Improving the Justice System: An Interview With Brian Banks

Written by Teresa Matich

After spending 10 years in prison and on parole after being wrongfully convicted at 16, former NFL player Brian Banks has seen the flaws within our justice system firsthand. Brian was a keynote speaker at ClioCon 2023, and we were lucky enough to sit down with him to hear more of his thoughts. This interview sheds light on some of the top misconceptions surrounding the justice system and the reforms needed to ensure fairness and justice for all.

Top problems with the justice system

When asked to name some of the top misconceptions within the justice system, Brian pointed out that most people are aware that our system is broken. “A large population of citizens are aware that there are many flaws in our system. It works well for some, but not so much for others. It’s at a point now where we need a massive overhaul and reform for our system.”

High conviction rates

While some might believe that high conviction rates are a sign that the system is working, Brian noted that a large proportion of convictions happen due to plea bargaining. “It’s a broken system,” said Brian. “People are exhausted, or run down, or tricked into pleas.”

Punishment vs rehabilitation

Another top misconception about the justice system is that incarceration is solely about punishment. “Yes, there is something to that, but there should also be some rehabilitation and effort to reintroduce the person back into society,” Brian added. “There should be rehabilitation and counseling to reintegrate people back into society in a positive way versus setting them up to revert back to the same crimes and what put them behind bars in the first place.”

Children tried as adults

From Brian's perspective, one of the top issues with our justice system is the belief that children should be tried as adults and incarcerated with adults if they commit certain types of crimes. At the end of the day, they are still children. "There's a difference between a monster and a mistake," Brian said, "And a lot of our youth are mistaken. They took advice from someone who isn't qualified to lead a child."

How to improve the justice system

In an ideal world, the justice system would not require reform. But for now, Brian believes that staying focused on providing justice will allow individuals to make a huge difference despite the many improvements needed to our system.

Reinstil moral and ethical responsibility

If Brian could change one thing about the justice system, it would be to reinstil the moral and ethical obligation within our judicial system to seek justice and truth. This matters for everyone—lawyers, paralegals, judges, clerks, and more.

"We have to remember why we chose the jobs that we chose," he advised. "We have to remember our duty within those jobs. And we have to instil the moral and ethical obligation to do what's right—not what's convenient."

Brian experienced the effects of a bias towards convenience firsthand—his lawyer pushed him to take plea deals throughout his case, even though he was innocent. Later, he learned she was on her way to becoming a commissioner in Los Angeles and that losing cases or losing the favor of the district attorney or judges could affect that goal.

Better checks and balances

The legal profession is known for having stringent ethical obligations. One mistake, and a lawyer could be disbarred and lose their right to practice law. But if someone isn't observing their duties, who is holding them accountable?

For example, Brian was lied to and accused of a crime he didn't commit. There's an eight-year statute of limitations on perjury in California. But in his situation, Brian could never have pursued this. "How would I know about that if I'm incarcerated?" he explained. "How would I know that's a law? Who's going to help me?"

Be there for your clients

Brian's top advice for enabling lawyers to provide a better experience within our justice system? "Be there," he said. "Treat your clients like human beings."

When Brian was 16, one thing he vividly remembers about the legal process was feeling completely unseen. "Everyone is talking over, above, for you, but no one is talking to you," he recalled.

"Most people need help. Most people need someone to listen to them. Most people need resources, wisdom, and support. As an attorney, you have to keep in mind what inspired you to take on the job that you took on."

How to stay resilient

So how does one stay resilient amidst a broken system? For Brian, it centers around having a zero-tolerance attitude when it comes to what we allow to stagnate us. As legal professionals, leaders, and humans, we will always have hurdles, trials, and tribulations. "What you do in this moment determines what happens next," Brian advises.

"Do you give in, do you give up, do you keep pushing forward, do you plan? You may be in an unwanted situation, but it's not a forever situation," he added. "Never allow that one moment or that one play to become the rest of the game."

For Brian, football has played a huge part in his resilience. Getting knocked down and being told how to get back up and keep pushing got him through, but so did having something he was passionate about and knowing who he was. "It was up to me to continuously hold onto that thought, that I'm not who they're trying to make me out to be," he said.

The other most important piece of mental resilience is practice. Brian thinks about it like this: Imagine when you were young, and you became obsessed with becoming an athlete, a scientist, or a musician. You poured your whole life into it, practiced every day, and hung out with people who were interested in the same things. What if we put the same passion and intensity into our resilience and overall well-being?

"We often forget about mental practice until we're in the midst of adversity. But do you just show up at the football game, or do you practice first?"

Overall, Brian believes a focus on mental well-being could have great impacts not just on the legal system, but on society as a whole.

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