



Fox Rothschild Podcast

The Presumption of Innocence

Episode 53: Diagnosis: Innocent – A Doctor's Journey to Acquittal

Featuring Matt Adams of Fox Rothschild and Dr. Dr. Rifai

Matt: Hi, everyone, and welcome back to "The Presumption of Innocence," a podcast brought to you by the White-Collar Criminal Defense and Regulatory Compliance Practice at Fox Rothschild.

We've had guests on this program that have been charged with crimes, convicted of crimes, had their sentences and convictions overturned by the United States Supreme Court. But it is seldom in our system to be able to talk with somebody who went the distance at trial and was actually acquitted. And that is the very guest that we have on today's program. Dr. Muhamad Rifai is an Easton, Pennsylvania multidisciplinary physician. He was cleared after a multi-day trial on charges that he bilked the federal government out of more than \$1,000,000 by billing for services he didn't provide. Dr. Rifai was found not guilty on four counts of health care fraud after his trial. And he's here today, practicing medicine again, to tell the story about it on "The Presumption of Innocence." Dr. Rifai, welcome to the program. How are you?

Dr. Rifai: Very good. Very good. Thank you for having me on this program to tell my story and what I went through during this prosecution, and how by the grace of God, I came through and I'm here to tell my story.

Matt: Yeah, and it's a remarkable one at that. And I'd like to set the stage for our audience. Talk to us a little bit about your medical practice and the types of patients that you're seeing. Because I think that gives color to the charges and the ultimate disposition of your case after the trial.

Dr. Rifai: Sure, sure. So, I am by training an internist and a psychiatrist. I did my residency at University of Virginia. And I did extra training at the National Institute of Mental Health. So I was one of the leaders of the field of psychiatry. And since the early 2000s, I've been a leader in the field of telehealth, telepsychiatry.

This is before telehealth was very popular during the time of COVID.

Matt: Before the pandemic pretty much forced you to go into telehealth.

Dr. Rifai: Absolutely. I was doing telehealth when it was not fashionable, when nobody else was doing it. And the telehealth I was doing was at the behest of the government, was at the behest of Medicare to provide psychiatric services to Pennsylvanians in rural areas that didn't have access to psychiatrists. Elderly Pennsylvanians in nursing homes in rural Pennsylvania who had no access to



psychiatrists and who were struggling with psychiatric illness. I would see them through telehealth and telepsychiatry.

Matt: So, people that are pretty much shut in rural areas with major issues that wouldn't ordinarily afford them to come to Easton to see you.

Dr. Rifai: Absolutely. They were several hours away. They were in central Pennsylvania. And the federal government at that time made a special provision to allow individuals, Medicare beneficiaries in rural area, to be serviced through telehealth. And this got me in trouble.

Matt: So here you are providing these services before they're fashionable, before it became sort of everybody was doing it, and you're providing it to folks in the Medicare program. What happens where you learn that the federal government is honing its sights on you and coming after you with a criminal indictment?

Dr. Rifai: This whole investigation and whole prosecution started in 2017. The federal government said, Dr. Rifai, we think you are different than your peers, than other--

Matt: So, how did you learn of the investigation? Were you served with a subpoena? Did the agents kicked down your door? Was it a CID? What was it?

Dr. Rifai: They sent me a letter asking for records to conduct an investigation, the Center for Medicare Services. A contractor for Medicare.

Matt: So CMS sends you a letter basically saying we're conducting an audit.

Dr. Rifai: We're conducting an audit. We think you're different than other people and we think you're not doing things right.

Matt: And so, at that point in time, did the prospect of criminal prosecution ever even factor into your consciousness? Because I have clients all the time who come to me and say, well, hey, this is just a letter. I'm going to respond to it. And I don't need a lawyer because you know what? If there's problems down the road, you'll fix it.

And I'm like, well, no, I, I need to be involved from day one. But I'm interested to hear from you because you received that notice from CMS. Did it cross your consciousness that-- years later it turned out-- but that ultimately you would be standing trial as a criminal accused?

Dr. Rifai: That did not cross my mind. But I, consulting with other physicians, thought this was a very serious-- as serious that it could be. Bells and whistles were ringing.

I hired an attorney whose job --

Matt: Good, good, good move. Good move.



Dr. Rifai: Whose job is only doing Medicare audits. And we hired an expert. And the expert reviewed the records that Medicare requested before we even sent them to Medicare. And he said-- the expert and my attorney that I hired said-- we think everything seems to be okay, send in the records.

Matt: So, they take a look under the hood. They tell you that your house is in order. Send in the records. You do so. That's 2017.

Dr. Rifai: Yes.

Matt: And we know -- for those of us that are in this every day-- a federal criminal investigation is always, especially in these complex paper cases, these white-collar paper cases, it always drags out for long, long periods of time.

I mean, we're just getting done with the holiday season at the time that this episode is being released and I just sent a bottle of champagne to a client who's six years into an investigation. Finally realized that he wasn't going to be prosecuted. And it is cause for celebration, but it took six long years. To the point where he would get an upset stomach if I even, he saw my name pop up on his phone, or if I sent him a text that said I needed to talk.

So it's it's 2017.

Dr. Rifai: Yes.

Matt: And, how long does it take you? I'm sure it's no small feat to get together the volume of documents that they seek.

Dr. Rifai: They wanted 100 records. We got them together. We asked for an extension for 45 days. We got them together. The expert reviewed them and we sent them. And they went into a black hole.

Matt: For how long?

Dr. Rifai: Despite my request for the attorney to ask about what's going on, what happened to this audit? He inquired multiple times and then he says, let the dead dogs lie. No news is good news. In my case, it turns out no news is bad news.

Matt: All right, so your lawyer is inquiring all the way along and you're getting basically no response. How long goes by before your next contact with the government?

Dr. Rifai: June 2019, 20 agents from the Office of Inspector General Department of Health and Human Services come to my office with a search warrant. Badges and guns, yes.

Matt: You have patients in the office while they're doing that?

Dr. Rifai: We had patients. We just sent the patients away and we closed the office for that day.



Matt: My goodness. And so what goes through your head? Because I'm sure that was a surprise. If they went dark for two years.

Dr. Rifai: Yes.

Matt: And then show up with that level of force. Did you know immediately that it was about what you had engaged with them or were you?

Dr. Rifai: No, no, I did not. I did not. I did not. And, to every criminal defendant: never talk to the police. Zero. Never. Ever. There's nothing that comes out of it. Cause they basically sat me down and said, Dr. Rifai, what do you have to tell us? And I said--

Matt: Did you talk?

Dr. Rifai: I said, I am represented by this attorney who represented me for the audit. And I invoke my Fifth Amendment rights. However, if you would like to tell me what you're investigating so I can communicate that to my attorney, I'd be happy to listen.

Matt: Help me help you, right. I mean, I've actually used those words in connection with these drawn out, expansive federal investigations, even ones that have the types of show of force that you're describing at your medical practice. It's not like you're running a meth lab. You're running a medical practice with people who need psychiatric and other medical treatment, in and out. And here they are.

I mean, when you saw the, the show of force, did you believe it was commensurate with an exercise in, sort of, potential billing issues? I mean, it sounds like. That would --

Dr. Rifai: That was their statement. That this was related to billing issues related to telehealth.

Yeah, that was the statement from the agent.

Matt: But did you ask them why they needed the show of force?

Dr. Rifai: That they said that's what they do. They're the Office of Investigation for the Department of, for the Office of Inspector General for the Department of Health and Human services. That's what they do.

Matt: So June 2019 they show up.

Dr. Rifai: Yes.

Matt: Guns drawn, raid jackets on, badges out. And--

Dr. Rifai: Not just guns: automatic weapons. Automatic machine guns.



Matt: Unbelievable. And so they show up in June of 2019, two years after the audit began with CMS. Tell you, ultimately, that this is about that same audit.

Dr. Rifai: Yes.

Matt: You, very intelligently, shut down, invoke Five, tell them you're represented by a lawyer but if you want to kind of give me some insight into what you're looking at, I'll communicate that with my lawyer. What happens next?

I mean, do they just pick the office apart or what?

Dr. Rifai: It wasn't bad. They were cordial. They imaged our entire computer system. They got some paper records. Some of the things that we did were paper records. And, they gave us also in addition to that, a subpoena for additional records that they wanted, which we complied with.

Matt: And what happens next? I mean, so I, I'd imagine they went dark again, right?

Dr. Rifai: So January, February 2020, COVID public health emergency comes about.

Matt: Ironically enough. Everybody's using telehealth.

Dr. Rifai: Yes. And I actually was interviewed by TV stations as a leader in the field of telehealth. Several local TV stations interviewed me as the expert and go-to on telehealth. I gave lectures to the local hospitals. I, I told stories about telehealth. And, during that time, everything was dark in terms of the investigation.

Matt: All right, and then, I'm not going to bury the lead. It popped the back up again didn't it?

Dr. Rifai: Yes, yes, yes.

Matt: So, what --

Dr. Rifai: December 2021.

Matt: So, COVID -- this is January 2020. COVID pops up. The raid happened the previous year. And another two years go by, almost?

Dr. Rifai: Yes, yes.

Matt: Wow.

Dr. Rifai: Two and a half years, because it happened in June 2019 and they showed up again in my office December 2021.

Matt: With another search warrant or?

Dr. Rifai: With another search warrant and with a target letter.



Matt: So, I want to pause here, because I want to find out what happened from there and then ultimately lead into the story of your trial and your ultimate acquittal. I mean, we 've kind of put the lead out front. But the story of getting there is probably what our audience is most enthralled about.

But I just want you to talk to me a little bit about the personal toll that this process took on you between 2017 and then 2021. I mean, so here you are. The world was sort of upended in the middle of all of this. But 2018 goes by, 2019 goes by, 2020 and all the wacky stuff that it brought goes by. And now you're at the very tail end of 2021.

And they show up again with another search warrant, and now you're identified as a target with a target letter. What toll did that take? Not just on you, but your family, your income, your professional standing in the community? Here you are, a guy that has dedicated his life and training to helping others, and I can't imagine that you weren't losing some friends and losing some business. Because, by all intents and purposes, the government was making you out to be a pariah

Dr. Rifai: Absolutely, yes. The hospital ended my privileges. The local hospital ended my privileges. News spread around that the federal government was investigating me. And, you know, how, news is like a fire that consumes your reputation. So that was significant. And it was very, very stressful. I would have sleepless nights. I would think that, I would hear horror stories about, basically, how federal agents break down your door and arrest you at six o'clock in the morning.

And basically every six o'clock in the morning I wake up and it's like, are the agents there to take me?

Matt: You're a mental health professional.

Dr. Rifai: Yes. Yes.

Matt: How did you, I mean, you couldn't self-treat, but how would you, if you draw on your own personal experiences, how would you recommend that folks dealing with this very protracted period of time handle themselves and take care of their mental health?

Because, be honest, I often tell clients, I say, I cannot be your lawyer and your therapist. And I frequently tell them to enlist somebody like yourself to help them through this journey. Because I think, for those that have never been through it, in a large -scale white-collar investigation, a paper case, like a, like a fraud case, right? We are so accustomed in our culture to thinking of criminal prosecutions as a crime happens, the police investigate it, they get their guy and they put him on trial. And this happens in the space of a couple of months. And that couldn't be further from the truth when it comes to these white-collar cases. Because at the end of the day, these are, most of the time, the norm is a years-long ordeal that could only be described as an emotional roller coaster, right?

Dr. Rifai: Yes, yes. Literally an emotional roller coaster.

Matt: How did you, as somebody trained in dealing with trauma and retraumatization and dealing with stress and compartmentalization and being able to function, how did you, as somebody that



has a firsthand training and awareness of how to handle those situations, how did you deal with it personally?

Dr. Rifai: I'm a spiritual person. I'm a devout Muslim. I'm pretty religious. I turn to my religion for help. My religious support was very, very instrumental in being able to, kind of, take me through this, unfortunate experience.

Matt: Wow, it's remarkable.

So, December 2021, they show up, guns drawn, badges out, raid jackets on. Now, after all these years, it's coming to the forefront. You're identified by the Department of Justice as a target. And I've got to just ask this question: in that space of years between 2017 when this began and 2021 when they identify you as a target and serve you with that formal target letter, which has so much significance, were there periods of time where you, I guess your nervous system, basically processed that maybe this is going to go in my favor and we won't hear from them again. That optimism. Did you lose that optimism or?

Dr. Rifai: No, no, no, no. I was like, I did nothing wrong. And unbeknownst to me, the Office of Investigation for the Office of Inspector General for the Department of Health and Human Services told Medicare not to communicate with me any further. That they got it. That, that don't, don't do anything. Don't restrict his billing privileges. Let him work. Let him do whatever he wants. We got it. And so, I was led to believe that there was no issues whatsoever.

I continued to work and bill normally during that entire period of time.

Matt: So, here you are being investigated for fraud, but continuing your practice and continuing to bill in a manner no different than you had been investigated for.

Dr. Rifai: Yes, absolutely. After receiving assurances from experts in the field that what I was doing was right.

Matt: Now, you're a target. You're a target of a criminal investigation.

Dr. Rifai: Yes.

Matt: What did reading that --I've read many target letters and I know what that must feel like, a ton of bricks comes down on you.

Dr. Rifai: Absolutely.

Matt: Did your sincere belief that you were innocent get you through it? Or, or did you have a rocky time with dealing with it?

Dr. Rifai: My sincere belief said that I was innocent. I immediately, like within one minute, picked up the phone and contacted my attorney, the person who was representing me. And he said, send me a picture of that letter. And as I sent him a picture of that letter, he says, I'm a attorney that only



handles audits. You need a federal criminal defense attorney, yesterday. We're going to get you one ASAP

Matt: And you got your man. And how far after the December 2021 raid of your office were you charged?

Dr. Rifai: It happened November 8, 2022. So they came to my office in December 2021 and the indictment didn't come through until November 2022. And there were a lot of things that happened in between.

Matt: Yeah, I can't imagine the toll that takes. And, was there any relief to the finally being indicted? That the process was going to finally start, you could begin to tell your story?

Dr. Rifai: I think it was a disappointment rather than a relief. Because I thought we were going to be able to maybe convince them to turn things around. So I hired this criminal defense attorney, who's a very famous public defender in the Philadelphia area. His name is Paul Hetznecker. He's a law professor. And, one of the reasons why I hired him is that his dad is a very prominent psychiatrist in Philadelphia who was a professor at Temple. And his brother is a very prominent child and adolescent psychiatrist, who's also a professor at Temple.

Matt: So they knew your business.

Dr. Rifai: He knew my business, in and out. He had psychiatry in his life all along.

Matt: We all could use a little psychiatry in our lives.

Dr. Rifai: There you go.

Matt: So--

Dr. Rifai: That's what my wife tells me all the time. My wife is also a physician, she's an OBGYN. And she was my rock that helped me throughout this.

Matt: So, you get your indictment. And the pretrial process begins. Did you seek a speedy trial or did it take a long time?

Dr. Rifai: There's a couple of stories I think the people may be interested in hearing. So, while awaiting this indictment, after being declared a target, you know, I'm a psychiatrist. I have a lot of patients who have psychiatric crises and major issues. This was July the 3rd, the day before July 4th. At two o'clock in the morning, my phone rings. And on the phone is a lieutenant from the Easton Police Department SWAT team. I said, oh, my God, they're sending a SWAT team to apprehend me.

Matt: Oh, my God.



Dr. Rifai: And I said, lieutenant, there's no weapons here. I'm going to come out. He says, I'm sorry, doctor, you don't know what we're talking about. I have one of your patients here and he's hauled up and he has an automatic weapon. And he wants to talk to you.

Matt: And you thought they were calling because you, you had been under investigation.

Dr. Rifai: And that they're going to come and arrest me!

Matt: Oh, my goodness. And you were, hey, I'll come in voluntarily. I don't need any more --

Dr. Rifai: They just wanted me to talk to the patient on the phone. And I talked to the patient on the phone and convinced him to come out without using this automatic weapon.

After the police cordoned several blocks of Easton with basically shelter in place for all the residents because this guy had an automatic weapon. He was a veteran. I talked to him for 30 minutes and I convinced him to come out. And the police department sent me a thank you letter for talking to this person. And so, and here I am a criminal defendant who's going to be indicted.

Matt: Wow, and that that contact just triggered probably all of the emotions and rush of nervous system responses from the fact that you were smack dab in the middle of your own roller coaster. So--

Dr. Rifai: Yes. Yes.

Matt: Talk about compartmentalization.

Dr. Rifai: And nobody knew about it. Nobody knew about it. But I'm talking to the lieutenant of the SWAT team and I'm thinking they're coming for me. And they're, in fact, asking for my help.

Matt: Oh, no, no SWAT team please. So you get indicted. And, you know, how shortly after the indictment did you actually begin your trial?

Dr. Rifai: So I get indicted in November. The expectations was also actually from my attorney that they're going to come strong. That they're going to basically send in lots and lots and lots of police officers to arrest me publicly and have the TV there and just kind of do like the perp walk and and cuffs and things like that.

But something happened in the Eastern District of Pennsylvania. There was this pastor, Mark Houck, he's the founder of a church called Kingsmen. And he was, basically protesting in front of a abortion clinic in Philadelphia and had a fight with one of the chaperones that brought in patients and out, in and out. And basically that chaperone hit him and hit his child and this reverend defended himself and pushed the chaperone.

He was ultimately charged with basically a violation of a federal law that protects people in abortion clinics and was indicted and charged and he went to trial. But at that time, the FBI sent in a show of



force. They sent in 20 officers to this guy's home. This was September 2022, like two months before I was indicted. And they sent 20 officers, and this was picked up by his surveillance cameras.

And he's a Catholic pastor, and so ultimately, actually, the Pope sent in a letter to Mayor Garland protesting this guy's arrest and how he was arrested. And it was in Congress, there were hearings and things like that. So the Eastern District basically decided to lay down and not send police to pick up people. So I was allowed to self-surrender even under indictment. They called my attorney, they said we indicted him, he can self-surrender in three days, he can come to court, we're not gonna do anything. And he just can come into the court, we'll arraign him, he's gonna be released on ROR and then he goes to trial.

Matt: So was vindication always in the tunnel? You said you had this profound belief that you were innocent, always.

Dr. Rifai: Yes.

Matt: And here you are.

Dr. Rifai: Yes.

Matt: The process begins where you get to demonstrate your innocence. Now, the whole name of this podcast is "The Presumption of Innocence." So I want to ask you this question: Did you feel presumed innocent?

Dr. Rifai: No.

Matt: While you were standing in the court before a federal magistrate being arraigned and showing up for status conferences and, you know, ultimately starting trial. Did you feel presumed innocent?

Dr. Rifai: No, not even by my lawyer. And ...

Matt: Why? How?

Dr. Rifai: So basically, the press release that the government put did not even include a statement that I was, presumed innocent. They omitted that statement in, like, all the press releases that they had published that year. Mine was the only one that didn't have the statement, uh, these are merely allegations and the defendant is presumed innocent until proven guilty.

Matt: I'm pretty sure that that's a Department of Justice policy that they have to put.

Dr. Rifai: Yes. And my press release didn't have that. So everybody says, this guy is guilty. And my lawyer is like, I don't know what evidence they have against you. They may have witnesses that says this doctor did fraudulent this and this and this and that. And I only have to, I can only defend you if I can see the evidence.



Matt: We have had a recent guest on our program, a gentleman by the name of Rodney Roberts. He was coerced into pleading guilty and served 18 years before he was exonerated by DNA evidence. And I had an opportunity to interview him just like I'm interviewing you now. And I asked him point blank: What was it that made you, knowing you were innocent, that made you plead guilty, acknowledge guilt? And he said, and I'm paraphrasing, it was really the lesser of two evils. It was, how do I get back to my family and my life as soon as possible without having this process unfold.

And his reflection on his own experience is really a microcosm for what happens in our system. In my experience, there has been, there is, a profound level of pressure on the criminally accused to plead guilty. Talk to us about that. Did you feel pressure to plead guilty?

Dr. Rifai: Absolutely. Absolutely. Every interaction I had with my attorney, he would tell me, I talked to the prosecutors. They said the evidence against you is overwhelming. When are you going to plead? Almost every conversation.

Matt: Wow. And how did you hold firm to your conviction that you were innocent?

Dr. Rifai: Let's look at the evidence. And part of it is that they hadn't showed us any evidence.

Matt: And unfortunately, the criminal system in federal court is really designed around giving you that at the very last minute. There are certain aspects of discovery in the federal system that you really only get until the eve of trial.

Dr. Rifai: Absolutely.

Matt: And, and so as time ticked on between your indictment and the scheduled beginning of your trial, I'm envisioning a scenario where you're just: okay, show us the evidence. I haven't seen it yet. I haven't seen it yet. And, based on the outcome, it doesn't sound like it ever came. But what was that like to be in this position of almost having to prove your innocence when you're supposed to be presumed innocent?

Dr. Rifai: It's very, very hard. It's very, very hard. The prosecutor had so much confidence in their case that they didn't know what was the exonerating evidence or what was the evidence that would prove me not guilty.

Matt: We, we in the defense bar call them "true believers." That no matter what, they could never be wrong. And that is so antithetical to the prosecutorial function. Because as defense lawyers, we just have to raise reasonable doubt. But, prosecutors have the obligation-- the ethical, moral, legal obligation --to if they have, if there is a weak case, they have the obligation and the discretion to take the exit ramp and get rid of that weak case.

But what you're describing is that notwithstanding the fact that that evidence, just through the discovery, process never really came out, they were continuing to pound their chest.

Dr. Rifai: Yes, yes. Even though that we started going through the evidence. So they were so confident that they basically had me that, that I was going to be convicted, that there was, I was



going to plea, that they said, Hey, listen, your client is so guilty, we're going to give you all the evidence. Here you go. We're going to give you even the grand jury testimony. We're going to give you early *Jenks* material. Here you go. Take it.

Matt: And nothing there, right?

Dr. Rifai: Well, we, we had hired an expert, a coding expert. My attorney hired a coding expert. He says, let me hire a coding expert. I know you had a coding expert. We'll hire a different one.

Matt: Absolutely necessary in defending an upcoding case.

Dr. Rifai: Absolutely. And it wasn't until the coding expert independently talk to my attorney and said, Mr. Hetznecker Dr. Rifai is not guilty. This evidence is bupkis. He used the word bupkis, which is like nothing. Nothing. There's nothing there. And I think that's when my attorney turned around, really turned around, because he didn't hear it from me. He heard it from the expert who said they don't have a case. There's nothing there. There's not like zero, nothing. But they didn't know that.

Matt: The prosecutors continued to march to the beat of, you're guilty, you're guilty, you're guilty.

Dr. Rifai: Yes.

Matt: Wow.

Dr. Rifai: And, and my attorney in the background knew. And he actually didn't want to disclose his cards. I said, well, why can't we go to the prosecutors and say, listen, you have no case? Your evidence is nothing. He said, they'll find something else. They'll turn their case around. They'll restructure their case around for trial. The trial is our only chance.

Matt: Smart lawyer, confident lawyer.

Dr. Rifai: Yes.

Matt: Turns out a good lawyer. Let me ask you this. You're a psychiatrist. The human psyche is your forte.

Dr. Rifai: Yes.

Matt: As your trial began.

Dr. Rifai: Yes.

Matt: What was it like?

Dr. Rifai: I had been in court before.

Matt: You'd never been in court before.



Dr. Rifai: No, no, I had been in court before. I used to be an expert psychiatric witness. And--

Matt: So you're familiar with the process.

Dr. Rifai: Oh, yeah.

Matt: What was it like to put your fate in the hands of those jurors? As you began jury selection, what was going through your head, knowing what, you know, about psychiatry and how to read people. What was going through your head as these people are shuffling in being questioned in voir dire about how these people are going to resolve your fate?

Dr. Rifai: I'm a psychiatrist. I'm a physician. I'm a scientist. And so I would turn to my attorney and says, is there any data?

So for example, when we pick jurors, this is Medicare fraud. Should we pick a Medicare beneficiary or not pick a Medicare beneficiary? Should we pick somebody who has mental health issues or not pick somebody who has mental health issues? Is there any data? Is there any statistics on this?

And he said, there's, Aly, there's no data, there's no statistics on that. And I don't know if people know, I looked at statistics: the number of federal criminal trials have dwindled over the years. There's only 1,750 criminal trials in 2022, the statistics are. So, basically, that's like almost, like 20 per U.S. Attorney's Office. That's almost like three or four per judge. Per circuit judge, federal circuit judge in the U.S. There's no more trials.

Matt: Yeah, that's why it's so difficult to speak with somebody who's gone to trial and won. When you and I spoke the first time, you told me the story about these weekend trips you would take to the correctional facility that you may actually go to if you were convicted. What was that about?

Dr. Rifai: When I first got indicted, a month after I I hired my criminal defense attorney, I was told, you know, listen, 99%, 99.6% of federal defendants are either convicted or they plead guilty. So your chance of being found not guilty is 0.4%. You better hire a sentencing consultant. And so basically, I hired a sentencing consultant who said, well, write your personal narrative, prepare yourself that you're going to be convicted. You're a Muslim, where do you want to go? Which correctional facility you want to go? So, uh, they said Otisville, Federal Correctional Institute in Otisville, New York. They have halal meat. Basically the camp there, that's probably where you go. That's where you should tell the judge if you plead guilty. That's where you want to go. And so, basically, I said, well, let me go see this place. If I have a 99.6% chance of being convicted or going to jail or pleading, I better go see this place if I only have a 0.4% chance.

Matt: I'm not going to put you on the spot for a medical opinion, but what compulsion or psychiatric issue would you account for that kind of conduct? You actually wanted to see where you're going.

Dr. Rifai: Oh, yeah. Oh, yeah. There's a famous psychologist who described the stages of dying. I think I ran through them to acceptance very quickly. There are five stages. Denial is number one. I went to acceptance. I went to five.



Matt: You didn't even go to trial yet!

Dr. Rifai: I didn't even try to go to trial and I went to acceptance immediately. And that that was going to be the fate that that was going to happen. And that it's only by the grace of God that I would be found not guilty.

Matt: Let's let's talk about that trial. As the days leading up to the trial started to come into focus, what was your anxiety level like?

Dr. Rifai: Uh, through the roof. I was anxious. I think my religion, my prayer, basically, my family being very, very supportive. I have a very supportive family. I have three siblings, two older brothers who are also physicians and my younger sister is also a physician. And, we expended the family resources in terms of finances. I mean basically you have the Goliath, the United States government spending all sorts of money to convict you.

I mean, by my estimates, they probably spent between \$2.5-3 million on this case.

Matt: Wow.

Dr. Rifai: And I had to, to match some of that. I mean, I had to spend a lot of money: experts, investigators, attorney. But I was lucky that my family was very, very supportive. And we, we just didn't waste anything. We just spent whatever needed to be spent to basically defend this case. Because I knew I did not do anything wrong.

Matt: So the trial begins. Those opening statements happen and you're now in the throes of it.

Dr. Rifai: Yes.

Matt: Talk to us about--

Dr. Rifai: The prosecutor started with this theatrical scene. She looked at the juries, and she looked at me.

And she said, ladies and gentlemen of the jury. I am prosecutors so and so representing the government of the United States. Dr. Muhamad Aly Rifai stole from the government.

Matt: Wow.

Dr. Rifai: That was her first sentence.

Matt: And that was the opening shot across the bow at a trial that sounds like it went in your favor from the moment it began.

So tell us how it went. Tell us witness after witness. We want to hear the nitty gritty from counsel table in your mind as this is playing out. Put us in your shoes.



Dr. Rifai: So, the first witness was the investigative agent from the Office of Investigation for the Office of Inspector General, its Department of Health and Human Services. What we found out during cross examination that this was her first court testimony. She was an agent for eight years, and this was her first court testimony. I said, that's it. My lawyer had her. My lawyer is a seasoned criminal defense attorney who'd probably been through 300 trials.

Paul Hetznecker has been through 300 trials, state, local and federal. So he basically knew, what to do, how to cross-examine witnesses. It turns out that that interview in June 2019, when the agents came to my office and wanted to interview me. And I said, this is the name of my attorney and here, and I plead the Fifth, the agents reprocessed that into a two-page interview where they inserted all sorts of hearsay that they got from my staff. Not my statements, but they listed that as an interview with me.

Matt: My God, so here you are invoking a fundamental constitutional right to remain silent and they penalize you for it.

Dr. Rifai: Yes.

Matt: Instead of just saying, we asked him some questions and that 302 saying that you invoked, it came out and they dusted you up anyway with statements from your staff.

Dr. Rifai: Yes. Yes. And the only way we got around that was that we showed their handwritten notes. My attorney was very skillful because he asked them to retain the handwritten notes. And when he showed the handwritten note, where, it says this is his attorney, he invokes his Fifth. And then there was nothing after that. But then, when the typed-up report came, it had all sorts of hearsay information from my staff. And this was their main witness. This was the investigator for this entire case. And basically kind of things went downhill from there.

Matt: All right, so tell us what happened next.

Dr. Rifai: They bring in multiple other witnesses from my staff. And basically, you know, when you are a witness in a federal criminal trial, you will say whatever the government wants you to say.

There's no witness that's going to stand up and say, what you're saying is not true. So, my staff went with the storyline that basically the prosecutor fed them.

Matt: Oh, and what was the central theory of the prosecutor's case that they were trying to prove?

Dr. Rifai: The central theory was that we were not justified in billing for psychotherapy services for these elderly people who were experiencing severe psychiatric symptoms, suicidal ideation. And that, the main four charges, I don't know if you, your audience know. Four charges, each charge we got paid \$43.46. Four charges. So about \$180 total.

Matt: And that's what you were charged with.



Dr. Rifai: That was I was charged with. And they extrapolated that to \$1.3 million. And they were say, they told the jury that I could go to jail for 40 years.

Matt: So, continue down the path of explaining to us how this trial unfolds against the backdrop of everything that you're starting to show us. You know, the government's witnesses are crumbling hyperbolic opening from the prosecutor.

Dr. Rifai: Yes.

Matt: Tell us where this thing reached its crescendo.

Dr. Rifai: It was a Friday, It was that Friday, of the first week of the trial. It was Friday, May the 3rd. Just to back her up, my birthday is May the 10th. I would have turned 51. And that Friday was the main witness for the prosecution. It was--

Matt: Who was that?

Dr. Rifai: It's a coder, a nurse, who was basically going to lay it out to the jury and was going to say, listen, Dr. Rifai's business is all fraud. All of his coding is fraud from A to Z. And that was the report that was done in 2017 that my expert told my attorney was all wrong and was all fabricated. And so the prosecution, basically, talked to this witness. She says, we have this report. I didn't do this report, but my colleagues that work with me did this report and it says 100% of Dr. Rifai's business is all fraud. He doesn't follow the rules of Medicare. It's all fraud.

Matt: My goodness.

Dr. Rifai: And basically to anybody that should be the end of their trial. I mean, they have a witness like that, but then. It's the turn of my attorney to cross examine this witness.

Matt: And the presumption of innocence may have failed you, but due process didn't. Your confrontation rights under the Sixth Amendment didn't because you got in there and your lawyer was able to pick her apart, right?

Dr. Rifai: Yes. And so my lawyer was armed with basically the guidance of the expert coder. He was coached by the expert coders, like, this is what you need to ask this witness. Number one, number two, number three, number four. Basically, he's pointing out to this report where they're claiming I provided services that were fraudulent, where in reality, I didn't even see the patient that day. I didn't even submit bills to Medicare that day. And they were just claiming days out of thin air where I didn't even submit a bill, or I didn't even receive money or I didn't even see the patient. And after confronting this witness with four different instances, she started crying.

Matt: My goodness. Talk about a dramatic moment.

Dr. Rifai: Yes. Yes.

Matt: So she's bawling on the stand now under cross-examination.



Dr. Rifai: This is the government witness. This is the government main witness and they're crying on the stand. The judge stops the trial. It's it's noon. He said, we should break for lunch. And the witness has Kleenexes and is bawling.

Matt: What's that lunch like? What's that lunch like, in the middle of that trial where you've got them on the ropes now?

Dr. Rifai: I'm feeling vindication. You know, it's a Friday. For us Muslims it's a holy day. And like, I'm thinking like, this is the salvation from the Lord. God is saving me on a Friday.

Matt: All right. What happens next?

Dr. Rifai: Comes back from lunch. My attorney keeps going because there's about four or five other instances where they fabricated the entire evidence against me. And he starts with number one, number two. She started bawling again. So, my attorney, I think he's, this is how good he is. He decided that he's not going to continue to torture her because he will look like, not somebody who's a good person in front of the jury.

It's like, okay, you got it. You decimated this witness. And he asked the question. I still remember the question. He's asked the nurse. Ms. Nurse Coder, so now we've seen that how this report is so much flawed and unreliable. I'm going to ask you this question, and I want you to think about it very seriously. Does your integrity allow you to support the government's case and to support that this report about Dr. Rifai is true?

And he says, I want you to think about this question very seriously. And she looked at him and her eyes were tearing up. And she said, no.

Matt: Wow. Wow. Talk about a dramatic moment. Did you hear the jaw of the prosecutor drop and hit the table at that very moment?

Dr. Rifai: My attorney said that he felt like the prosecutor wanted to hide underneath the table. Her and the agents wanted to crawl underneath the table and just hide there for the rest of the trial.

Matt: It's so seldom that you get a Perry Mason moment in a white-collar case, right? That these are cases that are driven around laborious amounts of analysis and paperwork and financial records and things like that that would put most people to sleep.

Dr. Rifai: Yeah.

Matt: And you, here you are having this Perry Mason moment in the middle of your trial. And I can't imagine --

Dr. Rifai: Even the judge chimed in and he says, well, hold on a second. So, I want to make this clear. I mean, it's very rare that the judge interjects in a witness testimony and says, I want to make this clear to the jury, you're telling me you did a report about Dr. Rifai and how many charts did you personally review that you're testifying here? And she said two charts. He says, you're testifying here



in a criminal trial that's going to put this defendant in jail and you're telling me out of his 25,000 patients, you review two records only?

And she said, yes.

Matt: My goodness. So, I imagine that the case didn't really pick up from there. Let's fast forward to the day that that verdict came in. Everybody rests. How long is the trial in total?

The trial in total started on a Tuesday. The jury selection was a Monday. We started the trial on a Tuesday. And we ended, the closing statements were the next Wednesday. So, seven days.

Dr. Rifai: So in the course of that seven days, you probably start with intense anxiety. You have some moments that probably were pure elation, jubilation.

Matt: Yes. And now. It's the end of the road. Arguments are in, evidence is in.

Dr. Rifai: I only had two witnesses. I only brought in two witnesses, a fellow psychiatrist and a coder. And he didn't want me to, my lawyer didn't want me to testify. He says, if you testify, you're going to bring in so many things that we don't need. We got it.

Matt: I don't want to invade the sanctity of that calculation between you and your lawyer, but at the end of the day, the accused does not have the obligation to testify, and seldom is it appropriate. So the case comes to a conclusion. The judge charges the jury.

Dr. Rifai: Yes.

Matt: And here you go. They begin deliberations.

Dr. Rifai: Wednesday after lunch. And my family is there, my parents, my mom and dad are there. My wife, my children. My staff. Everybody's there for the beginning of the closing statements and the beginning of the jury deliberations. This was a Wednesday. So they get the case after lunch, it's one o'clock. At 3:30, they sent a note to the judge, the jury sent a note to the judge. They want a rereading of the jury instructions.

So he brings them back and rereads the jury instruction. It takes about an hour. And it's 4:30. And he says, okay. So they go back and deliberate for another 15 minutes and then they break for the day. So--

Matt: You come in the next morning and they go right to the jury room to start their deliberations.

Dr. Rifai: Yes. So that's probably about three hours of deliberation. They come in the next morning. This is Wednesday, May the 9th. The next day is going to be my birthday, 51 years old. And they go to the jury room. They deliberate. 10:30, the clerk comes in. The jury has a verdict.

Matt: How did you feel at that moment? Just describe for our audience. The jury has a verdict. This is a yearslong ordeal that is coming to an end.



Dr. Rifai: Yes.

Matt: One way or another, it's coming to an end.

Dr. Rifai: Yes.

Matt: What was that like?

Dr. Rifai: Praying, and my family was praying. Everybody was just praying that the truth is going to come and that the Lord is going to save me. Even through that, my attorney says, you know, the government put in a case and they may have some things to convict you and they may have some things to find you not guilty. So, he - even him - , he was still 50/50. He didn't say, we got him. He didn't say, oh, the case is bust.

He's, he's--

Matt: I got news for you, I got news for you. A good lawyer is always going to be realistic with a client. It's not over until it's over.

Dr. Rifai: Yes.

Matt: So the jury is marching into the room. The visual I have is, as you know, are you clinging to facial expressions? I mean, I've been in rooms when the jury comes back and it's always an interesting psychological experiment to see who's looking at the defendant, who's looking at the prosecutor? Are they smiling? Is there chatter among them or are they stoic? Are they their heads down? What were they like?

Dr. Rifai: The jury forewoman, she is actually a health care worker. She is the one that was carrying the envelope. She locked eyes with me, and she smiled before handing the envelope to the bailiff to hand it to the judge.

Matt: Wow.

Dr. Rifai: The judge gets the envelope. He opens --

Matt: Did you nudge your lawyer and say, hey, did you see that? Did you see that?

Dr. Rifai: No. I don't know if he noticed. We never talked about it, but she locked eyes with me and she smiled. And that's how I feel. And, the envelope got to the judge and, he read it and then gave it back to the bailiff to give back to the jury.

And they read the verdict.

Matt: When you heard not guilty after this yearslong battle untold sums, exorbitant sums of money. The physical, mental drain of that long, long process.



Dr. Rifai: I started crying.

Matt: Yeah. What's it like? It's just a rush of emotion, right?

Dr. Rifai: Yes. Yeah. My mom was crying. My wife was crying. My father was crying. And well, we had to wait because there were four charges. So, not guilty, the first one. Could they come back with a guilty for the other charge?

Matt: Can we get the Cliff notes on this please? Before you're going to make me sit through all this? I can imagine.

Dr. Rifai: So, not guilty four times.

Matt: It's certainly a different experience for the defendant than it is the lawyers, right?

We have a lot invested in it. We're trial lawyers. We put a lot into our art and our craft. But the end of the day, we get to go home. No matter what.

Dr. Rifai: Yes.

Matt: Win, lose or draw. I just, I can't imagine the suspense. It's probably the most suspenseful movie that you've ever watched. And except it's not a movie, it's your life.

Dr. Rifai: Yes. He raised his fist, my attorney raised his fist and said, yes.

Matt: Wow. Wow.

Dr. Rifai: And --

Matt: So what's life like now?

Dr. Rifai: The prosecution said they wanna hear from every juror, four not guilty.

Matt: So what's your life like now, doctor?

Dr. Rifai: I mean, it's a trauma of your life. It's like you were about to be crushed by a meat grinder. I mean, that's how I feel. I was about to be crushed by the meat grinder of the United States government. And I escaped.

Matt: I've got one last question for you, doctor. And that is: What advice would you have for professional people that find themselves in these white-collar cases in the crosshairs of the government? How do you survive? How do you get vindication? How do you go the distance, avoid the temptation to plea and just hunker down and let the process play out?



It's long. It's expensive. It's taxing. How do you do it? To many, it's not possible. To many, they do not have the fortitude to survive. And like Rodney Roberts told us on "The Presumption of Innocence" just a couple of episodes ago, he couldn't. He didn't have the fortitude. What advice would you have?

Dr. Rifai: Find competent legal representation. Never talk to the police or the prosecutors, ever. Know your evidence. And be involved in the case. Don't just rely on the attorney. If you know your business and they're prosecuting you about your business, you're the expert in your business. Hire experts to tell whether you're doing a good job or not.

If you're not doing a good job and, it's clear fraud, you should plea and bear the consequences. But if you feel that you're doing the right thing and you're an expert in your business, defend yourself. Defend yourself and fight. Because there is good chances that you will prevail.

And if you have competent legal representation, if you're bringing good experts, people can prevail at trial. Because, basically very few people go to trial these days and the federal prosecutors are not very versed now in criminal trials because they're not doing criminal trials.

The agents are not versed in criminal trials. So if you have a good lawyer, a good federal criminal defense attorney, go to trial.

Matt: Wow. Doctor, we're going to leave it there. "That's all the time we have for this episode of "The Presumption of Innocence." Until next time, I'm your host, Matt Adams, and we'll see you then. Take care. Bye bye.