Fox Rothschild Podcast

The Presumption of Innocence

Episode 51: A Higher Duty of Care: Representing Clients Living With Mental Illness

Featuring Matt Adams of Fox Rothschild and attorney Elizabeth Kelley

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A few short decades ago, perhaps even more recently, our society didn't talk about, let alone understand mental illness. I would say, thankfully, as a society, we've started to evolve. And we've reduced the stigma that surrounds mental illness. And at least now we're talking about it. And that's what we're going to do today. Although we may not fully yet understand the scope of mental illness-- and that would probably be an understatement-- mental health issues exacerbate and expand the disproportionate outcomes some face in our criminal justice system, from investigation to incarceration, and pretty much at every stage in between.

Representing people in the criminal justice system with mental disabilities is quite possibly one of the most difficult things that a lawyer can do. And I can speak from experience on that. I've had a couple of cases in particular where I was representing individuals in major federal criminal cases who suffered substantially from mental illness, and mental illness had a factor in the crimes they were accused of committing. And those cases were some of the biggest challenges of my career.

We're lucky to have with us today Elizabeth Kelley, a New York City criminal defense lawyer who handles cases across the country and editor of *Representing People With Mental Disabilities: A Practical Guide for Criminal Defense Lawyers,* which is published by the American Bar Association.

Elizabeth, thanks so much. Welcome to the program.

Kelley: Well, thank you, Matt, and I appreciate the invitation

Adams: Now as a threshold matter, Elizabeth, when we talk about mental health in the criminal justice system, we most frequently speak of two main concepts. And I think it's important for our listeners to get a thorough understanding from the outset of those concepts. And they are competency to stand trial, on the one hand. And on the other hand, sanity, or the ability to be criminally responsible for certain actions.

Can you just talk to us about the differences between those often-misused concepts?

Kelley: Certainly, I'd be happy to. And I'm going to roll back even farther than those questions. I'm going to start about what I mean by mental disabilities. And that vocabulary is particularly important when we discuss concepts like competency and sanity.

Mental disabilities is my global term for, first of all, serious mental illness. Issues like bipolar disorder, schizophrenia, major depression. And also it's my term for intellectual and developmental disabilities, issues like autism spectrum disorder, fetal alcohol spectrum disorder, or what we used to call mental retardation.

Adams: So organic disability as well, as other issues that may have been developed over time from environmental factors.

Kelley: Perhaps. Basically mood disorders and brain-based disorders. And also, more and more in the criminal justice system, we're dealing with people with neurocognitive issues like dementia.

That being said, as you correctly noted, there are two major areas where attorneys who represent people with mental disabilities look. The first is competency to proceed. And the next is sanity at the time of the act. On the one hand, competency to proceed is a very, very low standard. On the other hand, insane at the time of the act is a very high standard.

Competency at the time of proceeding deals with does the person understand the nature of the proceeding and can that person assist counsel. That is a continuing inquiry. Not only that, that extends from the time of the initial appearance to, as perverse as it sounds, do they understand what's going on at the time of the execution? And it's a criminal defense lawyer's responsibility to raise that concern, if relevant, through every stretch of the proceeding.

So for instance, Matt, you might be representing an individual who, six months ago, was competent to proceed. Who understood the nature of the proceedings and could provide you with meaningful assistance. But now, six months later, because of the nature of their particular disability, they're not competent to proceed.

On the other hand, sanity at the time of the act measures the person's capacity at the time of the alleged crime. Did they have a mental defect and did they understand what they were doing and did they understand right from wrong?

Adams: Now, these concepts really refer to mental disability as an affirmative defense to a criminal charge. And I, I like how you said that the competency to stand trial is really a continuing spectrum that is constantly evolving, whereas--

Kelley: It's ongoing. It's an ongoing concern. But sanity is basically a picture of the person's capacity at the time of the alleged offense.

Adams: Right. And that is the criminal defense lawyer's essential tool kit to use those issues for the affirmative defense of criminal charges. And then --

Kelley: Well, competency is not necessarily an affirmative defense. Sanity, sanity is. But the challenge here is that the legal standards don't always serve people with mental disabilities. So, for instance, someone can be found not competent to proceed, but then, depending upon the jurisdiction, the court will order what is called restoration.

Now, again, this all depends upon the nature of the disability. If you, Matt, are representing someone with dementia, they cannot be restored. In fact, they're probably going to get worse. But on the other hand, if you are representing someone with bipolar disorder, if they are given the appropriate medication in the appropriate dosage at the appropriate time of day, and they are provided other supportive services, they can be restored to competency.

Adams: Yeah, and I'm glad you draw that fine line. In your book, you also reference something that you refer to as the "era of the vanishing trial." And--

Kelley: Yes.

Adams: You use it to introduce a chapter on mental health and this concept of mental disabilities as a mitigation tool. And shifting then from sort of the affirmative defense or this continuum of competency. Is this the most frequent area where mental health is used in the criminal justice system because those other standards are so difficult to meet?

Kelley: And inappropriate. Competency ultimately, because it excludes so many people because of restoration, because depending upon the jurisdiction, if they can be restored, then the charges are not necessarily dismissed.

By the same token, insanity at the time of the act is a very high standard, so very few people meet that. Nonetheless, you as a criminal defense lawyer know that your client has significant mental issues, and you want those to be taken into account. A very, very strong forensic evaluation might be used to negotiate a better plea. And/or, at the time of sentencing, that can be used by the court, whether to reduce a prison sentence. Or even better, to provide for a noncustodial sense. That is to say, probation.

Adams: Yeah, those three concepts oftentimes just get lumped together in a manner that is really not appropriate. But in the sense of, you know, my own personal experience, I can reflect on a physician that I represented. And one morning, this physician got a knock at his door from the DEA, they're executing a search warrant. The next minute he is in federal custody being charged with the dissemination of opioids. And I remember him sitting in my office in the midst of a bipolar episode to, to the point where I was fearful that he couldn't even get in his car and drive himself out of my office. And I convinced him that the best scenario for him-- with some help from his family-- was to allow me to drive him down the street to a hospital to get himself the proper treatment. And at that moment, at that moment, there was no question in my mind that that man could not assist me in defending him at all. But, the purpose of getting him to that hospital was because they could

probably get him to a stable position because he was off his meds and he really had taken a nosedive from what was a lifetime of proper treatment that got him through medical school. This condition was not new to him. He was --

Kelley: No, not by any means, not by any means.

Adams: Highly, highly functioning man. And this question of sanity at the time of his acts-- because in one of the allegations against this physician, he allegedly drove in the middle of the night an individual to a 24-hour pharmacy with a prescription that he had written-- who was a, let's call 'em love interest --who went into the pharmacy. And they had video surveillance of my client literally, as one forensic psychiatrist that I employed to evaluate my client at the time said, he was on top of the world. He was in the throes of a manic episode with the gravitas of a head of state. At one o'clock in the morning in a random town, an hour away from where he lived with a guy who was effectively taking advantage of him and was a junkie. And went in with this prescription to get it filled. And the police who came to the scene, their natural reaction was, in what world does a physician go to the pharmacy with the patient that they prescribed the medicine for? And this narrative began spun, which led to these criminal charges.

And the bottom line was, at that time, I was navigating these very precise concepts, the differences between sanity, competency and whether or not this was just going to simply be something that was used at sentencing to mitigate. And ultimately, there was, the competency could be restored because he went inpatient for 10 days, got himself stabilized, came out and was intellectually robust physician again. But at the other hand, they couldn't find that he was insane, legally, at the time of the commission of the acts, because that disease or defect that he was suffering from did not rise to that level. So we were really only left with mitigation.

Kelley: And you've outlined a thousand different issues. And let me touch on the last one, the very, very high standard of insane at the time of the act.

Contrary to popular belief, people accused of crimes are not willy-nilly entering pleas of not guilty by reason of insanity. For a couple of different reasons, not the least of which is experienced lawyers like you know how high the standard is. And after the attempted assassination of President Reagan by John Hinckley, legislators throughout the country-- including the federal government --heightened the standards for not guilty by reason of insanity.

And also, your anecdote about a doctor is critically important. Because mental disabilities touch people from all backgrounds, of all occupations. From all families, of all educational backgrounds. So not only can doctors or lawyers or accountants or CEOs have a mental disability which is in part responsible for the allegations, but also people who, as I say, wear white collars are sometimes capable of blue-collar offenses.

And finally your point about this physician dealing all his life with his mental illness is critically important, because mental disabilities are lifelong issues. Granted for instance, they may manifest at a certain time. For instance, bipolar disorder typically manifests during the late teens or early

twenties. Or autism spectrum disorder can be diagnosed as early as childhood. But even after the criminal offense is disposed of, whether it be a prison sentence or probation, that accused individual as well as with their families are going to have to devise strategies to manage that disability through the rest of their lives.

And this is particularly important when a defense attorney is representing someone who is relatively young. They are going to have to understand that even after the nightmare of a criminal case is over, they still have to deal with medication and coping strategies as well as the collateral consequences that come with a criminal conviction.

Adams: Yeah, and I'm glad you raised that. If we're going to get back then to the three areas where lawyers like us can use these mental disabilities as you call them -- and a proper understanding is necessary to adequately contribute to the defendant's overall defense of the charges -- how critical are expert evaluations and inclusions to the use of mental illness as a part of the defense? Because I could tell you right now, I had enough knowledge-- legal knowledge-- in representing that individual to know the difference between those three concepts. But I could not as a lawyer evaluate whether he fit into one or the other buckets without the help of a forensic psychologist.

So let's talk about that, right? How important are these physicians and what are we looking for in those experts?

Kelley: A forensic mental health expert is absolutely crucial. And I always explain to the accused as well as to their families that in many respects, a good forensic mental health expert is every bit as important as a zealous criminal defense lawyer.

Let me first explain what a forensic mental health expert is. This is a forensic psychiatrist or psychologist, who, although is retained by the defense, is independent. And does a very thorough evaluation and exploration of the person's mental disabilities and the nexus between the conduct charged, perhaps, the person's behavior at the time of the arrest and the investigation of the case, and also what that person's vulnerabilities might be in prison should that person be sent away. The mental health expert, again, depending upon their area of expertise, can also address whether that person is a danger to himself or others once the case is disposed of.

The attorney is looking for a variety of different things. The attorney is looking for an expert who has experience with that particular disability. Whether it be mental retardation, fetal alcohol spectrum disorder, schizophrenia, major depression, dementia. The expert also needs to be someone who is capable not only of writing a very thorough report, but also someone who is a compelling witness on the stand, whether this case goes to trial or at a sentencing hearing.

Very frequently, families and the accused are puzzled as to why they need a forensic mental health expert, particularly if they have been under the care of a treatment provider for years, perhaps even decades. And it's important to underscore that a forensic mental health expert is trained differently than a clinical provider. A forensic mental health expert is trained on how to write a forensic report. How to effectively testify at a hearing or trial. And also, a forensic mental health expert reviews all of

the discovery in a case and does more than diagnose an issue. After having reviewed the discovery, that expert can explain to the defense attorney --as well as to the government and the court-- why that person committed the offense that they are accused of committing and why they conducted themselves as they did after they were arrested.

You as the defense attorney are only that: You are a defense attorney. You are not a psychiatrist. You are not a psychologist. And an expert can explain in a way that we are simply not trained to do why that person is the way that person is.

Adams: You use a term in your book, and in fact, you dedicate an entire chapter to, it called "malingering."

And this was a fairly new term to me. And as I just read from your book, and now understand it to mean, it essentially means faking it. It essentially means an individual walking into your office claiming to have some sort of mental disability. But in fact they just might be caught red-handed and are trying to use this feigned mental disability as a basis to try to garner some favor for themselves in the criminal justice system.

And I found it fascinating that --and very helpful, by the way-- that you actually covered this subject and didn't sort of gloss past it in your work. But first of all, does that type of faking it, or malingering as you call it, does that apply to all three types of mental disability defenses we've been talking about? Namely the sanity defense, the incapacity defense and mitigation defense? Or is it exclusive to one or the other? Or is it more fluid than that?

Kelley: I've got to tell you, Matt, I have had very, very few clients over the years who are malingering or quote, unquote, "faking it." I may have some who exaggerate the symptoms a bit, but exaggeration does not mean malingering.

The reason why I deal with this concept in a substantial way in my two books is because it is a common refrain by prosecutors and even the court. And again, depending upon the nature of the disability, they will bring it forth. They could say that, for instance, a person is bringing forth their autism spectrum disorder-- their only recently diagnosed autism spectrum disorder --as something convenient for purposes of a defense quickly on the heels of the indictment.

They could say that they are using their bipolar disorder as an excuse. And it's important to realize that for many people, for a variety of different reasons, they in fact may not be diagnosed until after they are indicted. For instance, there could be a stigma against their mental illness and for years they have resisted dealing with it. Or it could be that because of the way they manifest their autism spectrum disorder, they have gone through a number of specialists over the years who have misdiagnosed them. And it is only on the heels of their indictment that they have met a specialist who is qualified to properly diagnose them.

A good forensic mental health expert can test for malingering. And this is where the relationship between the evaluating doctor and the attorney is crucial. Because it could very well be that a doctor,

after having met with the accused, realizes that those symptoms are not bona fide. And makes a call to the attorney and says, you know, I don't think you want me to write up this report.

Adams: Can you think of an example in your experience where a prosecutor has maybe suggested that your client was malingering and you've been able to push back on that with the assistance of an expert?

Kelley: Yes.

Adams: Talk to us about that.

Kelley: I'm only going to use broad outlines here because I don't want my clients to be recognized. But a client can be diagnosed with a particular disability. I can raise it to the prosecutor. The prosecutor can say, well, isn't that convenient? And then I can produce a couple of very thorough forensic evaluations, one that takes into account the past diagnosis and treatment, and another that shows the propensity --or lack thereof-- of my client for future dangerousness. And what you have on the one hand is a very cynical prosecutor saying, isn't that convenient? Versus two doctors who have sterling credentials who say, this is real, this is bonafide. This is who the accused is.

Adams: In your practice and your scholarship on the intersection of mental health and criminal justice, what mental health issues do you see at the highest frequency? What mental disabilities are sort of most prevalent in our criminal justice system today?.

Kelley: I would say within my practice, probably 50% to 75% of my clients are on the autism spectrum. The majority of them are male. However, I have represented some females. And one of the reasons why there are so few females who are diagnosed with autism spectrum disorder is number one, the tests that are used to assess autism tend to be modeled and made for boys and men versus girls and women. And secondly, generally and stereotypically speaking, girls and women tend to mask their symptoms more than boys and men.

And back to your original question, I would say that the next most frequent group of my clients are those with bipolar disorder. However, during the course of my practice, I have represented the panoply of different kinds of disabilities. For instance, more and more, we are seeing people in the criminal justice system who have dementia. I have represented people with traumatic brain injury. And I have represented people with PTSD, or post-traumatic stress disorder.

And it's also important to stress that the majority of people who have mental disabilities have co-occurring disorders. So, for instance, I may represent someone with bipolar disorder, but they may also have a substance use disorder. And sometimes it's difficult to know where one issue ends and the other begins. Indeed, they could be interconnected.

I could be representing someone on the autism spectrum. That person might also have an intellectual disability. Or, I could be representing someone on the autism spectrum who has a very high IQ, but because of a lifetime of bullying and ostracism could suffer from anxiety or depression.

Adams: Are there any reoccurring themes or maybe categories of crimes that you see which you could correlate to these types of mental disabilities? Or do they really run the spectrum of alleged criminal activities? Would it be too specific to get that?

Kelley: It runs the spectrum. I have represented people with bipolar disorder who are accused of crimes of violence. I've also represented people with bipolar disorder who are charged with various white-collar offenses like tax evasion and Medicare-Medicaid fraud.

I have represented people on the autism spectrum disorder who are accused of crimes of violence, but again, who are also accused of health care fraud. So, it runs the gamut.

Adams: On episode 40 of "The Presumption of Innocence," we talked to Chris Fabricant of The Innocence Project. We talked to him about a range of issues that lead to wrongful convictions in this country. Among them was mental health issues, and in particular, this-- really, I don't like to call it a phenomenon because that suggests a positive connotation and it's far from it-- but for lack of a better phrase, this phenomenon of the false confession. And I know that you touch on it in your book. But why are individuals suffering from mental disabilities more susceptible to this "phenomenon," quote unquote, of false confessions than perhaps those not suffering from mental disabilities?

Kelley: It depends upon the nature of their disability. So, for instance, if a person with an intellectual disability is meeting with law enforcement... People with an intellectual disability generally speaking, have a very high desire to please. Particularly pleasing authority figures. So they very well might say yes or no to every single question. They look to read their interrogator and they want to be helpful. They want to please. They may not have any depth of understanding of the nature of the question or the gravity of their circumstances.

Similarly, you may have a person with autism spectrum disorder who may be interrogated by law enforcement and who just keeps talking and talking and talking and talking. And we know that the more that is said, the more those statements can be folded, twisted and mutilated into something incriminating.

You could have someone with bipolar disorder who is locked into an interrogation room. They haven't had their meds for a significant period of time. They are in acute agony and they just want out of that room, and they may say anything. And it could also be-- depending upon the nature of the wrongful conviction and a mental disability-- is their counsel just did not raise that issue.

And one of the refrains I continually try to instill in defense attorneys is, you need to make the mental disability matter. It could very well be that your client is competent to proceed. It could very well be that your client was sane at the time of the act. But use that mental disability in some fashion, whether it's to negotiate a better plea or as a mitigator at the time of sentencing. Or now following a conviction, to use it as a basis for a 2254 or 2255. Or, if your client is in the federal system, use it as an argument for compassionate relief. Or, depending upon the state jurisdiction, if there are other second-look provisions, use that for an early release vehicle.

Adams: Yeah, I mean, it's almost like when you have one of these cases, you almost go down the list. Okay, do we have sanity? Do we have competency? Or are we, we're dealing with mitigation and then how are we going to use the mitigation?

Are we going to use it with the prosecutors in a negotiated plea? Are we going to use it at sentencing? In the case that I used, the example that I provided and shared with you earlier on in our discussion, that diagnosis, and that particular physician's mental disability featured prominently at sentencing. In fact, he received a noncustodial sentence because of it. And the judge made it clear that that was the reason that he was varying from the guidelines' range.

Kelley: Beautiful. Beautiful. And Matt, we've been talking about mental disabilities largely in the context of pleas. It should not be forgotten that a mental disability, depending upon the nature of the disability and depending upon the statutory language, can be used to negate mens rea. It can be used to negate some other element of the charge.

Adams: Are there, Elizabeth, from your experience, groups in our society in particular that can be linked to higher rates of these sort of deleterious impacts of their mental disability on criminal justice issues? What comes to mind for me are juveniles and veterans, in particular juveniles. I think the Central Park Five, that's pretty much the first thing that comes to my mind, not as much of mental disability, but just the unique susceptibility--

Kelley: Brain development.

Adams: Of brain development, exactly. Neurologically, these kids were not even on the same plane as the investigators and sort of forced into a confession. And then in veterans, I just, the astonishing impacts of PTSD in our veteran community that we see.

Kelley: And also traumatic brain injury.

Adams: Right. Any other segments of our population where these issues are particularly acute?

Kelley: Every group that has some sort of mental disability could be vulnerable to becoming ensnared by the criminal justice system. So, for instance, we know that people with autism spectrum disorder, because they might manifest symptoms that could be misinterpreted, like stimming, or if they are asked by police to stop, or if they are touched by law enforcement, may flee. All of that may make them susceptible to being chased or to an encounter that may end in tragedy.

Similarly, people with mental illness, if they are actively psychotic, they need treatment, but they may become violent. And hence, they may be susceptible to being arrested and perhaps charged and incarcerated.

We know that people with dementia who, all of their lives, have been law abiding at a certain point, depending upon the progress of the dementia may lose their controls. May lose the discretion that they have used during their entire lives and may become violent because they don't understand what's going on. Or they may engage in inappropriate touching because they don't realize that this

is wrong. So it runs the gamut but counsel should always be prepared to be sensitive to those issues, to bring in an experienced forensic mental health expert who can assist. And in some way to get that person out from under the criminal charge,

It's hugely contingent upon what they're charged with. If it's a low-level crime, if a first-time offender is accused, obviously, it's much easier for counsel to work a miracle. If the charges are serious, if they are violent, if the accused has a prior record, then it is a taller mountain to climb.

Adams: Elizabeth, one of the most gratifying experiences that I had in my entire career was on behalf of an organization near and dear to me, the Association of Criminal Defense Lawyers of New Jersey, the local chapter of the National Association of Criminal Defense Lawyers. I testified before the New Jersey legislature on a veterans' diversion initiative, which was attempting to harness some of this appreciation for the acute mental health needs of returning service members at a time when we had a high volume of people coming out of war theaters in Iraq, Afghanistan.

And I remember my testimony essentially was, this doesn't go far enough. And the political will at the time of the state legislature in New Jersey was, effectively, we're going to give some relief and some protection. But my testimony was essentially, you know, these people deserve more. And we are not getting into nearly what the true root of the problem is with some of these mental health concerns by having a robust enough system.

What is your experience with mental health courts and diversion programs that have been specifically established for addressing the types of acute mental disabilities that we see in specific populations like veterans and juveniles?

Kelley: Yeah, diversionary options, like problem-solving courts have become widespread throughout the state systems. They're not as plentiful in the federal courts. But what they are intended to divert certain groups of people out of the system and basically give them a second chance. Depending upon the composition of the behavioral health court or the veterans court or the reentry court, you have judges and prosecutors and defense attorneys who are designated for that particular court. They understand the makeup of the defendants before them. And they are dedicated to the proposition of second chances and lessening the impact of a criminal conviction.

That being said, my wish is not only that we have more problem-solving courts, but they become more inclusive. That is to say that they not categorically exclude the repeat offender. Or the person accused of a sexually oriented crime or a crime of violence. Those are the harder cases. And those are the cases where we need to be investing more resources. And we need to give our elected and appointed officials the cover to deal with them.

Adams: We've concentrated today a fair amount on the mental health impact from investigation or sentencing. Let's talk about opportunities for advocacy for those suffering from mental health issues in the custodial environment. Now, they have gone through the rigors of the criminal justice system. They're in the custodial environment, serving a sentence. Are our prisons adequately treating mental health issues, mental disabilities? And if not, how do we as counsel, defense counsel, help our clients

in those environments where they're now serving a criminal sentence facing one of these mental disabilities?

Kelley: Well, the answer to your initial question, are our jails and prisons adequately providing mental health services, is no. Absolutely not. Emphatically not. And the conditions range from poor to shameful.

That being said, what can a criminal defense lawyer do? If at all possible, if the judge has discretion to impose probation instead of prison, argue vigorously that prison is the worst place in the world for a defendant with a mental disability. For a variety of different reasons. Such as, that person could be victimized for manifesting the symptoms of their disabilities. That person could get preyed upon by other inmates. That person could be a victim or their families could be a victim of other inmates trying to shake them down for funds. That individual could be denied proper medication. But beyond that, and also an experienced prison consultant should be brought in to paint a vivid picture for the court of just how bad the plight of this particular individual could be in prison.

If the judge has no discretion and prison is a given, then counsel should do research and find out what facility within that jurisdiction might be suitable or, if you will, the lesser of two evils. So, for instance, in the federal system, there are a couple of facilities that have special accommodations for people with dementia. There are a couple of facilities that have special facilities for people with autism spectrum disorder. And within state systems, there are some facilities that are more appropriate than others.

That being said, what can counsel do? I would hope that after the sentencing that the accused would feel comfortable reaching out to counsel and saying, this is what I need and this is what I'm not being given. And counsel could reach out to the warden or the caseworker. In fact, that type of outreach could have been done, should have been done, before the person landed at a particular facility.

Earlier on, I talked about motions for compassionate release and other second-look provisions. Depending upon the type of care or lack thereof that the person is given, that attorney could file a motion with the district court judge in the federal system or with a sentencing judge in the state system and describe vividly the negligent medical care that person has been given. And hopefully persuade the court to release that individual.

But counsel should put together a very, very detailed, roadmap as to how that person or what that person would do if released in terms of getting medication, counseling, treatment. Where they would live. If they could work, where they would work, what their mode of transportation would be, and how basically that person would spend 24/7 in order to ensure that he or she would not be a danger to self or the community.

Adams: And we're talking with Elizabeth Kelley, the editor of *Representing People With Mental Disabilities: Practical Guide for Criminal Defense Lawyers*. We're running short on time, but I want to leave you with one final fairly loaded question.

And the title of your book is, or at least a portion of it is, *A Practical Guide for Criminal Defense Lawyers*. In your opinion, what is the basic ethical requirement, the basic threshold understanding that a criminal defense lawyer must bring to mental disabilities in order to have that professional competence to be able to assess and understand and appreciate when these issues arise and how to deal with them?

Kelley: All of us as criminal defense lawyers over the years have developed a very, very keen understanding of other human beings and an ability to read other human beings. Even if we are not trained in psychiatry or psychology, we should be able to tell when mental disabilities are an issue. We should bring in the appropriate expert and, armed with that knowledge, we should be prepared to zealously advocate for our client in front of the prosecutor as well as the court to make that disability matter.

Adams: Elizabeth Kelley, thank you so much for joining us on "The Presumption of Innocence." That's all the time we have for this episode. But until next time, I'm your host, Matt Adams. We'll see you then. Take care.