

## **CommonLaw.Vance.S2.Ep6**

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RISA GOLUBOFF: Welcome back to Common Law, podcast from the University of Virginia School of Law. I'm Risa Goluboff, the dean.

LESLIE KENDRICK: And I'm Leslie Kendrick, the vice dean. We're continuing season 2 of Common Law by talking with scholars and experts about points in time where lawyers change the course of history for the better, for the worse, or somewhere in between. We're continuing our theme today by bringing in a special guest, a scholar and a UVA law alum who's also spent much of her career as a litigator and a federal prosecutor.

RISA GOLUBOFF: We're so excited to welcome Joyce White Vance, a University of Alabama law professor who previously served as US Attorney for the Northern District of Alabama. Her story today is not only about a time when lawyers changed the world, but also about a time when she personally changed as a lawyer, and about what happened when a whole group of lawyers started to rethink, what does it mean to be a prosecutor? And beyond that, what should criminal justice really be about?

Joyce, thank you so much for joining us.

JOYCE WHITE VANCE: Thanks for having me on. I'm honored to be with y'all today.

LESLIE KENDRICK: You served as an assistant US attorney in Birmingham for 18 years before President Barack Obama nominated you to become US Attorney. What did you like about being a prosecutor?

JOYCE WHITE VANCE: My favorite thing about being a prosecutor was that I saw it as inherently a civil rights job. When I was going through the process of being hired, I had the opportunity to talk with a longtime career prosecutor who had previously been an FBI agent, and he told me his vision of the job was that it was about enforcing people's civil rights every day.

And that meant that even if you had a criminal defendant who had done something, committed really a horrible crime, if their civil rights had been violated in the process, if the Fourth Amendment had not been respected, for instance, in a search warrant, then your job was actually to be the person who put yourself in between the Constitution and something wrong taking place.

That was very powerful to me, and it was something that I took with me to work every day, was that my job was to uphold the Constitution even at a price.

RISA GOLUBOFF: When you became the US Attorney, did you put into practice that value and that approach more broadly? How did that affect the way you prioritize the work of the office when you were in charge?

JOYCE WHITE VANCE: I did do that to some extent. There are obviously warring priorities for prosecutors, right? There's this need to protect the community by getting dangerous people off the streets. The risk can be that folks focus on prosecutions and on prosecuting every case that they can and being concerned about numbers of prosecutions without being concerned about significance of prosecutions.

So I did try to focus on an approach where we prosecuted the most significant cases that would impact our community. I was blessed with being part of an office that had already really adopted this ethic of protecting people's rights even if they were accused of crimes. So in many ways, I was a product of the environment that I was raised in and didn't have to instill values that already existed.

RISA GOLUBOFF: So not long after you became US Attorney, Attorney General Eric Holder invited you to join his Attorney General's Advisory Committee, and you actually became the co-chair of its Criminal Practice subcommittee. So can you tell us about the committee and the subcommittee and what you all did as part of that?

JOYCE WHITE VANCE: Sure. So the Criminal Practice subcommittee was newly created by Attorney General Holder and it had broad areas of responsibility. It focused on policy regarding prosecutions, typically the criminal function at DOJ, but it also expanded beyond that, and it looked out what we now think of as this full portfolio of criminal justice issues, looking at prevention as a legitimate strategy for prosecutors to pursue, and also at reentry, which is a term that reflects the fact that most of the people who are incarcerated will come back to their communities. There are historically very high rates of recidivism, and the question of reentry is, how do we make it possible for these people to succeed when they come home from prison?

So we looked at criminal justice not just as a matter of putting people in prison, but as a matter of making communities safer by preventing crime and by helping people who had been incarcerated return to their communities as productive citizens.

LESLIE KENDRICK: Did working on that change your view of your own role as a prosecutor?

JOYCE WHITE VANCE: It really did, and I think it was, in hindsight, very foundational to the way that I viewed the role that US Attorneys offices needed to have in their communities. The question that I increasingly began to ask is, is what we are doing here making our community safer? And it was a real change in the metric for success that we used in the office.

Too often prosecutors are evaluated both internally and by their communities on numbers of cases, right? It's very easy to say, did you prosecute more cases this year than you prosecuted last year? And I remember at the end of my first year of tenure, there was an op-ed written in one of the local papers talking about the fact that we had done fewer cases than in the prior year.

I thought that that actually was a success metric, because what we were beginning to do was to do fewer of the sort of the easy cases, what prosecutors sometimes call lower-hanging fruit cases, and invest our resources in cases that were more difficult to do, that took a longer time to do, but that ultimately had a bigger impact on the safety of the community. So we changed our metric.

RISA GOLUBOFF: And my sense is that in addition to changing your metric, you also changed some of your activities, right? So it wasn't all about the cases prosecuted. You were creating partnerships and thinking more broadly about the relationship between prosecution, as you say, prevention and reentry. So how did that affect that kind of work that your office did?

JOYCE WHITE VANCE: So it was pretty interesting. In the criminal division in a US Attorney's office, the primary focus is prosecutions. But we also began to put together a team of people-- my criminal chiefs, some other folks that I'd worked with for many years-- with the notion that we would build partnerships outside of the office, strategic partnerships that could be used for prevention and for reentry.

So we built a partnership with police, with other agencies like probation and the courts, but also with community service agencies, and ultimately were able to put together a really strong community partnership that worked on preventing crime among young, vulnerable people who were prone to join gangs, but who with support and with some good counsel and guidance could take a completely different path in their lives.

LESLIE KENDRICK: Did this take a change in mindset within the prosecutors in your office? Or was this something that was fairly-- as you said about prevention, a fairly easy sell?

JOYCE WHITE VANCE: Yeah. So it really is a very individualized sort of thing. There are some prosecutors who believe that their only job is to prosecute cases and that everything else is social work, and that's, I think, a traditional view that was difficult for some people to walk away from. What was influential for me and for many of my colleagues was data that suggests, for instance, that locking people up for the maximum amount of time permissible doesn't necessarily give us the best justice outcomes, that preventing crime can be done intelligently and efficiently, and is a much more efficient use of resources than putting people in prison.

But it wasn't-- I don't want to pretend that this was an easy sell for people. There were some people for whom this just didn't make sense, others for whom it did, and I was fortunate to work in an environment where a number of key people really were willing to accept this work, including the chief federal judge at the time in our district.

RISA GOLUBOFF: Can you speak a little bit about what you did with relation to that opioid epidemic and thinking about criminal justice and its relationship to public health?

JOYCE WHITE VANCE: So I had an unfortunate personal experience before the opioid epidemic assumed the national prominence that it has today. My oldest kid, who's actually now a young lawyer, had a friend in high school, and after their first summer in college, she came home and died of an overdose. This was in a small Alabama county, heroin was not a problem that was on our radar screen, and I happened to see the sheriff in her county shortly after her funeral and I said, golly, it's such a shame about this young woman. She had been studying abroad and I said it's terrible that she got hooked on heroin while she was abroad.

And the sheriff looked at me and he said, Joyce, she didn't get hooked on heroin overseas, she bought it in Shelby County. I know who sold it to her. She died with a needle in her arm. And I

was stunned by that. I had prosecuted a heroin case probably eight years before this, it was the last heroin case that we had done in our office. And as I talked with this sheriff, he was the first person who told me he had concerns that heroin was coming back.

But we did what prosecutors do best. We put together some prosecutions that were aimed at taking out the supply chain. We wanted to disrupt the supply of heroin coming into North Alabama, we figured out how that was working. But my criminal chief came to me about a year and after we had done several major prosecutions and said, we cannot arrest our way out of this problem, we're going to have to do something different.

So I called our County Public Health Officer and said, Mark, what are you doing about heroin? And he said, nothing, what should I be doing? And that led to just a transformative partnership where we worked very closely. We partnered with them, we partnered with the public health department at the University of Alabama, put on a community-wide summit, brought in people to talk about the spread of heroin. And so we were able in Birmingham to create an early community-engaged partnership that worked to both halt the spread of heroin and opioid addiction, but also to change sort of the narrative around it, to change the narrative from addicts are bad people to this is a medical health crisis.

And as we now know because of statistics, opioids were prescribed in Alabama at just overwhelming rates. More prescriptions were written than there were people in the population, and we know that a lot of addiction resulted from people who had legitimate pain issues who became addicted but had no place to go with it.

RISA GOLUBOFF: So there's a perennial tension, I think, between different approaches to criminal justice, and is that is the best way to approach this, you've got to get people off the streets, you get them in jail, you get them in prison, versus thinking more holistically about how to approach people that you've been talking about. But I'm curious about what criminal justice is supposed to do and what it's supposed to be and how the kinds of things you've been talking about-- where they're based kind of more theoretically, can you tell us about these different approaches?

JOYCE WHITE VANCE: So there are these two sort of brightline very different approaches to criminal justice. One is the more traditional tough on crime approach which says, prosecute every person for the maximum crimes. Put them in prison for as long as possible, that's how you best protect society, by getting criminals off the streets. And of course, that approach has always been very attractive to elected officials. Nobody wants to have Willie Horton ads run against them, so anybody who's involved on the political side of the spectrum inevitably seems attracted to this tough-on-crime approach.

The newer approach, which is often called smart on crime, is a more data-driven approach, and it says, we don't have to always engage in these draconian sorts of penalties. We are a country that incarcerates a higher percentage of our population than anybody else in the world, but perhaps most importantly, smart on crime is about doing the right thing for people. People should be treated fairly. We should try to continue to bend the arc of justice in favor of doing justice in our

criminal justice system, and this is really what I think the commitment of the Obama administration in this area was about.

RISA GOLUBOFF: Obviously what you were talking about in smart on crime, it's interrelated with Black Lives Matter, with ideas that we're actually in a state of mass incarceration, and the racial inequities in the criminal justice system are just tremendous. And, I mean, it sounds like what you're saying is we've made enormous progress, but there's still clearly a lot that needs to be done. Where do you think we are in that arc of justice? Where do we go from here?

JOYCE WHITE VANCE: We have a lot of work to do, to be frank, about the situation. The case that really opened my eyes to this was the last criminal case I prosecuted as a criminal prosecutor before I went to our appellate division.

It was in a small North Alabama county in a city called Boaz, Alabama, and it turned out that the entire night shift of the police department in Boaz was arresting Hispanic employees at the local chicken factory on pay day. These people were unbanked, they were carrying cash, so the police officers were stealing their money from them and then letting them go the next morning. No charges, consider yourself lucky, because many of them lacked legal status to be in the United States, they were hesitant to report this.

Unfortunately for the police department, they managed to pick up a Puerto Rican guy who is an American citizen, and upon his release, he promptly took himself, highly outraged, to the local FBI office. And so we prosecuted that entire night shift at that police department for violating folks' civil rights.

That, I thought, was a very stark case. But at the end of the case, after we convicted everyone on this night shift, they sort of jokingly said to me, you shouldn't go back to Boaz, you know you don't need to be driving around up there. There was sort of a popular outlet mall up there and they made it clear that I couldn't shop there anymore.

All too often law enforcement closes ranks around these guys, and it's a shame, because really, 99% of the police officers out there, whether it's local officers or federal law enforcement, they're good people who are deeply committed to doing the right thing for their communities. But like everybody else, law enforcement has some guys who dishonor the badge.

And I'll tell you a difficult story about a prosecution that we did when I was US Attorney. We had a police officer in a Northeast Alabama county who, responding to a call that there was a suspicious-looking individual walking around in a residential community, approached an Indian grandfather legally here to help his son and daughter-in-law with a new baby, did not speak English, was out taking a walk in the neighborhood, and as he was approached by police officers, he put up his hands and said, no English.

This police officer body swept him, and the weight difference was incredible. The grandfather might have weighed 100 pounds soaking wet, the police officer was over 200 pounds. Body swept him, which is a technique that shouldn't be used, partially paralyzed him, was ultimately prosecuted by our office for violation of civil rights, and we did not get a conviction. The jury

hung the first time, they hung the second time. The judge wouldn't permit us to try the case a third time, we were ready to go.

It can be very difficult to achieve justice in these cases for all different kinds of reasons. What's important is that we support-- and by we, I mean people in law enforcement, but also elected officials-- support a narrative in our communities that this kind of conduct by police officers is unacceptable, that these people need to be removed from law enforcement and not have that special trust.

LESLIE KENDRICK: Stories like that illustrate why might be very difficult for communities to trust law enforcement, and possibly also to trust prosecutors. Is that also part of criminal justice reform, trying to build trust? And how do you do that?

JOYCE WHITE VANCE: It really is, and I don't know if you knew this when you asked the question, maybe it was deliberate, but Birmingham was one of six pilot cities in a project that was called Building Community Trust. And it recognized that because of these historic issues, police agencies and law enforcement needed to take the lead in going out to their communities and rebuilding trust where it was broken.

And so the components of that program were procedural justice, and then working on implicit bias, which is maybe a full podcast topic in and of itself, but this notion that we all have certain implicit biases, not explicit, doesn't mean that we're racist, but we need to work on understanding them and figuring out how we work around them to ensure that everyone is treated fairly. So those are those two sort of lead-in components to working on restorative justice, to police agencies working with their communities to make amends for what may have happened in the past. And we need to do more of that, because as law enforcement I think in many places knows, their primary commitment is to their community.

Police agencies really want to have these better relationships so that they can serve their communities. That's why they sign up for the job in the first place. So restorative justice is that final and very important step in building community trust.

LESLIE KENDRICK: What do you see being the next big steps in criminal justice reform?

JOYCE WHITE VANCE: So I'm going to go big on this one and say that we are overdue for some sort of national leadership and a holistic approach in this area. Sometime in the next few years, this country needs to come together, it needs to be bipartisan work that's done to develop priorities for America that can be implemented at the federal, state, and local level so that we, most importantly, I think, deliver more justice in our communities and do that while reducing crime and cost at the same time.

RISA GOLUBOFF: Thank you so much for talking with us, Joyce, what an important conversation, and your insights are just incredibly invaluable.

JOYCE WHITE VANCE: Well thank you so much for letting me talk about issues that are near and dear to my heart.

RISA GOLUBOFF: That was University of Alabama law professor Joyce White Vance, a former US Attorney for the Northern District of Alabama who served as a federal prosecutor for more than 25 years.

LESLIE KENDRICK: Well that was really interesting.

RISA GOLUBOFF: That was really interesting, and I think-- putting my historian's hat on, I think about the criminal justice reform moment that we're in in the context of a much longer trajectory of efforts for criminal justice reform and ways of thinking about what criminal justice is for, some of those fundamental questions that we were talking with Joyce about, and when she was talking about the tough-on-crime versus smart-on-crime models, I was thinking about the long history of different ways of thinking about criminal justice.

And there was a scholar in the 1960s, Herbert Packer, who talked about two models of criminal justice-- the crime control model, which is very similar to the tough on crime; and then he contrasted it with a due process model, which was not exactly the same as the smart on crime that Joyce was talking about, because the due process model was really about the kinds of issues she talked about early on in the interview, the individual due process rights, making sure that as you are prosecuting, you're also thinking about civil rights and maintaining civil rights in individual cases, whereas the smart on crime is really about using data and harnessing data and figuring out what role prosecution plays in the larger panoply of crime prevention and reentry, and thinking at a more kind of wholesale level about the role of the criminal justice system altogether.

LESLIE KENDRICK: That's really interesting. So I don't have that historical perspective, and it's really interesting to hear that these debates about what criminal justice is for have been going on for a long time. But I had another historical thought, which was just the-- on the last episode, we were talking to Fred Schauer about the case New York Times versus Sullivan, which grew out of basically a complaint in The New York Times about how police officers in Alabama were treating civil rights protesters and treating Martin Luther King Jr.

And now we're having this conversation with Joyce White Vance about police and prosecutors and how they see their role in Alabama, and real efforts to try to earn trust and to rebuild trust within the community. And you can think that's been a long time coming, that these are problems that developed over years and years and years, and it's going to take a lot of work to solve them, but at least people are trying to work on that.

RISA GOLUBOFF: It's funny you mentioned that the Fred Schauer episode, because I was also thinking as we were listening about another one of our episodes from last season with Professor Dayna Matthew where she was talking about medical legal partnerships, and really, having the law and lawyers partner with the medical establishment and various other kinds of helping professions to holistically attack the problems of public health.

I was thinking, as has Joyce was talking especially about the opioid epidemic, but also in all of these ways in which we're thinking about criminal justice not in a vacuum and thinking about prosecution not in a vacuum, but as one tool, as she says, one tool to address crime prevention

and create a holistic approach to how people live their lives and how to create better lives and how to make this a better society, a more equal society, a more just society, and that law is a piece of that, but it's obviously not the whole thing.

LESLIE KENDRICK: Yeah. It's really interesting to think of that shift in mindset from lobbying-- not something that happens at the-- someone commits a crime and then the law intervenes, but that law is a tool that helps to shape communities and is embedded in communities and can be a force for good within communities.

RISA GOLUBOFF: Yeah. And beyond law, also prosecutors.

LESLIE KENDRICK: Yep, yep. That they have an enormous role to play. They wield a lot of power, and when they think reflectively about how best to do that, they can make a huge difference in the quality of people's lives.

RISA GOLUBOFF: Yeah, absolutely. I think that's exactly right.

LESLIE KENDRICK: Let us know what you think. Stop by Apple Podcasts or wherever you listen to the show to leave us some stars or a short review. If you want to check out some past episodes or find more background information about our guests, please visit us at our website, [CommonLawPodcast.com](http://CommonLawPodcast.com), or on Twitter, [@CommonLawUVA](https://twitter.com/CommonLawUVA).

RISA GOLUBOFF: We'll be back in two weeks with UVA law professor Anne Coughlin to talk about women and the evolution of legal education.

LESLIE KENDRICK: Common Law is sponsored by the University of Virginia School of Law. Today's episode was produced by Sidney Halleman, Tony Field, and Mary Wood with help from Virginia Kane. Today's show was recorded at the Studio of Virginia Humanities. I'm Leslie Kendrick.

RISA GOLUBOFF: And I'm Risa Goluboff. Until next time.

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