Alison Monahan: Welcome back to the Law School Toolbox podcast. Today, we're excited to have Jim Brosnahan – a longtime Morrison Foerster trial lawyer and author of *Justice at Trial* – here to talk with us about life as a trial lawyer and the skills you'll need to succeed. Your Law School Toolbox host today is Alison Monahan, and typically, I'm with Lee Burgess. We're here to demystify the law school and early legal career experience, so that you'll be the best law student and lawyer you can be. Together, we're the co-creators of the Law School Toolbox, the Bar Exam Toolbox, and the career-related website CareerDicta. I also run The Girl's Guide to Law School. If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can always reach us via the contact form on LawSchoolToolBox.com, and we would love to hear from you. With that, let's get started.

Welcome back to the Law School Toolbox podcast. Today, we're excited to have Jim Brosnahan, a longtime Morrison Foerster trial lawyer and author of *Justice at Trial*, here with us to talk about life as a trial lawyer and the skills needed to succeed. Welcome, Jim.

Jim Brosnahan: Thanks very much for having me. I really appreciate it.

Alison Monahan: Oh, it's definitely my pleasure. Well, to start us off, can you give our listeners just a bit of your background, so they have some context here?

Jim Brosnahan: Yeah. Very briefly, I was born in Boston actually, and I went to Boston College and went to the Harvard Law School. And then I met my wife there. She was one of nine women...

Alison Monahan: Oh, wow.

Jim Brosnahan: ...in the class, yeah. With Ruth Bader Ginsburg. But then we got in the car, we went west, and I always wanted to be a trial lawyer. It wasn't something I was debating; it's just what I wanted to do and I got to do it. And my first trial was a first-degree murder case. We were very understaffed, and the boss handed me the file, I looked at it, I had six days. And to be honest, I just loved the experience. And I've tried cases after that for about 60 years. I did a lot of lecturing. I taught at the National Institute for Trial Advocacy for 50 years, and that of course is relevant here because it's devoted to learning by doing, and I hope we talk about that a little bit. And I taught at the Berkeley Law School for 10 years. I taught a class on persuasion and I discovered an awful lot of law students are worried about their voice, and so we worked on that. So that's a brief introduction, at least.

Alison Monahan: Awesome. If people want to learn more about you or reach out to you, how could they do that?

Jim Brosnahan: They can come to LinkedIn, where I actually have followers. It's quite exciting. I don't know if we're going to lead a revolution or what we're going to do, but I have followers. And I've been teaching on LinkedIn, which is a little unusual. And I've been teaching voice among other things. And I follow the Supreme Court, I have that on there too. And it's very enjoyable for me to be on social media actually, and I do that every day. Then I have a website, which is entitled JimJBrosnahan.com. And that tells my story and it tells a little bit about the books that I have written over the years and things of that kind.

Alison Monahan: We will link to all of that in the show notes, and I will definitely be sure to follow you on LinkedIn and keep up to date with what you're up to. You can do the same. You mentioned books. I was thinking you have one book, but tell me about your books or book, and specifically some of the cases that you discuss in *Justice at Trial*.

Jim Brosnahan: The most recent book is *Justice at Trial*. It's a memoir, but it's very often about other people. It's about other lawyers that I either admired, or maybe didn't admire all that much, and questions about why lawyers do what they do. Why do we go out and represent despised people? Why do we do that? And the foreword of the book is actually written by the Dean of Berkeley Law, and the first sentence is, "Every law student should read this book." So, you can't do better than that. Erwin Chemerinsky is, I'll just tell you, is a friend of mine, but I did teach there for 10 years, and this is relevant to your subject – I did a lot of one-on-ones with students. I think those are, if you can do it, if the economics of law school will allow it, it's a wonderful thing, because they tell you things one-on-one that they don't want to mention in class, including coming back to the question of the voice and working on the voice. And it's never about my voice. It's not imitating me. It's taking their voice, whatever it is, and developing it by practice is very important. But I witnessed people who would come into that class, they'd sit in the back – that's always a telltale sign. They sit in the back, they look like they might drop the class. Some of them are really nervous about getting up in front of other people. And I researched how many law schools have a semestered class on speech. Very few. And sending people out into the world where they have a concern about speech is not good.

Alison Monahan: Right. Certainly not into this profession, where we definitely need to be able to speak, whether it's in a meeting or in a hearing or whatever it is. That is very interesting. I guess you only worked with students for 10 years, but do you feel like this is a more recent phenomenon or something that you also experienced when you were in law school?

Jim Brosnahan: Law school was wonderful, if you were going to go directly to the U.S. Supreme Court, but it did not prepare me in any way to try that first murder case. I was just like, "What now, in the courtroom?" And I think that helped me a lot, because I've been teaching my whole life. When there's learning by doing, then you're actually doing something, and the appreciation of what you're doing is sometimes greater than when you're in a class of 75 people and you're making your notes and you're listening, which is crucial. Let me be clear about that, it's crucial. But honestly, I think in law school, looking back, it's a little bit overdone.

Alison Monahan: Sure, sure. It's funny because I went to actually another professional school before I went to law school, and it was the same thing. It was architecture school. I did not come out of that experience knowing how to build a building, let's put it that way. Which maybe is what you think you might learn there, but you know what? It is what it is. Alright, let's switch gears a little bit. Can you talk to me a little bit about some of the rewards and challenges of life as a trial lawyer? It must be pretty intense.

Jim Brosnahan: It's very intense. And of course it's changed dramatically. When I started, I was doing trial after trial. I did a couple of trials in one week, and that's just the way it was. The way it was structured is not relevant. Here's what I know about law students: There's a number of them that want to do trial work, they want to do litigation, and they want to know the answer to your question, which is, what does that take? First of all, you have to like competition. There'll be a lot of that. Litigation, trial work, arbitration – that's all competition, and you have to think that you would like to develop the elements which will really make you a successful person in that. You've got to be a very good writer. That's another thing that some law schools do a great job on. They really have a lot of writing classes, which they should. And some law schools, not so much. You have to teach yourself by doing a lot of writing. The speaking, and it's not limited to litigation to be a good speaker. You go into a board of directors and tell them they should risk everything. And you have to be a good speaker to do that. And the third thing is case analysis. And case analysis, of course, is borrowing from your law school experience, but it's different. It has grimy facts, like my client. Is my client a decent person? Are they going to be a good witness? There's a lot of human analysis that goes on, which, frankly, I loved. I loved meeting all those people over the years. You can imagine 60 years.

Alison Monahan: I would imagine it's quite the cast of characters.

Jim Brosnahan: Absolutely. And I did a lot of criminal work, and sometimes you're sitting in a holding cell and you're the only person that's willing to talk to that person. They cut off all their connections to family and people, and you're the only one to talk

to them. So, there's a little bit of a similarity to some kind of religious exercise, where you're talking to these people. And they have mental illness, some of them. And they don't have any money particularly, representing some homeless people. There are lawyers that litigate on behalf of homeless people. Maybe they got all their property, such as it is, taken away. That's all they had. So, my vision of trial work and all that is maybe overly dramatized, but I was there for 60 years and I saw an awful lot of idealistic lawyers that we don't have time, but I could just name the categories of what they do. And I know you had a program one time about being true to your ideals as you go through law school. I think that's a great subject.

Alison Monahan: Definitely. And I do think that idea you talked about earlier, about needing to like competition. Nobody asked me that in law school: "Do you like to argue? Do you like competition?" And I would have said "no", but somehow I ended up as a trial lawyer, as a litigator anyway.

Jim Brosnahan: It doesn't prepare you for the subtleties of it, but if your mother told you that you argued too much, that's a good sign. And you're always arguing with your uncle Fusby at Thanksgiving or something, that's a good sign. If you like to talk – and I've already shown that I do – it's a very good sign that you've done some things where you like to argue in a good way. What you really need to do is learn how to argue at the stage of law school. That's important.

Alison Monahan: Right. I feel like I'm actually quite conflict-averse, so I'm not quite sure how I ended up as a litigator.

Jim Brosnahan: There are people that way, and there they are, and they're in a law firm and they want to make nice with the opponent.

Alison Monahan: I'm like, "Can't we just all get along here? Do we have to be so aggressive?" Wasn't a great fit.

Jim Brosnahan: Yeah.

Alison Monahan: I do have one question for you, because it seems like you've seen this play out in reality. With trials being so limited these days, do you think this is actually a viable career path for newer lawyers?

Jim Brosnahan: It can be. And I counsel some number of people who just call me up and then I talk to them about it. The first point is, there're a lot more young people out there who want to be trial lawyers, who can, in this system, be that. And it's a conflict very often between money, for example, because if you go into a big firm, as I am, there are opportunities to go to trial, but not anything like what I

experienced. District attorney's offices, they're in court all the time. It isn't just a question of trial, but it's being in court. Public defenders, yes. There are some pro bono lawyers who try a number of cases. This is too much to cover today, but there're all kinds of things you can teach yourself. You can spend some time in a court watching a trial. You can read about trials, have a big library about trial lawyers. And you can do a number of things, and mostly you can speak and practice and take your phone, for that matter, or even a video, and practice your speech. Maybe we'll get to that, but it's a big subject.

Alison Monahan: Let's actually switch to that now, because I do want to talk with you about this. So, you mentioned you have worked with law students to help them develop their voice, their public speaking, get more comfortable with these things. Tell me about some of the recurring problems you've seen and how people can start to solve them.

Jim Brosnahan: The first and biggest problem is the terror that some feel at standing up and speaking. And they can get over that in a class, where that's what you do. Most law schools have a class on litigation or something, and you can join it. Most law schools have an opportunity to practice your speech. I talk to the summer associates every year that come to our firm and I have a long list of things they can do, because I'm adding to their work, which is nice. But I acknowledge that they're reading these books on trade, whatever, in Zimbabwe or something. They're doing all that, it's important. And they have to do that. And they would like to have a life even in law school and all that. But I just tell them, "Practice your speech two hours a month. Record it, listen. Is that good?" There was a lawyer this morning in the U. S. Supreme Court, arguing for Donald Trump. You could barely tolerate the sound of his voice. I don't know if he had a cold or something, but the scratchy nature of it... And so, you practice your speech. You write as much as possible, because in the absence of the trial, very often, with regard to cases, you have to be a good writer. You have to be a good writer, and briefs do not have to be dull. They really don't. And so, there's a lot to that. It's a question of priorities. I mentioned money. You go to a certain firm because first of all, you need to pay off a huge loan. They've lent you a lot of money, you've got to pay it back. Biden's in the paper on that issue. And I understand that. But in my case, really, trial, any trial was my priority. And you have to set lifetime priorities. Is that what you really want to do, even if you make less money? Of course I got to Morrison Foerster, so we did okay.

Alison Monahan: I think it worked out alright for you in the end.

Jim Brosnahan: Yeah, I think so.

Alison Monahan: Alright, let's drill down. I know you sent me a list of some issues that specific things you see in people that they need to work on developing. I'm just going to run through them, you can talk about any one you want. We've got things like tempo, volume, tone, emphasis, clarity, and pauses. So, tell me a little bit more about... These all seem pretty specific to me. Should I actually be recording myself? I do record myself; I just don't listen to it.

Jim Brosnahan: No, no, no. So, those are my elements that I teach. Tempo, for example, just means speed. But that's a good place to point out this speech that we have is a habit. We've had it a long time. And if we make it sound like we're in a hurry, it's going to be flat. You don't want that. Pauses are interesting, because if I let it sink in that Alice Sikoti was a 14-year-old girl on a Navajo reservation, taking care of her brother and her sister, when a man was walking on Route 89, he saw their tent and he went over there. And in his right pocket, he had a 22 pistol. I read a lot, and there're similarities with literature, good literature, but I will read the first two pages of a book when I'm deciding whether to read the book, and it better be good. And that's true of juries and judges and arbitrators. And if you can train your voice to keep that attention on you, so that when you begin, they want to listen to you. And I repeat it, because it's important – it's not copying me or the teacher or anything like that. It's your voice. It's simple. It's not that hard to pause. What you're fighting, though, is the habit of the speech. And your parents, for example, may have been a big influence on how you speak. And there are, of course, people in law school – many of them – that started with an accent of some kind.

Alison Monahan: Right. Now, the pause is interesting. We had an editor once who was taking out all of the pauses and said, "Oh, you guys are pausing too long. There's too much dead air." And we went back and looked at it and said, "No, actually those were on purpose." It made sense. It was specifically Lee explaining a very complicated area of law and then applying it. So, when she finished the complicated explanation, there was a bit of a pause, so people could digest. And it sounded weird when those were taken out, actually.

Jim Brosnahan: Suspense, like what's going to happen next?

Alison Monahan: Right. What's coming next, what's coming next? Alright, in your career, I know that you have interviewed many potential summer associates, and I know that's an area people are likely to be very interested in. What are you looking for when you're interviewing someone for a role at a place like MoFo? And what are some red flags that people should definitely avoid?

Jim Brosnahan: There are things that would strike me, as they're applying, they want to do litigation, and then they explain to me in some detail that they're keeping all

their options open. Can you imagine trying to go on a date and say, "I'm ready to go out with you to see how it goes, but I'm keeping all my options open." There's no telling what that might do. No. "I'm so glad to interview you, because I've researched your firm, and what you have is A and B and C, that's what I'm interested in. I noticed you're almost 50% women, and that's important to me. I care about that. And you do some pro bono, and that's important. And this firm has worked on diversity, that's important to me. That's why I'm here." Be ready to answer the question what's your favorite class, and if the answer is "Zimbabwe Debentures", that might not be the best answer. There's some fudging. I hate to tell you there's some fudging that goes on in these interviews.

Alison Monahan: I would hope so. That's the point too, is, can you make a case for yourself? I remember interviewing some people, like "How do you like law school?" "I don't." Not a good answer.

Jim Brosnahan: It's not good.

Alison Monahan: It's not what I'm looking for. Just give me the answer I'm looking for. This is a softball question.

Jim Brosnahan: Yeah, really. It's, "Here's the heart of it all." And this is true of litigation, and that is it's not about you, it's about the listener. The same thing is true in literature, it's about the reader. You have to think that way. You're not going to lie about anything, but you have to think, "If I was interviewing people with this firm, what would they be most interested in?" It's a selection of what you do. It's not lying, but it's a selection of it. It's not a therapy session, usually, although it could be. But it's thinking about the person you're talking to. You probably haven't been able to research that individual, but you've researched the firm as much as possible. If you're going to go to the trouble of interviewing with that firm, figure out what they're doing and a little bit what that's like. So, those are some thoughts. And I had a summer associate one time, and we tried a very big case, if I may say so. It was like a national case and we won it. I let him sit in on the case and all that. We were walking down Market Street in San Francisco. We were going to have lunch with him and a couple of others. And he said to me – I who had won the case – he said, "I wouldn't have tried it that way."

Alison Monahan: You're like, "Great, thanks for sharing."

Jim Brosnahan: He was never with us. We sent him back to law school to irritate other people. But you can be outspoken about a lot of things, there's nothing wrong with that. Interesting law experiences, something that you've had. I take summer associates out to lunch in groups of about five, one-on-one, and we talk about anything they want to talk about. And that's where they're pretty candid about

what they want to do and all of that. The one-on-one I want to reinforce what I mentioned very briefly. If you're in law school, if I was doing it today, I would start after the mandatory classes and all that. Maybe the first year is different, but I would figure out which teachers do one-on-one with people, and which teachers allow me to speak and develop my speaking abilities, which teachers do a lot of writing. I noticed the other day that Duke Law School had a huge list of writing classes. Of course, that would be essential. I never felt that my writing was now perfected and I didn't need to learn anything else. I've spent a lot of time reading books on writing and speaking and the things that I knew. This is over all the years. I'm reading a book right now on creativity, which is interesting in the law. Creativity is important. You don't make things up, but the case has all these facts. The Romans used to call it "invention", and they didn't mean make it up. They meant take the important facts here that are true, hopefully, and then you tell that story. And those are some things you can think about.

Alison Monahan: Definitely. I think the story is the key to a lot of these things. I clerked for a federal district court judge and it was so clear that the lawyers who understood that did better than the ones who did not, and they're just boring everyone and we don't care what they're talking about. The people who came in and said this case is about X, Y, and Z, and it's very compelling, the story they're telling. And we're all, "Oh yes, I'm much more interested in this."

Jim Brosnahan: Keeping people's attention is not easy. And you need to do it, because if they didn't hear that or they didn't appreciate it, you weren't clear enough, then it's like it never happened.

Alison Monahan: Right.

Jim Brosnahan: You learn that.

Alison Monahan: Yes, it is. I did one trial in my career, and we had a jury consultant come in and did some sample juries. We did the test juries and whatnot. And I was the one who watched all the videos. And it was absolutely fascinating to watch these deliberations of the people who sat through exactly the same presentation, three different groups and two come up one way, one comes up the other. And you're just watching this and seeing what they picked up and what they remembered, and it was fascinating.

Jim Brosnahan: Yeah, it is. It's one of the fun parts of trial work. I rode some buses, I think in five jurisdictions – Hawaii, Los Angeles, Washington, D.C., where I was going to try cases there. And I would just ride the bus and listen to the people talk, and look at them and ask myself, "Are they're really going to care about my defense of

interstate commerce? They have lives to live." I'm looking at people in this bus and I'm listening to them. What would appeal to them? I think that's one of the great parts of litigation actually, is all the people that you meet. You interview the witnesses, you learn how to handle witnesses properly, you're not abrupt with them. An inquisitive personality is a great help.

Alison Monahan: I think that's so true, based on my very limited experience. Any final thoughts you would like to share before we wrap up here?

Jim Brosnahan: No, I think it's a good life if you can find a place where you'll be trying cases. It's a very good life. You're on the edge of law. I'm writing a book right now, actually, on the history of trials, starting with Socrates and coming all the way through some very important trials that Galileo, for example, science and those kinds of things. It's great fun. But it's been a good life. And my wife, as they say, was a judge for 40 years. And one person asked us one time – this is hilarious – "Do you talk about things other than law?" Yeah, I think we have talked a little bit about the children.

Alison Monahan: Occasionally.

Jim Brosnahan: Yeah.

Alison Monahan: And whether they should go to law school.

Jim Brosnahan: Yeah. One did. If you can imagine, there're two judges in our family of five, so I try to speak at home when I can.

Alison Monahan: Thank you so much for joining us. Remind us again how people can find out more about you.

Jim Brosnahan: I'm on LinkedIn, and I'm active on LinkedIn and I answer any messages that I get from people. I answer them and that takes me a while, but it's a good thing. And then I have a website, and it talks about the book, which is *Justice at Trial*. And the website is JimJBrosnahan.com. And I greatly appreciate this chance to talk to some law students. I think it's a great idea.

Alison Monahan: Thank you very much for joining us. I really appreciate it. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We would really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to Lee or Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website contact form at LawSchoolToolBox.com. Thanks for listening, and we'll talk soon!

RESOURCES:

JimJBrosnahan.com
LinkedIn: Jim Brosnahan
Justice at Trial: Courtroom Battles and Groundbreaking Cases, by James J. Brosnahan
Podcast Episode 13: What Do Lawyers Argue About?
Podcast Episode 53: Acing Oral Arguments in Law School
Podcast Episode 103: Setting Yourself Up to Be a Mock Trial Rockstar (with Sara O'Connor)
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