



## Fox Rothschild Podcast

### The Presumption of Innocence

#### Episode 33: Framing the Narrative: Journalism's Influence on the Presumption of Innocence

*Featuring Matt Adams of Fox Rothschild and journalist Mark Di Ionno*

**Adams:** Hi everyone, and welcome to "The Presumption of Innocence," a podcast brought to you by the White-Collar Criminal Defense & Regulatory Compliance Practice at Fox Rothschild. I'm your host, Matt Adams.

And I want to introduce today's guest by telling a quick story. Several years ago, I was representing at the time, which was a fairly unpopular client. He was accused of some rather embarrassing acts and his name and likeness were being strewn all over the media, nationally and internationally. And one morning on my way to work I got a phone call. And the person on the other end of the call said, "Hi Matt, my name is Mark Di Ionno, and I'm a fairly serious guy. And I think your guy is getting screwed."

And from that point on, I developed a friendship and a profound respect for Mark Di Ionno, who started his career as a sports columnist at the *New York Post*. He went on to be a columnist at *The Star-Ledger* in New Jersey for something like 30 years. He had a great run covering New Jersey, including being a Pulitzer finalist in news for his columns on Hurricane Sandy and the Tyler Clemente case -- which sort of rocked New Jersey -- and other local events and issues.

He's now an adjunct professor of journalism at Rutgers University's Newark campus. He's won a whole host of awards and has written several books. He is, just, when it comes to covering news, Mark is an old school newsman. And to say the least, it is my distinct honor and privilege to have Mark Di Ionno on the program today to talk about the media's role in criminal defense and in particular, the media's role in preserving or eroding the presumption of innocence.

And Mark, I want to get right to it. Can the media erode the presumption of innocence in a criminal case?

**Di Ionno:** Well, the bumper sticker-ism that I've talked about through my career is this: once the media sets a narrative, it can't be undone. And that's pretty much it. Yeah, it can destroy the presumption of innocence because people are tried in the press. They're given half measures, half of truth, if the prosecutors whispering something to a favorite reporter that's being presented as facts.

Defense attorneys are usually a little more cautious about trying to set narratives. And so, you know what they say, history is determined by who writes it. And so I think that's what happens here.

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**Adams:** I remember that first conversation you and I had, Mark. And one of the things you tried to instill upon me was that your interest was in giving the story of my particular client, who will remain nameless for purposes of this conversation. But your intention was to give him a fair shake to tell his story. And I remember you saying to me something to the effect of -- after you said, you're a serious guy and that you had no interest in creating more clickbait with my client story-- you said something to the effect that has had a very profound impact on me. You said, "He's entitled to tell his story and I think what's being done to him is wrong."

Yeah, how much of that goes on in a newsroom these days when these salacious stories come out? How much of that discussion about, this isn't the right way to treat somebody, there is a presumption of innocence that we should be putting above all else?

**Di Ionno:** Well, I'll tell you Matt, back in the newspaper days when we actually had editorial meetings, we measured the damage of what a news report on a minor offense, the damage it could do to somebody and their reputation. And certain things we just didn't put in the newspaper. I remember a story where a guy was accused of indecent exposure by a neighbor. I called the cops and said, "Is this guy a repeat offender?" "No, they said, it just seems like a weird thing." And, you know, okay, he's not a danger to the public. It's something that could embarrass him, his family, his children. So, let's put that one on the shelf and let's see if something happens later that makes us take it off the shelf.

And we used to have those kind of discussions about the public's right to know and weigh that against the damage to an individual. And so, what we've receded into is a clickbait type of cruelty that no longer counts the damage to the individual.

**Adams:** And what do you attribute that to? I mean, you're sort of referencing this transition of, we used to have newspapers that were, you know, you had a column and it was measured by the words and the inches and everything. And you better make it a good one or you're not going to get it next week. Now, seemingly anyone and everyone can be a journalist. We have blogs. We have all kinds of opportunities to self-publish on what is seemingly the limitless media of the internet.

**Di Ionno:** And, you know, for professional organizations, they're guided by algorithms. And so, you know, stories of sexual natures, racism, these things get the hits. And so they pursue these kind of stories.

You know, here's the real problem, Matt, that I see right now is that generally the media -- and I'm talking about from the top down -- they seem to be in the business of inspiring either fear or anger. And so we read about the same things all the time. You know, if I read another story about racism in Harvard admissions, how many times can you hit these things? And it's designed to inspire fear, inspire anger. And that's why we've lost control of our political discourse, because we have the media being a pretty destructive force in that.

**Adams:** When it comes to covering legal proceedings, one of the things that has struck me in recent years is there aren't boots on the ground anymore. Reporters don't show up in the courthouse with



their steno books in the front row, taking copious notes. At best, they're doing it from afar, compiling information and comment from some office location or in their pajamas on their couch. How important is -- especially when covering legal proceedings -- is good old-fashioned shoe leather, as my grandfather called, it boots on the ground.

I know in this recent chapter of your career in the past several years, you've been extensively covering the war in Ukraine. And you've reported live on the war in Ukraine from Kiev and other places where you're putting yourself in danger to cover this story, that a lesser journalist might dial it in and rely on feeds and other information without being there to sense it. How many parallels are there to war coverage, which you're doing these days, and legal coverage as it relates specifically to the need to be present? Because what strikes me is, I'm often called by reporters for comments related to cases that I'm involved with, high profile cases and the like, cases of first impression, and it never seems like anybody's willing to actually step foot in a courtroom anymore.

**Di Ionno:** It's amazing. And, in my job now, I work for Ras Baraka in Newark, in communications, and anytime somebody calls with a negative story idea or something they're trying to pursue, I always say, "Come on down, come on down. Let me take you for a ride."

I remember, we had, the police opened up these cameras, these neighborhood cameras. And, got a call from a salon that seemed like it was racial profiling that we would have these cameras. And I said to the guy, "Why don't you come down, come down and we'll take a ride through the neighborhood and you can see where the cameras are, and you could see who the victims are and you can see who's being profiled here right?" And the guy comes down and, uh, I'm driving him around, you know, the neighborhoods where we had high crime and he's starting to get the picture a little bit, you know. So boots on the ground is imperative.

And let's talk about a couple of things here real quick. Would you buy something from somebody over the phone, you know? Don't you want to look into somebody's eye and their facial expressions and find out if they're telling you the truth or not? You can't replace that with email questions or phone calls. You know, it's important to engage people.

**Adams:** The first thing you did in that case that I opened, in your introduction at the outset of our discussion today. The first thing you did is say, "Hey, I know where your office is, how about I show up and have a cup of coffee with you?" I remember that vividly.

**Di Ionno:** Exactly, exactly. And it's amazing how this has changed now. And I think it's because everybody wants to be first and speedy. And also at the level of certain regional papers that have gone by the wayside or, you know, have transitioned into totally online clickbait sites: the 20 best pizzas, the 10 best hamburgers. You know, those places, there's nobody training these reporters because their editors are all laid off and fired because they cost too much.

And so here's the real issue, okay, just looking at Ukraine as an example. A narrative is set that we're sending over billions of dollars as if it's cash on pallets. And even the men and women in Congress have not been there to see the suffering, the body parts, you know, civilians strewn in the streets. The



destruction, the wanton destruction. And we forget, oh, you know, the guy bombed an orphanage, that was two years ago. And so, if you're not there, you can't have a visceral reaction to what you're seeing.

And honestly, you know, I loved going to court. I really did. I covered huge trials. And it's a fascinating dance, and you see the damage done to the families of the victims. You're going to gain a greater sense of empathy.

**Adams:** Yeah, I mean, if we're talking about the basic premise that the media has the ability to impact the presumption of innocence, how much of that has to do with the ability of the reporters who are creating the story, right? Creating the narrative through their eyes, through their lens. How much does their empathy have to play into this role? I remember the conversation we had about my client, and I keep going back there. You were empathetic. You said, "I think people are really treating him unfairly." You may have used some more colorful language. And that you believe that he was getting railroaded by the process. And I viewed that as an empathetic move and that's why we continued our conversation.

**Di Ionno:** You know, Matt, I think the greatest example in my career of the media setting a narrative and, it not being undone is the, uh, Dharun Ravi case, Tyler--

**Adams:** And tell our listeners, we're talking to a national audience and this is a pretty New Jersey story, but it did make national headlines as well. This is the Rutgers University student who was charged criminally for recording his roommate in a homosexual act. Am I correctly...?

**Di Ionno:** Well, yeah. And see, right there: he didn't actually record it. So, let me just back up a little bit.

So, the roommate who was spied on -- computer to computer, there was no recording, there was never anything posted on the Internet -- the kid jumped off the George Washington Bridge and committed suicide. And the guilty party in this was his roommate, his name was Dharun Ravi.

And so Dharun Ravi was seen as, you know, a homophobic, a bully and, you know, just this mean kid. And the narrative that was set was, he spied on these two people, having sex, a homosexual liaison, and he posted it on the Internet. And it went viral and the kid was so shamed he killed himself. And none of that is true.

**Adams:** It was every day. It was in the papers, on the news, every single day.

**Di Ionno:** And so this kid, Dharun Ravi, there's so many interesting things about this case we could have a whole show on it. This kid was not a citizen and there was a Chinese American girl who was also not a citizen. There was a third actor in this, another one of their classmates, an Indian kid who was a citizen. They never charged him. They charge the two non-citizen kids and threaten them with deportation if they didn't plead guilty to some minor charges, right? Because the prosecutor didn't want anything to do with this, bad case. The Chinese young woman, she pled out and went to enlightenment camps or whatever they do. And the Indian kid, Dharun Ravi, absolutely refused to



have an elocution where he was going to admit that he was a homophobic bully, and he was not going to admit to bias intimidation.

**Adams:** And this is all stuff you gathered from being in the courtroom every day.

**Di Ionno:** Right, right. Now, prosecution witness after prosecution witness got on the stand and said Dharun Ravi never used a gay slur. He never asked for a roommate change after the young man discovered that he had spied on him with the computer. He apologized. He said he hoped they could still be roommates and get past it. The computers were open for a matter of three seconds, twice. They saw the men with shirts on kissing. They saw the men with shirts off not kissing, and because they showed nipples it became like a Peeping Tom charge, right? It's just insane.

That jury rang that kid up on every single charge of bias intimidation. And I couldn't even believe my ears. You know, it was like, they never heard any testimony. And so Judge Glenn Berman in the case gave him 30 days in jail, and he was lampooned by activists. You know, that he didn't care about homosexual life and all this stuff. And actually, he was shocked by the verdict too. But it just speaks to the strength of that media narrative.

Now, I want to tell you, something very quickly about empathy and I promise you, I wouldn't do this, now here I am, right?

**Adams:** Yeah, Mark, this is fascinating stuff, yeah, go ahead.

**Di Ionno:** So, here's a story about empathy: I have six children. And every day outside of court, I would see Dharun Ravi's father and, you know, and he was angry, really angry at the kid. You know, I mean, he didn't want him to plead guilty to something he didn't feel he did, but he was still pretty pissed off at him, right? So I go up to Dharun Ravi's dad and I say to him, "This is a story about 'there but for the grace of God go I,' because I got six kids. Five of them, I don't think would do something like this. The sixth one, I'm not so sure."

**Adams:** Did he get a laugh out of it at least?

**Di Ionno:** Got a laugh at it, but that's how I got the first interview with the kid, because I approached the father, father to father. And, you know, while all these other reporters were trying to angle to get him on TV first and all this other stuff, I showed that I had a greater understanding of what the father was trying to do to protect his son and yet not have him cave into to these false charges.

**Adams:** You've spent your life in newsrooms, Mark, and some of them, I'm sure, have been tense at moments and some have probably been euphoric and very fulfilling as you've covered the events of the last 40 some-odd years. Do people in those newsrooms, do they know that judges and juries are reading and watching what they're writing about legal proceedings?

**Di Ionno:** I think they do. You know, I always had a good relationship with judges in big cases. They always recognized that I was paying attention, that I kind of knew what was going on and that my coverage was fair. And I also had judges complain to me about coverage of other news outlets that,



you know, took the shortcuts to create a bumper sticker narrative that was not nuanced. And almost everything is nuanced.

**Adams:** In your role as a teacher, teaching journalism students, when you address your class, these students are coming up in another generation. They're coming up with a new medium of journalism. The print medium hasn't yet gone extinct, but it's sure close, I would argue. And they're going to be operating in a different media. How do you get them to buy into these traditional notions of empathy towards criminal defendants, empathy towards the process, the system, the presumption of innocence? How do you get them to instill that ethic into their daily lives as budding journalists?

**Di Ionno:** You know, I see this as a parallel to the political false narratives that we are being fed about our country and our people, that are very damaging and --

**Adams:** From both sides, from both sides of the ideological spectrum.

**Di Ionno:** It's horrible. And so there's these false narratives that are shaping our identity as a country. And it's, actually very dangerous because it shows to the globe that we are a weak and divided country.

But what I say to the kids, to get back to your point, is that their own values, their own sense of right and wrong, is not far off from, like, the general public's right? You know, unless you're a sociopath, we're all sort of share these same basic ideals, the same basic sense of what makes sense, common sense, right and wrong. And that they need to understand that and they need to be muscular about that.

So, going back to your client. I wasn't at that operation, *NJ.com* when the story broke. But in the end, I was the only guy who said, "Hey, let's stand up to this. You know, our bosses are loving this and they're getting clicks." But, you know, somebody's got to stand up to it. Somebody's got to say, no, it's wrong. This is wrong. We are destroying a guy's life for a misdemeanor.

And I'm trying to instill that into these kids. Like, if things don't make sense to you, if things offend you, your sense of right and wrong, your sense of reason, act on that. No matter what anybody tells you, you got to act on that. You have to have the courage to act on what you know is right.

**Adams:** And you certainly, in the course of your career, majority of which was at the preeminent North Jersey paper of record, *The Star-Ledger*, you certainly had that courage. When I look through your Pulitzer Prize nomination, I see titles like, "Victims' Father Envisions a Different Kind of Justice." I see titles like, "In Life's Second Act, He Took His Gloves off so He Could Pick Up His Guitar. I see a decidedly humanistic ... I don't know if the right word is alliteration to these titles, but you're invoking decidedly human themes when you talk about the criminal justice system, rather than this conveyor belt. The former New Jersey Supreme Court Justice Barry Albin in some majestic words that I'll butcher and could never come close to emulating, said something about the criminal justice system is not this conveyor belt where we go through from start to finish just to throw people from defendant to prison and out and back. And we're not building widgets we're talking about human lives.



**Di Ionno:** Right.

**Adams:** And when I read these titles to your Pulitzer-nominated stories over the course of years, particularly that year, 2022, which for the state of New Jersey was a rough year. It was a real rough year. We had this once-in-a-generation storm: devastation, flooding. Our beloved shore was wiped out. And here you are striking these humanistic tones to your work. Why?

**Di Ionno:** Well, you know, because stories actually happen to people, you know. And again, going back to your client and Dharun Ravi and others, you know, these are people, these are people. These are people who are impacted by this for the rest of their lives. And the problem with the internet is that these things don't go away. The paper gets thrown into recycling and that's the end of it. But in the internet, you live forever. And your kids live through it. And to try to get things taken down by a news site, you know, is arduous if they even care to do it. So, that human approach... you know, as a writer, you're interested in the human aspect of it. You're interested in the humanity.

As a person of faith, this is important to me that we always view the human aspect of it. That everybody kind of deserves a fair shake. And that everybody, unless you're a mass murderer or a sociopath, everybody has the ability to be on one side of that courtroom or the other, you know. And I think that's important to understand. And I'm not talking about, you know, being overly sympathetic or bleeding heart kind of stuff, but I am talking about--

**Adams:** I wouldn't ever refer to you as a bleeding heart, Mark.

**Di Ionno:** I'm just talking about, kind of, putting yourself in the shoes of another person and kind of understand the drive of what has happened and why it may have happened and that kind of thing.

It's just, again, nuanced is a good word because there's no black and white, Matt, you know that. There's very little black and white in the world that you operate in.

**Adams:** One of your nominated works from that Pulitzer finalist was entitled, "Pathmark Shooter's Final Act Leaves His Grieving Family in Private Pain." There's quite a bit to unpack there. You wrote that for *The Star-Ledger* on September 10, 2012 and it was about one of these shootings that happens in our society all too frequently. And you took a decidedly empathetic bent on what was a horrific act and you told a story about the pain of the people not that were shot -- that was covered enough, right? The media saturates with stories of victims and who dies in these horrific tragedies that happen way too frequently in our society. But you took an angle at that with talking about the shooter's family.

**Di Ionno:** Yeah, this kid goes to work one day, and he doesn't come back. And next thing you know, the parents are-- it was a sister and an uncle -- that are like, what happened? We saw no sign of this. We had no idea that he was in this kind of emotional trouble, we had no idea. And again, you know, one of the things about that story that was so interesting to me was I was a Navy corpsman and the kid was a Marine. So, I know a little bit about the Marine Corps, and I know a little bit about when guys come out of it. And, you know, we, we're going to make you a warrior, and then you go back



into society and, um we're not going to really help you adjust. Here's your duffel bag, here's your separation pay, here's your DD214 and off you go.

And that's how I got the interview with the family is just by saying ... You know, the whole TV gaggle was there and the uncle poked his head out the door said something and they all left. And I stayed, knocked on the door again, and I said, you know, "hey, I got experience here, young, I was in the Navy. I was a Navy corpsman. I know the Marines." "Oh, come on up."

They showed me all the pictures. They talked about their sadness. And, yeah, it was a different angle. And I got a lot of, got a lot of hate mail for that one because people were angry that I took the side - they claimed I took the side -- of the killer. And I didn't really do that. I just put myself in the shoes of the family for a moment.

**Adams:** Kind of like you did for my client when we were introduced to each other. No one had ever told his side of the story. It was just this grotesque, embarrassing scenario that resulted in relatively minor charges blowing his life out of proportion in an epic manner.

If you, Mark, could give one message to today's journalists, and one message alone, about what things they should consider and what they should think about when they handle criminal legal proceedings, where the ultimate liberty of that individual is at stake, what would it be? What would your advice be?

**Di Ionno:** I think it would be that there's nothing glib about this. This is not entertainment. These are real people's lives at stake. These are real victims, and these are real, accused. And you need to have an understanding of that kind of grim wise -ass humor that goes through a newsroom. You know, they think it's cool to be jaded. There's nothing real about that. What's real is when you understand the human costs and you take a little bit of a walk in everybody's shoes.

I think that column about, the kids that were murdered in the Mount Vernon Park, the one you alluded to before, where the lead is that whoever the guy's name was, can't remember. You know, this kid is up there and he's being sentenced and he's doing the math, you know, in his head, like, "I'll still be a young enough guy to hunt this kid down that killed my son and humiliated my daughter." You know, you could just see where his head working, you know, and that was an empathetic moment in that story. Like, here's somebody that's watched this trial five times, they try each of those guys, separately his daughter had to get up there and testify five times about how she was sexually assaulted and how she watched the other three kids get executed right in front of her eyes.

And so, yeah, as a father, as a man, you know, I'm thinking the same thing.

**Adams:** Right.

**Di Ionno:** Right.



**Adams:** Very humanistic reaction and you're passing it along in your work. I want to leave you with one final question, Mark. How do lawyers like me get journalists like you to treat our clients -- oftentimes accused of embarrassing, heinous, dare I say reprehensible acts, whether it's a physical crime or a financial crime. How do we get journalists to give our clients a fair shake? To invoke the humanity that your work has been awarded for invoking, so that the presumption of innocence and all that it carries the due process of law that we fly the flag for. How do we get journalists to see it from our lens?

**Di Ionno:** I think, Matt, you know, the big thing is to develop relationships with reporters. You know, if there's people who cover what you're doing, you have to develop relationships with those people. You know, you talk to them off the record, give them enough background. You might say, you know, you need to talk to this person or that person. Look, you know, here's what I tell, even in my job now with the mayor and everything else, the reporter has to get a story. They're going to have to get a story. Who tells that story is the one who controls the narrative.

And so, I know the defense attorneys need to do things and hold cards to their vest because things can come back to bite them in court. But if you have reporters that you trust and you develop a trusting relationship ... And there are still those guys that are out there, you know. Then I think you can give them information that can put them in the direction of taking a more humanistic approach rather than turning everybody into cartoon characters.

**Adams:** Well, that's, that's a great stopping point, Mark. I'm just delighted that you were able to join us on the program today. That's all the time we have for this episode of "The Presumption of Innocence," and until next time, I'm Matt Adams, your host, we'll see you then. Take care.