



Fox Rothschild Podcast

The Presumption of Innocence

Episode 56: A Strategic Gamble: The Risks, Costs and Rewards of Going to Trial

Featuring Matt Adams and Patrick Egan of Fox Rothschild

Matt: 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.

Today we're going to tackle one of the most difficult decisions that a defendant needs to make in the course of a white-collar criminal case and frankly, one of the most difficult decisions that a human being needs to make in the course of their lives. And I hope for many people that that decision never has to be made. But it's really one of whether to go to trial and essentially roll the dice in front of a jury and to take a disposition that's short of trial.

And I recently spent some time exploring the Federal Bureau of Justice statistics website. It's promulgated by the United States Department of Justice and contains a whole host of federal criminal case processing statistics. They have a data tool there that tracks a whole host of things about the federal criminal justice system and some of the most striking statistics that I found there were really ... they've been tracking these things since 1998 and that's a 24-year period. And statistics are available up through 2022. And in that space of 24 years, there have been approximately 2.1 million people charged with federal criminal offenses. About 90% of that are federal felonies. Another 10%: federal misdemeanors. And then some unknown obscure sort of bad data set of just under 1/10th of a percent.

When the statistics get even more lopsided in the 24 years that statistics are available, the conviction rate of those 2.1 million charges is approximately 90.5%. That means about only around 200,000 are not convicted after being charged. What happens when you drill into this data even some more is even more stark. When you speak about the idea of what percentage of those convicted go to prison, it's astonishing. It's almost 70%; probation, just around 11%; and no sentence, around 9.5%. Everything else falling into negligible categories.

My guest today is my friend and partner Patrick Egan. He's a legend in the Philadelphia criminal defense bar. He's the type of trial lawyer you go to when your only option is to roll the dice and go to trial taking a shot against all odds. He's the Chair Emeritus of the White-Collar Criminal Defense and Regulatory Compliance practice at the firm. And it's an honor for me personally, to currently take up the mantle that he began at the firm a couple of decades as his successor in that role.

He's a fellow of the American College of Trial Lawyers, an adjunct professor of integrated trial advocacy at Temple University Beasley School of Law, as well as an adjunct professor at the

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University of Pennsylvania Law School and a faculty member for multiple National Institute of Trial Advocacy programs. And if those accolades were not enough, he's the founding board member of the Pennsylvania Innocence Project, on the advisory board of the National Association of Criminal Defense Lawyers, the Champion Magazine and an author of *Business in a Global Society: A Guide to Understanding the Foreign Corrupt Practices Act*. Pat, welcome to "The Presumption of Innocence."

Patrick: Hey, how you doing? Nice to see ya.

Matt: So, I want to talk to you everything about criminal trials today in the federal system, frankly, because they're too few of them today. And let, let me start off with some of the type of statistics that I opened the program with. According to the Pew Research Center, in fiscal year 2022, only 290 of the 71,954 defendants in federal criminal cases, about 0.4% went to trial and were acquitted. Another 1,379 went to trial and were found guilty. According to that same Pew analysis, the overwhelming majority of defendants in federal criminal cases that year did not go to trial at all. About 9 in every 10, or astonishingly 89.5% pleaded guilty while another 8.2% had their case dismissed at some point in the judicial process, according to the data that Pew analyzed from the Administrative Office of the U.S. Courts.

What that means is astonishing. That only an acquittal rate of something like 0.4%. Why do you think that there are so few federal criminal cases going to trial today, Pat?

Patrick: Well, there's a number of factors. The first, probably, and most obvious one is that they don't indict anybody until after they have investigated for years. And they generally won't indict anybody if they think they have a chance of losing. So, it's essentially a rigged game by the time you get to indictment. They will not bring an indictment until they are so confident in the evidence that they don't think they have a chance of losing. And of course, they bring that attitude to the table when they do indict. So, the number of cases that are indicted that you can try essentially boils down to, are they making you an offer that's unacceptable? Like, you may as well go to trial. Or do you actually have that rare set of circumstances where it's possible you could get a not-guilty verdict? And, of course, that's a very difficult thing to do.

On top of that, you've got the financial issues. Um, of course, if you are indigent and you have a court-appointed counsel, then that, that's not an issue then. But, if you are paying for your counsel, a trial is exceedingly expensive in the federal system. And a lot of people end up broke by the time they get indicted.

Matt: Yeah, it's astonishing. You know, in the day-to-day trenches, you and I frequently have to advise our clients on the risks and benefits of actually going to trial as opposed to some off-ramp short of trials and disposition that either winds them up with a guilty plea or some sort of deferred prosecution. It's not always plain and simple that defendants have the option to choose a plea over a trial in the federal system, is it?

Patrick: No, and you know, you really have to assess the evidence and you have to also assess your client's personality, their tolerance for risk, you know, their family circumstances. A lot of times family members really weigh in on these issues and can really impact the decision. And it's, essentially, you



have to have the perfect storm of a client who has the wherewithal, the stomach, basically, and the desire to say, I'm not going to accept this. I did not do what they're alleging I did and I want to fight this to the end. And even then, you have to explain to them, um, you know, the, the enormous risk that they're taking.

Matt: Among those variables that you've isolated about the decision, whether to go to trial or take some step short of that, what role do you think that governmental overcharging has in that dynamic? Because that's a phenomenon we talk a lot about on the program, where charges are stacked, where culpable conduct might be a small subset of the overall group of charges. But does that, does that dynamic play into the decision to go to trial?

Patrick: Absolutely.

Matt: How?

Patrick: Essentially the government has a very long-standing --and I suspect it's about to get worse --habit of overcharging everyone. Essentially, you know, statutes, particularly a lot of the statutes that pertain to business conduct and what we call white-collar crime, they're ambiguous and they're subject to a number of interpretations. And for instance, if you look at securities fraud, or you look at health care fraud, or you look at any of those types of, activities generally, the standard for what is actionable, the only difference between a criminal and a civil case is if the government wants to make it one. It's the exact same law. It's the exact same conduct. It's just a question of whether or not they want to prove beyond a reasonable doubt that it was intentional.

And so, they oftentimes make that decision either based upon, uh, attitude about the defendant or, you know, some political thing or some kind of publicity thing that's going on around a certain type of behavior. And, um, once they're animated to prosecute, then they always seek the most readily provable, serious charge, which is frankly what they just got ordered to do by the new Acting Deputy Attorney General, um, and what historically they were supposed to do under the Thornburgh Memo. And so they will turn something that could theoretically end up, could have been resolved as a civil penalty, into a very serious charge. For instance, a racketeering charge, you know, currently got an accountant is charged with racketeering, basically, for being the outside CPA to a medical practice.

So, once they charge something like RICO, that obviously impacts the federal sentencing guidelines tremendously and, uh, opens your client up to all sorts of risks, not only in terms of their exposure for prison, but also in terms of the financial, uh, repercussions. Because they, of course, have forfeiture and fines and penalties and all that fun stuff.

Matt: Yeah, you touched upon a couple of variables here, and I want to unpack them a little bit for a moment. This notion of the defendant's resources: is it fair? Is there an equal playing field in the federal criminal system? Because the idea that the government, with all its unlimited resources, is brought to bear usually on an individual ... most of the time an individual with limits to their resources.

Is that a fair dynamic?



Patrick: No, absolutely not. It's less fair. It's very rare to find an individual defendant who has the finances to bring to bear a full-throated defense to federal charges. Now, having said that, a lot of money gets, you know, spent unnecessarily on a lot of not really important things in the run-up to being indicted.

But when you're trying to defend someone who is, facing, you know, basically disruption of their entire life, you know, you want to leave no stone unturned. So there's a tendency among defense counsel to maybe you know, over investigate certain things during the pre-indictment stage. But regardless, all those things cost money and very few people have enough to sustain the fight. And the government relies on that. They know it.

Matt: Yeah. In contrast to the state system, for example, the feds, they carefully select their caseload. The priorities of the Department of Justice trickle down, as you mentioned, from the executive branch of the federal government, leaving room for politics to enter into the equation when charging decisions are made, whether that's right or wrong. What impact in your experience does that political dynamic have? Because aren't, cases are basically carefully cherry picked by the feds, aren't they?

Patrick: Yeah. So, there's a couple of different things that go on, you know, sometimes you'll have, um, task forces that they set up and therefore, you know, there's a certain thing they're out looking for. For instance, there was a, you know, all that PPP fraud activity. So there was a big task force. And, you know, you create a task force and then you got to find somebody to prosecute because, you know, the task force has to justify its existence.

I always say to my clients, the more that we do, if you get a grand jury subpoena or you get a visit from agents, you want to do as much of the work as possible because every dollar that the, you know, Department of Justice and the FBI or whomever happens to be investigating you spends, is something that they have to rationalize to their superiors having spent. So at the end of the year, they're going to say, well, you spent all this money on this investigation, like, where's the results? And if that investigation leads to nowhere, then, you know, that's a problem for them. So, I always say, you know, the more they spend, the more likely I'm going to come in and give you a beating.

Matt: In the eyes of the public, particularly in the hotly contested political and dynamic we have in our society today, does the injection of politics into the federal criminal system risk jeopardizing public trust?

Patrick: I think the obvious answer is yes, particularly if the public is of the view that there's no impartiality and that there is a political motive behind certain prosecutions. Now, and historically, there has always been that element, but it's mostly been used to apply to folks who are marginalized, so nobody pays any attention. But, uh, when indeed it's folks who aren't marginalized who are brought into the crosshairs, all of a sudden, it's like, where are the rights? Where's everybody's rights? You know. Well, you let them slip away when they were being, you know, used against people who you didn't care about.



Matt: On this topic of trials -- are prosecutors getting enough trial practice today with such a low trial rate? What are the impacts to the system writ large that come as a byproduct of that lack of experience? If you would agree with the premise of my question that perhaps they're not.

Patrick: But I have to chuckle at that because the last thing I'm worried about is prosecutors getting more practice. But, um--

Matt: I agree with you, but are they, I mean, do they know the basic tenants of trial practice anymore?

Patrick: Yeah, they tend to cut their teeth on, you know, very simplistic guns and drug type cases. Um, so, the federal government always has sort of two things going on at once. You know, they've got the, the white-collar crime, which is generally handled by a large portion of the manpower in the office. And then they've got the folks who are dealing with guns and drugs and things of that nature. And, generally, uh, most of the young prosecutors will cut their teeth on some of those gun cases because they're pretty easy to try. And they at least get in court over that.

What I see, though, is a very significant lack of training, a very significant lack of understanding of the dynamics of a court and the dynamics of a jury. And of course, I'm all for that, because any advantage we can get, we need, because most of the deck is stacked in their favor.

Matt: But are these core tenants of due process like *Brady* and *Giglio* are, in your experience, are today's prosecutors in tune with them as much as they should be?

Patrick: No, absolutely not. You know, it's a joke.

Well, let me just look at... You can look at prosecutorial misconduct and it exists throughout all systems, federal and state. There's never any action taken against prosecutors for their misconduct because, generally, most disciplinary boards are stacked with former prosecutors and it's always, oh, well, you know, they didn't really mean it. You know, they're out fighting bad guys. So it's okay.

And when it comes to disclosure in terms of exculpatory, you know, most prosecutors wouldn't know *Brady* if you hit them over the head with it. And whenever you seek *Brady* materials, they're always like, oh, we were given as soon as we see it, you'll get it. And when people get it, like, 10 years after their trial, that's when people get their *Brady*.

Matt: Yeah, remarkable. We've had some folks from the Innocence Project on here, including Chris Fabricant, who's really made a career out of fighting when those types of injustices occur.

I'm going to ask you the same question: Are judges getting enough trial work today? And what impact does that have on the system?

Patrick: That's an interesting one. You know, probably not, but I don't really know for sure. Generally, my experience with judges is, very few of them know a whole heck of a lot about trying cases. Uh, and when you get a judge, who actually was a trial lawyer, it's just such a joy. It just makes your life so much easier.



It's interesting because in the federal system, you know, at least in our area, you have, uh, different judges come from different backgrounds based upon the political sort of situation. So you almost always have a few former Common Pleas judges who are-- it's what we call our state courts here in Pennsylvania-- who have worked in the local collar counties and, you know, because of their political connections, they'll get appointed. And then you have, like, a lot of people who, you know, were like the counsel, disciplinary counsel to a big law firm or general counsel to a big law firm, and things like that. And, uh, as a rule, although those folks can be smart when it comes to, like, pre-trial motions and understanding, you know, complex federal law, when it comes to trying cases, like, they have no clue. They haven't tried any cases. So, you know, it all kind of depends on the background of your judge. And then, of course, you've got, there's always been historically, there have been a whole lot of former federal prosecutors that you have to deal with. Basically, we certainly have a couple in our district, who, it's like fighting two prosecutors at the same time.

Matt: Too many, if you ask me. Too many prosecutors.

Patrick: Way too many. Which is one thing that Biden did, obviously, that was very, very positive and helpful and hopeful, appointing a lot of-- along with a lot of diverse people-- he appointed many, many former defenders. And so, in our district, we actually got two or three former defenders appointed in the last four years, which is pretty awesome.

Matt: So, against the backdrop of all these variables that we're discussing. Against the backdrop of these ridiculously stacked statistics against the defendant.

Take us inside that discussion. Take us inside the discussion between you and your clients when helping them navigate the trial versus plea decision. Against the backdrop that there isn't always a plea on the table. I mean, there, there are cases that the government just decides, hey, we're going to trial. This is, you got no choice. This is where we're going. you can plead to the indictment or you can, you can go to trial.

What does that discussion look like, Pat, when you have it with those clients?

Patrick: Well, first of all, it's a process. So, when you first meet your client, chances are very good that they're going to be, obviously, incensed about the situation they find themselves in. Extremely defensive, because they're being accused of something. And oftentimes we deal with people who are used to being very successful and used to, essentially, you know, having folks do whatever they tell them to do.

And so you can't just, like, say, hey, dude, you know, these are the feds and, you know, life's tough, you know. So, um, I find that, uh, developing a relationship with your client is the key to everything. You know, I, my passion is capital defense and, uh, my current nonprofit centers around trying to end the death penalty and fighting capital cases.

And it's, a lot of the work that's done there is easily transferable to the white-collar world and vice versa. And what's unfortunate is most practitioners don't have the time to spend to develop a relationship with their clients that you need to to have them really trust in your guidance. Because



that comes with, like, sitting with them and talking about, you know, the Sixers or whatever they're interested in. It's cars or, you know-- I'm not into cars, but a lot of people are-- you know, you have to like, develop a relationship with people and get them to feel like you actually care about them.

Matt: On a human level.

Patrick: Yeah., That's what it's all about for me. And so if people feel like you care about them, then they're going to listen to your advice. Most people think, well, my lawyer wants to plead guilty, so he's afraid to go to trial, or he doesn't want to spend the time, he's too busy. I mean, you know, I always tell -- and it's true-- I'd rather go to trial than anything else. My favorite thing in the world to do, just about. But, um, you know, it's not always in your interest.

And so it's a process. You start early. I always invite the family in if they're, um, you know, some clients don't want their family to know anything about their situation, but others, most of them do. I always tell them that, you know, you're going to find out who your friends are and this is a marathon, not a sprint. You have to realize this is going to go on for a long time. It's kind of like being diagnosed with a serious disease. You know, and we don't know what the prognosis is yet, but we're going to work on it.

And then, as you go through the process, generally, what I do is, you know, I've got to figure it out myself. You have to take a look at, at the facts of the case and the defenses that are brought to bear and also, who the prosecutor is and who the judge is. Quite frankly, if you know you've got a judge who's going to give you a fair trial, then that changes everything. So those initials on the indictment are extremely important.

Um, and, you know, as you assess the evidence, you have to look at, uh, the facts beyond change, which I always believe, you know, that's the guidepost. There are certain facts you can't change. Certain things happen and there's nothing you can do to change them. So do you have a theory that fits with those facts beyond change? And is that theory one that you can make more attractive to the jury than the government's theory? If so, then you have it, but even then you have to explain to your client that it's basically walking through a minefield and we've got to make sure we don't step on any mines.

And a lot of times they want to do stuff that's real aggressive. And a lot of lawyers, you know, that's how they make their money, you know, they go to court and they scream and yell and clients are like, oh, that's cool. But I've never seen that really be very successful.

Matt: I frequently tell clients, I can't be your lawyer and your therapist. Because during that period where we're getting to know the client, we're establishing that relationship on the human level, we're talking about the risks of proceeding down the path of potential trial instead of something short of that. It's oftentimes that they're on this emotional roller coaster. How do you deal with that?

Patrick: Well, actually, I'm not obviously a therapist and I'd probably be a lousy one. But, um, but I, uh, I mean, I'm willing to... you definitely feel like their therapist a lot of times. And as long as they're not concerned about running up the bill and they want to vent to me, you know, I usually, I'm usually



pretty careful about not, uh, about making sure the bill stays within line, but, I'll listen to you all day long, man. It's, your life's on a line and, um, and I can relate to it. So, I'll listen to you, I'll listen to your troubles.

My problem is when you have really bad ideas and you get mad at me for not adopting them. Because I'm not going to do something stupid, I won't do that. If you want to do something stupid...

One nice thing about doing this kind of work when you represent these folks with a lot of resources, they're all usually talking to two other lawyers. So, like, they'll come and say, well, you should, we should do this or that or the other thing. And I'm like, I don't really think that's a good idea. But, you know, if there's somebody you think can do this better, like, knock your socks off. I didn't worry about it. So, um, you know, generally that, when they see that, they like, oh, this person has confidence in what they're doing and they're not worried about me going elsewhere. Because I'm really not. If that's what you want to do, you know, I'm just, I'm not going to engage in stupidity. So, you know, it just to me, it's like, they're going through essentially one of the worst things you can go through in their lives. Usually there's big family problems around it. Usually there's financial problems around it.

And so, yeah, you know, you need to be, you need to meet them where they're at.

Matt: Pat, how early do you get into the discussion of the federal sentencing guidelines? You know, I was trained at an early age in terms of my practice that you got to have those conversations starting fairly soon in the attorney-client relationship. At what point do you veer off from the guidelines to talking about the trial penalty-- or the so-called trial penalty under the guidelines-- if you are in fact convicted. When do those conversations start to creep in?

Patrick: Well, let's start with it is not so-called. There's a trial penalty and everybody knows it and to pretend there isn't is ridiculous. You know, we have a, we like to, we have this theory of what our justice system is that is not in line with what our justice system actually is. It's just, it's unjust. So let's start there.

But to answer your question, it kind of depends. So, uh, it depends on how important they are to the ultimate decision, and it depends on the type of case it is. And also, like, how insanely high they are. A lot of times, if I have a client whose guidelines are way out of whack with what I believe is appropriate for the behavior that they're in trouble for, I'll stay away from them for a while, because I don't want to totally flip them out.

To me, it's, you know, you educate people, you meet them where they're at, and you educate them gradually as to what they're looking at. And then at some point, I'll do a presentation to them, almost like a reverse proffer, where I basically show them the worst evidence as I see it, and then I go through the guidelines with them and explain to them that if we do go to trial and we do lose, that these are the numbers that you're looking at. Depending on the, you know, and again, you take into context who the judge is. Because, you know, some judges love the guidelines and some are not so interested in them. And, you know, you have to have that conversation, and obviously you have to have it before you enter any kind of a plea, because the client needs to be fully informed.



So it really depends on the case. I find they're not particularly helpful in terms of resolving a case. Clients -- a) they're really hard to understand. I always explain them by saying it's like buying a car, you know. Back in the day, you buy a car and if you wanted air conditioning and power steering and power windows, and it was like another five-grand. Well, the guidelines are same thing. You could plead to fraud, but, you know, it comes with this upgraded package that raises your sentence by, like, four years. It's just kind of a bummer.

Matt: We're operating in a guidelines framework these days where relevant conduct counts. And I've spoken on this program with former members of the Sentencing Commission who have advocated for that to change and to inject some level of center component into the federal sentencing guidelines.

I want to get your thoughts on it. Relevant conduct, you know, for our listeners who may not be in tune with it, really means that you can have facts and circumstances that don't bear on the ultimate conviction being used at your sentencing. How uphill of a mountain is that to climb after you go the distance of trial, potentially lose, and now have to face relevant conduct being used as part of your sentence?

Patrick: Well, relevant conduct is really an unfortunate portion of the guidelines, because it's been so expanded. It's such an expansive view of the situation that it can really, as a younger lawyer, there were times that I'd look at the guidelines and think they were one thing, and by the time you got the PSR, they were an entirely different animal, because--

Matt: Is this my client? This guy that they're writing about?

Patrick: So, uh, you know, I always have a conversation with the client about the fact that this is a fight we're going to have to have. And you know, there's two kinds of probation officers, wannabe social workers and wannabe cops, and you have your fingers crossed that you get the first and not the second. And, uh, you know, you can put almost anything in relevant conduct and the government often tries to.

You know, essentially, discretion over federal sentencing was handed over from the judges to the prosecution during the Reagan administration. It has never been wrested back. The prosecution largely drives the framework for the sentence. *Booker* and *Fanfan* to me-- which is, for those of you who are, you know, weren't around, they're the two cases that changed the guidelines from mandatory to advisory. Total cop out, one of the, one of the most, egregious BS things the Supreme Court ever did in my view, and that's a pretty high standard. You know, basically, well, these guidelines are unconstitutional, but we're just going to call them advisory. It's like, they just made that up out of thin air. And, of course, for the first five to 10 years after they did that, they were still essentially mandatory because all the judges just followed them anyways.

Now, that has gradually broken down as folks see the problem with the guidelines. And the problem with the guidelines is-- I'm sure you've had plenty of podcasts about this-- there's like, no empirical basis for the numbers they throw out there. Like, the loss table is just made up. I could have made it up myself. I would have made it a lot less egregious.



Matt: Some bureaucrat felt good about the fact that they were stacking months on to the sentences based on how big a numerical score got.

Patrick: Politicians get elected by scaring people, and crime scares people, so they, just pass more egregious bills and we end up with a lot of people in jail who shouldn't be. So, it goes.

Matt: I want to shift gears slightly to a bit of a case study. I would say one of the biggest professional successes that you've had in the past several years and that's the defense of Philadelphia City Council Member Kenyatta Johnson. In November of 2022, a federal jury found Council Member Johnson not guilty of participating in a bribery scheme that allegedly saw the lawmaker accept thousands from two former nonprofit executives in exchange for what the government called "political favors."

This was his retrial. So you went through this twice after the first jury hung and you and your client really did run... I guess if a trial is a marathon, this is like one of those ultra-marathons where you need to change your shoes in the middle because the soles have worn out.

The crux of the case was that prosecutors argued that the council member's alleged co-conspirators funneled bribe money to him by making payments to a consulting firm under what they referred to as a sham contract. And they said there was an alleged quid pro quo exchange, whereby the council member introduced certain favorable zoning legislation favoring those who made the alleged bribe payment. But in the end, the jury didn't buy it. The gamble paid off and he was acquitted. Like I said, it was a second trial after the first resulted in a hung jury.

You know, what was the downside exposure if the council member had been convicted?

Patrick: Well, I suspect, well, let's start with his career would have been over.

Matt: He would have forfeited public office, right? I mean, he would have been forced to forfeit.

Patrick: It was a career-ending event. And he probably would have done anywhere from 36 to 60 months, I would assume. Basing that off other sentences that that particular judge gave to other individuals. And the guidelines would have been higher than that, but we had an extremely fair judge. And there were a lot of, tons and tons and tons of mitigating factors on my client's favor should we have ended up where we needed to go to sentencing.

But of course, you know, judges always have the whole issue of they got to send a message and all that stuff. So, I'm sure he would have done time. Which really would have stunk because he had two little kids who are really awesome. I love them both, they're great.

So, yeah, that was, ah, that was a daunting situation. I did have the benefit of having an innocent client, which is always kind of nice. Probably the scariest thing you'll ever have in your career is an innocent client. Um, I've had several and it's always extremely nerve-wracking. A lot easier to have a really guilty client who you're like, hey, I'll get the best result I can. But, you know, so it goes. But, uh, yeah. Great guy, too. He was just a pleasure to work for, just always trusted my judgment. He's the



kind of guy like, he'd call you up the night before the closing and he'd be like, leave it all out in the field, Pat. That's like, his whole advice.

Matt: A little Knute Rockne speech before you go out to the field.

You know, was there ever a real prospect of a disposition short of trial? Was the government dangling anything--

Patrick: Oh, yeah.

Matt: In front of him to, to try to get him to take the exit ramp?

Patrick: Yeah, they were dangling from day one, actually, my very first meeting with them. I came into the case a little late. So just a little bit of background, the alleged bribe was a job that, this nonprofit hired my client's wife to do. Um, what the government seemed to refuse to take into account --and what really ended up helping us win the case is --his wife was extremely qualified for the job and actually did work. So it's kind of like, you know, it made no sense from that perspective, at least to me.

So I was hired because he received a federal grand jury subpoena. And I called up the prosecutor and he said, come on down, we got stuff to show you. And the very first thing they did was throw an indictment in my face. No, not indictment, an information to a guilty plea, which was from an elected official from a different city who had been bribed by the same people. And they basically threw it in front of me and said, this is what you're looking at and your guy needs to come in.

First thing I looked at was the initials on the indictment and I was like, is this a related case? Because those of you who don't know, you know related cases all go before the same judge, at least in our district. And they were like, yeah, it's definitely a related case. This is a related case. I said, you're sure it's a related case? They said, yeah. I said, all right, cool. So I knew I had a judge who was a former trial lawyer who would give me a fair trial and, you know, wouldn't like be an extra prosecutor. So that was nice.

Matt: As if that is even relevant to these circumstances. It's astonishing the types of games that prosecutors play, right? Like--

Patrick: Yeah, well, yeah, but and then the thing that really got me in that, you know-- they do all the time, but they did in this case as well is-- you know, because my client's wife was involved, they were kind of like, you know, well, he can come in and throw himself on a sword and we will leave her alone. And, um--

Matt: And he won't orphan his children or something.

Patrick: Yeah, basically. Yeah.

Matt: Yeah.



Patrick: Yeah. And then, uh, you know, there were bigger politicians that they thought he could be assistance for. Yeah, thanks, I'll go talk to my client. Um, and of course he was like, I didn't do this. You know, my wife got this job on her own. It's had nothing to do with me.

If you met him and his wife, you'd realize two things. One, she's probably smarter than he is, as much as I think he's a very smart guy. And two, like, they're like one of those, you know, like, some marriages, everybody knows exactly what everybody else is doing and others, like, they're always busy doing other stuff. And like, you know, they get together when they get together and. so, like, she was doing all sorts of stuff, he had no clue, you know. And actually we used that to our benefit with the jury, particularly, because we know we were careful to try and get as many women --and some women business owners and minorities because my client was a Black individual-- on the jury, because basically it was like, insulting. It's like, well, your wife couldn't have a job without you kind of thing. Um, so we kind of shoved that one up their butt.

Matt: Nice. Nice. Was he, was he aware of the odds that were so stacked against him with this 0.4% acquittal rate?

Patrick: Yeah, he was. And it got even scarier. Because when we hung the first case, in our district, if you want to talk to the jury, you have to get permission from the judge. Ironically, that's because a client of mine about 20 years ago started calling up jurors. Ended up getting interviewed by the FBI, but I didn't know he was doing it. But anyway, so they passed this law that you got to get permission from the judge or some local rule. And so I called up the judge and I said, hey, is it cool if I talk to the jury? And he was like, sure. Because, you know, he trusted me. And, um, I talked to the jury from the first trial, and when they first went back, they were 6-6, hung. And by the end of the deliberations, they were 9-3 in favor of guilty. Because, when it comes to picking a jury, my advice is always, it doesn't matter how many people you got on your side, you need strong people on your side. I learned this from death penalty work. You got to find two or three people who are not going to cave. You're not going to win the majority on the death penalty case. And you only have to get one or two, you know, not to go there. So you have to find the strong people who agree with you. Um, and fortunately, we had three really strong people. One of whom was an immigrant from Africa, a really fascinating dude. And he was just infuriated by the government. He wasn't going there no matter what.

So after my client heard that, he got real nervous about the second trial. Uh, we're hearing it goes as close as nine to three. yeah. So, uh, we learned so much from the jury though. And, and it, uh, essentially what happened was, they explained to me that what they found as problematic in our theory, uh, why they couldn't get people to go all the way there. And like, we addressed those issues in the second trial. We approached those things differently.

Matt: Would you say that having the benefit of investigating the thoughts of the jury from the first trial was really instrumental in securing the acquittal?

Patrick: Yeah, absolutely. 100%. And it was funny too, because two of the jurors came to the second trial, like they wanted to come see--



Matt: Wow.

Patrick: --some of it. They had become real friendly, because a lot of people in our district travel and they have to stay in a hotel and all. So these, these two women had become friendly during the first trial and they were two of the holdouts. And so they came to watch the second trial. And when the prosecution saw them there, they lost it. They were like, ran up to the judge like, what are they doing in here? And he's like, hey, it's an open --

Matt: It's a public trial, you know?

Patrick: Yeah. And so then they were like, well, who told him about about this? And I was like, I did.

Matt: It was me.

Patrick: You know, I was surprised they hadn't talked to them, because I had figured they would.

Matt: I mean, at that point, they're basically your best consultants.

Patrick: Oh, yeah, it was amazing. That was pretty cool. I enjoyed that a lot.

There were so many great things about it. It was such a fun trial. We had a great team, wonderful people here working for me. Two really smart associates there, actually, I think they're both partners now.

Matt: Yeah, they are.

Patrick: Did a phenomenal job. And, uh, and, uh, I had a secret weapon, um, the person who's sort of the go-to 3rd Circuit genius in our district is a close friend of mine. And I was calling her every night for advice. So.

Matt: Well, Pat, I mean, some of your insights today are just invaluable for our audience. I can't thank you enough for being with us and sharing with us your decades of experience. And in particular, this one case study on what what it means to go the distance and how your client rolled the dice and won against ridiculous odds.

I got to ask, the gamble paid off, what's the councilman doing now?

Patrick: He's the President of City Council. They just actually, it's pretty wild. They wrote an article about him last weekend about his first year as president. And, uh, it's been an interesting year, what with the Sixers arena and all that craziness. And, uh, it's funny, every article they write about him always says, you know, he rose from the ashes and they mentioned this thing, you know, several years ago, uh, but not without a lot of detail. And, uh, he's just a nice, nice man. He's a really, you know, he grew up-- his story is amazing story. He grew up in the neighborhood that he represents. He had issues as a juvenile, could have been, uh, school to prison pipeline. Managed to get a



scholarship to go to some small state university, like, six hours away, and, uh, you know, just raised himself up, and he's just basically a really good dude.

And so that's cool. Makes me happy. Hopefully doing good things for his people and the people of Philadelphia. I know one thing is, there was no corruption involved in this particular circumstance. And actually, the other interesting thing that was another thing we had going for us was the legislation that he approved was extremely popular. It was basically a zoning ordinance so that an abandoned building could be rehabbed. And, um, there were all sorts of issues with it because it was a historic property and there was all sorts of zoning problems. And uh, you know, I had the local civic group. They voted in favor of this project. I had the woman who was the head of it ready to come testify. The government moved and eliminated a precluder and the judge actually did preclude her. We had a, there were a lot of really interesting trial issues. Because the law has changed since that trial around the particular honor services the fraud. But, at the time, it was not a defense to honor services fraud that my client would have done what he did regardless of the alleged bribe. So I was precluded from presenting a lot of evidence about the fact that he would have done what he did without the alleged bribe. Which I thought was really unfair, but it was the law. I mean, this judge was exceedingly careful. I kept there was a better law in the 2nd Circuit. I kept saying, and he kept saying, we're not in the 2nd Circuit, Mr. Egan. So what are you going to do? Yeah, so that was a problem.

The other problem is-- and you'll find this when you try any kind of white-collar case in federal court-- your emails. If your client isn't going to testify, the things they say in emails, I can't admit. The government can admit them all day long if they like them, because they're co-conspirator statements, which is an exception to hearsay. But the emails that I like, where my guy says stuff like, that clearly shows that he's not, you know, guilty, frankly, from my perspective, is inadmissible hearsay. And I'm like, you're hiding the ball from the jury here, like, this is just not fair. But that is, the judge is actually an expert on Rules of Evidence, and he was right. But it was really, really a problem. But so we just kept introducing the headers of these emails like, so that thinking like the jury will get the point.

Matt: I want to end here. You've done a lot of trial work. Where does the Kenyatta Johnson acquittal rank up there among your trial successes? I know the death penalty stuff is where your heart is, but in a white-collar case, where does that Kenyatta Johnson decision rank up there?

Patrick: It's up there, man. I mean, you hit the nail on the head. I have tried 12 death penalty cases and nobody got the death penalty. So that's the thing I'm most proud of.

But, um, yeah, it was up there, man. It was, first of all, you know, the *Inquirer* was there every day. There was like an hourly blog. My wife says the first time in 30 years she knew what I was doing. So, uh, you know, it was cool. Everybody town was like a lot of, you know, the respect of your peers is probably the most important thing to you and, you know, people who I think are really good lawyers, you know called me to congratulate me. So that was cool.



Matt: Yeah, I know we're really proud of you here at the firm, Pat. You contribute a lot to helping our group expand and you're very generous with all of your experience and your expertise. I can't thank you enough for joining us on this episode of "The Presumption of Innocence."

That's all the time we have. We'll see you next time. Take care.

Patrick: Cool. Thanks for having me.