

Courtney Bullard:

Welcome to the Law and Higher Ed Podcast. I'm your host, Courtney Bullard, an attorney that has been practicing almost two decades in the space of higher education, specializing in Title IX compliance. If you want to learn more about myself or my background, you can listen all the way back to episode one, where I share my journey in my law practice, as well as some fun facts and you can also check out my bio on my website www.icslawyer.com.

It is 2020, which is hard to believe, and there's so much on the horizon that ICS is bringing to you to help in your professional development. So I wanted to cover that with you quickly before we dive into today's episode. First, Title IX University launched on January 9th. It is compliance at your fingertips. Digital courses to help you in your Title IX proficiency that you can take any time anywhere. And its inaugural course is Title IX 101, which covers the evolution of Title IX from its enactment through today. A super important class to ensure that you have all the foundation that you need, whether you are an aspiring Title IX professional, a new professional or a seasonal Title IX professional. It's also helpful for attorney who are practicing in this field or want to begin practicing in this area. You can check out Title IX U through the link that I've provided in the show notes, which is titleixu.com.

We also have a signature conference, hot topics in Title IX in March, here in beautiful Chattanooga, Tennessee, put on by our ICS team. It will start off with a complementary lunch and learn for Tennessee Title IX coordinators on that Thursday, where we will cover all things specific to Title IX here in Tennessee. And there's a lot that has happened in the sixth circuit. So, very important information, as well as an opportunity to collaborate with your colleagues across the state. We will then dive into an NPRM intensive, which is going to be the pre-conference. And then at 6PM that evening, open to everyone is a welcome reception. Friday we will kick off with our keynote speaker, Dr. Laura McGuire, who is a past podcast guest. She is a sexologist and just an overall really neat person with great information to share. And then we'll dive into different sessions covering all the hot topics that you need to know that are relevant for Title IX coordinators today. I hope you'll join us. The link for registration is in the show notes as well.

Finally, we always try to provide you with monthly complementary webinars and we have several lined up for you in 2020. Expect also when the NPRM drops, that we will of course have a webinar that will be released on that, or any other timely matters that come up. But we have some really great topics. Betsy Smith, our newest team member and first guest this year, who will talk about tracking trends to prevent sexual misconduct. We have one that is dedicated for Title IX compliance in school districts. And one on addressing allegations of stalking. All of those can be found on our events page on our website and there's a link to it in our show notes.

So, I hope you will join us for some, if not all of these, and that I'll get to meet you in person in Chattanooga in March.

Doug Fierberg:

As you all know, it's not enough that the school did something wrong or made a mistake. When you look at the thing that the school did wrong, we have to be able to analyze it and come to standard that the school did something that was deliberately indifferent to the circumstances of the person who wants us to represent them.

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In this episode, I sit down with Doug Fierberg of Fierberg National Law Group. He is an attorney who has been practicing for over 30 years and his legal team focuses on and is dedicated to representing family, survivors and others in lawsuits and other legal proceedings nationwide involving fraternity hazing, sexual assault, Title IX violations, gun violence, serious personal injury, wrongful death and other misconduct in schools. Doug shares the evolution of his team, the vetting process that his team goes through in determining whether to take a case. He explains Title IX litigation in a way that I think is extremely helpful, especially in the context of explaining deliberate indifference.

We talk a little bit about the NPRM and then we discuss an ongoing case in which his firm is representing Max Gruver's family in a case against LSU. And in that case, Doug is arguing on behalf of the Gruvers family that LSU engaged in a practice of discrimination by policing sorority hazing more strictly than for fraternity hazing. So I hope you enjoy this episode.

Hi Doug, really great to have you today. I appreciate you taking some time out. I know you are extremely busy.

Doug Fierberg:

Well, thanks very much. I enjoy taking this time to have an opportunity to speak with you and provide some interesting information, or at least information I hope is worthwhile for your listeners.

Courtney Bullard:

Absolutely. Tell me about the evolution of the Fierberg National Law Group. I always get that wrong and want to say the National Fierberg Law Group. But tell me about the evolution of that and a little bit about your team.

Doug Fierberg:

Well back in the early 1990s, so about 28 or so years ago, I sort of had two cases fall in my lap. Both involved school aged people. One involved a gang rape that took place in a park in the District of Columbia. And the other was a hazing case at the University of Maryland. During that process, what became clear to me was that there were absolutely no lawyers in the country focused on representing young people who had been hurt or killed in schools and/or their families. I had at the time also learned about the frequency of these incidents and realized that there was a serious need and a need for young people or their families to be able to find a lawyer with the type of experience that could combat the defensive strategies that were regularly being mounted against people to prevent them from achieving justice.

It sort of started with me. And I had some support from time to time at my then existing law firm in Washington DC. Eventually in practice began to develop more across the country, to where it sits now where it's my own firm and we have a team of probably five other lawyers and legal assistance, all of whom have a passion for helping survivors of sexual violence or young people and their families who've suffered traumatic injuries or death.

Courtney Bullard:

And so your firm covers... I'm just looking at your website... Fraternity and campus hazing, sexual abuse, assault, discrimination, which is probably the most pertinent for my listeners today. Does that pretty much sum it up?

Doug Fierberg:

Yeah, it does. But because the central unifying factor in practice is being trained as trial attorneys, we're often retained to do things that are maybe a little outside the meat and potatoes. Our serious disputes who need lawyers that can perform well in court and see the entire chess board. So for example, I've been retained by Rolling Stone Magazine to help them defend some lawsuits filed against them and there are number of commercial clients that have used my services over the years when they're involved in serious disputes.

Courtney Bullard:

I know I probably oversimplified that as well because you have on your website, personal injury and wrongful death. But of course very well known for representation in the Virginia Tech massacre of the victims' families.

Doug Fierberg:

Yeah. I was lead counsel for 20 or so of the families in that circumstance. That crossed a couple of different substantive area. It involved obviously school violence, it involved gun violence, it involved some form of premises liability or duties that the university may owe to its students if there's a clear and present danger on campus. That fits a couple of different categories, but is well within the range of work that we do.

Courtney Bullard:

When you came out of law school, just backing up for a minute before we get into some of your cases, did you know that you wanted to be a trial attorney?

Doug Fierberg:

Yeah, I knew that. And it may have been because of some naivety. The most compelling examples that I had as a young person growing up were trial lawyers in action, usually in the movies or TV.

Courtney Bullard:

Right.

Doug Fierberg:

I didn't come from a family of lawyers, so what did I know? To me, lawyers were men and women who performed in court settings and helped people achieve justice. I wanted to be that. Now, in what particular area, I don't think that when I came out of law school I particularly knew. I did know that I wanted to be trained as a trial lawyer to resolve disputes in that form.

Courtney Bullard:

In the civil form, not the criminal?

Doug Fierberg:

Yeah. I mean, I had an opportunity when I was coming out of law school, to become an assistant DA out in Texas. I was offered a job to work for the Harris County District Attorney's Office. While I value what attorneys do in that context, it wasn't something that I had a passion for.

Courtney Bullard:

Sure. I teach business law as an adjunct professor and have for 19 years, but I make my students go to court, and they can pick whatever they want. Typically, they go to criminal court, just because it's easy to get to. But when I went to law school, I'd never even walked in a courtroom. I hadn't had a speeding ticket, luckily, or anything like that, so my knowledge of it too was what you see on TV. Some of that is accurate and some of it isn't. Of course, now we have real time coverage of trials and things like that. But I'm always interested to find out how attorneys got into trial work versus some attorneys are "trial attorneys", but of course don't see the courtroom very much, just by virtue of the ways that the litigation goes. I know certainly you're not one of those attorneys and have practice in the courtroom quite a bit.

Doug Fierberg:

It's changed a little bit over the years. Just in fairness, I am not physically present in court as much as some other attorneys are. That's by virtue of the size of the cases we have.

Courtney Bullard:

Sure.

Doug Fierberg:

So, just as criminal lawyers are in court looking at a file and walking into court almost daily or a couple times a week, civil lawyers who have heavy automobile practice or slip and falls or certain types of civil cases may be in court several times a month. That's not our practice anymore. That used to be the type of work I was doing, but now the matters we work on are much larger and more complex. So the opportunities to be in court are fewer and far between.

Courtney Bullard:

Absolutely. And am I right that you'll involve local counsel? Because you have cases across the country.

Doug Fierberg:

Yeah. Part of what we're offering people nationwide is clearly unique. Our lawyers are licensed in a few jurisdictions, but our cases are from New York to California. What we do is we form a team. We have to get admitted to practice in that state for the limited purpose of the case we would be handling, but we have to partner up with a law firm that's local and licensed. We end up doing a search to make sure that the firm we're going to partner up with is the type of firm that we would want to represent ourselves, were we in a similar tragedy. And because we do have the ability to assess lawyers differently than the average layperson, we tend to put together some dynamite teams that sort of merge our national experience with their local experience. That's part of what we bring the equation.

Courtney Bullard:

That partnership really is so important. I want to talk about your vetting process a little bit. I know clearly you've represented plaintiffs in a some very high profile cases and continue to do so today. I know that if your firm takes a case, when we spoke before, that it's been fully vetted, which is not always the case with some plaintiff attorneys who are in this line of work. What does that process look like for your firm? What goes into vetting a case and your decision to take a case?

Doug Fierberg:

I would like to believe we're very particular in terms of what we take, that's for sure. We do not have the fire power to take anything that just walks in the door anymore. We are looking for cases that certainly will have an impact on the law and serious impact for our clients. Most of the cases that we're looking at involve some serious tragedies. When we're looking at them, we're focused on two very principal issue. One, what was the nature of the wrongdoing. Did it involve some general negligence? Did it involve some willful or wanton or really bad misconduct? And then second, if it did do that, what are the nature of the injuries caused by that wrongdoing. In both of those circumstances, given that our lawyers may be physically located half a country away from where the tragedy took place, it's important for those issues to be answered clearly enough for us so that we know that it's worth our time to get involved, worth the client's angst for having us involved and that at the end of the day, there's enough of a potential recovery for the client that it would justify bringing in a firm of our nature.

Courtney Bullard:

Yeah, I think, at least from my experience, and as you know, I focus really on Title IX compliance and mainly work with institutions, but have served as a expert witness on both sides. But there is kind of this misperception for the layperson that if they feel they've been aggrieved by school district or campus, they're going to be able to sue and get their day in court and that's that, which is not really the case. It's a very long process, the standards are high in Title IX cases. So talk to me a little bit if you don't mind, just about Title IX specifically and when you're looking at those types of cases and sort of where you see the law today... And I know we're going to talk about that in the hazing context in a moment... But really would love your perspective on sort of what's going on because litigation is pretty all over the place at the moment when it comes to Title IX and sexual misconduct matters.

Doug Fierberg:

Sure, it is. It has been an evolving area of law for, at least in the context of sexual violence and misconduct, for maybe a decade or since the mid 1990s. So, that's more than a decade. But the first big case came out of the Supreme Court, I think, in the mid '90s. When you're looking at these cases, at least in the Title IX context, as you all know, it's not enough that the school did something wrong or made a mistake. When you look at the thing that the school did wrong, we have to be able to analyze it and come to a standard that the school did something that was deliberately indifferent to the circumstances of the person who wants us to represent them. That's a far higher standard than negligence, which is essentially making a mistake. This means that the school had to have some knowledge of what was going on and the consequences of acting or not acting, and then be deliberately indifferent to those circumstances. And because that's a higher measure of proof, it means when we're looking at these cases, we're trying to evaluate them at the outset as to how bad was it, in terms of the school's failure or decision not to act.

From that analysis, then you have to take a look at if you are comfortable believing that the wrongdoing rises to that level of deliberate indifference. Then you try to analyze, well, what did that

deliberate indifference cause in terms of damage. Sometimes the deliberate indifference, given the circumstances, actually caused somebody to be sexually assaulted. They actually cause the primary injury. We've had cases like that, where universities have known of serious risks of danger to women, decided not to lessen those risks and those risks have resulted in women being sexually assaulted. In that circumstance, you have deliberate indifference in a causation of an actual sexual assault.

Now conversely, sometimes, in many of the cases... And I'm sure you've investigated these cases... Someone may have already been sexually assaulted and then they are seeking some action by the school or university to accommodate them or to hold the responsible party accountable or to protect their educational rights, so that they can continue to go to school without being harassed or terrorized by the assailant. In those circumstances, you may be evaluating as to whether or not the school was deliberate indifferent in helping that person. And then you'd try to assess, well, how bad were the injuries given that lack of assistance or help.

That's sort of how we try to analyze them. And then we advise the potential client or, certainly if they become a client, client, of what their legal remedies are. What in fact they may be able to recover, what the risks are in initiating litigation, whether or not they are likely to be successful or not successful, and if they're successful, what does success look like. Does success involve getting the school to change its policies so that others are protected in the future? Does it involved implementing some organizational changes in terms of training, so that the school gets additional training where they might not have had it before? Does it result in staff terminations? Firing people who were deliberately indifferent to the pain and the rights of others. And at the end of the day too, what financial recovery may result.

I think all that's important, but I want it to be known that in all the lawyer jokes that are out in society... You go to a cocktail party and you're five minutes away from a bad lawyers joke. For some lawyers and law firms, it's not always about the money. And for some clients, it's not always about the money. I mean, the civil system does have as its principal remedy financial compensation, but in the context of these lawsuits, we also have leverage and the leverage to cause change. It is fundamentally important to us and our firm that that leverage be used to cause change wherever we're able to. To make the world or a school or a camp or a specific location or maybe even broader, safer for others.

Courtney Bullard:

I think that's a great point and something that folks lose sight of when they hear about Title IX litigation in general. In any civil litigation, they think it's just about the money. And in this space, at least folks that are doing the work in the way that you are, it's really about much more than that.

Doug Fierberg:

It has to be if you care about one of the primary parts of history involving trial lawyers. We all learn in high school... Well maybe we learn it, maybe we don't... In high school or college, that there's a tri-partied system of government in the United States. You have your legislative branch, you have your courts and you have your executive branch, like the presidency. In the judicial branch, the courts have had a heck of a tradition, an amazing history, of causing social change that most people value. I always refer to one of the biggest examples, which is desegregation of schools. Desegregation was not pushed initially out of legislatures. It just didn't happen. When people talk about Brown versus Board of Education, that was a lawsuit that got settled at the Supreme Court in 1954 that basically said, separate but equal is wrong. It began the process of desegregating schools in the United States and desegregating

other areas of our country. It didn't come from the legislature. Courts and lawyers have been able to use the justice system to create social change that's very important.

Courtney Bullard:

If you don't mind me asking along those lines, given everything that you just stated, would you mind sharing your opinion, if you have one, which I would assume you do, on sort of what's going on with the notice of proposed rule making and sort of the status of what's happening with the Office for Civil Rights in this space?

Doug Fierberg:

That's one part of the government weighing in on some of the law that has been developed or has been developing through another part of the government. After the Supreme Court decision out of Georgia in the mid '90s, which identified that people do have a right under Title IX to have sort of equal access to educational opportunities that are free from sexual harassment and violence, there's been a large development of case law setting forth generally what people's rights are in these circumstances. As we talked about earlier, that law has been evolving. Well Title IX, since it is a statute, comes out of the legislative branch, has also been subject to rule making and decisions and policy clarifications coming out of the legislative branch, or in this circumstance, the executive branch, outside of the office of the presidency. That's where you have the education department on the Obama years, and now out of the Trump years, identifying policy statements as to what remedies are available and what schools should be doing to ensure that people's Title IX rights are clearly identified, limited where they need to be limited, and implemented the way the government believes they should be implemented.

Yeah, I mean, our firm has disagreements with where some of the proposed changes are headed, but they're not finalized yet. And I don't think the answers are easy on it. I think some of the backlash coming from generally men, are an interest in having due process in Title IX proceedings at schools, and I can understand those concerns. But conversely, we also understand the concerns of how difficult it is if you're, take an example of a 13 year old young woman, to actually go report it to a school and to pursue her rights and then perhaps be confronted by the assailant in cross examination. Not all of it's clear yet. It hasn't all been worked out. There's still some time. But it's positive that the law and remedies are continuing to develop for young people so that schools are headed towards becoming safer and less fraught with sexual harassment and violence.

Courtney Bullard:

I agree.

Speaker 3:

Did you know that ICS has a membership? Are you a Title IX coordinator that feels you can never keep up with the ever-changing Title IX landscape? Or do you need access to tools that can help you stay current and perform your job at the highest level for your institution? Perhaps your campus needs help with training. Put our knowledge to work for you with an ICS membership. Over 15 courses that can be used to train your campus. Unlimited access to all ICS webinars. Compliance aids and tools that are legally current. Discounts on services and information to assist you with Title IX and other regulations such as Clery, FERPA and the ADA are just a few of the benefits of an ICS memberships. Whether you are interested in one as an institution or as an individual, contact ICS today or visit www.icslawyer.com to become a part of the ICS family.

Courtney Bullard:

I know you represent those who have been victims of sexual violence. Do you or have you represented any folks in what you here termed reverse Title IX lawsuits or respondents in cases who feel that they were discriminated against or have you?

Doug Fierberg:

No. We've been asked to and there are maybe two or three firms in the country that are specializing in doing that. They can take that work, that's fine with us. We don't need that work. It's not like we think that that work is not of merit. Sometimes it is, sometimes it's not. Sometimes those lawsuits are just crank.

Courtney Bullard:

Sure.

Doug Fierberg:

But we're in a position where we can clearly define our ethic, our firm's ethic, our ethos, our sense of justice and where we believe we fit in, in the world and we don't have to compromise that. Not only do we not have to, but we intentionally do not. So, were Harvey Weinstein to call us and say, "Look, you've got great trial lawyers and great experience. I'd love you on my team," that's a non-starter.

Courtney Bullard:

Talking about a little bit the crossover between Title IX and hazing. The first time I spoke to you, and the only time so far I spoke to you by phone, was because I had commented in an article on the Gruver case and you all are using Title IX in a really novel way in this hazing case. Can you share a little bit about that case and the argument that you're bringing forward.

Doug Fierberg:

Yeah. Title IX as its central principal talks about how schools can't be gender biased in policies in the way people are able to access educational programs. The history of Title IX started with trying to deal with athletic differences that existed in this country. When I was growing up, high school had volleyball team and gymnastics for women and 17-18 sports for men. So Title IX has levied that playing field. But in terms of academic programs in certain circumstances, it still remains unlevel.

There is a Greek community at most universities across the country. But one of the central differences in that Greek community between, say, fraternities and sororities is that if you look at the statistics and you look at certain information about fraternities, they are fundamentally more dangerous to perspective members than sororities. Now, there are many reasons for that. Some of it relates to differences in policies enacted by sororities versus what fraternities have or haven't done. But it is certainly true in many circumstances and at many universities, a young man seeking to join a fraternity and get the reported educational, social and professional benefits out of that is going to face risks unparallel by any other organization on campus and certainly far different from what a similarly situated young woman might contemplate or face in joining a sorority.

In the LSU case, one of the things we learned as we were working on certain claims against the university, if there were claims and what claims there were as a result of the hazing death of Max Gruver. And the obvious prevalence of fraternity misconduct on that campus that had, from our

perspective, gone on for many years with a wink and a nod, was that LSU treated sorority misconduct and sorority allegations of hazing one way and fundamentally different in its approach in dealing with dangerous hazing in men's organization, particularly fraternities. And that that difference essentially discriminated for those Greek benefits against men by subjecting them to extremely dangerous circumstances, versus women who did not face pretty much danger at all. The central danger that women face in joining Greek organizations is that they may interact with fraternities and they may get harmed at the fraternity level.

But it was clear to us that LSU had a sort of boys will be boys approach to dealing with hazing violations and potentially hazardous conduct at fraternities, and an all hands on deck reaction if there were allegations of hazing at a sorority. And that that worked against the interests of young men who were not even accurately advised as to what those risks were on campus. Though for many, many, many years, LSU had had incidents of severe injury, death and hazing at fraternities.

We wanted to use the litigation to force LSU, and likely many, many other universities across the country, to take these issues seriously. And they have the power to take these issues seriously, after many decades of these issues being ignored or with universities nipping and tucking around the edges of these serious problems involving fraternities. We think we're on the path of creating that change. I was just going to say, LSU, yes it is a novel complaint. It's the only one ever using Title IX in this circumstance in the history of litigation in this country. We believe it's a solid stretch on the law and solidly fits the law. And as of this date, the district court has agreed with us, because LSU [inaudible 00:32:06]. LSU came out of the box and looked at this mess and that motion to dismiss was denied.

Courtney Bullard:

That's what we talked about because I think people hear deliberate indifference and they hear erroneous outcome and all these different theories that are brought forward in Title IX cases and they sort of lose sight of the fact that at its core, Title IX is still a sex discrimination law. You still have to show that, not in due process arguments, but in other cases where you have an erroneous outcome argument by a respondent let's say, at its core, it's still a gender discrimination law. So I don't think it's a stretch either and obviously the district court doesn't think it's a stretch and I'm interested to see where the case goes, as I'm sure-

Doug Fierberg:

I mean, if you think about it, it's a different expression of what, say for the last five years, men have been vehemently complaining about. When you say the reverse litigation, where they're concerned about due process and being discriminated against in proceedings because they believe they're rigged against them, and they're all in favor of the alleged survivor, those sorts of things.

This lawsuit is saying in effect, men are being discriminated against by virtue of the deliberate indifference of the university, to subject them to dangers that are unprecedented, versus not doing the same towards women. In fact, that's true. It's about time that universities shelved sort of some of these age old truisms that are not true and that have contributed to these organizations being dangerously self-managed on campus and shielded from responsibility, if only because universities never tell the truth about the prevalence of injury and death caused on their campus by fraternities.

Courtney Bullard:

I'm interested to see when you said, boys will be boys, immediately athletics popped into my mind from investigations I've done into athletics programs and hazing and if this ever goes into this realm as well as an argument.

Doug Fierberg:

It may. It just depends on the specific circumstances.

Courtney Bullard:

Absolutely. And with fraternities and sororities, it's a little more clear cut I'm sure, whereas with sports, maybe not so much. But that boys will be boys is just something that's come up quite a bit in my practice when there's kind of allegations of sexual misconduct that cross over with hazing and folks don't recognize it as sexual misconduct. They're like, well, that's just boys being boys. They pop each other on the rear end with a towel, they put their genitals in each other's faces, they on and on an on.

Doug Fierberg:

Sure. Yeah, they're harassing because they're not strong enough, they're not man enough, because for a variety of reasons... And look, I was a competitive wrestler and ultimately wrestled for the University of Michigan for a brief period of time. So I've been in those locker rooms and I've been in those locker rooms where it's about manhood or supposed aspect of manhood, and seen hazing and heard those attitudes. Candidly, the times have changed, fortunately, and there's a better understanding of what young men should or shouldn't be exposed to, or how they should or shouldn't be harassed as they're growing up.

Courtney Bullard:

I agree with you. I will say though, you still have some old school mentalities out there that are pretty prolific. It's definitely an area that needs continual work, at least in the work that I do, that I see with [inaudible 00:35:53] in sports.

Doug Fierberg:

Oh, I agree 100% and I think your work is great. But ideally the dinosaurs will die.

Courtney Bullard:

I like that.

Doug Fierberg:

And the world will be occupied by higher thinking creatures.

Courtney Bullard:

Yeah, we're getting there. We're definitely getting there and I think there's a heightened awareness now that we didn't have before and all of that goes towards effectuating change.

I guess my final substantive question, for lack of a better word, and I don't know if you can pick one or two or not, but you have had a ton of cases that have reached national attention. Any that really

stick out in your mind as ones that you feel like you're the most proud of or made the biggest impact on social change? Thoughts there?

Doug Fierberg:

I want to approach it a little bit differently because it is absolutely impossible for me to segregate out differences between, say, what we did for the Starkey family in California or Marie Andre in New York or-

Courtney Bullard:

Sure, absolutely.

Doug Fierberg:

... The [inaudible 00:36:58] in New Jersey or any of these families. It's easier for me to say what sticks out in my mind over the past 31 years is one of the biggest losses I've had that was based on an unjust trial court and appellate court. It sticks with me and I'm still connected to these families 15-20 years later. And still so much of the work that we do is in deference to their young kids that died senselessly on the side of the highway in Brazos County outside of Texas A&M University. And that's six kids who got killed on the side of a highway outside of a fraternity house, Sigma Alpha Epsilon, many years ago. Three or four were from Texas A&M and some were from Baylor.

We had a strong case based upon the longstanding misconduct by this fraternity chapter that was situated on the side of an unlit five lane highway. We developed evidence of police being at the property the night before and warning the fraternity that if they didn't change their activities, someone was going to get killed right outside of their fraternity house. Well, those warnings were prescient because literally the next night, the fraternity ignored the warnings by police, increased the size of its parties. Six of my clients were killed on the side of the highway. I met with the parents out, even when the accident reconstruction marks were still on the pavement. And just a horrible tragedy. It wasn't Sigma Alpha Epsilon, it was Tau Kappa Epsilon.

We developed an extremely strong case against the fraternity and I know the defense believed that the case was extremely strong because of all the conversations we had had as we litigated this case. And the trial court judge dismissed the lawsuit without writing any more than a single word about that lawsuit. It just said, "Dismissed." To me, that struck me as just an amazingly corrupt action in a decision that was so impactful on these families that knew we had established serious wrongdoing on behalf of the fraternity and what should have been a remedy under law. That decision will stick with me forever because I know those families. I still know those families and I know they know that the work we continue to do on behalf of families that have been traumatized by the unprecedented levels of misconduct in injury and death at fraternities, I know they know that we're continuing to do that work for them and on their behalf, because there should be a remedy.

Now, deference to them, and they know this too, we have since taken on Tau Kappa Epsilon outside the state of Texas and we have beat Tau Kappa Epsilon and held them responsible for injury and death they've caused. And we'll continue to do that. But there's not a day that we don't work, that we don't do it in honor of their family and in honor of every other family that we represent.

When they hired us, not just this family out of Texas, but when our clients have hired us, they're often so much more concerned about things that have nothing to do with money. They know that even when we're "done" with their lawsuit, we are still out there, pushing for change in this area and we're

doing it on their behalf. Even though they're not on the phone with us anymore, they well know that we're kicking butt somewhere to advance something in honor of their family.

Courtney Bullard:

So just you even talking about being at that scene gives me chills. I know this can be really heavy work. At least for my in my practice, especially given the types of cases that you've had. How do you deal with that? Do you have certain things you like to do for fun? What is your way of sort balancing? I mean, obviously you're seeking justice and I know that that gives you great satisfaction in trying to help those families, but anything else?

Doug Fierberg:

I do have a private life for sure, but you can't do this type of work if you don't live it, if it isn't who you are. I mean, I just had one of our attorneys was at a location for the last three days defending depositions involving the sexual assault of a five year old girl in a bathroom at a church. The passion she has for doing right and being involved in this work defines her. So yes, she, like I, we leave, we go home. I like hanging out on the farm. I like hanging out with my daughters when they lived near me. Those sorts of things.

But the one central things that most of these families are searching for when they're talking to me is someone who is somehow able to wall off some of the emotional content and analyze the circumstances to get them the justice that exists. Somewhere over the years, I've had to, as a matter of necessity, learn to integrate so much of this tragedy into my life, so that I can continue to do this work. Now, it's caught me by surprise many, many times, where I've not been able to keep that wall up.

When we were finishing some of the Virginia Tech massacre cases, I was seen crying at certain portions of the proceedings and that caught me by surprise, but maybe still indicated that I'm human. But I'm not being retained by anybody to be their psychologist. I'm being retained by people to strategically and surgically and aggressively analyze circumstances so that I can bring them relief in this form and bring them justice. And however that works out for them emotionally. I take that portion seriously and it requires lolling off many things and trying to work to do that.

So yes, I work out. Blow off steam that way. I have some horses that I love playing around with and a farm where I love to smell the clean air and look at the stars and relax to the extent I can. But then we're right back at it the next day, because that's who we are and that's what we think people who come to see us or retain us deserve.

Courtney Bullard:

I can completely relate. Listen, I am so glad that we were able to connect. We've been somewhat on opposite sides of a case, but never gotten to meet. I really appreciate you sharing your passion for your work, kind of the background behind your law firm. I've learned so much just listening to you. And the way that you deliver and explain the law, I think will be really helpful for listeners because it's in a way that anybody can understand. Sometimes us lawyers get a little heady and talk over people. You're not one of those and I very much appreciate that. So, thank you so much for sharing everything with me today and taking the time to talk with me. And I really hope that you are able to get some time to relax and enjoy your family over the holiday.

Doug Fierberg:

Yeah. Thanks so much, and to you too. And to the listeners out there, I hope I wasn't pontificating. I hope that-

Courtney Bullard:

No, you were great.

Doug Fierberg:

... Saying it to you in a way that's human... Too often lawyers think that they're in star chambers and their word is next to the word of God. It's not right. It's not the reality. It's not the way it should be. And certainly with respect to our firm, it's not the way it is.

Courtney Bullard:

Well I have put your contact information or your law firm's information in the show notes. I didn't even notice on there, are you on social media?

Doug Fierberg:

Yeah, the firm is on social media. I think we have a Facebook page and other things. Erica who runs the [crosstalk 00:45:22] manages it. She's also an incredibly passionate person. We try to be out there, if only so that people can get helpful information when they're trying to consider what's going on. We should be out there on Facebook. I know we have a website. I think we have a Twitter account, not that I really pay attention to it. But occasionally Erica comes in and says she tweeted something. But any way that we can at least help people understand their rights and get some relief in these areas, we try to be there.

Courtney Bullard:

Well I will make sure that's all in the show notes for the listeners, if they want to get in touch with your firm. And thank you again for your time.

Thank you for tuning in to the Law and Higher Ed Podcast. I hope you will continue listening to episodes which are scheduled to be released every other Thursday, with a couple of informational episodes sprinkled in. Or is something happening on the Title IX front, which it probably will, of course there might be something that is more frequent. Please connect with us on social media. We are on LinkedIn, Twitter, Facebook and Instagram, our newest platform. So be sure to connect with us there, as well as visit our website for current events and upcoming conferences. If you'd like to be a guest on the podcast, don't hesitate to reach out to me at chb@icslawyer.com or through the contact us form on my website. Or if we can be of service to you, don't hesitate to reach out as well. Thanks again for listening and see you next episode.

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