

## PODCAST 33 – THE LAW AND LAWYERS

Narrator & Editor Richard Gay: This is 30 Brave Minutes, a podcast of the College of Arts and Sciences at the University of North Carolina at Pembroke. In 30 Brave Minutes we'll give you something interesting to think about. Today's topic is Contemporary Issues in the Law. Joining Jeff Frederick, the Dean of the College of Arts and Sciences are four attorneys: Kay Fraley, Ronette Gerber, Kelvin Jacobs, and Megan Strickland. Now get ready for 30 Brave Minutes!

Jeff Frederick: The American Bar Association informs us that in the last decade the number of attorneys in America has grown about 15 percent to just under 1.4 million total. You're most likely to find an attorney in New York or California, not surprising given the number of potential clients in those States, and the high volume of real estate transactions, contracts, wills, disillusion of marriage, and occasional criminal misunderstandings. Effective lawyers are well versed in the law, articulate in understanding the needs and options of their clients, passionate about justice, creative in finding solutions to problems, and generally do comparatively little of the grandstanding in front of judges and juries in search of what used to be called a Perry Mason moment. I'm not a lawyer and I've never played one on TV, but I think I'm on pretty good ground in saying virtually no lawyer ever got a witness in a court room to scream, "You can't handle the truth!" One aspect of professional life that doesn't always get represented on film is the research. Reading the statutes, checking the precedents, sifting through court filings, land deeds and memoranda. Understanding the subtle and technical differences between applications of different laws, writing and rewriting briefs and trying to explain what must be explained to clients. Somewhere in there lawyers have to make sure that they are advocating for their clients and not simply allowing their personal views to air. At ground level lawyers protect the rights of citizens and the interests of many different parts of the diverse society, dedicated to the premise that none are above or beneath the law. Section 1 of the Fourteenth Amendment of the United States Constitution introduced the critical concept of equal protection under the law. This protection was ratified in 1868, about 92 years after America declared its independence, and yet another reminder that the law is constantly changing in one way, shape, or form. More to the point lawyers in the law help provide various forms of re-dress when those rights are violated,

abridged, or otherwise limited. And because society is undergoing so much change legal issues are constantly being reimagined. What is the importance of precedent? How is the Constitution to be interpreted? What about matters that the framers of the Constitution, the Congress, or the General Assembly have not yet considered? What about the rights of privacy and from another perspective who actually does get to define them? Joining us today to talk about matters of the law are attorneys with a range of experiences and roles. Kay Fraley, Ronette Gerber, Kelvin Jacobs, and Megan Strickland. Welcome everyone and thanks for being a part of 30 Brave Minutes.

All: Thank you.

Frederick: So let's start with the basics. How did you become interested in the law and what does it mean to you personally to be a lawyer?

Gerber: I don't remember a time in my life when I didn't want to be an attorney, going back to grade school. I always knew I would be an attorney. I can remember being in class and we would have some art project and while all the kids are coloring some photos or some picture, I'm drawing a diagram of a courtroom. It took one class trip to a courthouse for me to see a judge, see a witness and attorneys, and I was hooked and my adolescence is just drawings upon drawings of courtrooms, the jury box, the bench, people sitting in pews. That was just what I wanted to do and I realized at some point in undergrad that it didn't matter what my undergraduate degree was; I just needed the GPA, you know, whether it was going to be music, or history, or political science, or psychology, or a science degree. It didn't matter. I needed the GPA just to get into law school. Once I was able to get in, survive it and then go out into practice, it became for me a life of fulfillment. It was "this is the way I know that I can help people." I can be effective at one person, one client at a time.

Frederick: What about the rest of y'all? When did you know you wanted to be deeply immersed in the law?

Jacobs: So unlike Ronette, I didn't come out of the womb knowing I wanted to be a lawyer. For me, it probably happened when I was an undergraduate here at UNCP. I was always more interested in law enforcement and that kind of thing, so I'm a

Criminal Justice major, and part of those courses and classes were things that dealt with the courts and the legal system. And I think that's what first piqued my interest. Even though it was a long time before I ultimately decided to pursue that goal, I do think that was for me sort of what ignited the flame. As far as the other part of your question, what do I like about being a lawyer? You mentioned at the beginning the number of attorneys in the United States and how that class has increased, but to put things in perspective it's still somewhat of an exclusive class, if you do look at the percentages of the population versus those who are an attorney, it's still a pretty exclusive class.

Frederick: So far, none of y'all have said you just like to argue so we'll see if Megan or Kay want to admit to that.

Fraley: Well, my experience is similar to Ronette's. I can remember being in the second grade and dressing up as a lawyer for career day. I think where I got it from, though, was my father was a lawyer and so it was kind of ingrained in my brain from a very young age that that's what I needed to do.

Strickland: And I guess I'll be the oddball. So for me specifically, I never had anybody in my family that was an attorney. I come from a family that had two professionals. My mother was a family nurse practitioner. My father is a professor at RCC and I just loved to argue. That is one of my issues and I just always remember me and my brothers and sisters, and even me and my parents, and they were like, "you just need to go to law school. You're so good at arguing." I just have a passion for helping people, too. I'm very outgoing and I know that attorneys have to be outgoing because they have to deal with clients all the time.

Frederick: So let's talk a little bit about how you got ready to practice. Talk a little bit about law school. There's tons of different kinds of classes, contracts and torts, civil procedure, and criminal procedure. What are your primary recollections from law school and which of those courses seem to be the biggest hit with you guys?

Fraley: Well, I think what most people don't realize about law school is law school doesn't really prepare you for the practice of law. What it does is it helps you think like a lawyer and so a lot of people come out not exactly knowing what to do. Our paralegals are the ones that guide us the most. As far as classes go, our classes

were... the Socratic method was used, where you know, your professor would ask you to stand up and recite the facts of a case and talk about analysis and reasoning and all of that. It was torture, actually. That's the best way to describe it. I think everybody was trying to find a way not to be called on, but for me the criminal law was the best. I think it was most relatable because you could correlate what was going on in the real world with what we were learning.

Ronette: Kay is absolutely right. Law school is not about the practice of law. It is about teaching you to think like an attorney. For me, it was constitutional law, both as undergrad here at UNC Pembroke or what was Pembroke State at the time, and with law school constitutional law. Taking an issue that has risen over a number of years to the highest level that for one individual was their particular issue. Obviously, they had some problem. They needed a resolution. They had a conflict that needed to be fixed. But by the time it reaches the Supreme Court, it's an issue of national importance. It's going to affect all of us. It's kind of taken on a life of its own and it's the study of that process, it's the study of what had happened at a district court, whether it's in the state or the federal court system and then looking at what the judges said. What was the opinion? What was the message? Who delivered the message? And is it consistent with what they've said in the past? That study I found fascinating from being an undergraduate and through law school and I still keep up with Supreme Court cases to this day. I mean that to me has always been the study of Law.

Jacobs: I think the saying is the first year they try to scare you to death, the second year they work you to death, and then the third year they bore you to death. And I guess that somewhat holds true. The first year is all about that Socratic method where again, you know, you're just in it as a new experience for you and you're going in there and the professor starts calling on people randomly to brief a case. And generally all across the country in your first year of law school no matter where you go, pretty much all schools start with those same courses of property towards contracts, civil procedures, so it doesn't matter what school you start out at. It's usually in your second year and especially in your third year you get to branch out and start getting into sort of areas or taking courses that you know are more of interest to you. I don't think I necessarily had a course specifically that I recall that I liked. I guess I was sort of a nerd; I liked them all. I like contracts. I

guess civil procedure would have been my least favorite but I like torts, so I think I had a good experience with all the classes at the law school.

Frederick: Well, let's jump into some terms here to make sure that our listeners are familiar with what you're talking about. What is the difference between a crime and a tort? What's a felony? What's a misdemeanor? What constitutes a contract? What doesn't? Give us a little background here.

Gerber: I'll start with torts. That's what will lead you into civil litigation. So it's an allegation in civil court that somebody has done you wrong, or whether by act or some infringement of your right and you then have an obligation or the burden of proof to show that that person had a duty of care towards you so they owed you something. There was a breach of that duty and there was because of that breach, there was some injury. Quite different from crimes where we're looking at state action against an individual for violating a statute, whether you're in court for speeding, or you are in court for murder. It runs the gamut. Misdemeanors are your lower offenses versus your felony offenses, which usually carry some sort of jail time or prison time and high cost.

Frederick: And what about contracts? What do you need to have in order for a contract to be enforceable?

Fraley: An offer, acceptance and consideration. I know that that means nothing to our listeners, but there are many different types of contracts and many different rules that go along with those specific types of contracts. So it would kind of be difficult to, other than the offer and the acceptance, to get into that.

Frederick: And consideration. Is that remuneration in some way? In kind, or is it mostly we're talking about cash?

Fraley: It could be either. Yes.

Jacobs: I think on the most basic level, a contract is an agreement between two parties. Two people say here's what we want to do, here's the terms we're going to do it by; let's do it. I think sometimes the problems come in when later on those terms get interpreted different by the parties and one party is like, no, I think the

way it's written means I can do it like that. The other party is like, no, it should be done like this. So the bottom line is it's a meeting of the minds and when you don't have that meeting of the minds, that's when issues arise. And the parties say, well you breached the contract or you caused me harm because you're not doing it the way we wrote it. So next thing we're at court with the attorneys.

Fraley: That was much better stated.

Frederick: So you got excited about the law, you survived law school, you got overwhelmed, you got scared to death, you got worked to death, you got bored to death, and now we know a little bit about some of the basic terms that you guys use every day. What kind of cases are you most excited about being a part of? What has become your individual passions within the law?

Gerber: Well, it's become higher education. I did not go to Law School to be a University Attorney or a Title IX coordinator. In fact, I didn't even know universities had attorneys when I was in college. I went to law school to be a prosecutor. That's what I thought I would end up doing and I've never been a prosecutor, outside of third year practice. I went into Civil Litigation. I did Family Law. So it was a lot of custody, lot of divorces, lot of adoptions, and kind of backed my way into higher ed and now realize the importance of what this position is on this campus. How, and I'm sure Kelvin would agree with me on this, for us in working for the University, our client is the University. It's not the Chancellor. It's not the cabinet and it's not the students. It's the university as a whole, and we try to do whatever we need to do to keep the university out of any problems and that's become quite interesting to do because you end up being an expert on so many levels and topics of areas that you hadn't been before. You have to be excited or you'll just implode. You've got to love it.

FREDERICK: What about the rest of y'all? What is most interesting aspect of law for you guys in your own practices or where you might want to go from here?

Fraley: Well, so, I practiced in family court for about 10 years before I came to the university. My favorite aspect of that was adoptions by far. It was very fulfilling to see people who have been trying so hard and long to adopt a child, to actually see that through and help them with that, it was the best part of those ten years.

Jacobs: So I enjoy administrative law/higher education law. That's something I knew even in law school that I wanted to get into. Higher ed law was definitely on my list as was municipal law, or becoming a county attorney. So I always knew I wanted to get in that side of the house as opposed to, I guess, the courtroom. You know, a lot of attorneys, especially in law school, when you think of lawyers or you think of law school you think prosecutors and defense attorneys and you think court. No disrespect to any of those folks, but court just wasn't for me. I did spend a little time with an organization called Legal Aid in North Carolina and we represented indigent clients and civil matters, which put me in court a lot. And again, it just wasn't for me. I try to stay away from the courthouse as much as possible. So I really knew I wanted to get in the administrative side of the house and fortunately I was able to land in higher education law, which is something even before I got the job I explored. It interested me and I just knew that it was going to let me touch various aspects of different kinds of law.

Strickland: As for me, being freshly out of law school, I graduated in 2016. While I was in law school and previous to that, while I was in undergrad at UNCP, I was able to work with Ronette in the Chancellor's office and then in the Title IX office. So I developed a passion to work in higher education and I never, even in law school, wanted to go to court or be that person to hang out my own shingle, but I'm glad that I was able to get into this position where I'm working with Title IX here at UNCP.

Robin Cummings: This is Chancellor Robin Cummings and I want to thank you for listening to 30 Brave Minutes. Our faculty and students provide expertise, energy, and passion, driving our region forward. Our commitment to southeastern North Carolina has never been stronger through our teaching, our research, and our community outreach. I want to encourage you to consider making a tax-deductible contribution to the College of Arts and Sciences at the University of North Carolina at Pembroke. With your help we will continue our impact for generations to come. You can donate online at [uncp.edu/give](http://uncp.edu/give). Thanks again for listening. Now back to more 30 Brave Minutes.

Frederick: So let's have you put on your market hat for a little bit here. What about the system really works in your experience, and that we're pretty good at in terms

of creating this judicial system? And then the flip side of the coin, what would you change and what do you think needs to be changed right away?

Ronette: Well, I'll talk on the civil side because I've never done criminal. I think one of the elements of a civil litigation practice that works well is when you have attorneys who are willing to communicate, certainly with their clients, but even more so with opposing counsel, so that issues can be resolved prior to walking into a courtroom. Sometimes you can be hired, you can be retained on a matter and never have to file the lawsuit. You can talk with the other side or the other side's legal counsel, resolve the matter, and everybody goes away fine. The remedy has worked. Sometimes you do have to file or it's filed and then you're brought in as the attorney and then you've got to reach out to the other side and maybe you can work something out. I loved courtroom work. I thrived on courtroom work. That's one of the reasons why I got out of it. I think I got to where I like it too much. And it can be hard for clients not just financially, but certainly emotionally, to have to go through that process. And as an attorney, I think you have a duty to resolve issues before it would rise to that level. And as long as you've got the attorneys who are willing to do that, it's positive for everybody. It's an element of civil litigation that works well.

Jacobs: I think one of the things that works well in our system is it is designed to give both parties an opportunity to come to the table and to present whatever they have, be it a criminal matter or a civil matter. The system, in my opinion, is designed where you visualize the parties at the table and everybody puts their cards on the table and they get an opportunity to talk about those issues that are on the table to come up with a fair resolution. It doesn't always work that way. Sometimes, you know, one party comes to the table not represented, while the other party comes to the table represented, and that can create somewhat of an advantage for the party who has the opportunity to have an attorney. So I think we've got the best legal system in the world. I do think, the flip side of that, though, is when evidence is produced years later, and it sort of exonerates someone and sometimes that evidence, you know, it can be that sometimes you have to fight, tooth and nail, to even get that evidence back into court. The system is designed that way. I mean, we can't have cases linger. Everybody gets their day in court, right, wrong, or indifferent, that's your day in court and when the gavel falls it's

over. There are mechanisms in place when new evidence does arise, to get that before the court, but sometimes it's not as expedient a process as you would hope or think.

Frederick: And dockets get pretty full and it takes a long time to get them cleared for one reason or another.

Jacobs: Right, and again, we view it as, "well you had your day in court." The gavel fell.

Fraley: Well, that's kind of exactly what I was thinking of when I was thinking of what maybe doesn't work as well, especially in Criminal Court when you have people who have been incarcerated and there is evidence that can exonerate them. But the process takes entirely too long for them to be able to get back in front of the court, so that I think needs to be revisited a little.

Frederick: So the entire process of the legal system rests on a bunch of really important fundamentals like judicial review and **sorry decisis** and you know, an adversarial system where as you suggest Kelvin, you've got to have two actual adversaries, right? Both parties have to be well-represented. Talk about how that plays out in some of the cases that you either read about or have been a part of that were particularly meaningful to you. How do we know the system works based on some of those critical cases that you've studied?

Gerber: Well, first of all, it doesn't always work. We could, I think, all talk about cases that we disagree with the verdict or the opinion, if it's at the appellate level. There are a number of cases that jump out that I agree or disagree with the finding. I'll talk one in particular is the Supreme Court case of Fisher v. the University of Texas. So that was a higher ed case about race as a factor in the admissions process, which is again now an issue that the courts are going to be looking at. In that particular case, there were two Supreme Court cases. It was determined that using race was fine, kind of a general matter, but the way the lower court's decided the case by not using strict scrutiny meant that they remanded the case back down. It was heard again at a lower court, saying finding for the University and then appealed back up to the Supreme Court. And again, they looked at precedent, how have they looked at these cases before? And the courts have always said that you

could use race as an issue, a factor, but what they are very clear on now is that it can't be the sole factor and you can't use terms like quotas. It has to be viewed in context with what the university is trying to do. Are you looking at diversity among your student population for the benefit of the students themselves? When you've got thousands of students on your campus, is the premise that the students will have a better experience if you have multiple races on your campus? And I think the answer is yes and the Supreme Court has agreed with that and has allowed race to be used. Watching that case go through kind of the appellate system was long and arduous. It was a number of years to get through that, starting in 2010 until 2016, culminating in a final decision. Again, that's a case where you had one individual, Abigail Fisher, who had an issue. She had been denied acceptance to school and for her, she needed a resolution. Well, by 2016, she'd already gotten her degree from some other school. It was no longer her immediate issue, but it certainly was an issue for higher ed. For higher education for the colleges and universities, we were waiting with baited breath to find out what the court was going to say because it certainly would impact what our campuses would do.

Jacobs: I think overall, again, our judicial system is the best. I mean, I can't think of a better system. If somebody did, I wish they would come forward. I mean, it's not a perfect system. I would have equate it to, like airplanes, you know, every day, wheels up, wheels down, you don't hear about it, but unfortunately when there is an airplane crash, it's all over the news. And that's what happens in the courts in cases every day. Every day there are cases being decided. Huge cases, but then we come across something like the Central Park Five which was atrocious, and truly gets the attention it deserves but those kind of cases, hopefully, aren't the norm, but when those type of cases do occur, again, they should get the attention. They should get the immediate attention and they should get us outraged, but I do think, for the most part, most cases are decided fairly.

Frederick: And the concept is that even if we don't get it right at the first place, there is redress, so in 1896, when Plessy comes out that, you know, separate but equal facilities are constitutional, it is a disaster and for multiple decades there are people who are absolutely infringed upon their rights. But the glass is half full version is in 1954 in the 90 ruling the court reverses that precedent and ushers in

the context of freedom that for the next 75 years allows people to sort of have full access to the law. So even when it's broken and cracked there's always the sliver of hope that the right case can one day come back and fix the problem. So, what are the issues that you think the courts need to face in the next five to ten years? What are the kinds of things you would like to see them look at in great detail?

Gerber: I'm fairly confident that this Supreme Court's going to deal with the abortion issue, first and foremost, and that's my number one issue that I want to see addressed. Given the makeup of this court, I'm not sure I want this court to be the one to hear that matter, but it's going to. There are too many cases that are now already working their way up. We've had too many legislations passed just in the last month. That's going to open the door for new cases that will start working their way up. I think some of our current cases will be combined and put before the court. And going back to what you were just talking about with *Plessy v. Ferguson* and then with the *Brown* decision, I think what you are going to find is yes that didn't exactly overturn *Plessy*. They didn't use that language and I'm sure for political reasons they didn't, but that was the effect of it. And what we may find with the abortion issue is the same thing. Even though we have precedent that has stayed the course over the last 30, 40 years to the last 25, 30 years. I'm going back with the *Casey* decision that we may have a reversal and then you're having decide which side of the fence are you on? You know, I think a lot of us would say, yes, we're happy with the *Brown* decision, but how many of us would be happy with the decision that's probably forthcoming from the current Supreme Court? Someone is always going to be the victor and someone is always going to be the loser. I think that's what we're going to end up having.

Frederick: Other issues that you think will work their way through the courts in the next decade or so?

Jacobs: I think an issue I would like to see work its way through the court, I think it will be interesting and something that's so entrenched in America's core values are First Amendment issues and freedom of speech issues. Campuses are a hotbed for that topic and that discussion and I do think it's generational where when I talk to a traditional group of young students and we're talking about hate speech, and then I tell them that hate speech is protected speech, they sort of look at you sideways

because they don't want that. They don't accept that. This new generation, to them that shouldn't be protected speech. So I would be interested to see if any case makes it up where to me that will be just a cultural shift in America if other types of speeches are carved out from being protected. Again, an example being hate speech and trying to define what that means. I do hope one of those kind of type of cases bubbles up to The Supremes.

Strickland: My thoughts are with Ronette. I think the abortion cases are the ones that are really going to probably create a huge divide in this country and there are going to be people on both sides of the issue and it's going to be heated. I think also the LGBTQ cases. We saw this whole trend of rights being issued and protected for them and now it is kind of starting to reverse. We're looking at a lot of people that are going to start to have their rights infringed upon.

Frederick: I know I'm breaking news here, but occasionally lawyers get poked fun at as the butt of jokes. Breaking news here. But let me make sure that as we wrap up today I give you guys a chance to disabuse those joke tellers of notions that are just patently untrue about lawyers and the law. So, if you could take a minute to correct one fallacy, each of you all, what would you say to correct the impressions, undoubtedly false, that some people have about how lawyers work?

Gerber: Well, I want to say, going back to your first comment in your introduction, yes there are a lot of attorneys, and that number grows every single year, but there's always going to be room and there's always going to work for really competent, hard-working attorneys. I can't say that about everybody who finishes law school, but I can say that about a number, or a great deal of attorneys that I know and for all the jokes that we hear, and I've got a number of those books on my shelf in my office, a lot of attorneys work really hard and take a lot of pride in what they do. It matters to me as someone who is a mother of three, and raising children, that I represent myself, my family name and my children well. I do that in my job here at the university and in my life, in general. I work really hard and the attorneys that I know here at the university work really hard at what we do, and we take what we do very serious and we take pride in it.

Jacobs: So, I don't know if I've heard of any of these jokes, and you might have to share one with me, but I don't chase ambulances, I don't keep puppies. I think a lot

of that is from when folks have to enter a relationship with an attorney most of the time it's just not for pleasant reason. Sometimes it is, you know, sometimes you do go see an attorney because you won the lottery but a lot of times it's because you're in some type of litigious or adversarial issue or situation and then you look at the attorney who's all calm, cool, and collected, while you're telling them this horrific story or emotional story and they're not getting emotional with you or whatever because we're trying to take the emotion out of it. We got to see the legal issues so this person who's over there all mad and having to cut us the check. I think there could be a misperception there, but as far as that, I truly don't know a joke that just comes off the top of my head that I can debunk.

Fraley: So when I was first out of law school I know there was a lot of jokes about how attorneys are always late, how they always lie and about how they're really bad at math. So some of the issues that I have I'm hardly ever late. I'm just the type of person if I'm not there on time, I'm the person that's five minutes ahead of everybody else. So I know that can be debunked very fairly for certain. As far as lying, attorneys are advocates, so they're going to take up for their clients regardless and it shouldn't be looked upon as being a negative attribute that you are being an advocate for your client.

Strickland: Well, I think I'll sum it up by saying that everybody has an attorney joke until they need one and you know, all the colleagues that I have in this profession are some of the most brightest and most passionate, hard-working people. They're people I would want on my side if I needed help.

Frederick: Well, this has been great fun. I want to thank each of you for helping us to go inside the profession a little bit and to learn a little bit. Thanks for joining us on 30 Brave Minutes. I'm Jeff Frederick. We'll see you next time.

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Good job everybody.