jess and I are, you likely remember the Thomas confirmation hearings and I know I am having flashbacks. I feel like

we are in a moment where we have a chance to do better by Dr. Ford than we did by Dr. Hill and I hope that we capitalize on that moment. Unfortunately, it doesn't seem like we are, based on some of the reactions from people on Twitter. Jess, what were your first reactions when you heard about the Kavanaugh allegations?

Jessica Pieklo: Frankly, I was pretty sick to my stomach. It's one thing to exist in a state of permatrauma in the Trump administration and all of the news of sexual abuse and assault that has swirled around not just President Trump himself, but his associates. Knowing and paying attention and covering the Kavanaugh hearing and hearing from Republicans and the parade of women that they put around Kavanaugh, then to have a very serious, very detailed allegation of an attempted rape come out and to hear Republicans and Brett Kavanaugh himself basically say not that, "Oo, this is something that is terrible and would be disqualifying if true," but their immediate reaction was, "No. Dr. Ford is lying," and that stung extra for me personally. I'm tired of the bitches be lying thing.

Imani Gandy: I'm so tired of the bitches be lying thing and I was expecting that to be the initial response, but the hot take that I didn't expect was, "Well, even if the allegations are true, do we really want to say that something a high school boy did when he was 17 is disqualifying and doesn't say anything about the character of the man that he is today?" I didn't expect to hear that from a lot of women in particular. I expect to hear a little bit of that from men because when allegations like this surface, you tend to get a lot of men who essentially tell on themselves, who say stuff like, "Well, if Brett Kavanaugh can be brought down by allegations like this, then every man should be worried." And I'm like, "Unless you attempted to rape or have raped someone, then you don't need to worry." And I know plenty of men who have neither attempted to nor actually raped anyone. I feel pretty confident in saying that suggesting that all men need to be worried when allegations surface like this, it does a disservice to men because it assumes that all men are rapists.

That's not the case and that is certainly not something that we want to be teaching our kids, that's not a place where we want to live, and so I think it's depressing that we are going through this, "Oh, boys will be boys." Date rape is a thing that people do in high school. That really bothers me that we're settling in to this world where sexual assault is not only expected, but excused.

Jessica Pieklo: Mm-hmm (affirmative). So, I think as the news trickled out and we got more and more details, then we had Dr. Ford herself tell her story essentially and come forward and no longer be anonymous, it was really interesting to see the Republicans and Kavanaugh first double and triple down on denials and this confirmation hearing is moving full speed ahead, which would have been a vote on his nomination on Thursday to now actually holding a hearing on Monday on these allegations, a public hearing and potentially giving this an airing. Although I'll be honest Imani, I'm pretty skeptical about what Monday is going to look like.

Imani Gandy: Yeah. Like I said, I think that I'm having Anita Hill flashbacks. I think those hearings were really tough on the country as a whole. Certainly, they were tough on Anita Hill and I want to be clear that the country as a whole let her down. Black people let her down, white people, everyone let her down, so I feel like we have a chance to not make that mistake again. Yet, like you, I have a gut feeling in my stomach that we're going to make that mistake again. I'm wondering if there are any ways that Democrats and Republicans could act, anything that they could do to signal to the American people that they are taking this seriously. I don't know. Is there anything they could do?

Jessica Pieklo: Yeah. Let's talk a little bit about what we can expect Monday's hearing to look like. First and foremost, it needs to not be a sham, right? A lot of the complaint around the Anita Hill hearing is that it turned into a circus and was not about Clarence Thomas, but was in fact about interrogating and tearing down Professor Hill, so that is the really low bar that the Senate judiciary has to meet. Now I will say that there is a part of me that feels some hope that the Senate Democrats can manage this differently because one enormous difference between Hill and Ford is that we have Senator Kamala Harris, we have Senator Hirono, we have Senator Klobuchar, we have Senator Feinstein, we have women on the Democratic side who had the opportunity to do some really good examination on Kavanaugh and really develop these allegations.

Because the other thing I think is important for folks to remember is that this is not a criminal trial. This is not going to be, as much as conservative pundits are going to try and turn this into can they prove the allegations. This isn't a trial where the burden of proof is on Dr. Ford. This is about Kavanaugh's fitness to be a member of the Federal judiciary and these are very real ethical standards. So, this isn't: can Dr. Ford prove her allegations beyond a reasonable doubt? This is an airing of the grievances, so to speak. What are the allegations against Kavanaugh? What does she want the committee to hear and get the opportunity to explain those circumstances and then Kavanaugh rebut, so that is one focus.

The other thing I want to say is so far Grassley said that it's only going to be Kavanaugh and Ford who are going to testify before the Senate Judiciary Committee and that leaves a lot of questions to me. Ford, herself, has identified this Mark Judge guy as a corroborating witness and he's gone on all sorts of records saying terrible things.

Imani Gandy: Yeah. Terrible things essentially like "you lived a less than zero lifestyle back then." He basically sounds like Robert Downey Jr's character from Less than Zero. Like this white prep school party situation in the 80s in DC. I'm not sure if that's the kind of guy you really want in your corner to testify as to your character, but that certainly the sort of guy that Democrats want to be able to show to the world and say, "These are the sorts of people that Kavanaugh has been associated with."

Another thing that I do want to bring up and point out is that immediately in the wake of the allegations, there was this letter signed by 65 ... Initially, the reports were that there were 65 of his classmates, they were women, who all came out and said, "Oh no. He was great. He was so respectful. He didn't rape me. I don't even know what she's talking about." Then, it turns out, of course, that he went to Georgetown Prep, which is an all boys school. So then, it became this 65 list of teenage women at the time who were teenagers at the time in the 80s, who happened to be hanging out on the mean streets of Bethesda. I'm envisioning a Grease situation where they're all wearing pink jackets and twirling their hair and snapping their gums like, "Hey Brad! How're you doing?" 65 of them who all loved Brett Kavanaugh and were able to, 30 years later, recall, "Yeah! Brett Kavanaugh. He was a real swell dude. Didn't try to rape me. Not even once."

Jessica, can you explain to me how it is people think that "he didn't rape me" or "he didn't try to rape me" is an actual cogent response to sexual assault allegations? Why are we still doing this?

Jessica Pieklo: Oh man. I have no idea. It's absurd. I saw something on Twitter that was like, "Well, let's hear from the two people that Jeffery Dahmer didn't try to murder and eat."

Imani Gandy: It's absurd.

Jessica Pieklo: None of that has any bearing, has any relevance, but it absolutely shows that Republicans are borrowing from their Clarence Thomas/Anita Hill playbook and trying to make this an inquisition on Dr. Ford and her testimony and her personality. You've already seen Senator Orrin Hatch come out and say, "Well, I talked to Kavanaugh personally and it sounds like this Dr. Ford is misremembering some things."

Imani Gandy: Especially when Kavanaugh said ... I heard reports yesterday that Kavanaugh specifically remembers not being at the party that Dr. Ford is talking about -- because I remember all the parties that I didn't go to in high school and specifically which ones those were and which people attended which parties. A lot of this already isn't making sense and I feel it going down that same path where Monday is going to be about grilling Dr. Ford and trying to prove whether or not she's a liar as opposed to demonstrating whether or not Kavanaugh is lying about the situation, whether or not he is fit to be on the bench as you said, whether or not there's something more to his testimony about Kozinski and what he knew about what Kozinski was doing on the ninth circuit. As you may recall, Alex Kozinski was a judge on the ninth circuit court of appeals who resigned in disgrace over allegations of sexual assault.

So, there a lot at play here and we're certainly in a different place than we were the last time you heard from us. I guess now the question is, what would need to happen in order to stop this nomination?

Jessica Pieklo: That's a great question. Initially when Senator Flake, who's a Republican on the judiciary committee, I believe it was yesterday had come out and said, "I don't think we can hold a vote until we have a hearing." The internet went wild and was like, "Woo, it's going to pause." And so I think Republicans, from their perspective, very rightly then started to figure out how can they keep their timeframe right. They want Kavanaugh on the Court as soon as possible, ideally by October 1st. That's looking a little dicer, but definitely before the midterm elections and the possibility of the Senate flipping hands.

So, what would have to happen to actually stop this nomination. I think one of the opportunities Democrats have on Monday is to make the case pretty clearly whether to not Kavanaugh perjured himself in his confirmation hearings. This is, again, not about the proving the truth of Dr. Ford's allegations as it is showing the manner in which Kavanaugh, as an adult, responded to them professionally. So, I think that's one thing. If there's hard evidence of perjury, that helps. This is going to be a circus. Even in the best run situation, this is going to be a circus, so who knows what's going to get said on Monday.

Imagine Senator Kennedy questioning Dr. Ford about these allegations?

Imani Gandy: Oh God. I don't want to. I honestly don't want to.

Jessica Pieklo: Yeah. If you had asked us when they first scheduled these hearings, we were saying none of this is normal in terms of the lack of disclosure and all of these documents, which, by the way, Senate Democrats have filed a lawsuit. All of those fights that you and I have talked about with regard to this nomination are still happening. This is another new one.

Imani Gandy: Oh God. As these thing tend to go, at least looking at history as these things have tended to go, it seems very likely that there may be more accusers or a possibility. I don't want to say very likely, but there is a possibility that there may be more accusers, and it could be that Trump decides that it's not worth the trouble to continue down this lane. On the other hand, Trump being Trump, I could see him thinking that, "Well, no. It's really important that we push this through because I'm not going to let these bitches who be lying take down my Supreme Court nomination pick." You have to remember, this is the grab 'em by the pussy, they let you do it, moved in her like a bitch guy, so he's not exactly a feminist. Not exactly going to be the guy who's going to want to take these allegations seriously.

So that in and of itself is concerning to me and it also, I think, demonstrates how little value he, and the Republicans generally place on the Me Too movement and how little they value women because remember, he's got Amy Coney Barrett over here on the side somewhere like, "Hi. I probably haven't been accused of rape and I'm just as conservative as Brett Kavanaugh." And bonus points, when it comes down to either reversing Roe or upholding really regressive abortion restrictions, you can rely on me to vote with the boys, and it's going to make you look better because you got a woman who's voting for

the ..." There's so many good angles and good reason to pick Barrett. It really concerns me that he's not done so because it means that he really wants this Kavanaugh in, and he doesn't give a shit what women think or what his accuser potentially might think.

Jessica Pieklo: Our listeners cannot see me right now gesticulating wildly because this is a moment where Imani and I are having a brain twin thing and didn't even work this out ahead of time, but you brought up Barrett which I think is amazing because one of the things that we haven't talked about of what could happen. I think you're right. I don't think Trump would withdraw his nomination. I think maybe Kavanaugh would withdraw his nomination depending on how dicey this is going to get and Republicans would launch the ultimate redemption narrative by then putting forward Barrett and that would be a really hard one for Democrats without the numbers and without some massive skeleton in her closet too to really block.

You're talking about that as a possibility. I'm like, "Nightmares."

Imani Gandy: Maybe we should cut this part out of the podcast because if we release it into the world, we might make it so.

Jessica Pieklo: Oh, we've done some terrible reverse manifestation or something.

Imani Gandy: We're going to have to do some quantum leap shit.

Jessica Pieklo: Seriously. So, the tl;dr is we don't know what's going to happen on Monday so far and we're recording and within the way the news cycle works in Trump's America, we could have four more emergency episode podcasts for four more days.

Imani Gandy: That's so true.

Jessica Pieklo: Oh gosh. Everyone will kill us if that's the case. Please, hopefully not. So what will happen on Monday? I don't know. It is definitely going to be historic. We will be covering it. I will be live tweeting the hearings as I want to do.

Imani Gandy: I'll be throwing spitballs at your head and making bunny ears and generally acting the fool in the peanut gallery as I am one to do.

Jessica Pieklo: Oh, that's why we're so good together.

Imani Gandy: Definitely.

Jessica Pieklo: And so we're trying to bring some levity to this, but I think it's probably pretty apparent to our listeners that this is a really serious situation and allegation and the jokes aren't coming easy in terms of drink them if you got them.

Imani Gandy: Yeah, it's very serious and again, I really hope that we're better now than we were 30 years ago, but I'm not optimistic because patriarchy.

Jessica Pieklo: Yeah. Yeah. Although I am happy that this time around, we've got folks like Senator Harris and those women particularly on the Senate Democratic side who can hopefully bring some order to this disaster.

Imani Gandy: Right, and we also have social media, which we didn't have back during the Thomas hearings, so there's more of a chance that, I don't know, feminism might be able to shine through a little bit, actual intersectional feminism might make a difference this time because back in 1991, it was either heard or saw it on the nightly news or you read it in the paper, but there was not a whole lot of opportunity for people to come together and I think what's been really impressive about using social media during this time is that it's permitted survivors a chance to get together and to come together and to share their stories. I've seen a lot of people sharing their stories on social media as a way of catharsis and I see other people reaching out to them.

So, I think we are in a more social, a more connected moment, and so maybe that will help. Maybe that will make a difference. But I do want to say that I know this has been triggering for a lot of people, so I'm offering virtual hugs to anyone who wants them and please, please take care of yourselves. Be kind to yourselves. Drink wine if you need to. Have some chocolate. It's important that we take care of ourselves and take care of each other.

Jessica Pieklo: Absolutely.

Imani Gandy: So, that's going to wrap it up for us today. You should follow us on Twitter. You can follow me @angryblacklady. You can follow Jessica @hegemommy h-e-g-e-m-o-m-m-y. You can follow Rewire.News @rewire_news and you can join our Boom! Lawyered Facebook group. Go search Boom! Lawyered on Facebook, there's a question you should answer, please answer it, and then we will let you right in and you can join in on the law nerdery that we hold down on Facebook.

Jessica Pieklo: Yeah. It's fun. Please join it.

Imani Gandy: It is fun.

Jessica Pieklo: And just a real quick shout out to our storytelling show Choice/Less. It's back. This season is so good, you guys. It's so good. It's all about teens, parents, the government and how those groups talk to each other or don't about sex and you can even hear Imani and I on it.

Imani Gandy: Yay! And also Jenn Stanley's the boss, so you definitely want to check that show out.

Jessica Pieklo: Yeah, really. So subscribe or listen to the whole series now at rewire.news/choiceless.

Imani Gandy: Thanks everyone. We'll see you on the tubes.

Speaker 3: Boom! Lawyered is created and hosted by Jessica Mason Pieklo and Imani Gandy. Nora Hurley is our producer. Our executive producer is Marc Faletti and the Rewire.News editor in chief is Jodi Jacobson.