

FINDING BRAVE

with Kathy Caprino

Transcript

Finding Brave Episode #21

How To Deal With Sexual Harassment At Work, and Protect Yourself with Tom Spiggle

- Kathy Caprino: Hello, everyone, this is Kathy Caprino and welcome to my podcast, *Finding Brave*. I've created this show for everyone who longs to create something bold and brave in their life. To rise up, speak up, and stand up for who they are and to reach their highest and biggest visions. Each week I'll be speaking with inspiring guests from all walks of business, leadership, entertainment, the creative arts, and the entrepreneurial world. They'll be sharing their intimate stories of Finding Brave and offer their best strategies for building your most rewarding, joyful, and meaningful life, business, and career.
- Kathy Caprino: Hello, everybody! Welcome to *Finding Brave*, Kathy Caprino here. I feel like I'm with you just a lot of the week. I hope that's the case, I hope you're listening in and enjoying it. Today I'm really thrilled and honored and inspired to have as our guest, Tom Spiggle. I'm pronouncing that right, Tom, right?
- Tom Spiggle: You nailed it, that's perfect.
- Kathy Caprino: Fantastic! I've already interviewed Tom for Forbes which was an amazing piece on his experience supporting women who've been sexually harassed or sexually abused. But given everything that's going on in the world we had to have Tom back and talk more about what to do if you've been sexually harassed and even more kind of wide ranging than that, how to protect your job the way you would anything else that needs legal protection. Tom, thank you so much for joining us.
- Tom Spiggle: Kathy, I'm thrilled to be here.
- Kathy Caprino: Thank you for making the time. All right, so everyone, you need to know this. Tom Spiggle is a former federal prosecutor from DC.
- Tom Spiggle: Right.

Kathy Caprino: And the founder of the Spiggle Law Firm, a firm that empowers women who've been fired or afraid that they might be. That's a lot of people, that's a lot of women. The very first question I have for you, Tom, is how did you get into this? How did you choose to focus on supporting women? I'm really interested.

Tom Spiggle: Yeah, it's a great question and I think it started probably way back. There's not a grand plan that I had, but when I look back on how I picked what I do, I probably started back in high school with my mother, who incidentally works at the firm now. She used to answer the phone for us, now she's our client coordination person. She was a teacher in western North Carolina, went through a terrible divorce back in the 80s and the things that happened to her and the way that she was treated as a woman and what she had to do to right that ship. Really, I mean I was 15 or 16 at the time, but to watch her go through that and really fight to take care of herself at a time when many women did not. In fact, in the court system in North Carolina, pretty hostile to women, she got it done.

Tom Spiggle: Then to add insult to injury, not too many years after that she was teaching at the high school where I grew up and they got a new superintendent and he had somebody he wanted to put in her job and he tried to fire her. She fought back and appealed it to the school board and was only one of few teachers in history in that area to have the school board overrule the superintendent.

Kathy Caprino: Wow.

Tom Spiggle: It was really spectacular.

Kathy Caprino: What a fighter, what a warrior, what a—

Tom Spiggle: Yeah.

Kathy Caprino: What an inspiring role model mom is.

Tom Spiggle: Absolutely. Then when I opened my own firm, one of the reasons that I did, I left the US Attorney's Office is I wanted to spend time with my own children. It was difficult trying to juggle the career that I was in to do that. One of the reasons that I left and opened up my own shop is so that I'd have control of my own schedule. I was from a fairly supportive environment in the US Attorney's Office. I thought, what about people who aren't? Because also I started to see a lot of people in my office who were a lot of women, some men, but a lot of women, who got pregnant and all of a sudden something started not going right at work. They're getting fired or afraid they might be. Some men. They're trying to take their maternity leave, to which they were arguably entitled. It's on the company policy. All of a sudden, yeah, you're on that vice president track, and not anymore.

Tom Spiggle: Those laws are really, really complicated. There seemed to be such a need that that is what I decided to focus on.

Kathy Caprino: Wow. Oh gosh, it's so inspiring. I love how you watching your mom in your teen years

affected you in that way.

Tom Spiggle: Sure.

Kathy Caprino: That's really powerful. See how we're role models as parents and people every day, how we affect things. Wow. That's really something. Thank you for sharing that.

Kathy Caprino: You say, Tom, it's important to use the law to protect your career, just like using a will to protect your estate. What do you mean by that? How do we do it? What do we need to know?

Tom Spiggle: Absolutely. As you know, I mean, you are an expert in this field. People put hundreds of thousands of dollars into their, in terms of time and money, into their career. It's an asset, just like you might own a house or you might have an investment. If you own a house or have kids, chances are you have a will. If you've got legal documents, insurance, that protects those things. But, most of us that are even in the higher levels don't give much thought to how to protect that, your career as an asset.

Tom Spiggle: One is to be aware of your founding documents. If you had an agreement when you started, what it says. Do you have things like a non-compete? Do you have a non-solicitation agreement? Take a look at those. Dig them up. I know, I have been guilty of this, too, in my jobs in the past. Hey, it's the glory days. You got a new job. You're just signing whatever.

Kathy Caprino: You're like, woo-hoo! Bring it on! I don't care.

Tom Spiggle: Absolutely! Things are never going to get wrong. A lot of times we see people in our office that, if we had seen them just a little bit earlier, if they had just known a little bit more about what they were getting into before ... it's a non-compete. First of all, knowing that it is there. Knowing what the perimeters of that non-compete are. Then, knowing if you're going to leave the company, and you think you're going to open up your own business, you're going to join another. How do you negotiate that?

Tom Spiggle: For instance, a non-compete is only as powerful as the company's willingness to enforce it. A lot of times, not all the time, but a lot of times, if you come to the company and say, "Just checking in. This is what I'm thinking about doing. I just want to make sure I'm okay with this." A lot of times a company will say, "Sure. No problem." You can get that in writing and you don't have to worry about it.

Kathy Caprino: You mean before you take the job or—

Tom Spiggle: Yeah, before you take it.

Kathy Caprino: Always before. Okay.

Tom Spiggle: Before you take the job. You don't always have this leeway. But sometimes non-compete agreements get to be personal for the company, right? "Hey, you left? And you're doing this? We find out from somebody else. Now we think you've violated your non-compete. We're going to send our lawyers after to you." Whereas, if you had come to them and said, "Hey, this is what I'm thinking about doing. Just want to make sure we're okay." Even if they're not willing to wait, it sometimes there can be a negotiation about what's in it.

Kathy Caprino: Right.

Tom Spiggle: Another one is just to be aware of what your rights are. For instance, we see a lot of people who come to us that would be in a much stronger position if they had known just a few key things about their rights.

Tom Spiggle: For instance, don't quit. Before you see a lawyer, don't quit, right? Because if you quit, people don't realize this or expect you to, but this is why you see a professional to protect that aspect. If you quit, you cut off, many times, a large portion of the damages you would be entitled to. Those would be lost wages, right? That's what really gets a company's attention. That's the leverage you have when you're trying to negotiate a severance or if you get involved in some kind of legal action.

Tom Spiggle: There have been some really shocking cases in the courts where people have been in truth, horrendous situations at work, and then they quit. They try to come back and they try to sue. The courts say, "Go ahead. You've got a case, but you've got no damages because you quit. So you don't have any lost wages."

Kathy Caprino: I don't understand that. So, the lost wages come from ... I'm confused. Why don't they have lost wages? They feel they had to quit because it was untenable? Their health was affected. They were harassed. Why is it not lost wages?

Tom Spiggle: It's a good question. The way it works is in any employment case, if you are fired or terminated wrongfully, one measure of the damage is your lost wages. The amount of money that you would have earned if you had not been fired, right?

Kathy Caprino: I see. If you go ahead and leave, you've thrown that argument out the window.

Tom Spiggle: The courts, and there is a thing called constructive discharge. Essentially, if things were so bad, while you weren't technically fired, you were in fact fired. Right?

Kathy Caprino: Right. Right.

Tom Spiggle: That is similar concept in a landlord or tenant. You probably call it constructive eviction. Your landlord didn't show up and say, "Get out." But your roof fell in. Well, what are you going to do? Right? There's a similar concept in employment law, but it's very, very narrow. Depending on if courts are different and depends on where you are in the nation, are courts ... there's some that have just been ... there was one, there was one, interesting, I read about some time ago from the Seventh Circuit where a woman came

back from maternity leave. She was expressing breast milk and she came back and there was, she thought, this was a big insurance company, had a place for her to pump. They said, "Oh. Yeah. We'd love for you to be able to do that, but you didn't fill out the proper paperwork." It's painful if you are nursing and you're used to expressing milk at a certain time and you can't, it's a very physically—

Kathy Caprino: Been there.

Tom Spiggle: Right. Painful situation, so she is, the case is heartbreaking. They pretty well detail it in the Eller Case where she is going to her manager. Her manager says, "You've got to go talk to this person." She goes and talks to the woman in HR and says, is in tears and says, "I just don't know what to do." She helps her write her resignation letter and says you need to go home and be with your babies. This woman is in pain. She's having her HR person saying, "Here's your resignation letter. You might as well go on." So, she does that. Later, decides to consult a lawyer and that lawyer says, "There's so much wrong with what just happened to you." They sue. The courts say, "Too bad. You quit." You have a case, but you have no damages. You have no—

Kathy Caprino: Did she win anything?

Tom Spiggle: That's a good question. I'm not sure. They're probably settled after that. For a lot less than what she would have gotten. That she said, "You know what? I'm going to take a day of leave, I'm going to go see a lawyer. I'm going to go and force them to either call their bluff or make them fire her." That's one example.

Tom Spiggle: Another one, getting to the secretarial harassment, the issues that you and I talked about before, is if you are facing retaliation at work, report it. Report it, report it, report it. Okay? Because by reporting it, not only do you have potentially a claim for sexual harassment, you also have a claim for retaliation if they fire you afterwards.

Tom Spiggle: We see a lot of people who come to us. They've already been fired. They say, "Yeah, this has been going on for months." "Did you report it to Human Resources?" "No, I didn't really do that."

Tom Spiggle: Again, this could be a one-page document that somebody has in their career file. This is what to do if you've been harassed at work. This is who you call. Here's how you find an attorney. It could be on the sheet right now.

Kathy Caprino: Let's have it under this post. Under this podcast.

Tom Spiggle: Yeah.

Kathy Caprino: I want to ask a few things here.

Tom Spiggle: Yeah. Yeah.

Kathy Caprino: I want to tell everybody. I want to punctuate this. When you're in this situation and you are not coming from a place of empowerment, which so many women aren't—

Tom Spiggle: Of course.

Kathy Caprino: The idea of even going to a lawyer is beyond, right this minute, but not when you stop listening to this podcast in 20 minutes. It's beyond even your understanding of what you're entitled to. Your worthiness.

Tom Spiggle: Sure.

Kathy Caprino: It's just outside of the scope, for me, I went through some of this. Was laid off, and there was an element of sexual harassment that I spoke to people about, but I never officially reported it. I just had to share this with everyone, so no one will make this mistake. I did have a friend who was a lawyer, and I said, "Do you have ..." She was on the other side. Not on the side of employees.

Tom Spiggle: Right, on management side.

Kathy Caprino: I said, "Do you know anyone?" She said, "Yeah, this guy is great." When I met with him, he said, "Where's the email?" I told him, "I got several emails from this very senior guy about seeing me naked in his pool, etc." I deleted them, Tom, before I quit.

Tom Spiggle: Yeah. Wow.

Kathy Caprino: He said, "Why would you delete the smoking gun?" I just wanted to cry. I'm going to be really honest. The reason was I felt that if I hadn't had the gumption to report it, that it makes no sense that I would tell a lawyer after. I was actually thinking about what was fair.

Tom Spiggle: Yeah, right.

Kathy Caprino: Which is so ... I'm going to—

Tom Spiggle: Yeah.

Kathy Caprino: In Episode 4 of this podcast, I talked to a wonderful best-selling author and therapist. He said, "Women often, in a patriarchal society, protect the very behavior that is against us." I was protecting this person.

Tom Spiggle: Yeah.

Kathy Caprino: I just want you to know, folks, here I am, Kathy, empowered Forbes writer, I did this. I just deleted it, which is really irrational.

Tom Spiggle: Yeah.

Kathy Caprino: If you think you want to delete it, okay, don't delete it yet.

Tom Spiggle: Right.

Kathy Caprino: Talk to your lawyer.

Tom Spiggle: Yeah.

Kathy Caprino: I'm just preparing everyone that you're not going to think like this until you speak to a lawyer. But up to that minute it was the most empowering thing, Tom, I'd ever done.

Tom Spiggle: Yeah.

Kathy Caprino: Talk to a lawyer.

Tom Spiggle: Yeah.

Kathy Caprino: So, I just love that you're here and helping us. Let's get into the sexual harassment piece. I know you're going to walk us through, but since we talked in Forbes, #MeToo has happened.

Tom Spiggle: Yes.

Kathy Caprino: Wow. And what a different world we were just saying.

Tom Spiggle: It's unbelievable. It really is.

Kathy Caprino: Can you tell us from your perspective supporting women, how has it changed things? One thing we want to talk about is when you're going through this, how much do you reference #MeToo in your own battle? What should people do? Do you understand my question?

Tom Spiggle: Yeah, yeah. Absolutely. I think it has changed a lot. Of course, as well as you know, very well. I think, speaking to what you're talking about, women, some men, in your experiences, too. But, it is mostly women. Realizing they can have a voice potentially, right? Seeing these other women come out. I'm not saying it makes it easy for them now, but back in the day when you were ... back even three years ago, right? A lot of women would not feel, as you say, empowered to do this, would not see this as a lot ... insurmountable hill to climb. I'm just going to quit. Go on. Just try to forget it ever happened.

Kathy Caprino: And you feel ... don't forget, folks, you're not talking to other people about this.

Tom Spiggle: Of course.

Kathy Caprino: You're talking to your husband, your friend. You're scared and you feel like you're the only one. The last thing you want to do is tell anybody.

Tom Spiggle: Yeah. Absolutely. I think for women seeing this and you and I were talking about earlier. We've seen it in our office, just by their number one calling ... realizing there is a possibility of having a voice. I think it's having a real impact, it's a little bit early, but an impact on juries. They are hearing these cases.

Kathy Caprino: Wow.

Tom Spiggle: Right? Because they, I mean, look, when you see Matt Lauer go down in flames like he did about, he was in everybody's living room for years. I think people now realize that, okay, let's face it. Before this, you could get a jury that were like, "Hey. If you've got a slick CEO who can get up there and tell a good story about how this was all a misunderstanding." You get a lot of juries who don't think it would be like, "Yeah. That's probably right." Then the woman's going to lose.

Tom Spiggle: Now I think we're seeing some evidence of people are like, "Okay. We know this is, we've seen it. We've seen it on national TV. We've seen these, it almost seems like every week another national figure has, that we trusted is caught. Seen to be a perpetrator in this movement."

Tom Spiggle: For those two reasons, it's giving people a voice until the people realize that this happens.

Kathy Caprino: All right. Good. That's all good. As you say, of course, we don't want, it's not good that it's happening, but it's good that because it has happened in such a proliferation, it's wonderful that women can speak up and not feel alone any more. There's some crazy making aspect of it that you do wonder, like this thing where he says, "I can't wait to see you naked." The senior vice president in your pool. I went home and said, "I literally do not know what to do."

Tom Spiggle: Right.

Kathy Caprino: If I complain about this man who has more power than the head of HR, I'm out of a job.

Tom Spiggle: Right.

Kathy Caprino: Yeah. But, that's why you need a lawyer because you probably will be out of a job. But if they do one thing to retaliate, you're going to have damages.

Tom Spiggle: Right. Right.

Kathy Caprino: Horrible. Okay, Tom, you think you're being harassed and even have, I wouldn't even go so far as to say you have an inkling that something's very wrong, but you're not sure. You don't have to be sure. Because look at me. It took me way too long to be sure.

Tom Spiggle: Yeah.

Kathy Caprino: So you have an inkling. What do you do? Where do you find great help? Where do you start?

Tom Spiggle: Yeah, well, I think, I understand there's a, and we'll get to talking to a lawyer in a minute and about what that is like and how to do that. I think they are where everybody starts, or where a lot of people start, Google. There are a lot of good resources out there. Go to the EEOC, which is the Equal Employment Opportunity Commission.

Their site is eeoc.gov. They are the federal agency with responsibility for enforcing the majority of the sexual harassment law in the United States. It's a great website. It's got a lot of really good information, not only about the EEOC process, but about the law on sexual harassment. It is often overlooked. Depending on what state you're in, your state may have a state Office of Human Rights.

Tom Spiggle: For example, in DC there is a DC Office of Human Rights that also has a good website. Some really powerful state laws that you might find useful to look around.

Kathy Caprino: Great.

Tom Spiggle: There are some really good sites that will ... AVBO, is one ... avbo.com. It's a lawyer locator site. It's a little bit of "buyers beware," but their information is generally very good. You can go there and ask questions for free and anonymously and get responses from lawyers. Lawyers will publish a lot of their own material there. I'm sure you can find a lot of material on the law on sexual harassment. That's what I would do first.

Kathy Caprino: Great.

Tom Spiggle: The second thing, to get to your point earlier, about seeing a lawyer is to realize that, and this in a legal profession, this is our fault for building up this kind of view of lawyers. Not all of us have sharpened fangs and the first thing we're going to do is drag you off to the courthouse steps. I think a lot of people are worried about that. They are worried about, THAT, and getting a lawyer is like a junkyard dog is, "We're going to court."

Kathy Caprino: Or, it's going to cost \$100,000 to do it.

Tom Spiggle: Exactly. Or, it's going to be, yeah. It could easily be hundreds of thousands of dollars. Both of those are generally not true. If you find a lawyer, pay for a consult. Pay for an hour and sit down and talk to him or her. A lawyer who works a lot in this field is going to be sensitive to the realities of it and what you're facing and will give you good advice that you may be able to operate on your own. Or, at least give you an understanding of what your rights are.

Tom Spiggle: I can't tell you how many people come to talk to us who are like, "Whether they do anything or not," in terms of suing or filing a charge or even writing a demand letter. Whether they do anything or not, I will feel so much better knowing what my options are. Right? Because they were in the dark before. They haven't hired us. They have just come to talk to us for an hour.

Tom Spiggle: There are some great sites for that. NELA, nela.org, is the National Employment Lawyers Association. It's the national organization for equal representative employees. It's got a lot of good information on it, just like the EEOC website, but it's got a great lawyer locator function on it, nationwide.

Kathy Caprino: By the way, folks, all of these are going to be linked to below, so you can just listen

without scribbling constantly.

Tom Spiggle: But, it's a great site. You can almost bet that anybody who has gone through the trouble of being listed on that site knows their stuff. Now, that doesn't mean that somebody that is not on the site doesn't know their stuff. But, that's a good place to start if you're, like, someone in Wichita and have no idea. Because the truth is, you do want to go to somebody who does this work frequently. If you go to see somebody who handles car accidents, people who have car accidents or a criminal defense person, employment law is very complicated. You want somebody who knows the rules of the road and who can give you a real world view of how this is going to work.

Kathy Caprino: I couldn't express that enough. I find that even in my own businesses coaching. Do I want a life coach, a divorce coach, a career coach? Find the one who has done, who has worked with thousands of people in this situation because they know things another person who is a generalist does not.

Tom Spiggle: Exactly. Go to NELA. If you go to NELA, there are a lot of states that have their own local affiliate. For example, here in the DC area, we had, it's a mouthful, Metropolitan Washington Employment Lawyers Association. It's mwela.org. Great site. It's broader than what you're going to find on NELA. There are similar organizations all across the country. So, that's a good place to start.

Kathy Caprino: Fabulous. And then, what is the evidence somebody needs, actually? If they are listening to this and they think I'm, this might be me, what do they actually need to move forward in any kind of concrete way?

Tom Spiggle: What they only need is their own story.

Kathy Caprino: Hmm.

Tom Spiggle: Is it better if they have the smoking gun emails like you had or the text? Of course, that's going to help. But your testimony, your story, is all you need to move forward in these kinds of cases. It's evidence. I think a lot of people don't realize that. "Well, it's just going to be my word against his." That is often the case. When I used to be a federal prosecutor, I used to work in the domestic violence section. A lot of times, that's all we had. It was her word against what he was going to say.

Tom Spiggle: That's enough to get started and a lawyer can use discovery tools as we have seen through the #MeToo movement. Sometimes where there's smoke, there's fire. Chances are, you're not the only one. Even if you don't have the smoking gun emails, even if you don't have the recording, your story is enough to move forward and can be enough to win. That's why we have courts, we have juries. Did the car run the red light or not? We may not have pictures. We have people there who saw it and testifying people can judge their credibility.

Kathy Caprino: Wow. What a beautiful thing. You need your story! I know, I remember telling my lawyer and the fact that he said it sounds like, he said, "You may not win in court, but you have something here."

Tom Spiggle: Yeah. Sure.

Kathy Caprino: And, we're going to work on it. I did get a settlement, large settlement.

Tom Spiggle: Yeah. Good for you. At least you took that step.

Kathy Caprino: Oh! I mean, it was a life-changer. I will share with you, women listening, and men, too, I felt like all my life I'd been "Good Girl Kathy." Good Girl Kathy people pleases. Good Girl Kathy doesn't rock the boat. But, I think for me, I never wanted to return to that industry. I do want to talk to you about that. I knew I was done. So, I didn't worry if that bridge would be burned forever. I mean, I have to say no, I did worry. I became a therapist after. But, you do have a worry.

Kathy Caprino: Can you talk about that for a minute? Does taking this kind of action, which is, the lawyer can write a letter on your behalf, right? Or, it's asking for damages or it's not just straight to the courtroom, as you said.

Tom Spiggle: Yeah.

Kathy Caprino: Tell us what people need to think about how it will impact their career or getting another job. Does it?

Tom Spiggle: Nine times out of ten, it does not. I can't say it's never a consideration. If you are in a really, you're higher up in a very small industry. People talk, even if there are non-disclosure documents. You can't say for certain that it doesn't happen, but I will say it is, for most of the women that we help resolve that, they go on and do better things. They really do. To your point, it's just a fact that, almost regardless of the outcome, the fact that they took a step forward, the fact that they are trying to fight this.

Tom Spiggle: We had a woman not too long ago we represented in a case and didn't end up going to court. It was settled out of court. She was a high-level fundraiser, had a child, came back to work, and all of a sudden, things weren't looking so hot, even though she continued to perform very well.

Tom Spiggle: When she came to us, I didn't realize this until I saw her later, it was as if she was in prison. Just the way that her bearing, the way that she looked. We ended up taking her case. We got her a settlement and certainly, it was not that she was going to retire off the settlement, but it was something. I saw her the next time and it was like she had gotten out of prison. Her countenance was completely different.

Tom Spiggle: Will that affect her career? Not at all. The reason is, the employers don't want to talk about it, right? For it to be public knowledge or for them to be out there talking about it, right—

Kathy Caprino: Women don't want it out there either.

Tom Spiggle: I don't want to talk about it either.

- Kathy Caprino: I want to reframe something you said. Will it impact your career? Yes, in a good way. Because when you get out of prison and you've been heard and you've been validated after years, that changes your life overnight. Right?
- Tom Spiggle: Yes. Yes. We've got several women who have come to us. This one who I can think of in particular, long time government contracting industry here in DC, fairly high-level position. Pretty nasty fight and ended up getting resolved. She ended up starting her own business. Not only did she end up starting her own business, she took some time off to, she was a hobbyist mountain climber and she ended up writing a book about her experience. It really, like you say, it does lead to this flowering sort of I have now stepped up, for in myself, I am now out of prison. Almost a settlement is, I mean, everybody would like more money nonetheless, but it's almost beside the point.
- Kathy Caprino: I agree with you. It's the internal shifting that makes our life change. I'm aware of your time and I could go on for an hour, but I did want to ask you, tell us about non-disclosure agreements. Do we sign them when there's a severance? When do we stay away from that? What do we do?
- Tom Spiggle: Yeah, and we've seen that, obviously. We've seen a lot about non-disclosure agreements lately, which is a good thing, because they are very common in most settlements. We see non-disclosure agreements all the time. Should you sign them? I think in most cases the answer is yes. But, it is a personal question and consultation with your attorney. The company often will not settle without one. That is one of the things they are putting a price tag on is while they may have whatever arguments they have about their legal liability, they don't want you out there talking about it. It means often the teeter you settle or you don't. They are not going to settle without a non-disclosure agreement.
- Kathy Caprino: Yeah.
- Tom Spiggle: You need to decide, personally, if you are okay signing that. For a lot of people that we work with, they reach that point where they have, and they have experienced some kind of personal growth just by going through the process, they've moved on. They are ready to start that business, start the new job. The truth is, they don't want to talk about it. I mean, it's not like they are going to want to start a blog about it.
- Tom Spiggle: As long as that is where they are mentally and emotionally with it, I mean, sign it. Take the money and go start a new life because you don't ... a lot of people, particularly employees that we work with understandably are very ... because a lot of these non-disclosure agreements are really gnarly in terms of their language and what they say. The companies are not going to follow you around. If you tell a good girlfriend or you tell your spouse, chances are nobody is going to ... it's only when you go ... when you make improper comments that most people don't care about making anyway that you're going to get in trouble.
- Tom Spiggle: Again, it's a personal decision. It's often part of the legal equation. It will be interesting to see, however, because there are some companies now who are dropping their non-

disclosure. They are even saying that IBM was one of them. Some law firms have said they are going to drop that and their arbitration provision. Some states are considering legislation disallowing, there is actually federal legislation pending, we'll see if it passes, that would disallow non-disclosure agreements in sexual harassment cases.

Tom Spiggle: But, I would say most of our clients, with proper advice, sign them and sleep just fine at night.

Kathy Caprino: Wow. So, so, fascinating. Is there a statute of limitations on those?

Tom Spiggle: There isn't, right, on non-disclosure agreements. But, I will say that is something to consider, right? I don't want people to feel that's why we work with our people to feel like, "Okay, I have sold my silence. I have sold my soul here. It is important for me to tell my stories so that others can hear it." You shouldn't be forced into signing it just because there's some money on the table that somebody wants to give you. I think that's a fine objective. You just have to be very clear about that with your attorney, what that means for you going forward.

Tom Spiggle: But, we've seen with non-disclosure agreements, too, that companies will enforce them. Sometimes they won't. Right? If it actually looks worse for them to try and enforce it, than to just let the story sort of play out, which we've seen a lot of this happen in these #MeToo cases where there are non-disclosure agreements, but the defendant is not, it's just going to pour gasoline on that fire if they are going to try to enforce it.

Kathy Caprino: Wow. So much great information. So, Tom, what do we leave our listeners, and I do want to be fair to men as well. I've had discussions with male friends, male colleagues, and some are right there with women and so happy about, to hear that women can speak up. Others say quietly among themselves, "I feel like the other shoe is going to drop. I'm worried about what I've done that ..." I've heard the whole gamut about how men feel about it.

Kathy Caprino: What I do want to say is, I'm sure you have your share of male clients who have been harassed, mistreated, abused. We need to understand that as well. This is not just a woman's issue.

Tom Spiggle: Yeah. It's a very good point. Men have sort of a different sort of shame about it, right? They are supposed to be the alpha males and here they are in the workplace being sexually harassed. In some ways, they have a different disincentive not to come forward and share it because, hey, you're a strong man. You can't take care of yourself. Absolutely.

Kathy Caprino: That patriarchal pain we all have. Men are supposed to be strong, not vulnerable. Now they have a double whammy to deal with.

Tom Spiggle: Yes, absolutely. Men can be sexually harassed. We're seeing a lot more of them step forward, too. To your point about the men that were worried about the other shoe dropping, I mean, I get that to a certain extent. But, the truth is that chances are, I mean, something like this can happen are very slim. Very slim. I read an article a while back. I mean, the law is actually very favorable. Very difficult to prove a hostile and vital sexual

harassment case. If you said something offhanded at a party, if you said something that could be misconstrued in an email, chances are that's going to lead to a sexual ... I mean, successful sexual harassment lawsuit. I wouldn't take that case. Because the law is so, as you probably know, in order to prove a hostile environment based on sex, it has to be severe or pervasive. That's a pretty high standard.

Tom Spiggle: There was actually a case, I think it was Alabama, where a supervisor, he was a line worker, but a male supervisor came up and grabbed this woman's butt. Just squeezed it and gave her the thumb's up. She brought a lawsuit and the court said, "Yeah, that was kind of boorish behavior, but it didn't rise to the level of severe to prove it was pervasive or sexual harassment.

Tom Spiggle: For those men who are worried about, hey, I can't work with women any more. Relax. You still have friends at work, female friends at work. You can still meet with women. You can still mentor women. This is not going to all of a sudden result in multi-million dollar lawsuits against well-meaning men who have said something that got misconstrued.

Kathy Caprino: Thank you for sharing that. Thank you. There is so much you've shared. Is there, I want everyone to know, you have a new legal program out, I think you said. Tell us about that. Where can people learn of you? What can they get from you?

Tom Spiggle: Yeah, sure, I appreciate the opportunity to plug my wares in.

Kathy Caprino: Plug away!

Tom Spiggle: Absolutely! I've got two things. I've got a book, *You're Pregnant? You're Fired!* which folks can get on Amazon or through our website. If you go through Amazon, you can get the Kindle version, it's less than a dollar. Then, we just rolled out the last couple of weeks, the last month or so, what we're calling, it's a Legal Leverage Program. It is a 7-part video course with eBooks along with it to really walk someone through the steps of analyzing an unemployment legal claim. We've designed it for people who either want to do it, do their own severance negotiation, which is entirely possible. I tell people it's like selling your house without a realtor. It can be done.

Tom Spiggle: I personally don't want to do that because I don't want to hear people telling me about how ugly they think my kitchen is. I have friends who are re-upping into doing that sort of thing. It is possible. So, it is designed for those sorts of people who are considering doing it on their own. Four, to help you be a really educated legal consumer when you're looking for a lawyer or going through the process.

Kathy Caprino: Fantastic. Where do they find that? On your website?

Tom Spiggle: On our website. Yeah. They can come to our website, spigglelaw.com. We have a section, if you go under 'Resources,' you can see the Legal Leverage Program.

Kathy Caprino: Fantastic. Tom, you are doing such important, meaningful work in the world. We all thank you. Any of us who have felt alone and confused and afraid and disempowered, we all thank you. Thank you so much.

Tom Spiggle: Thank you for all the great work that you do, this podcast, your writing, not to mention the professional work that you do. You are really a leading light. I'm sure you have changed a lot of lives. Thank you as well.

Kathy Caprino: Thank you, Tom! I appreciate that. Well, come back soon. I don't want to say when another movement emerges. We've got to get through this one.

Tom Spiggle: Any time.

Kathy Caprino: Thank you for being here! All right, everyone. I feel like this was chock full of useful resources and information. Let us know how you're experiencing this. Let us know. Reach out to Tom directly.

Kathy Caprino: Hey, let me ask you, Tom. If someone feels like, gosh, I've got to talk to Tom about this, is there a contact form on your site they could reach out to you about?

Tom Spiggle: If you look at the top corner of our website, we've got the "No Cost Online Review." You can fill that out or you can call us. We've listed our phone number, but it's 202-449-8527 and we will be happy to talk to you.

Kathy Caprino: All right, everybody. Thanks again, Tom, and we'll see you next time!

Kathy Caprino: Thanks so much for joining us today. Please don't forget to check out, findingbrave.org for more programs, resources, and tips. Tune in next time for your weekly dose of *Finding Brave*.