

Transcript: Fighting with health insurance is easy... for Jackie Fox

Dan: Hey there.

Almost thirty years ago, Jackie Fox was a young associate at a big law firm in Washington, DC. It was a Friday afternoon. Jackie's mom was scheduled to check into a hospital the next day for life-saving cancer surgery.

Except suddenly the insurance company was saying they wouldn't pay for the surgery. Jackie called them right away.

Jackie Fox: I was like on the phone in my office, going, I am out the door to Sue you over this leg. You need to understand cause it's four o'clock. So I only have an hour to find a judge and I'm not going to wait

And so they said that they would pay for it.

Dan: Which, great! Whew! Mom gets her surgery, does fine. Jackie's ready to go back to doing fancy law-firm stuff.

Except. While she was yelling at the folks at the insurance company, Jackie had left her door open. Her assistant heard the whole thing. And the support staff at that fancy law firm? A lot of them were having problems with their insurance.

Jackie Fox: So a steady stream of support staff started to show up in my office with problems because she said here, you got this fixed.

Dan: And that was how Jackie Fox started the journey from being an associate at a fancy D.C. law firm to being the person who blows my mind more consistently than anybody I've ever talked to for this show.

And I have been talking to Jackie Fox for about a year and a half.

She's a law professor these days, and the reason I haven't mentioned her to you before is that every time we talk, I'm like, Oh wait. What? That's a whole episode of this show, what you just said right there.

I say that multiple times in every conversation.

So, this episode is an introduction. How Jackie Fox came to be this person who blows my mind every time. How she sees the world.

Which includes: BIG PICTURE THINKING. That's key.

I mean, in a few minutes she's going to lead us back about 800 years to a pivotal moment in English legal history. In order to understand health insurance.

You ready?

This is An Arm and a Leg-- a show about why health care costs so freaking much, and what we can maybe do about it. I'm Dan Weissmann. I'm a reporter, and I like a challenge. So my job on this show is to take one of the most enraging, terrifying, depressing parts of American life and bring you a show that's entertaining, empowering and useful.

So, Jackie Fox had this stream of people, coming to her asking her to solve their insurance problems. And she kept helping them. And she says...

Jackie Fox: And it was actually easy to get it fixed for them.

Dan: Jackie Fox has said a bunch of times in our conversations that fixing health insurance problems is easy. And that's pretty remarkable. I've really never heard anybody else say that. And I talk with a lot of lawyers.

There may be some things that are peculiar to Jackie Fox that make these things easy for her. But the idea that they're easy for ANYONE-- that they're not basically impossible-- is something really worth exploring.

To understand Jackie's trajectory--and what makes any of this seem easy to her-- it's probably helpful to talk about what she was doing at that fancy law firm, and why.

Jackie: My training was in reading contracts and understanding corporate financing mechanisms.

Right.

Dan: So she was doing securities law. Designing complex financial instruments. Remember mortgage-backed securities? She was doing those thirty years ago. And here's how she describes that in three separate conversations:

Jackie Fox: So much fun so much fun. it was just pure fun, fun

Dan: You get the idea. She says she just loved the intellectual puzzle. How do you structure incentives, and obligations. She had picked up the bug in law school.

So for her next move-- big picture thinker-- she leaves the law firm job, goes back to Georgetown Law School for a masters in legal studies. In legal history and philosophy.

Jackie Fox: This is so dorky, like how this all came together.

Dan: Remember how I told you we were about to go back about 800 years in legal history? OK, this is it.

Jackie Fox: So there's this thing called the enclosures act.

Dan: We're talking about English lords grabbing exclusive rights over lands -- enclosing them--where peasants used to graze livestock-- or even where they had houses. Which the lords knocked down.

You know, it wasn't nice. Jackie Fox calls it a tragedy, and it's not like she's alone there. This went on for hundreds of years. There were peasant revolts. It was kind of a big deal.

Jackie Fox: And is this started like in the 12 hundreds

Dan: That's when the first statute said a lord of the manor could take land away from peasants . And here's the interesting part: On paper, Jackie found, the laws offered peasants something in return.

Jackie Fox: we're willing to compensate you for what historically was your entitlement to a share of that property, but you will no longer have the property. You will have, you will be made whole for the value of it

Dan: and-- we are headed back to health insurance-- the law includes a system for filing claims to get compensated for that loss...

Jackie Fox: But what it required was a level of sophistication on the part of the people who had those claims and an ability to fit the regulatory scheme, set up to identify and value the claims.

And we're talking English peasants in the 1200

Dan: not everybody's literate.

Jackie Fox: Not only that you had to go somewhere to file the claim. You had to go up against people who could kill you.

Dan: Yeah. Those would be the lords. People with swords and soldiers and stuff. Being an English peasant in the 1200s was no picnic.

Jackie Fox: So on paper, it looked okay. Eh, a little exploitative, but at least it was doing something.

In fact, it was terrible. And this continued through the 1700, and the starvation and the exploitation, wherever. And as I was studying it, I was like, this looks like health insurance. This looks exactly like health insurance,

Dan: That is: I'm a peasant with a claim against an English lord. Or, I'm an office worker with a claim against a health insurance company. There's some big power imbalances here, and Jackie Fox is seeing some big parallels.

Jackie Fox: Because I keep getting these people calling me.

In a steady stream. Cause they hear through other people than I know how to do this. And I read their contract.

Dan: And if you're Jackie Fox, and you know how to read that contract, it says these folks have the right to what they're asking for.

But if you're not a lawyer whose idea of pure fun is reading through complex financial instruments... how the hell would you know that?

Jackie Fox is like, you know what? All this stuff I'm seeing, helping people with their health insurance?

Jackie Fox: It looks exactly like the enclosures act

Dan: Because...

Jackie Fox: process without meaningful access to process is no process at all.

Dan: Yeah. Let's say that again. Process without meaningful access to process is no process at all. And she was like, maybe I can provide that access. Because she wasn't just interested in puzzles. She was also interested in justice.

We'll hear all about where things went from there-- and what it means to us-- right after this.

This episode of an arm and a leg is produced in partnership with Kaiser health news. That's a nonprofit newsroom that covers healthcare in America. Kaiser health news is not affiliated with the health care giant Kaiser Permanente. We'll have a little more information on Kaiser health news at the end of this episode.

So: Jackie Fox. Interested in puzzles. Interested in justice. Armed with this insight: Process without meaningful access to process is no process at all. Like for instance, when we have trouble getting what we're entitled to -- what we need-- from health insurance.

Jackie Fox: I'm going to see if I can just do this for people. It seems like they're all, a lot of people who really need this help. And for whatever reason I never lose.

This was like what I was thinking at the time I've won every single case. It doesn't even take that much time.

Dan: So she wouldn't have to starve either. She figured it would be a volume business. She'd charge a flat rate, relatively low, and aim to knock most cases out quickly.

Jackie Fox: So I set up a practice and I was like, I got to do this cheap right.

So I took over an outbuilding at my mother's house and turned it into my office.

Dan: And it worked! It helped that there were a ton of doctors in her family, people who were happy to explain the medical stuff.

Doctors called her too. They had patients they wanted to treat, but insurance wasn't playing ball.

And then sometimes she called those doctors back for help. Like when parents had a baby who needed heart surgery, and the only in-network heart surgeon didn't do pediatric surgery.

Jackie Fox: And apparently you can't use an adult cardiac surgeon for an infant cardiac surgery because the heart's like this big and it's a totally different field.

And it was great because other doctors I knew could walk me through how to explain how absurd this was. And also point me towards really, really qualified doctors. Then I could call them and they'd say, I'm totally willing to accept the in network rate.

Then I could call the insurance company and say, Hey, is it going to cost you any extra? They're going to accept this. Let's just make this go away. And the insurance company was like, Oh, okay.

Dan: Jackie ended up charging a thousand dollars an appeal. Which is definitely real money for most of us, but: compared to paying for surgery? Or doing without it?

And some cases involved weeks and weeks of slogging through the mud. But a lot of them were quick.

She did fine. She had a Mercedes. She raced sailboats. And it was a lot easier -- for her-- than working in a big law firm.

Over time, she got interested in policy --she wanted to fix more than one case at a time.

She started working with government agencies, and advocacy groups, in her spare time. Then she took an academic fellowship or two. First at Johns Hopkins, then Yale, and for the last sixteen years she's been a law professor at the University of South Carolina.

But her phone still rings.

Jackie Fox: like last year I got a call, I was in the grocery store and it was a colleague of mine whose dear friend's husband was dying of cancer. And they were trying to get him into, an experimental treatment program.

And the insurance company had said no.

Dan: And there in the grocery store, Jackie Fox figured out the issue-- somebody at the insurance company had made a mistake, was looking at the wrong part of the contract.

Jackie Fox: I said, yeah, just call them and say, there's a mistake. The contract covers this. This is how it got coded. It should be fine. And she was like, Oh, so then she called and they covered it.

And it just took a phone call. I was like, and this is who you ask for. Don't ask for that. Just ask to speak to a manager, explain it. It was this screw up. You don't even want to go through the appeal or retaining counsel and you just need them to clarify it. And it just worked. Right,

Dan: worked so they didn't, they, they didn't have to get an attorney to write that letter. They didn't have to go through all those things. They just had to know the magic words.

Jackie Fox: right.

Right. But that was super obvious to me.

I know what contracts with like link without even thinking about it. And that's not a, I've been doing this for 30 years.

Of course. I know. Right. So it's not like a brag. It's like, duh, it's like a plumber knowing what a pipe looks like. Right.

Dan: She's like: This is why the flat-fee model worked for her, back when she did this for money.

Jackie: that's that joke, right? When the plumber comes and they hit the thing and there's, someone's like, why'd I pay you that much money for hitting the thing. And they're like, cause I know which thing to hit and how to hit it.

Dan: So, yes. When Jackie Fox says something is easy, we've gotta take it with a grain of salt. She's been doing this for thirty years. And yes, she started off as a lawyer-- specifically as a lawyer who liked dealing with complex financial instruments. Like an insurance contract.

So she started off with an extra leg up: inclined to just see an insurance contract, from the start, as part of a system of pipes. A puzzle.

Jackie: a lot of people think that insurance companies are in the business of getting people healthy. I have never thought that, right. I mean. It's not a slam at them. They're amoral, they're not immoral or moral. Right. And so a lot of people's approach to them is to beg or, or to point out the harms that are going to be caused by their choices.

And it never occurred to me to do that.

Dan: If you've listened to our episodes about Laurie Todd, the Insurance Warrior, I bet some bells are ringing for you:

You have a problem with your insurance company? That's a contract dispute. They don't care about right or wrong.

So, yes: Jackie has decades of experience, and a finance lawyer's inclination to take a fairly cold-blooded approach to a contract dispute—and the credential of actually being a lawyer.

And she'll tell you, she's got something else. A lifetime of relative privilege she gets to take for granted. Which produces what she calls an entitled response to lots of situations.

Jackie Fox: like if I go to a restaurant and they say, we're sorry, we, we lost your reservation. Leave. First instinct is going to be, so how are we going to fix this?

Dan: And she says that entitled response is, basically, an asset.

So, a while ago Jackie's husband had some medical issues, and Jackie called the hospital billing department.

Jackie Fox: I don't think they believed me that I was a lawyer. It was kind of interesting. Like they, they were actually talking to me like I was lying, .

And so there was a huge, uh, contempt and disdain in the woman's voice I was speaking to.

Dan: And this woman was mis-representing the law to Jackie. In a way that-- if it were true, or if Jackie didn't know it was false-- would have been to Jackie's disadvantage.

And of course Jackie is a lawyer and knew the woman was wrong. But Jackie thinks, even without that knowledge, she wouldn't necessarily have taken that woman's word for things.

Jackie Fox: for someone who is, feels entitled. Right. Like me, I will hear that and go, the shouldn't do that. That sounds wrong. The law can't be what you just said. It is because that would be weird that someone like me would have something that occur.

Dan: And we don't all start there. But we can be coached. I'm thinking again here about Laurie Todd, the Insurance Warrior-- a non-lawyer who coaches people through insurance appeals.

And one of my favorite things that she tells people who say they don't feel ready to call up a bunch of bigwigs, and stand up for themselves:

Laurie Todd: I say you don't have to feel that way. Just pretend you're that way. Pretend you're somebody who pretend you're me. I'm not scared of these fools.

Dan: I love that so much. We want people like Jackie Fox, like Laurie Todd, to teach us what they know, and we want to keep learning how to find that confidence -- or how to fake it -- when we're dealing with a health care system that abuses so many of us.

And yes, that's a LOT to take on. So like, for instance, Jackie Fox said to me early on:

Jackie Fox: I do this whole thing with law students where I teach them how to do a basic appeal and it's really easy. And I can just walk people through that. That's really not hard at all.

Dan: And now, I've actually watched a class session where she does that.

And -- well, one: She's talking with law students. Law students at the END of a semester-long course on health policy and law.

And two: That class session is about three times longer than an episode of this show.

And three: She talks pretty fast.

So, unpacking that lesson? It's actually going to be a big project.

But yes: She really does walk us through it. What she says is super-consistent with what Laurie Todd has to say in her books.

And I'm pretty geeked about it.

Because: I want ENOUGH of us to soak up enough knowledge and that confidence, so that we can become some kind of army.

Like, go into training. Learn this stuff when we DON'T need it personally. Learn it to be able to help others. Help ourselves, and our families, when the moment comes.

And yes: That turns out to be a big chunk of work. But good work. For some of us, maybe even fun work.

It's a lot to look forward to. And meanwhile, there's a bunch more stories to dig up-- I've got a whole list cooking for next year, and they're gonna be pretty fun.

And I get to do that because YOU are supporting this show.

For the last few weeks, I've been asking you to help us take advantage of NewsMatch. It's a program from the Institute for Nonprofit News that matches individual gifts to journalism outfits like An Arm and a Leg.

And I'll tell you what: The way I'm doing the math, you have already given us enough to max out the \$10,000 in matching funds that NewsMatch told us they were offering..And you know what else? NewsMatch just announced that they'll NOW match another \$3,000 in contributions.

AND: If you come through with ANOTHER \$2,500 on top of that? Well, I've got some folks who are ready to match that too. We hit that, the Knight Foundation has a little bonus for us. And I want that bonus.

So we could absolutely use your support. Right now.

We started the First Aid Kit newsletter last month, pulling together the practical information I've learned from doing this show. [And I can see that people are reading it, and re-reading it, and passing it along. YES!]

And like I said, we have so much more coming up. Yeah, we. Because I don't do this by myself. There's a team of rock stars whose names you'll hear in a minute, working hard on this show.

If you're enjoying it-- if you find what we're doing entertaining, empowering, and useful-- then please do come on to support us now, and get double your money's worth:

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The place to go is: arm and a leg show dot com, slash, support. That's arm and a leg show dot com, slash, support.

Thank you so much for supporting the show if you can. Thanks for listening. I'll catch you in a couple weeks. Till then, take care of yourself.

This episode of An Arm and a Leg was produced by me, Dan Weissmann, with help from Emily Pisacreta, and edited by Marian Wang. I can't tell you how much better the show is because of their brilliance and their patience with me. Daisy Rosario is our consulting managing producer. Adam Raymonda is our audio wizard. Our music is by Dave Winer and Blue Dot Sessions.

Gabrielle Healy edits the First Aid Kit Newsletter.

This season of an arm and a leg is a co production with Kaiser health news. That's a nonprofit news service about healthcare in America, an editorially independent program of the Kaiser family foundation. Kaiser health news is not affiliated with Kaiser

Permanente, the big healthcare outfit. They share an ancestor. This guy, Henry J Kaiser. He had his hands in a lot of different stuff.

His companies built roads, made cars, smelted aluminum, built ships, created some early TV stations. There's a whole list. When he died, more than 50 years ago, he left half his money to the foundation that later created Kaiser health news. You can learn more about him and Kaiser health news at [arm and a leg show dot com slash Kaiser](http://armandalegshow.com/slash/Kaiser).

Diane Webber is national editor for broadcast and Taunya English is senior editor for broadcast innovation at Kaiser health news. They are editorial liaisons to this show.

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