



Fox Rothschild Podcast

The Presumption of Innocence

Episode 47: Fireside Chat With Bill Baroni and Jesse Eisinger

Featuring Matt Adams of Fox Rothschild

Adams: Well, hi everyone and welcome to a live edition of our "Presumption of Innocence" podcast at the 2024 Fox Rothschild White-Collar Symposium. And I'm really delighted to have two return guests with me today. Jesse Eisinger, to my left, was on episode 34 of the podcast. He's a Pulitzer prize-winning journalist at ProPublica and author of *The Chickenshit Club: Why The Department of Justice Fails to Prosecute Executives*.

To my right, our guest on episode 31 of the podcast is Bill Baroni. He's a former New Jersey state senator, law professor at my alma mater, Seton Hall University School of Law, the former deputy executive director of the largest transportation organization in the world, the Port Authority of New York and New Jersey. And he was convicted of wire fraud in the infamous Bridgegate scandal, only to have his conviction overturned in a unanimous decision by the United States Supreme Court.

So please join me in welcoming Bill and Jesse to this special live version of "The Presumption of Innocence."

So, I'm bookended by two guys that really present a striking juxtaposition. Because on the one hand, the central premise of your book, Jesse, is that the Department of Justice is, well, chickenshit. And you, in your very methodical coverage of the 2008 financial crisis, show that really nobody was ever punished for what was the largest economic collapse in the history of the United States -- short of maybe the Great Depression-- brought about by irresponsible, reckless financial trading. I think there was one low-level person, maybe, that was actually brought to trial and convicted.

On the other hand, Bill, you represent the human side of the criminal prosecution system. You are sort of a poster child for what happens when folks are overcharged, or charged with things that are not crimes.

So we have this striking juxtaposition to start out. So I want to push it to you, Jesse, first. Are cases like Bill's more of the chicken-shittery that you so eloquently write about in your book? Or is it something different?

Jesse Eisinger: Yeah, well, thank you so much for having me. I really appreciate it. I, um, I don't know if you guys remember the scene in "Annie Hall" where the blowhard is standing in line at the movie theater opining on Marshall McLuhan. And, the guy says, "Oh, I have Marshall McLuhan right here." And he says, "You know nothing about my work."

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So, this is sort of what I'm going to experience, I think, maybe with Bill. I'm hoping not to be, uh, confronted by someone who actually knows what they're talking about and experienced it. Um, obviously there is a great human cost to prosecutions and the government has an awesome power.

And so you have to be cognizant of that when you talk about these issues. But, there is a profound problem at the Department of Justice where they do not prosecute powerful individuals enough, particularly when it comes to white-collar crime. And the problem persists.

So, uh, corporate prosecutions were barely ticked up last year into the Biden administration, a little over 100. Um, and that's about a third from where it was in 2000, which is way down from where it was in the kind of 1980s, 1990s. Prosecutions of individuals for white-collar crime down to 5,000 from about 10,000 in 2000. And that's also way down from earlier decades. And of course the economy has grown since then, which really uh, sort of understates this, this drop.

So what do they do instead? Well, they prosecute small companies, when they do prosecute them and then they prosecute, uh, mostly small individuals, you know, lower individuals when they prosecute individuals. And, uh, Bill's case, I think is a perfect example of that, because they didn't go after, um, the person who, who ordered Bridgegate, uh, who, uh, everyone knows, in this room.

So, you know, why don't they go after the powerful actors? You know, it's expensive, it's more difficult. There's career risk involved, um, and there isn't much institutional support. And the law has turned against, uh, it made it more difficult. So all of these factors have combined to, uh, exacerbate a chickenshit problem.

Matt Adams: So Bill, you're called the poster child for the human component of being prosecuted criminally. You went the distance. Talk to us about the human element of that.

Bill Baroni: Well, I mean, you know, I, um... of all the nice things you said in the introduction, one of the titles you didn't give me was 67325-050. Which was my inmate number. And, you know, I, we lost at trial. Bridget Kelly and I were co-defendants of the Bridgegate case, and we would not plead guilty. And we had an enormous amount of pressure. And I had some great attorneys. I had Mike Baldassare and Jen Mara, who I don't see, but they were my, my trial counsel. And the enormous amount of pressure, not from them, but just externally and, and from the government, to plead guilty.

And, you know, what they didn't understand is that my father, who still is in the house I grew up in, you know, grew up in the South Bronx. And his view was we don't plead guilty. Like it would have broken my father's heart to plead guilty. I remember he would say, we don't plead guilty. We don't plead guilty to stuff we didn't do. I said, well, we don't go to prison.

Um, and so I went the distance and went to trial, got convicted, went to the 3rd Circuit. So we were out. And the 3rd Circuit threw half the charges out. 'Cause they essentially, it was wire fraud, property crime and civil rights that we had violated. We were charged with violating the civil rights of drivers. They had a right not to sit in traffic. It would cause intrastate traffic.



3rd Circuit throws the transportation case out but kept the, kept the property crime. And I had to make a decision. You know, Bridget had young kids. I have older parents. And I made the decision to go into prison. Like I chose to keep the Supreme Court appeal going. But of course, one in 10, 000, what's your odds of a case being picked up? And so I did go the distance and I, I went to federal prison right here in Pennsylvania, the other end of the state in Loretto, Pennsylvania.

And three months later, Supreme Court did grant cert and I was released. But it was a, it was a journey through the criminal justice system. And now I teach at, back teaching at Seton Hall Law School. And the course, what I'm teaching is prison law, because of the effect it really does have on lives.

And the effect is not uniform. You know, it's just not equal. And the pressure to plead guilty is -- as you all know, I mean, you deal with it with your clients every day -- is immense. It just, Bridget Kelly and I just wouldn't do it. And we put the government to the task. And, you know, they won at trial and then lost the next two steps. Because nobody challenges it, nobody fights it. So it's easy to go after, you know, lower-hanging fruit that you assume are gonna plead guilty.

Matt Adams: Yeah. So Bill, I want to talk a little bit about that low-hanging fruit concept and what we see in these wide-ranging, highly publicized investigations like yours.

You tell a story, and I want you to tell it to our audience, about your assistant at the Port Authority of New York and New Jersey. And the enormous pressure -- thankfully she was ride or die too -- but the enormous pressure that was put on her. Because that is quintessentially the same type of chicken-shittery -- that we're going to find as many ways to use that phrase today as possible -- by the Department of Justice that Jesse writes about. So tell the story of your assistant.

Bill Baroni: One of my staff folks, of course, we couldn't talk, right? We can't talk, you know, when you're a defendant you can't talk to anybody. But I later learned that one of the folks who worked for me at the Port Authority, the government was convinced I had told her that we had done this. Done it on purpose.

She said no, kept saying no, kept saying no. And they had her in. And, uh, one of the agents screamed at her. You know, we, something along -- I mean, I later learned this during the trial -- that we know, you're not telling us the truth, you're not telling us the truth. If you-- and yelling at her across the table -- if you don't tell us the truth, we're going to take your children away from you.

To which she replied, you don't know them, you can have them. True. At which point, the agent storms out of the room. There was just immense pressure brought because they clearly wanted us to plead guilty, so they put as much pressure on us as possible, including people who were around us in the case. She wasn't going to say what wasn't true.

Matt Adams: There's a big empty chair. We all know the physically and metaphorically big personality that's not being investigated with those type of tactics in the Bridgegate case. Jesse, are those tactics the chicken-shittery that you write about?



Jesse Eisinger: Well, I think, you know, I think this case presents what lawyers call, you know, bad facts making bad law. Um, and in this case, sort of, difficult to sustain, uh, an argument based on this kind of case, which is really unusual.

I think there are a couple of things. One is that, uh, I think that the processes that the Department of Justice goes through today in trying to figure out what is a criminal case, what's worthy of a lot of resources, is pretty broken. That they don't generally have enough experience with these cases. And so they're extremely reactive. And so what they do is they will react disproportionately to a political scandal. I think that Bridgegate -- and, you know, I'm not actually an expert on the facts, uh, to great detail -- but I think the intuition that I have about it is that it was a political scandal, but probably not a crime. Or it doesn't strike people as a significant kind of crime or corruption from a political leader like taking a bribe, which we can get to in a second.

But you know, so they, prosecutors will react to a political scandal by trying to impose their understanding or their professional expertise onto it, which is a matter of trying to prosecute a crime. Now, specifically, what they do is they try to put immense pressure on low-level people to roll up on. Then when you see these very muscular tactics or hear about them against the secretary or against Bill... you know, I don't think Bill or Bridget were the ultimate targets there, but they foundered on the shoal of, um, resistance and then they wanted to look tough by bringing those cases, I suspect, to an end.

And, you know, I would say generally that's the right tactic. It's not pretty when you get to the details. There's a lot of, uh, strong-arming that you have to do. What you want to be doing is have it be a righteous prosecution. And you want your ultimate target to be the highest-level person you can to transmit justice from the highest level so that, uh, you communicate that no one is above the law.

Um, I didn't know whether you were referring to the, uh, the other, rather big target that, who has been the focus of many criminal investigations. But if you look at the Manhattan DA's prosecution, you see this failure to get anybody to flip. And the essence of a white-collar prosecution is you've got to get low-level people to flip. You've got to get the soldiers to flip on the capos and the capos to flip on the capo di tutti i capi. And they couldn't ever do that, and so that was very difficult. They couldn't ever get Weisselberg, and the reason they couldn't get Weisselberg is they didn't put, he was willing to do the time.

And they didn't actually put pressure on maybe his sons or his family to do that in the way that they did with Bill's secretary. So they, they sometimes do it and they sometimes don't. They don't really have this kind of consistent expertise or process to, um, lean back on so that they can do it in a way that you can see over time. And they develop the expertise and the knowledge and the judgment to do it well.

Matt Adams: Bill, did you feel like you were being squeezed as part of a broader effort to target somebody that wasn't you or Bridget?



Bill Baroni: It's, it's a great question because it was something actually all these years later I, because it was never, I don't remember an ask. You know, even when they did a sort of show-and-tell with us, it was never this sort of like give us this person or that person.

But quite frankly, they didn't tell us what the crimes were. I mean, for an extended period of time, I, you know, I had, as I mentioned before, two great lawyers who represented me, and I was in their office in Newark all the time. And Jen Mara, I just talked to her, she just walked in, and we'd look at each other at these meetings and go, what crime are they actually... you know, it'd be one thing if they were saying, you know, Bill, you went and took a bag of cash and the, and the, but that wasn't it.

Um, so the first thing was just sort of difficult knowing what the, what the crimes were. And even when we found out, we sort of said, well, that's the, that's the crime. So I'm not sure about what the mindset thought. But remember, this was a case where you had, you know, we were, we were in the middle of a... we had one person who was, when I say in the case, sort of involved and talked about, you know, Gov. Christie was sitting governor of the state.

Matt Adams: A front-runner for the Republican nomination for president.

Bill Baroni: So he was sitting governor of the state, had just been reelected, overwhelmingly. Running for president of the United States. You had, you had sort of the politics of all of that, of him running and being very seen, high-profile. And then all of a sudden this happens. It was on the news, it was every night, night after night for every article.

I mean, I couldn't go to the, I remember one time I was at the gym and I looked up on the, on the, on the elliptical machine, I look up on the machine and there I was, right? It was like, it was constant, it was everywhere. And the U.S. Attorney's Office took it fairly early and I think was, was left with the situation. Could they not charge? Could they, would they charge?

And you've got, you know, middle of a presidential campaign, the middle of a gubernatorial campaign. And I think that the politics of it was so great. Um, you have a different administration in Washington. You have a U.S. Attorney that was of a different party. And Gov. Christie had been the U.S. Attorney. It was, it was just... and then there's Bridget and Bill sort of sitting there.

Matt Adams: And there's the U.S. Attorney's Office trying to shave down a square peg to fit it in a round hole. And if I know my good friends, Mike and Jen, your lawyers, they went into that office and they told 'em, you're barking up the wrong tree. Where is the crime?

I've heard, Jesse, you talk about the Department of Justice's fetish with statistics. That they love to get the stat. We just heard from a panel where the beginning of the, the Department of Justice's presentation was statistics, where they have impressive statistics. They get billions of dollars recovered under the False Claims Act.

What level of chicken-shittery is the statistical analysis that goes into the Department of Justice's victories and notches under their belt.? Go into this type of stuff.



Jesse Eisinger: It's a, yeah, it's a very good question, and, um, it's kind of like the data analytics, money-ball-gone-wrong phenomenon. Because, uh, there are a couple things.

One is, they really like to see the numbers of the fines go up year-over-year. And they like to have record fines. And fines and settlements with corporations, uh, are relatively easy to get compared to prosecutions of individuals. And companies are happy to do it because it's, uh -- well, they're not happy to do it, but they, um, they're willing to do it because it's a cost of doing business, and, uh, and they're making so much money generally as profit margins go up.

Um, and so if you can score a big fine, a record fine from a large corporation and you get a press release, that's something that you can accomplish in, you know, six to nine months. You're on your way to, with kind of three-to-seven-year stint at, the DOJ, and then you can roll those press releases into a nice, job at, uh, Fox Rothschild or, other firm, and you go from, uh, you know, prosecuting corporations to defending them. And, in some ways the Department of Justice has become a training ground for future white-collar corporate defense lawyers.

Um, the, the other thing they want to preserve is this: They hate losing. And they, the whole title of my book comes from a Jim Comey line um, when he's, the U.S. Attorney in the Southern District. And he asks the, uh, hotshots in the SDNY, you know, how many of you have never lost a case? And a bunch of hands shoot up because they're so proud of their undefeated record. And he said, well, you're the chicken-shit club because you're only taking on low-hanging fruit. You're taking on the easiest cases. You're not doing justice. You're not, um, you're not going for the challenges, uh, at the highest level. And, they love to have their high percentage of wins, and they're afraid of losing.

And if you see a counterpoint with the Biden administration's Antitrust Division at the DOJ where they lost some cases early on. They, um, they brought in multiple, uh, price-fixing cases against, for chicken price-fixing and lost, lost them over and over again. And Jonathan Kanter, the head of the Antitrust Division, actually, uh, in a flattering way cited my book and said, we're not going to be the chicken-shit club here.

And lo and behold, after three years of banging their head against the wall on antitrust, they've, they've won big cases. They've carved out major accomplishments. And they're slowly kind of turning this enormous battleship of antitrust law that has, um, turned against prosecutions for decades, uh, around. It's a major accomplishment, you had to lose so that you could, learn something and start to win.

Matt Adams: Bill, you're a law professor, you're a former politician --

Bill Baroni: A recovering politician.

Matt Adams: Recovering, I should say. Why is it easier to prosecute a politician than it is a CEO? Having been through that process yourself.

Bill Baroni: Well, I tell you, I think it's money. I mean, plain and simple. I was just fortunate to find two incredible lawyers --

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Matt Adams: Who are glowing in the back of the room, right now.

Bill Baroni: But it's true, that were willing to take on a case at a rate that I could barely put together to afford. But if you're, you know, you're an elected official, you're -- and Bridget, I mean her, uh, Bridget Kelly's team, Mike Critchley, did it also very, very inexpensively.

And so the pressure gets so high you can't afford an attorney. You know, if you're a CEO of the Acme Widget Company and you got a criminal case against you, you've got indemnification. They're gonna pay your legal fees. You've got cast of thousands if you need it. I didn't need a cast of thousands. I needed two, and I had them. But you can't afford... I mean, I had, you know, my people in the case, just they couldn't afford lawyers.

So why did, why are we low-hanging fruit? Because we're gonna plead guilty. You're gonna plead because you can't afford, you can't afford it. So you plead guilty.

Jesse Eisinger: Yeah, I think money is an issue, but I think that there's, something, uh, else that's going on, maybe even something deeper, which is, uh, kind of elite affinity, I think. Which is that you have now prosecutors who, especially at the most prestigious offices, you know, like the SDNY or, uh,

Matt Adams: Allegedly.

Jesse Eisinger: Allegedly. Exactly. Well, in their own minds. And they've all gone to elite schools along with bankers and, uh, hedge fund managers. And, uh, I think they see these titans of industry as, uh, as cultured, learned, intellectual, intelligent, people who, you know, may be aggressive but aren't really criminal, while they have a kind of low-level disdain for politicians.

Bill Baroni: I think that's absolutely right.

Jesse Eisinger: Um, you know, it's a class issue. It's a cultural issue. It's also a kind of basic issue that I, I think they, we have now in this country kind of disdain for civil servants and a cynicism about politics and a kind of elevation of the private sector, and wealth and money.

And, uh, and so I think that there's, this is, there's a confluence there that, makes them particularly disgusted about corruption and, rather kind of, uh, you know, sort of blasé about corporate corruption.

Bill Baroni: I also think that there is... and I'm not speaking about, especially the line prosecutors in, in our case. The folks who, the guys who actually tried, it was three men who tried the case who I thought were in a number of ways very fair to me. But generally speaking, I think that often, I think it goes right to your point, Jesse, they often don't get politics. They will often get high finance and they'll get Wall Street and they don't do much about it, but, but they look at politicians and they think everything that a politician does is crooked.

And I remember talking to someone who had come from that world -- not, again, the line prosecutors in my case -- basically laying out a hypothetical, which is, you know, I'm the mayor of of

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Adams Township and my next-door neighbor comes over to me and says, hey, Mayor, you know, my no-good kid can't get a job. Can you get him a job at the sewer plant? And I say, all right, I'll take care of it. I call the business administrator up and I said, hey, I need to get my next door neighbor's kid a job at the sewer plant. The administrator says, well, you know, we got a line of people that are lined up to get a job at the sewer plant. And I said, look, I'm the mayor, hire the kid.

A prosecutor could look at that fact pattern and say we can convict that. A politician says that's politics. And what's happened is the Supreme Court of the United States keeps saying to prosecutors, you better learn politics because you're going to keep losing. You know, Bob McDonnell, you're going to lose McDonnell, you're going to lose Percoco, you're going to lose Bridgegate, you're going to lose case after case. Because prosecutors are, and some prosecutors are not understanding what politics is.

Now, I'm not talking about the person who takes the pile of cash right, but by the way -- which is a fact pattern and a true case from someone I served in the New Jersey legislature with, um, true. Um,

Matt Adams: Probably more than one.

Bill Baroni: Right. And, uh, I'm not talking about that. But these gray areas, it seems like in gray areas, the calls always go against the political person and always go for the CEO.

Matt Adams: I want to keep it with you for a second on this topic Bill, because you, Jesse and I were talking privately outside before here. And we're, we're on the eve of a presidential election, 2024. Our country is polarized. But there is an increasing mistrust of our systems. How confident would you be as Bill Baroni, the guy caught up in the Bridgegate scandal, going to trial knowing that there might be somebody on that jury who is being fed from cable news a line that you cannot trust the jury system, you cannot trust the government and that everything is rigged.

Bill Baroni: What's interesting is our case ended, I was convicted four days before Donald Trump beat Hillary Clinton. In the middle, I mean, the case was in the middle of the end of the 2016 presidential election. I don't think anybody the day I was convicted expected the outcome. But I think if we were going on trial eight years later, Mike and Jen, when they were doing the draft jury questionnaires, we were sort of looking to find sort of how do you find politics without asking. And they came up with some great ideas about do, you know, do organizations, you have a bumper sticker, things like that.

But now, I mean, I don't know. I guess if our case, we went into it thinking everybody hated politicians. I think now it's beyond hatred. I think you walk in and I, you just, people would hate you. That, that being said, because of the way that presidential politics has been in the last eight years, you also could get jurors who walk in there thinking the government is just, you know, they're weaponized against certain political people.

I don't know, but certainly the anger is there. I, I can tell you, uh, when I was helping Mike and Jen with the case, I read all of the jury questionnaires. You want to talk about something? Don't, please



don't have your clients do that because it is a depressing thing to do. I mean, I read these 300 draft jury questionnaires and I, I found myself guilty.

Like I read, I mean, it's like you're, I was the devil, and Bridget was the devil. And I think I'd be even more so now.

Matt Adams: Jesse, the central theme of your book is underpolicing corporate America. And it sort of brings us right up to the aftermath of the Great Recession. The 2008-9 economic collapse. What other segments of the economy do you see from your reporting today that are experiencing the same level of underpolicing that you wrote about in the book?

Jesse Eisinger: Yeah, uh, I think if anything I underestimated the problem in my book. I hadn't really written about that were underpoliced or, uh, or had no policing. Tax evasion and, uh, tax avoidance is something that, later, uh, my colleague Paul Keel and I, and then a, series of reporters and I wrote on, uh, the tax avoidance techniques of the wealthy. The IRS has been gutted over the course of the last 15 years, uh, so that the budget was halved about and or reduced by billions. And, uh, you know, thousands of IRS employees many of the skilled employees, so audits were down, prosecutions were down. And you had corporate finance, an area that was almost, uh, entirely unpoliced. And, uh, and lobbying and, uh, foreign influence in particular, something that they're kind of finally starting to prosecute with FARA now. And so you really saw a dramatic problem in all these areas.

And then another area that I didn't appreciate fully when I was writing the book was antitrust, which is a, uh, both sort of criminal and civil obviously, um, but a way to check corporate power, with tools that essentially had been forgotten. And, uh, laws that, uh, had been completely fallen into disrepute, through really what now is -- and Kanter again, had this fascinating talk kind of going through the history of kind of the way economists took over the antitrust field from lawyers over the last several decades, something that, a colleague and I wrote about in 2016. And, uh, again, it was one of these things that, it became a realm where it was kind of a dirty word to think about crime and prosecutions. Uh, kind of, it looked like it was kind of crass, and, uh, kind of, uh, antiquated to prosecute these kinds of abuses. And now they're kind of relearning these skills at the FTC and the DOJ and, and bringing these cases against the largest, most powerful corporations in America.

So, we're starting to kind of correct. for this, uh, but it's still a significant problem. And then you get to the problem that you just alluded to, which is kind the weaponization of the DOJ, which is a whole different category and problem.

Matt Adams: Precisely where I want to go next.

We --

Jesse Eisinger: I'd love to lead a, lead a question.

Matt Adams: You read my notes. We read, we can't go a day without reading a headline about current political climate that doesn't use that phrase, "weaponizing the Department of Justice." The



right says it about the left, the left says it about the right, and it's just this back and forth. I want to ask you, Bill, did you feel like the Department of Justice was weaponized against you?

There was a political scandal. In my opinion, the Department of Justice perverted a federal statute into a prosecution that landed you in prison. Landed you disrupted for a number of years and it took the Supreme Court to reverse. Do you feel like the Department of Justice weaponized a political issue to go after you?

Bill Baroni: You know, I don't know. I think that... I certainly don't think the line prosecutors had... I don't think they did that. I don't. People above, I don't know. Certainly politics, the whole case was politics. So it was, you know, people, I can tell you, people think that this was done to go after that person and the other side says they didn't go after that person, or what have you.

I don't know. I think the problem is not what I believe. The problem is what potential jurors believe, and quite frankly, what voters and citizens believe. Like, people in my hometown of Hamilton, you know, do they think that prosecutions are being made politically? What does that do when they're on juries?

That is just an unhealthy position for democracy. If you start to think --whether it's true or not-- if the perception is that prosecutions are being brought for purely partisan reason: the Democratic administration indicted these Republicans in New Jersey, a Republican administration indicted these Democrats in Chicago. That's just a bad direction for the country. It's just bad. And it will take immense amount of pain on people if it really becomes a thing.

Matt Adams: Jesse, you cover this area. You are observing what's being said by political candidates. You see the types of prosecutions that are being brought. What's your biggest fear about the weaponization of the Department of Justice?

Jesse Eisinger: Yeah, I think we should be really careful to make a distinction between political ambition, which, uh, most people politicians have. That's why they got into the game. Um, most U.S. Attorneys or DAs, you know, the people who run for election, they're going to have political ambition. They're going to be sensitive to politics. They're going to have their finger in the wind for public sentiment and weaponization, which I think is really a different thing. The weaponization is a kind of corroding of the power of the government to use it as a sword to attack your enemies and a shield to protect your friends. And I think that's what we see with Trump today, um, and the Trump administration and it persists in today.

And I, uh, I think we should be clear that it's not a symmetric issue. That the Biden administration, for all the accusations from the right, that, um, it's, uh, been weaponized, has not. Um, the Biden administration, DOJ under Merrick Garland, people, uh, prosecuted the son of the president. So, there isn't a symmetric threat from Biden and Trump or Harris and Trump. And what Trump has talked about is prosecuting his enemies. And he thinks that the Department of Justice are his personal lawyers. He tried to treat, um, the Attorney General like his personal lawyer during the first



administration and, uh, he ran up against some resistance late in the process. Bill Barr was quite malleable until the very end.

And the, you know, if he's elected again he's explained to us that he's going to get somebody more malleable than Barr. And, so I think that it's a clear threat. It's corrosive to the process. It's different than Republican and Democratic administrations post-Nixon, um, in a, in a real order of magnitude, and, uh, and I think people should be clear about it.

Matt Adams: From a historical perspective, can you give some examples when the Department of Justice was genuinely weaponized in your opinion?

Jesse Eisinger: Yeah. Well, I mean, uh, Nixon tried to do it, uh, and that was obviously what gave rise to the post-Watergate norm that the Department of Justice was going to act independently.

RFK you know worked closely with JFK. FDR, uh, this isn't the DOJ, but FDR ordered the IRS to audit political enemies. So there was, things that would be shocking today, were not unusual in previous decades. But since the mid-1970s you know, from Republican to -- you know, George W. Bush did not treat the Department of Justice like it was his personal, uh, you know, play thing and weapon to wield against his enemies. I mean, there was a kind of scandal about firing U.S. Attorneys in a way that, uh, violated some norms, but I don't think that was particularly overtly political in the way that we see, uh, Trump's um, actions and aspirations.

Matt Adams: Bill, you've been through what you've been through. You're a law professor. The Supreme Court has now essentially handed a victory to Trump and said that he will be essentially immunized from basically anything that he does if he's reelected. From against that perspective of what you've been through, what keeps you up at night about that?

Bill Baroni: Well, I mean, I'm keep me up at night, I mean, I think we're still trying to figure out exactly how far reaching that decision is, but it seems pretty far reaching. People said that it really empowered the presidency, giving broad power to the president, which is true. I actually think that decision really empowered courts and it really empowered the Supreme Court. Because they set this very odd line of official acts and even within the line of official acts, some things that are super official acts that you can never be prosecuted for.

Well, who's the decider of that question? Eventually the decider of that question is the Supreme Court. Right? And what falls on what side of a brand new line? Well, that's, that's going to the Supreme Court. I was joking before is like, you know, Justice Marshall, John Marshall would have, you know, in *Marbury* would have never thought of that, right? This is such a broad expansion of Supreme Court power. I think that, I mean, Chief Justice Roberts made the Supreme Court truly the last decider about what, what a president does being criminal or not criminal. That's very powerful.

Matt Adams: Jesse, you're working on a new project. You've studied this issue of what the Department of Justice is up to, the cyclical changes, what it's doing, what it's not doing, for the last 25 years. You're a Pulitzer Prize-winning journalist. You have a pipeline into Merrick Garland. This



afternoon you call him on the phone and you tell him what's wrong with the Department of Justice. What do you tell him?

Jesse Eisinger: Uh, yeah, sadly, Merrick doesn't return my calls. Uh,

Bill Baroni: Mine either.

Jesse Eisinger: Um, well, I mean, I think that we need to prioritize prosecuting individuals.

I think they know the answer to the problem, they just can't execute it. They, what we should do is focus on prosecuting individuals. Uh, not settling with corporations for money. Um, that's harder, so you need to devote resources to it. You need to develop expertise over time. You need to focus on, uh, those individuals and not be afraid of losing.

And then writ large, we should, uh, put more resources into enforcement, more resources into the IRS, into the DOJ, into the regulators to, uh, focus on individuals. I think individual, focusing on individuals, um, can, uh, improve the, you know, the process of, uh, of disincentivizing, people to commit crime. I think, um, it's a deterrent in a way that, uh, settling with corporations for money is not. And I think that, as I say, I think they recognize it. They've given speeches about this, um, but they can't really --

Matt Adams: Incessantly.

Jesse Eisinger: Yes. They, um, they talk a good game. And what, what you see is, even though they understand it and they talk about it, they can't execute it.

And they can't execute it for a wide variety of reasons that are cultural and economic and, it has to do with the disparity between how much you make as a prosecutor and how much you can make as a partner in a white-collar defense firm. Um, so we should raise prosecutors' salaries so that they, can, you know, two professionals living in the most expensive cities in America can, live comfortably like, as, you know, as affluent people and they could send their kids to private school. Uh, I think that that's, should be fine for prosecutors instead of having to think that they should, can only do it for a number of years before they need to go make money so they can afford college for their kids. So, you know, there's a, a wide variety of things.

And then what people need to do is focus on judges who, believe that there is such a thing as white-collar crime and political corruption. And, uh, to Bill's, I take Bill's point, um, about the excesses, but I think, you know, what we've seen is rulings, I think the Bob McDonnell ruling is a, you know, really disastrous mistake. Uh, you know, this, last session they said it can't be a, uh, it's not a crime if you bribe the guy after he's done you the favor. And, uh, so I think that's a disastrous mistake. I think they're writing corruption out of, uh, political behavior and, and, uh, also trying to do that with corporate behavior. And I think that, that's the wrong path to go down. Um, so we need to change the law.



Matt Adams: What I'm hearing is, is general deterrence. Are you a believer in general deterrence to create an ethical, law-abiding corporate America? Is that what you're, is that your central point?

Jesse Eisinger: Yeah, my, my view is that white-collar, uh, affluent corporate actors read the newspaper-- um, or, they used to read the newspaper, that's sort of naive of me-- but, uh, they get some information on their phones, I should say. Um, they're relatively informed about the world. They see, they can see this, they understand it and they don't want to go to prison. And if a peer goes to prison, I think that that sends a message. And they, and you can communicate it. So in a way that you cannot deter street-level crime with individual prosecutions, you can deter white-collar crime. I think there's some, uh, academic evidence to back this up, but, um, but mainly it's an intuition about people who have reputations to protect will act, uh, more cautiously if they understand the risks.

Matt Adams: Bill, political corruption is a tale as old as time. Is there general deterrence to politicians when these high-profile political cases are, are brought?

Bill Baroni: I think there's some. Um, I, I think, however, that, you know, when you bring these cases, especially the sort of the straight up bribery cases, if, if you're a politician that's open to being bribed, you're still going to be open to being bribed, you know. I think you're going to say, well, he was just stupid or she was just dumb. But if you're not open to being bribed, you're not, you know... I always joke. I said, you know, if I knew my political career was going to end in scandal, I would have taken something I shouldn't have, slept with someone I shouldn't have, but it, uh, uh--

Matt Adams: At least had some fun on the way out.

Bill Baroni: Yeah. I was the first New Jersey politician ever convicted of traffic.

Matt Adams: Yeah. Um, so I do want to leave a little time for some audience questions, but I want to sort of end where we started with the juxtaposition between the central premise of *The Chickenshit Club* and Bill's personal story.

Bill Baroni: And I will just say, by the way, Jesse won't toot his own horn, I will. The books are for sale out in the lobby, you should buy one.

Matt Adams: Free! Free!

Bill Baroni: Oh, they're free!

Matt Adams: They're free!

Bill Baroni: The, um, please read this book. It is an incredible and damning presentation about criminal justice. And it's a great book. He won't say it about himself. It is a terrific book.

Jesse Eisinger: Thank you. I do say this about myself all the time, but, uh, in private, usually. No, thank you.



Matt Adams: So, Bill, I want to go back to the human element. Because your human story arising from your situation is fairly remarkable. And how did this situation, this years-long battle against a case that I'll submit should never have been brought, Mike and Jen, um, how has that changed you?

Bill Baroni: I'm a better person.

Matt Adams: In what way?

Bill Baroni: People always say, oh you must regret the last ten years, it's, it's eleven years now. I'm a better person today. I'm more patient, I'm more understanding.

Matt Adams: How are you not jaded? How are you not resentful?

Bill Baroni: Because, and this is what, and one of the things I do is I advise people who are going to prison, so if any of you have clients who or people going to prison, it's what I do now. You have a choice when you go into prison. You either put the bricks down or you carry them around with you. And I made the very clear decision when I walked into Loretto, not expecting the Supreme Court was going to rule, take the case. Not expecting to get out. I had an 18-month sentence, expected to serve the whole time or whatever. And I decided I'm not going to have the regret, the bitterness, the anger, the real anger towards some people.

I put it all down. And that's why I tell all of my folks who are going in, I said, you can't carry it around with you. And when I went in and saw people who were carrying it around... it just eats at you and eats at you and I didn't do that. And so people often say, are you angry at this person? Are you upset with that? No. It was a terrible thing that happened to me. My life changed. I'm a better person today.

I will tell you though, that I will take many of the people I served in federal prison with over many of the people I worked in politics with. They're more honest in prison. And they stab you in the front. Um, but no, I'm a better person today than I was. I don't regret it. It was terrible. It was hard. It was, I mean, I, you know, like I went to federal prison. My conviction got overturned and I'm not a felon anymore. And I, you know, all that.

Matt Adams: You have your law license back.

Bill Baroni: Law license back, teaching. But it was, you know, I went to federal prison.

Matt Adams: We have a few minutes where I'll open up the floor for some questions. Because we are recording live, uh, an episode of "The Presumption of Innocence," I'd ask that you come up to the table and use one of the microphones because it's, uh, it's going to be part of our podcast. But does anyone have any questions for Jesse and Bill?

And I'll just say, Bill's not going to talk about the facts of his case.

Question Asker 1: Uh, Bill.



Bill Baroni: Yes.

Question Asker 1: Question for you. I read that you sued for legal fees.

Bill Baroni: Yeah.

Question Asker 1: To get them restored. Did you get them back?

Bill Baroni: No, not yet.

Question Asker 1: So that's still ongoing.

Bill Baroni: Still with the 2nd Circuit. Yeah, we had to go uh, you know, the --this, this I will talk about. Um, you know, Bridget, filed for her legal fees to be paid by the state. She was state employee. They paid them. I followed the Port Authority, which had very clear indemnification language. I kept getting told once you're cleared, we'll pay, we'll pay. They refused to pay. So we sued and in the Southern District. We had to go up the 2nd, waiting on the 2nd Circuit. Yeah.

Question Asker 1: Good luck.

Bill Baroni: Tell me about it. Poor me. I want to pay Mike and Jen.

Jesse Eisinger: What do you think they're here for?

Matt Adams: Anyone else have any questions for Jesse and Bill?

Question Asker 2: Hi. Um, this is probably more of a question for Jesse, but would be interested in Bill's perspective as well. You know that the Justice Department's track record in trying to prosecute individual corporate executives and politicians really isn't that great over the last 15 years. So, you're making the argument that they should be going after them more, they should be taking these cases that maybe aren't as slam-dunk-ish as a lot of other prosecutions. But when we're talking about individual liberty at stake and you don't have the same confidence that you're going to be able to convince a jury that you're right. And you have a track record that is pretty spotty. I mean, do you think there's really an argument that they should be trying more of these cases than they are against, uh, corporate executives and arguably or inarguably corrupt politicians?

Jesse Eisinger: Yeah, I think you've identified the vicious cycle that they're in now, which is that they lose cases so they lose confidence in their judgments. They take fewer of them, so their skills erode so that they have worse judgment. They don't know how to bring the cases. Then they bring them. Then they more likely to lose. And the cycle continues.

And uh, so, yeah, I think that there's been a skill erosion. Um, these are very, very smart, educated people who don't know how to do this very well. And, uh, and they don't have good judgment anymore about what is a crime and how to prosecute it. There are exceptions. I, I think they, uh, the Manhattan DA's office in Trump's case took a kind of out-there legal theory, that many, uh, experts

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thought was a real stretch. And then tried a very clean case, a very thin case as they say, to, uh, made it very simple to understand for the jury and the jury saw it and convicted. So I think that they can do it when they're really focused and they have the right kind of attitude and resources.

But, um, yeah, I think it's, it is very hard. And you are talking about an individual's liberty. So it is a, uh, as I said at the onset, an awesome power and responsibility that cannot be treated lightly. But I think it's the only way to really do justice. I don't think pieces of paper commit crimes, um, and I don't think you settle them, uh, and reach justice by writing checks.

I think at a certain point, to change corporate culture-- and I do think we have a moral crisis in the country. Um, I think that we have a, a tendency to slough off uh, corner cutting and fraud, and cheating, and excess, uh, and breaking the rules. I think we've elevated that to kind of art or, uh, and, you know, thought that, you know, we, we can break things, uh, you know, Silicon Valley likes, is a kind of ethos of, uh, breaking things, which really means kind of violating the law and, and, trying to pay a fine later.

So I think it's the only way that you can really start to fix things. But I don't think it's easy.

Matt Adams: We have time for one more question. And I see Pat has the microphone. I told Bill I would get him out of here cause he has a flight to catch. So, Pat?

Question Asker 3: Um, along the same lines, but from a totally different perspective. I think that the, your goals are extremely laudable, but why trust the criminal justice system, which is inherently completely flawed, to execute those goals? Isn't the disincentivization of the behavior this incredible, rampant corporate greed that we are living through? I mean, like doesn't work. So how do you, I mean, how do you respond to that? Like there would be better ways. We always do criminal justice on outliers. Um, wouldn't it be better to have systemic change of the things that incentivize corporations to behave in such, um, immoral and unethical ways?

Jesse Eisinger: Yeah. Uh, if you, if you read the book, you'll see this debate. And I encourage everybody to buy the book, uh, they don't have to read it, I say, um--

Matt Adams: We bought one for you.

Jesse Eisinger: Yeah, um, there was a strain of debate in the wake of the crash, uh, uh, the kind of NASDAQ bubble crash, within the, the George W. Bush administration and the Democratic-controlled Congress, where Democrats thought these are systemic problems and they deserve systemic responses. We need regulatory rules to prohibit this and we, um, so they passed Sarbanes-Oxley. And the George W. Bush administration, led by, uh, people like Larry Thompson, who was the Deputy Attorney General at the time.

They were kind of law and order, traditional Republicans. And they thought, we don't want overreaching governmental rules. What we want to do is prosecute bad apples. And, my view is you, you need both. And that you do need judicious prosecutions of individuals because that's the thing



that really concentrates the mind, um, of the prominent individual. And that you can deter it. Because his or her peers will see this and behave better. And so, yes, it's difficult.

Um, I think what we should be doing is prosecuting many more white-collar criminals but putting them in prison for much shorter periods of time. I think the sentences are excessive. I tweeted a few months ago that I thought SBF's sentence was totally unjust, and, uh, got my ass handed to me on Twitter, which is not unusual, uh, for Twitter. But, um, you know, what I think is many more prosecutions of powerful white-collar criminals for and have them serve shorter sentences. I think prison, as we've heard from Bill is, is a horrific thing. Uh, we should have more humane prisons and we should have shorter sentences for almost all criminals. But we should have more of them for the most powerful actors in prison.

Matt Adams: Well, that's all the time we have for this special live edition of "The Presumption of Innocence."

Please join me in thanking our guests, Bill Baroni and Jesse Eisinger, for joining us today and being so candid with their thoughts.

I've got to let Bill go because he's got a flight to catch, but thank you so much, Bill. Have some fun, we'll be here the rest of the evening and thank you so much for joining us. And thank you to all of our wonderful speakers and guests.

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