

## **Boom! Lawyered 221: Ford Shines, Kavanaugh Whines**

Kavanaugh: I think you've probably had beers, senator, and so ...

Klobuchar: So, you're saying there's never been a case where you drank so much that you didn't remember what happened the night before or part of what happened?

Kavanaugh: You're asking about, yeah, blackout. I don't know, have you?

Klobuchar: Could you answer the question, judge, it's just, to you, that's not happened. Is that your answer?

Kavanaugh: Yeah, and I'm curious if you have.

Klobuchar: I have no drinking problem, judge.

Kavanaugh: Yeah, nor do I.

Klobuchar: Okay, thank you.

Imani Gandy: Hello, fellow law nerds. Welcome to yet, another special confirmation hearing episode of Boom! Lawyered. A Rewire.News podcast, hosted by the legal journalism team that's in Cambridge, Massachusetts right now. I'm Imani Gandy.

Jessica Pieklo: And I'm Jess Pieklo. Rewire.News is the leading non-profit journalism outlet devoted to recording on reproductive and sexual health rights and justice, and the #TeamLegal podcast is part of that mission.

Imani Gandy: As a non-profit, Rewire.News relies on your donations to fund Boom! Lawyered and all of our evidence-based journalism. If you like our show and you want to hear more of it, please donate online.

Jessica Pieklo: You can support us Rewire.News/donation.

Imani Gandy: That's Rewire.News/donation.

Jessica Pieklo: Let's give a big welcome and thanks to our new subscribers because, holy shit, Imani.

Imani Gandy: I'm just, I'm dreaming of the day when I don't have to say, "Welcome to another confirmation episode of Boom! Lawyered." I just want to say something else because frankly, I'm sick of Brett Kavanaugh.

Jessica Pieklo: Brent.

Imani Gandy: Brett.

Jessica Pieklo: Brad.

Imani Gandy: Brad.

Jessica Pieklo: Troy.

Imani Gandy: Troy, John, Jacob Jingleheimerschmidt. Like, I'm just sick of the man, sick of his face. I'm sick of him yelling at me. Like, what was the deal with him yelling at everyone today?

Jessica Pieklo: Okay, so yeah. Let's talk about this because a lot happened today. Today was the day that Republicans had scheduled testimony to hear and air the allegations against Brett Kavanaugh, brought by Blasey Ford.

Imani Gandy: Yes.

Jessica Pieklo: Can we just have a moment of how phenomenal a witness Dr. Ford was?

Imani Gandy: She was extraordinary. I mean, I've watched a lot of confirmation hearings. I've watched just a lot of hearings in general, whether they're court hearings, Senate hearings, and she held herself together so well. Not only that, she was very sincere, and she was very down to earth, and she was very very believable. She was hella smart when it came to the psychology of her lapse memories, of her PTSD. I mean, in terms of having a witness who can explain exactly what's going on with them, in terms of their anxiety, and the trauma that they suffered as a result of sexual assault, you couldn't really find a better witness than Dr. Blasey Ford.

Jessica Pieklo: Yeah, I couldn't agree more. And so, let's give some context for the listeners as to the format and what was happening here. So, Republicans had called this hearing, and because it was a bunch of old white men, who would be questioning Dr. Ford, they brought in a special prosecutor. They brought in a woman, who with experience prosecuting sex crimes to cross-examine and effectively prosecute Dr. Ford.

Imani Gandy: Right and they kept saying that, you know, "Oh, yeah, it's not a criminal trial. It's not a ... no one's on trial." But, really she was on trial. The woman's name, the prosecutor's name is Rachel Mitchell. She's a prosecutor, I believe, from Maricopa County in Arizona, which, if that sounds familiar to you, that's where Sheriff Joe Arpaio, that's where his reign of terror was for years and years and years. You know, she prosecuted some of the cases, that I assume, that he would've been involved in.

I thought she was very good for the job that she was brought to do. I think that she struck a nice balance between being aggressive and questioning, but not being an asshole. I don't think that Republicans on the Senate would've been able to walk that fine line. Nevertheless, it was apparent that she was, that

Rachel, was trying to trip Dr. Blasey Ford up in a number of respects. First, with respect to the flying. There was a very odd line of questioning about her fear of flying. Can you talk a little bit about that, Jess?

Jessica Pieklo: Yeah. This dynamic is really interesting here. You know, Dr. Ford had brought allegations and there was a big tussle about whether or not Republicans were going to hear them and when a hearing was happening and all of this stuff. In allegation context, prosecutors, or attorney's will question witnesses to try and dry out inconsistencies in their testimony or to make them less believable. That's what happens in an adversarial process. I think it's probably important to note for our listeners that these aren't supposed to be adversarial proceedings.

Imani Gandy: Not at all. Not at all. These are supposed to be fact-finding proceedings where you're trying to get at the truth and trying to understand the character of this person, that we're probably going to elevate to the Supreme Court. But, that's not what when on. We heard a lot of testimony about whether or not Dr. Blasey Ford was afraid of flying, and if she was afraid of flying, then how did she make it here when she was able to go on her vacations to Polynesia, and there were a couple of other far-flung places that they mentioned.

Being afraid of flying doesn't mean you don't fly when you need to, right? If you need to get somewhere for vacation, you suck it up, you take some meds, and you go. If you need to fly across the country to testify about how someone assaulted you 36 years ago, and that person is about to be elevated to the Supreme Court, you maybe pop a Xanax, you drink a glass a wine, and you fucking go. Do you know what I mean? The whole line of questioning about whether she was afraid of flying, and why she was there, and you know?

Jessica Pieklo: And if she was a Democratic operative, who was paying for her polygraphs and if her lawyers were working for fees or not.

Imani Gandy: Right. With every response, she would say, "I thought it was my civic duty to come and testify. You know, it was important for me to be here." I think at one point, she actually said, she hoped that they would come to here, but she realized that wasn't reasonable. That was kind of a humanizing moment because yeah, sure, we can all imagine hoping not to have to fly across the country ...

Jessica Pieklo: On TV.

Imani Gandy: ... to be grilled in front of the entire country, on TV, about probably one of the most traumatic experiences in your life. They tried to get her. They tried to trip her up there. They weren't able to trip her up on that. What are some other things that you recall they tried to trip her up on?

Jessica Pieklo: You know, whether or not she was a political operative and to the extent that she is responsible for leaking her story to the press. This whole idea that

accusers come forward to seek notoriety and fame. I will say one of the things that really stood out to me in Dr. Ford's testimony, was not just the substance, but the manner in which she constantly tried to accommodate the senators. You could tell this was an uncomfortable process for her. From the very get-go, she offered to lean forward into her mic, you know, to answer questions beyond the scope. You contrast that with Brett Kavanaugh, who walks in basically shouting at the entire gallery.

Imani Gandy:

Oh, my. It was bizarre to me. He was intermittently shouting and crying. I can't tell, I mean, there's some directors on Twitter who said, "You know, when I see people who are crying, but there's not actual tears on their face ..." I believe the director of Doctor Strange said, he calls that bad acting. He was constantly sniffing, and crying at weird times, like crying when he was mentioning this laundry list of woman who had texted him to wish him good luck and well wishes.

I think what was interesting was the contrast in demeanor between Dr. Blasey Ford and Judge Kavanaugh. One would expect Dr. Blasey Ford to be the more emotional one because she's talking about trauma. In addition to the trauma she suffered then and is suffering now, she's had to uproot her entire family. She talked about how they've had to move several times, about how they've not been able to be together the whole time. She talked about the extensive security detail that she's had to hire. I mean, these are all traumatic things.

Meanwhile, Kavanaugh gets up there and is basically talking about how his life has been destroyed, and this is hell for his family, and sure, I will grant that it has probably been terrible for him, and terrible for his family. The way that he was talking about it, it seemed almost as if, he expected Dr. Blasey Ford to apologize to him for putting his family through all of us, as opposed to saying, "Yeah, you know, it's been hard for my family. It's been hard for her family, I'm sure, but we want to get to the bottom of this."

There was no sense from Kavanaugh that he wanted to get to the truth of the matter, but that he wanted to air grievances at being forced to deal with this affront to his humanity, and a front to his family, and how his entire career has now been ruined by these ... I mean, he literally said that proceedings were a joke. He said that they were a farce.

Jessica Pieklo:

It was a Clinton conspiracy, Imani.

Imani Gandy:

He mentioned the Clintons at some point. He said that it was the revenge of the Clintons. I don't really know how that ... I mean ...

Jessica Pieklo:

He still has some Starr Report hangover happening.

Imani Gandy: He apparently, he does. It didn't play well, I thought. I don't think it made him look good. I don't think and his wife sat there looking very annoyed the entire time. I don't know, how did you think it played?

Jessica Pieklo: Yeah. I mean, so again, we've got a study of contrast. We have Dr. Blasey Ford who sits through three hours, effectively, of cross-examination from Rachel Mitchell, the attorney brought in to question her. And then, we have Judge Kavanaugh, who comes in, yells at the entire panel calls it a farce, calls it a political hit job, and a function of the Clinton machine.

Imani Gandy: Yep.

Jessica Pieklo: And then, the Republicans basically send Mitchell off, after a couple of questions because hey, it doesn't look so good when their guy is actually under legitimate cross-examination and so then, they start fluffing him, effectively.

Imani Gandy: Yeah. That's exactly what they did. I mean, Mitchell started to ask some questions of him that were pointed, and just kind of got shoved to the side so that, you know, Chuck Grassley, and who else? You know, all of these other Republican senators could essentially say, "You know, this is an outrage that you're forced to go through this. I'm sure that you're innocent, and I'm sure that you'll be confirmed, and just stick through it, champ. You'll be okay." It was a really kind of disgusting. Just the way they circled around him to try and protect him from the truth, from what we should be getting to, which is the truth of the matter. What actually happened?

Frankly, it did not seem to me that Kavanaugh was at all interested in getting at the truth. Although, he said otherwise, multiple times, right? He was like, "From day one, I wanted a hearing. I didn't even want to wait ten days." And he was literally yelling.

Jessica Pieklo: Yeah, like spitting.

Imani Gandy: Talking, spitting, yelling.

Jessica Pieklo: Yelling.

Imani Gandy: He was talking over Feinstein. He asked Klobuchar whether she was an alcoholic, which was, I thought a bizarre and strange moment. It just didn't seem like he was very sincere. It seemed like an entitled guy, who had gotten everything that he had always wanted in his life, was finally being forced to account for his actions. Whether they took place or not, is what the hearing was supposed to be getting at, but really it was just sort of a showcase for Brett Kavanaugh's outrage, his white dude outrage at being forced to answer these questions. "How dare you ask me to account for these issues."

Jessica Pieklo: What do you take about this position that Kavanaugh took during the hearing that, you know, gosh golly gee, everybody's got it wrong, and I'm just here to do whatever the committee needs. If that's an FBI investigation, well bring it. It's an FBI investigation. What do you make of that?

Imani Gandy: It's horse shit. I mean, to be honest, I mean, he kept saying, "I'll do whatever the committee wants, whatever the committee wants." And a couple of Democratic committee members said, "You have the power to go to President Trump or to tell Don McGahn, who is President Trump's lawyer, we need to stop these proceedings, so we can open the FBI investigation, and we get to the bottom of this." And when asked if he would be willing to do that, he demurred, every time he changed the subject.

He'd say, "No, no. I'm innocent. I want to do whatever you want to do." And they're saying, "Well, we're telling you, we don't have the power to tell the President to stop this," they're in the minority. You have the power. You have are the nominee. "Well, I'll just do whatever the committee wants to." It was just this circular thing where he was able to get out of answering the questions because he kept refusing to answer them. It was just filibustering, essentially.

Jessica Pieklo: Yeah, he was filibustering the question. And so, I want to talk real quick about the Democratic strategy here on some of the line of questioning. I thought it was very effective for them to push Kavanaugh on his allegations about high school drinking. And look, I'm not here to say that if you were drinking too much in high school, that like you're a terrible person. I drank a fair amount in high school.

Imani Gandy: I drank a fair amount in high school. I'm sure a lot of people did, but it wasn't about whether he drank in high school. It wasn't even about how much he drank in high school. It's about his truthfulness about his drinking in high school.

Jessica Pieklo: Exactly.

Imani Gandy: Frankly, a lot of the stuff that he said today, just didn't ring true. It doesn't ring true that there has never been a time if you drank as much beer as he said today he did. I mean, he mentioned beer a lot. I drink beer. You like beer. Who likes beer? Everybody likes beer. Despite his Fox News interview the other day, where he presented himself as a teetotaling virgin.

Jessica Pieklo: No, he's a choir boy.

Imani Gandy: But today, I mean, I have half expected I'm to pull out a six pack and start throwing cans of beer in the audience. I mean, it was just like, he couldn't stop talking about all the beer. When he was asked whether or not he ever drank too much to the point where he forgot what had happened, or he didn't remember what happened. "Oh, well, no, no, no. I always remember what happens when I drink." Which is nonsense?

Jessica Pieklo: It's bizarre.

Imani Gandy: Anyone who has drank, anyone who's played drinking games, understands that there's going to be a point where you probably did some shit you don't remember.

Jessica Pieklo: Right.

Imani Gandy: And you should just say that. He could've just said that. He could've said. "Yes, I drank a lot. I was in prep school. It was the 80's, we drank a lot, but I still never assaulted someone." That is something that he could've went with, but instead, he went with, "Oh, you know, we had a couple of beers here and there. Yeah, I mean, I drank a little bit, I mean, never got blackout drunk. I never, you know, had any memory lapses." And that's just not, that's just not something that anyone who has ever drank in college or high school would believe.

Jessica Pieklo: Exactly. There's one other point that I just got to get out there because it's a burr in my chaps. We have been talking about Republicans, and their pounding the table on this idea of due process, due process, due process, and have noted that there aren't actually any constitutional rights at stake here for Brett Kavanaugh.

Imani Gandy: Right.

Jessica Pieklo: He doesn't have a constitutional right to a promotion to the Supreme Court. What struck me is that even Republicans, who suddenly got this big love for the process, and fair process, and equal process, gave Kavanaugh special treatment. Dr. Ford sat there through questioning from an effectively, hostile prosecutor, and then the Democratic senators, and they released Mitchell. Like she, Dr. Ford and Kavanaugh didn't even have the same fundamental process in this hearing that was supposed to be about fundamental process. I just want that point there out of the listeners because it's driving bananas.

Imani Gandy: It's absolutely right. I mean, Kavanaugh was essentially allowed to sit there and yell, and cry, and be, you know, tearfully emotive. What looked to me, very insincere, but we'll see how it plays in the media, while Dr. Ford sat there stoically answering questions, very deep personal questions. Her opening statement was, I just think very matter of fact. It wasn't overly emotional. It was just, this is what happened. Kavanaugh's opening statement was just shouty, almost drunken, crying, anger. It was very strange. It was like, sort of I think, he showed anyone who was watching, the sort of aggressive, bullying, nature that he's been accused of having when he's drunk.

Jessica Pieklo: It struck me just how much he sounds like President Trump.

Imani Gandy: Yes.

Jessica Pieklo: At this point, I think he had done a fairly decent job creating some of that distance in terms of judicial temperament, but today, there was no daylight between his statements and President Trump's statement earlier, defending Kavanaugh. I think that's a really, it's just a really important point. Now, we have the, what's next?

Imani Gandy: What's next? Yeah.

Jessica Pieklo: The Senate Judiciary is still scheduled to vote on his nomination. They have the votes to get him out of committee. Everything with this story has been bananas, so it's entirely possible by the time we have this edited and up, the Republicans have decided to pull some new shit. Who knows?

Imani Gandy: Yeah, that's the thing with the Republicans, they are really pulling new shit and whenever they can. If he gets out committee, then what happens?

Jessica Pieklo: If he gets out of committee and so far they've said that they want the vote to happen as soon as possible, as likely as Friday and then schedule a final vote as soon as Tuesday. The Supreme Court term starts Monday, October 1st. They are really trying to get him voted in and on the bench as soon as possible and before midterms. That doesn't mean that all hope is lost. It's clear that one of the reasons that they are rushing, I think, is because McConnell and Grassley are worried about the whip. They are worried about whipping the votes. It's not clear to the entirely that they have all of that. There is still some time, a lot can happen. We have these other allegations that haven't even been aired either and so, you know, who knows.

Imani Gandy: Yeah, just to leave with one thing. One point that I think is crucial is that I have been sort of following Fox News coverage of this and certainly, after Dr. Ford's testimony, Fox News called it a disaster for Republicans. They thought she was extremely credible. They thought that the way that she talked about the allegations, I think, brought up a lot of emotion in other Republican women.

Jessica Pieklo: We should talk about race real quick though because right?

Imani Gandy: Yeah.

Jessica Pieklo: Like, this is a white woman talking to white women.

Imani Gandy: Absolutely, absolutely. I think that has a lot to do with it. I think a lot of her credibility, and her believability among white people is going to be the fact that there was this nice soft-spoken, very stoic, very pretty, very gentle white woman who was clearly viability upset, who had gone through a trauma and that is something that other people can relate to. I do want to make a point that there is often talk about the weaponization of white women's tears. I don't think that ... I've seen people talking about that on Twitter. I don't think that qualifies here because her tears were related to her trauma.

Jessica Pieklo: Yes.

Imani Gandy: The fact that white women tears are viewed as more important is not her fault because she's a white woman, that's just the way societal racism works. I think in this instance, it's going to work in the favor of Democrats because people looked at her and they identified with her. Chris Wallace, who's a Fox News host ...

Jessica Pieklo: Can you believe that?

Imani Gandy: ... said that he talked to his daughters, his daughters talked to him about experiences that they had with sexual assault and talked to him about why it is that they never told him, why it is that they never reported. And so, he actually spoke about that and said that he had been schooled by his children about why it is that women don't report. This is a Fox News host we're talking about here.

Jessica Pieklo: Yeah.

Imani Gandy: If there's any other of that among Republican men, among Fox News people, then Republicans could be in real trouble.

Jessica Pieklo: They could. And so, anyone who says they know what's happening next with any sort of certainty is a liar.

Imani Gandy: They are a liar because if we don't know, they don't know.

Jessica Pieklo: Exactly. You can rest assured that as soon as we know, we will tell you all.

Imani Gandy: Right. That is absolutely true. We're going to wrap it up.

Jessica Pieklo: Yep.

Imani Gandy: That's going to be it for Team Legal from Cambridge, Massachusetts. Twitter, you can follow me on Twitter, I'm @AngryBlackLady. You can follow on Twitter at @Hegemommy. You can follow Rewire.News on Twitter at @rewire\_news. If you want to hop on into our Facebook group, it is popping off. We're posting exclusive photos from our trip in Boston. Just look up Boom! Lawyered on Facebook, answer the question.

Jessica Pieklo: Please do.

Imani Gandy: If you've tried to get in and you haven't been let in, go and try again and just answer that question. That might be the reason. We're not trying to keep you out, we promise. But, aside from that, do you got anything else?

Jessica Pieklo: Just, you know, what a week.

Imani Gandy: Yeah. What a week. Take care of yourselves, do you know what I mean? Have a glass of wine. Have a nice glass of sparkling water, you know, smoke them if you got them. Just, do what you can to take care of yourself. It's been a really rough week. It's been a really triggering week. Team Legal hugs you if you would like to be hugged.

Jessica Pieklo: Yes, and even if it's an awkward side hug.

Imani Gandy: If it's an awkward like Christian side hug.

Jessica Pieklo: Or like, big pat on the back. We'll do that too.

Imani Gandy: Right, exactly. Any consensual touching and of affection that we can provide to you.

Jessica Pieklo: Affirmative consent only.

Imani Gandy: We are doing that because we understand it's been hard for people.

Jessica Pieklo: Hang in there. It's going to be a bananas weekend and we will keep you posted with stuff that we know. See you all on the tube.

Imani Gandy: See you on the tubes.

Speaker 5: Boom! Lawyered is created and hosted by Jessica Mason Pieklo and Imani Gandy. Our producer is Nora Hurley. This episode was produced by Marc Faletti, who is also our executive producer. The Rewire.News editor in chief is Jodi Jacobson.