

Fox Rothschild Podcast

The Presumption of Innocence Podcast Series: Episode 25

**An Investigative Journalist's Insight Into the COVID-19
Fraud Strike Force**

Featuring Matt Adams of Fox Rothschild LLP and Brandon Block of Crosscut

Adams: Hi everyone, and welcome to "The Presumption of Innocence." I'm your host, Matt Adams. Today's guest on "The Presumption of Innocence" is a special one for us. It's the first time that we've had a journalist join us. We are joined today by investigative journalist Brandon Block. Brandon is with *Crosscut*, which is a nonprofit news agency covering the Pacific Northwest, and located just outside of Seattle, Brandon, right?

Block: In Seattle, yeah.

Adams: And one of Brandon's very interesting assignments... We've been talking a lot on "The Presumption of Innocence" about the COVID-19 financial relief packages that have come out from the federal government, and the enormous government investigative action that's flowed from that influx of money into the economy.

I have in past episodes of "The Presumption of Innocence" publicly stated that this is the largest white-collar investigation in the history of the United States. And I stand by that.

And Brandon, your journalism has really started to confirm that. Ironically enough, back -- which seems like a lifetime ago -- but, at the beginning of 2020 when we started down the path of COVID, and thankfully we're coming out of it, hopefully, one of the first places, if not the first place with reported cases in the United States was in Washington state, not far from where you work and live, Brandon. And so ironically enough, Brandon and his news agency have taken a real deep dive focusing on some of the enforcement activity that's going on in Washington state surrounding these federal emergency relief funds. And when we talk about this, we're talking broadly. We're talking about PPP. We're talking about ERC. We're talking about all of these federal programs, the trillions of dollars that coalesced into the economy in an effort to try to fend off economic calamity, basically, when commerce and life as we know it shut down for those, really, those couple of years. And we talk about it almost like it was something in the distant past, but really wasn't that long ago. And to be getting back to life is actually refreshing and I'm grateful for it.

But Brandon, how did this project come to be? That you and *Crosscut* wanted to really take this deep dive into pandemic relief? And as I've seen it reported by *Crosscut*, what you're calling the "fraud frenzy." How did this come to be?

Block: Yeah, well, thanks for having me. Good to be here. It's actually my first legal podcast, so excited to enter that realm of broadcasting.

So, there's a couple of entry points for this story. The team of prosecutors that's going after these cases in Washington has referred to themselves as a strike force. There's a lot of gray.

Adams: You know, the government loves to give themselves superhero-esque monikers when they go after large-scale things. So strike force is actually an oldie but goodie. That dates back to the organized crime of the eighties and the government's prosecution there.

Block: Yeah, it definitely sounds cooler than a task force. So yeah, there's a couple entry points here. The project that I work on at *Crosscut*, for about a year and a half now we've been kind of zeroing in on the effects of the government's COVID stimulus aid that's been passed in response to the pandemic, and kind of how that money is making its way into Washington.

And there's been a good deal of reporting on, for example, the Paycheck Protection Program, the business loan program that was passed in the wake of COVID. But I feel like there's been kind of less attention paid to some of the cleanup that's going on right now with regard to these prosecutions.

I think that was mind boggling for me when I started looking into... first of all, I think the fact that no one even really knows how much fraud happened during the early stages of when these business loans went out. And, you know, we're talking about April, May of 2020, so really in the thick of this extremely traumatic and sort of unprecedented economic crisis. I think we were interested, or I was interested, in this story and getting at, trying to apprehend the scale of fraud. And then also what it looks like to try and prosecute these cases, or bring some accountability to these programs when you have limited resources on the part of the prosecutors. You know, there's only so many prosecutors and no one even knows exactly how many cases of fraud could be out there. But I feel pretty confident in wagering that there's probably more cases than a U.S. Attorney's Office -- which is the federal prosecutors locally around the country -- there's probably more cases than they could ever get to the bottom of. Even if they were just focusing on pandemic fraud full-time for the next five or 10 years, I think it's fair to say they probably wouldn't get to the bottom of all these cases.

So, I was really interested in how prosecutors are prioritizing what cases to go after, how those decisions are getting made and what the punishments look like for the people who do get prosecuted. And then we can talk about that, I was in a couple sentencing hearings over the past few weeks and actually published a short follow up to the piece that you're talking about.

But yeah, I think the initial impetus was to kind of take a broad look at how this enforcement is panning out.

Adams: Yeah, I think those of us in this profession, those of us who are representing clients who are accused of fraud in these programs, or those participants in these programs that are just trying to make sure everything is on the up and up, have been at this for a really long time. In fact, one of the observations that I made, as someone in the system as a defense lawyer, was the record pace at which these prosecutions began. Really, some six weeks after the first PPP loans dispersed, we saw a significant amount of prosecutorial action. Which, albeit, was low hanging fruit. It was the PPP money to acquire Lamborghini and other luxury items. But the government has been at this now for a solid three years. And there is no indication that the government is letting up. In fact, every indication is that they are throwing more resources at this, that they are going to more aggressively pursue this than ever before.

We talked a little bit about your investigative piece for *Crosscut*. You published it on May 3, 2023. And when we release this podcast we'll make a point of linking to your story. One of the things that I was struck by when I read your piece -- and you quoted this Adams guy in there that was phenomenal, I must say -- but --

Block: Yeah, where do we get him?

Adams: There was this notion that the watchdogs that are supposed to be looking over these programs are almost blowing the whistle that there is insufficient resources out there for them to adequately filter through the legitimate versus the illegitimate. And I think that gets to something that you just stated, which was you're kind of astonished by the fact that nobody really has a handle on how much fraud went on in these programs.

Block: Yeah. Nobody knows.

Adams: So, your story talks about Offices of Inspector General and raising the flag to Congress saying, "Hey, get us more resources."

Talk to us a little bit about that aspect of your story and your investigative journalism.

Block: Yeah, so there are several federal department Offices of the Inspector General that have raised concerns in the past, I'd say six months or so, that they just don't have the funding and resources to do the kind of watchdog work that would be necessary to even answer that most basic of questions of how much fraud was there.

So yeah, it was really astonishing when I started looking into this. That the estimates that have been produced range really widely. I spoke to the chair of the Pandemic Response Accountability Committee, which is a committee that Congress created as part of the first stimulus package as part of the CARES Act, that is congressionally mandated to monitor these funds and produce reports about where this money is going and kind of be an internal watchdog, essentially for the stimulus program. And you know, I was speaking to the chair of that body recently and he was saying that part of the reason that it's been so hard to even know how much fraud was committed is because it actually took a while for those agencies to even get ahold of the data.

You know, if we're talking about the Paycheck Protection Program, there was a long, protracted process throughout 2020 where the Small Business Administration, which is administering the business loans, was basically refusing to release publicly information about who got the loans. So for a long time in the first year of the pandemic, it wasn't even clear like where these loans had gone, who had gotten them. And I believe it was several news agencies that sued the SBA under the Freedom of Information Act, and eventually this data was released.

Adams: Now there's comprehensive lists of borrowers you can search.

Block: Yeah, it's very easy to go look up who got a PPP loan. There's a lot of ways to do that. But anyway, because of that delay, as it's been described to me by the watchdogs, they're playing catch up a little bit. Most of them went out in the first couple of weeks of the program with PPP. So we're talking about April and May, most of that money is already gone. And then it's a year later before there's even sort of widespread knowledge across the government of even where these loans got off to. There might have been prosecutors' offices who had different information on that.

You know, I think it gets to sort of the government strategy here, which we can talk about the pros and cons of, of saying there's an economic catastrophe. If we don't get hundreds of billions of dollars out to try to save some of these businesses, more businesses are gonna go under. They're gonna lay off people and this is gonna get even worse. And mind you, at the time we're talking about what I think can reasonably be described as one of the biggest, if not the biggest, economic catastrophes since the Great Depression. In April and May of 2020, the unemployment rate quadruples, in an

extremely short amount of time, too, which is kind of what makes it distinct from some of the past recessions.

So the government really made a choice. They said, we're gonna send all this money out there. And there was a little bit of an acknowledgement that some of it is going to go to people who don't need it. And some of it is going to get stolen by fraudsters. And the calculus there was, you know, we can go chase it later. We'll just send it out there now. Chase it later.

Adams: Chase it, they are. Because I mean, I can just tell you we are very busy with this work and have been so for a couple of years now. The initial case, like I said, that was charged was almost instantly by federal government terms, six weeks or so, the first trial for PPP fraud took place in the Middle District of Florida in the first part of 2021, which is also a fairly significant pace. It was almost as if they were sending a message. It was almost as if: Hey, we know that some of this money got out there improvidently, that some of it went to folks that didn't need it or didn't qualify for it, and we're coming.

And that message was sent loud and clear. We heard a message from President Biden in his first State of the Union directly on point with what we're speculating was their theory, which is, we're gonna beef up enforcement. The resources that are going into federal enforcement of these programs is coming for anyone that improvidently received these loans or nefariously hooked up an application that got them money they shouldn't have.

What I've seen though, is that in the midst of that fervor, there has been legitimate people who deserve this money. People who needed this money to pay their employees, to keep their doors open, to feed their families, that have been swept up in the administrative red tape of the belt tightening that went on. And anything in your investigation, did you find any stories of those folks who have now had to add insult to injury by getting swept up in some sort of audit that becomes costly and time consuming, when in reality they were entitled to the funds?

Block: I can't say that I've really come across any cases that I'd describe in that way.

I know when you and I talked for the piece you know, you brought up that as a concern. Yeah, I honestly, in the cases that I'm reviewing, I haven't seen anything that I would describe that way. But there's also, with the caveat that the cases that I'm writing about are the ones that have been publicly announced and charged by the U.S. Attorney's Office. So, there's a lot that we're probably not seeing.

Adams: As a white-collar defense lawyer, one of the things we like to say is, "Our biggest successes you'll never read about." Because they're the things that happen behind the scenes. They're the things that happen where we convince prosecutors to exercise their discretion and not make that charging decision.

One of the things, and I started our discussion today talking about, I guess the irony between how COVID-19 really was born in the U.S. in Washington, right outside Seattle. And now your expose of this strike force that's coming outta Spokane is, it's really --

Block: Sorry, Spokane. I know they'll be offended if they...

Adams: Well, you know --

Block: Everyone gets that wrong.

Adams: You got the Jersey guy, right?

Block: I've made that same mistake many a time.

Adams: So, we've got the Spokane strike force -- there's regional dialects in New Jersey as well. The northern Jersey in me is struggling with it, but we'll go with it.

Your piece chronicles the strike force and what the U.S. Attorney's Office is doing. What did you find?

Block: It's interesting. So, they've kind of taken a special focus on these types of cases in the U.S. Attorney's Office in Spokane. And it's interesting, there's certainly a handful of other U.S. Attorney's Offices across the country that have launched similar types of efforts, to really drill down on these cases. I think the interesting thing for me, as someone who's not any kind of legal expert or well-versed in white-collar crime, was to learn how long a typical fraud case usually takes. You know to hear them tell it, your average fraud case you're investigating maybe for a year at a time.

Adams: I have, I have cases that have been investigated for four and five years.

Block: Yeah. And you know, when you're talking about thousands of potentially fraudulent loans, there's no way that could be viable. They've really tried to, like, lean down the process to basically pump these indictments out as quickly as possible. In a in a more typical fraud setting, you know, I'm told that you would spend more time trying to track down exactly like, okay, what did they use the fraud proceeds for? Where is that money?

Adams: The government hates to lose. They want to have all their boxes checked.

Block: But here, you know, there are sometimes indictments that are coming out after a couple of weeks of investigation. Once they can prove that this person said they had five employees, they didn't actually have any employees. This person said they started their business in 2018, they actually applied for a business license two weeks before they submitted the PPP application. And once they feel confident that they can prove that to a jury, they're gonna send that indictment out there and move on to the next case.

So that, you know, as it's been described to me is a pretty different model from what white-collar fraud prosecution usually looks like. And it's entirely a response to just the enormity of the potential cases out there.

Adams: Do you get the sense that political pressure is driving that?

Block: You know, it's hard to say. Certainly the way it was relayed to me is kind of what we've already talked about, that there is a strong focus at the national level on these cases and that there's a desire for accountability from the community that, you know, I think no one loves the idea of taxpayer money being wasted. I think they would say that there is a kind of a robust consensus that the people that abuse these programs should have to return this money.

But I think there's an interesting question to be had about who decides that this is more of a priority than anything else. And is that influenced by national priorities? I'm sure it is. That could be influenced by any number of pressures. So, you know, yeah, I don't know if that's a satisfying answer. But I think it's a good question. Because anytime you're talking about throwing the justice

system at a particular group of people, I think there's good questions to be asked about, like, is this the best allocation of these resources?

And I think where that's come up for me is there have been a number of cases in the Eastern District of Washington, which is the Spokane strike force that we're talking about, where someone concocted a fake business and obtained maybe a \$50,000 PPP loan. And, I think there's, like, good questions to be asked. Because there's been a few cases, too, where, you know, maybe the person has a history of poverty and has maybe been to prison before, and there are mitigating factors in their background. I think it's a good question to ask, like, is it an appropriate use of government resources? Like, are these the big fish, basically, that we should be going after, you know when maybe there's also companies that took million or \$2 million loans and similarly abused them.

So, I think there's good questions to ask about who is the priority here and how do we decide who goes to jail and who gets away with it, basically. Because that is the decision that prosecutors have is that you can't do all these cases and you have to choose.

Adams: In interviewing the folks that you did both on and off the record for purposes of your piece, did you get a sense from where they were drawing that line?

Did you get a sense for whether they were searching for the big fish? Did you get a sense for whether the little fish, so to speak, could, for lack of a better phrase, help themselves by flipping up to people that may have aided and abetted them?

Block: Yeah, unfortunately it's pretty squishy. I did pose this question to numerous prosecutors and I think there's two things that you'll hear. One is that all the cases are important.

Adams: They love to say that they really don't believe it, but they love to say it.

Block: Yeah. There's a little bit of a like, well, you know, I think we all know that you can't do all the cases. So, they'll never say, like, here's the hard and fast line where less than this amount of money, we're not gonna pay attention to it. And I think that's kind of understandable. If they went out and said, we're not gonna go after you for stealing less than \$50,000.

Adams: I told you, I've had clients that have been indicted for issues with their applications and there were very low dollar amounts involved. It wasn't multimillion dollar cases. It was \$10 grand.

Block: It's worth saying that like, you know, this office has also gone after companies and million dollar-plus cases. But yeah, it's really hard to nail down exactly like what qualities, what are the benchmarks, at which point they'll go after a case? I think, you know, certainly people who filed multiple applications. You know, if there's a person who stole \$50,000, but, you know, they tried 10 times to get it on the tenth time, you know, they finally got approved. You know, I think a prosecutor and, likely a jury, is gonna look at that differently than you know, someone who fired off one application got some money.

Potentially, from a defense lawyer perspective, I think it's probably, I'd imagine, easier to argue that here's a good person who just made a mistake versus this is a serial fraudster who is, you know, committing a well-thought-out scheme over a long period of time. And I think that has become a factor in the sentencings too, that I've seen. Judges tend to look very differently at someone who is doing this in a protracted way over a long period of time.

Adams: I was struck by quotes that you got from the Department of Justice's Inspector General quote you took from his testimony during a judiciary committee hearing on the Hill.

Block: Yeah, we, yeah, I, did get a chance to talk to him.

Adams: You did?

Block: Yeah. We had an interview.

Adams: And, in your piece he says, "We don't want to send the message that crime pays, whether it's a penny, a dollar, a hundred thousand dollars or a million dollars."

That dividing line doesn't seem to exist. They're pursuing cases, at least from my experience. And my firm, Fox Rothschild, since this began has created a tool that we make available to the public -- and including to you that helped for your story -- the case tracker, that, through a national database, keeps track of the numbers of cases being filed across the country related to pandemic relief, fraud. And I don't think there is a dividing line. A lot of times clients will come to us like, hey, we just got this little loan. Are we okay? We want to check it out. And unfortunately, I'm left but to tell them is they're pursuing all of these. There's not one clear and fast rule that I can actually look to as guidance in that scenario. Now, originally when the plan --

Block: I think if there was, they probably wouldn't tell a journalist what it was.

Adams: They wouldn't tell a defense lawyer either. So, we're in the same camp on that.

But when the plan originally came out, I think a lot of the public got this false sense of security because there was talk of this loans under \$2 million. There is a presumption that loan is economically necessary. And that term, economic necessity, was a buzzword early on in COVID. It fell off. There was a form where you used to have to justify, as part of the forgiveness process, your "economic necessity." And then I think somebody in the SBA, a light bulb went on in their head that this is really a waste of time and is administratively unfeasible. Because anyone who took this application is gonna say it was economically necessary and the criteria that we're giving them to substantiate economic necessity is fairly subjective.

They were looking at financial performance in quarters that followed an application. In the instance of the first PPP program, which came out in early April of 2020, they were looking at financial performance in quarters three and four. That application was supposed to be based on the then necessity, then economic necessity back in Q1 and Q2 of 2020 when the pandemic's impact came on to our shores. So, I think there were some changes along the way that, generally speaking, didn't make a lot of sense. And so that there was this confusion about things like: Hey, it's assumed the loan is economically necessary if you're having a loan under \$2 million, that gave people a huge false sense of security.

I'm encountering that in my practice where people are saying, oh my loan was only a hundred thousand dollars and I heard if I'm under \$2 million, I'm cool. It's not the case. And I think your journalism point concludes that as well, is that whether it's \$10,000, \$5,000, \$2,000, or as I think perhaps hyperbolically, the Inspector General Michael Horowitz says, if it's one cent and it was secured through fraud, they're coming.

Block: Yeah. I'm not as familiar with the particular process that you're describing. I think the broader point that the enforcement priorities have changed over time, I think, rings true. You know, another

thing that came to mind when you were talking was, there was a recent report that came out that suggested that the SBA was not going to collect on EIDL loans-- and that's the Economic Injury Disaster Loans, like a different business loan program -- under \$150,000.

So, the Economic Injury Disaster Loan, that's a loan that was designed to be repaid. And now what we're hearing is that SBA, Small Business Administration, might just decline to collect on a lot of those loans that are a \$100,000-\$150,000. So, that kind of sets up a little bit of a bizarre situation where if you defrauded PPP for \$50,000, you might get prosecuted, but if you defrauded EIDL for \$50,000, you might just get away with it.

And so, you know, I think there is some challenge coordinating across different agencies. Obviously, the SBA are different people making different decisions than lawyers in the Department of Justice. But I think it does make for sort of a confusing landscape of enforcement that has really shifted over time. I think, as you were alluding to, Matt, there was a perception maybe earlier in the pandemic that this was kind of a free-for-all and that you might get away with it.

And there was a lot of confusion around what the rules of the program were, I think it's fair to say. You know, jump in if I'm speaking out of turn here, but it sounds like, from talking to you and other lawyers, and I think even prosecutors would likely admit that like the terms of the details of how these programs were supposed to work, obviously, like, rolled out in a hurry and have changed over time. The eligibility has changed over time. So, I think it's certainly conceivable to me that, you know, there could be honest confusion about the way that some of these programs were rolled out and the eligibility.

Adams: Yeah. Certainly, from my vantage point, that is in fact the case but with capital letters. I think at the core of some of these fraud cases, while those infused circumstances during an emergency may speak to aspects of how things got undetected, it still doesn't excuse or provide a defense for an underlying fraud.

And the essence of that fraud is to induce the government, in this case, to provide funds based on false facts. And I know that for your May 3 piece for *Crosscut*, you took a close look at some specific examples of cases that were brought by the strike force in Washington state. Why don't you tell us about some of those?

Block: Yeah, there's been some really interesting cases coming out of Eastern Washington and also some even more bananas cases coming out of the Seattle office, which we can get into as well.

You know, we talked earlier about the case of a guy who stole about \$50,000. And that was a kind of an interesting case because it was, like I said, a relatively small amount of money compared to some of the other cases. And you know, I was personally interested in the sort of background. This is someone who had been to prison for a pretty significant amount of time for basically drug distribution. And so, you know, it was kind of interesting and had been, from what I gathered from the court documents, like had had a pretty difficult life. Obviously had also like, committed crimes before. So I think that may have contributed to the sentencing in some way or another.

But it ranges all the way from that to, there was a nuclear contractor at the Hanford site -- one of the places that was like working on nuclear weapons in the Second World War and is now one of the biggest nuclear waste sites. So, there's like a contractor that is providing kind of like health services to the employees there that applied for, I think it was a \$1.3 million loan, said they were gonna use it to pay their employees, and then the owner just pocketed the money. So, really like a range of different situations and economic circumstances.

And then going all the way to the more sophisticated end of things: On another side of the state, there was someone who worked for the state's unemployment system who was ultimately sentenced to five years in prison for essentially using his insider access to steer unemployment benefits to ineligible people and then extort money from them, steer benefits to himself, steal people's identities and apply for benefits on their behalf.

So there were some pretty, like, sophisticated schemes that were a little bit more organized than you know, just someone firing off a loan application to an unsuspecting lender. And then that goes all the way up to, there was even a politician in Nigeria who was stealing people's identities and filing thousands and thousands of claims.

Adams: So, what I'm hearing from you is that if you wanted to take your research and put it into various buckets, you might have a lot of buckets on that table.

Block: It was a challenging piece to write for that reason because there are so many different stories that are all intriguing in their own way. And trying to find a central narrative thread to what can I say about COVID fraud enforcement? Well, there's so many different sort of individual cases and what do they necessarily add up to? We did leave a lot of material on the cutting room floor because there just wasn't, you know, enough space to get into all the other interesting cases that that just didn't quite make the cut.

Adams: So, what I'm hearing from you in a nutshell is that there's just a tremendous amount of activity out there in this area. That it's very difficult to try to distill it into anyone category. And you're seeing a wide array of prosecutorial action.

In light of those observations, at least for the observations that were reflected in your early May piece, where's your journalism going next? What has your interest peaked on this subject of COVID-19 financial relief and the potential for fraud?

Where are you going next?

Block: Well, I think the next piece is gonna be about something entirely different. But yeah, I do imagine we'll return to this topic sometime in the next three to six months. So, I did publish a follow-up story actually. There were two of the main characters in my story who actually we haven't even talked about, but who got sentenced. One of them to a year in prison and the other one took 15 months in prison. And so it was interesting to follow those cases. They were both more significant amounts of money, I think, than we've talked about. One of them was a guy who ran a ticket selling business out of an office, basically, like, right across the street from the Seattle Seahawks stadium and the Seattle soccer teams that play there too. And he had, I think, obtained a little over \$600,000 from two PPP loans that were submitted on behalf of his businesses. Again, was a situation where the application said he had so many employees but it was actually just him. So he ended up getting a year.

And that was an interesting case, too, because part of the defense's argument was that they said the government couldn't prove that he actually submitted the application. And they say that he was approached by two other people who said they could get a loan on his behalf, for a fee, basically.

And I think that this is something actually that came up in our conversation was, I think the term you used was "promoters" people who are sort of hawking their ability to get these loans to small business owners. And so the defense's argument was sort of that he didn't know how much they

were gonna ask for and that he wouldn't have done it if he'd known it was so much money. The judge didn't necessarily buy that argument.

So yeah, I know it's interesting to see sort of like what arguments are compelling to judges and which ones stand up. I guess I'm curious if you have any insight on that because I figure you're in court quite a bit.

Adams: At the end of the day in a financial fraud case, the sentencing really comes down to the loss. The loss drives the sentencing guidelines. And then everything else in terms of aggravation and mitigation are driven by holistic factors that the government can use to convince a judge to, to go high or a defense lawyer like myself can use to get the judge to go lower.

And we have the concept of variances and departures, and that in itself is a whole other --

Block: It gets really technical, really fast.

Adams: Really technical, really fast.

Block: There's like numbers in the court documents.

Adams: Lots of math. Lots of math.

Block: I didn't sign up for math here.

Adams: Well, that's all the time that we have today. I think. Brandon, we're gonna be looking forward to following your journalism as you follow up on some of the work that's going on across the country in this really unprecedented prosecutorial effort surrounding these economic stimulus programs brought about by the COVID-19 pandemic.

Really appreciate you being with us today. And until next time, we'll see you on "The Presumption of Innocence."

Block: Yeah, my pleasure. Thanks for having me, Matt.