



Fox Rothschild Podcast

The Presumption of Innocence

Episode 74: Shattered Scales: Structural Harm in the Criminal Justice System

Featuring Matt Adams of Fox Rothschild and Emily Galvin Almanza

Matt: Hi everyone, and welcome back to The Presumption of Innocence. I'm your host, Matt Adams. This is a podcast brought to you by, as always, Fox Rothschild and the White-Collar Criminal Defense and Regulatory Compliance Practice.

And today we have just a absolutely fantastic guest. Today, we'll be speaking with Emily Galvin Almanza. She is the Co-Founder and Executive Director of Partners for Justice. It's a nonprofit creating a new, collaborative model designed to empower public defenders nationwide. She's a former public defender herself, a federal court clerk and just an extensive academic pedigree. But her new book is *The Price of Mercy: Unfair Trials, a Violent System and a Public Defender's Search for Justice in America*.

And I got to tell you Emily, welcome to the program, but some of the reviews of your book are just outstanding. The likes of Michelle Alexander, Congressman Jamie Raskin, the ranking member on the Judiciary Committee in the House. This is a tremendous work that I think that the way to summarize it best would be, you're peeling back some stuff that if you're not in the system you don't get, but those of us that see it sometimes get-- dare I say-- a little immune to it, because it's just the way it goes. But you're saying the quiet part out loud in a way that I think really needs to be said. So let's dive into it. But first, talk to me a little bit about your background as a public defender, because I think that obviously shaped the book.

Emily: Yeah, it really did. I mean, as a public defender, as you point out, you're going to the courthouse day in and day out. And for me, I was going, you know, first in San Jose, California, and then later in the Bronx. And you're bearing witness to stuff that is shocking. That is wrong. That is appalling. Over time, people start to act like this stuff is normal. They start to act like it's completely normal to see completely innocent people, kind of routinely accused and railroaded through a process so punishing that an overwhelming number of them will plead guilty, even though they probably shouldn't. And they think it's normal to have regular citizens be treated like garbage by their government just because of the position they're in, having been accused but not convicted of something.

So having represented-- I think at this point I've represented around 2000 people -- at a certain point, I started to feel like we need to talk to the other half of America about what's really happening in these rooms. I mean, after all, half of Americans have had a loved one locked up.

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Half of Americans have had some kind of familial experience that tells them exactly what's happening behind courthouse doors. But the other half of America has no idea. They think we have this fabulous truth-finding system that works exactly as it was intended and is not doing anyone any harm. And after a decade in public defense, one just wants to scream from the rooftops what's really happening.

Matt: We're seeing across the country an epidemic of rollbacks to civil rights, things, constitutional principles in this country that we thought were tried, true, tested, as American as apple pie. And we are living through an era that sometimes really shocks me. And, why now? Why is exposing a broken system, as you say, something that you had to do at this moment in history?

Emily: I'm so glad you asked that question. So I'm going to pick up first on the word "broken." Because I think there's a strong argument to be made that the system is functioning exactly as it was intended, because it wasn't intended to help ordinary people or disempowered people against the full force of their government.

And the reason I mention that is that that's what makes it so important in this moment. In a moment when we are watching government overreach at a scale we've never perceived like this in this country, we are called upon to ask, what is the proper role of government and how it interfaces with the citizenry, how it treats us, how it treats our neighbors, how it treats our families? What are we willing to accept? What do we, the governed, consent to in the method of our governance? And I frame it that way because for decades and decades and decades in the criminal court system, we've seen a system that is nonresponsive to the consent of the governed. I mean, I guess what I would say is for those of us who've been working in the criminal courts for years, watching what's happening right now in the streets is only surprising in how overt it is. It's not surprising in its nature or its extent.

I mean, we've watched bad things happen to good people carried out by some folks with badges for years and years, because we have not built a system that is designed to create equality, to find truth, to give everyone a fair shake. If we had that, we'd have really great criminal discovery laws, which we all know, we all know that it completely depends on what jurisdiction you're in, in this country whether you even get to see most of the evidence against you when you've been accused. If we wanted a system --

Matt: In New York, where I practice, they've dramatically rolled back both the timing and the scope of discovery in just the last year.

It's, it's remarkable.

Emily: Oh my God, when I first moved to New York from California-- so in California we have pretty solid discovery laws, and it's reciprocal discovery, so, both sides show each other the evidence they've got. Which if you're a lay person, you might think to yourself, well, yeah, like that's kind of the only sure way to do it. Yeah, right. This isn't rocket science, but you know, once I moved to New York I ran face-first into the lack of discovery and the lack of a real speedy trial rule. Because of course in California you have the right to a speedy trial. If you invoke your right to a speedy trial, you



get your trial within a given term-- depending on the status of your case, it might be 30 days, 45 days, 60 days-- but you get your trial fairly immediately.

In New York, oh, sure, technically, there's some limits on how long this can take, but only the days where the delay is caused by the prosecutor are going to be counted. It was this whole byzantine system. And I think that's what I mean, is that like, laypeople often believe that we have the system designed to find truth and justice. And what we actually have is an apparatus designed to get conviction as efficiently as possible.

In New York, in that time, we had a perfect example of that. It would've been inefficient in the pursuit of conviction to create a real speedy trial rule, which empowers the defense, lets people say, no, you know, you want to prove me guilty of something, put up or shut up. Show me the evidence right now, it would've been inefficient in the path to conviction to have people have a real discovery obligation where their evidence was inspected and put in the crucible of investigation meaningfully prior to trial. So what we see in the streets right now is a government that has overtly said, we don't really care about the truth, we care about the expediency of punishment. And that is shocking to most Americans. But those of us who've worked in the criminal court system have already seen a government whose primary concern was the expediency of punishment.

Matt: Yeah. And your book is just so, it's so good, but you break it into two parts, right?

Emily: Mm-hmm.

Matt: The first is part one and the problem, and second is the solution. So you're not just, bitching and moaning that there's a problem. You're actually coming to a realization of what it is we've got to do. So let's talk about the problem for a minute. One of the most shocking things that early in my career I saw was the cattle call at like a, an initial appearance when folks, either shackled or not, were sort of brought in for their first touch with the criminal justice system. And there were clearly the haves and the have-nots, right?

There were the people-- most of my clients --private counsel, had money. They afforded to, to hire me, my law firm. But there was the have-nots that were this element of people that were kind of forgotten. And that would either flicker onto a screen because they're being remotely arraigned from a cell somewhere. Or they would be sort of marshaled in in a jumpsuit, correctional facility jumpsuit. And I just remember how transactional that seemed as a young lawyer and how it almost appeared as if we had dehumanized an element of society.

But what was worse was some of the lawyers seem to be okay with it. As a young lawyer without a lot of experience at that time, I was appalled by it. It was something that got my, the hair on the back of my neck standing up. But I would just see this transactional, you know, grizzled lawyer come in, a little disheveled maybe, and say, ah, we're going to do this, you're going to do that. And these people are making decisions in 20 seconds, in two minutes.

I had a guest on this very program who pled guilty to a crime he didn't commit. Served nearly 20 years incarcerated before he was exonerated by DNA evidence and good lawyering. The problem is



multifaceted, right? It's not just the policymakers giving us bad laws. Every piece of the system has flaws. And I think your book really pointed that out because it took each piece of it, like head-on.

In your view, right, if we talk about the judges, we talk about the lawyers, we talk about the inadequacies of our public defense system because we have people that are defunding it. What is the most glaring of those systemic issues?

Emily: It's hard to pick a most glaring, but I'm going to pick the same entry point you picked, which is talking about the role of money in setting the tone and outcome of a criminal case. So I want to be clear that the have-nots are almost everybody in this context. 80% of people arrested in our country are people who are low income enough to be assigned a public defender like me.

Which really tells you who the system is directed at, right? Now, let's follow the role of money through this entire system. We hear a lot in the context of cash bail about how what cash bail really does is condition liberty on wealth. And that's absolutely true. What it does is it means that if you've got endless money, it doesn't really matter, you know, up to a certain extent it does not matter what you're charged with, you can pay for yourself to be set free and spend your time fighting your case from the comfort of your home with your family.

I'm not saying that spending your time, fighting your case from the comfort of your home is a bad thing. I actually think many more people who are only accused-- not convicted-- should be fighting their case from homes where they can go to work, participate in their life, assist in their own defense. We've set up a system where poverty deprives people of liberty.

I'll never forget, I was in court one time. I was in New York and I was standing up on behalf of a client who was unhoused, living on the street. And the judge was about to set \$300 bail on this case. And I protested, because that \$300 might have been \$3 million to my client. I mean, he was never going to be able to pay that amount of money. And I remember the judge said, counselor, it's only \$300. And I remember thinking, how have you lost touch with the fact that you're looking at your fellow human right now? There's no world in which that \$300 is just \$300. That is a barrier, which, as you point out, puts people into a completely different context in their case. That money determination at the very beginning of a case then sets a person on a course where they will either be experiencing tortuous conditions or fairly comfortable conditions during the pendency of their case.

Now I want to be clear, in the book I detail how bad it is, even if you're out. Like even if you're out, especially if you're out and poor, you're still struggling to come back to court 80 gajillion times for court dates at which often nothing really happens. You may be laid off or deprived of access to housing or experience any number of hardships just because of an accusation.

If a person's in custody, they're experiencing jail every day, being treated like they were already convicted of something, trying to withstand an environment in which 80% of people experience or witness violence daily. An environment that shaves two years off your expected lifespan for every year you spend in it. An environment that sends 80% of people home with some kind of long-term chronic illness. And what's worse is that jail is actually criminogenic. There have been really well-



structured studies showing that exposure to jail can take a person who was unlikely to commit any crime in the future and render them substantially more likely to commit crimes in the future.

So this initial money determination is putting people-- purely by virtue of poverty-- into a circumstance where withstanding pleading guilty is much more difficult. And also their own future prospects are systematically destroyed.

Now, further following that money, just for one more beat, I do want to add, this is a way of compounding poverty. It's not just punishing poverty, it's compounding it. American families lose over \$300 billion every year due to prior incarceration. They're \$300 billion poorer. Incarceration cuts a person's expected lifetime earnings in half. Much of the cost of incarceration itself is not even born by the individual who is incarcerated. It's born by their family. So this is a system that is setting people on a different track because they're poor and then driving them further into poverty in ways that are bad for public safety.

I'll close with just one stat that I think really shocks people when I share it, and this is really the point of the book, right, is just to share all the shocking details that most of us will never come across unless you're in the trenches. There was a study from Alabama, Alabama Appleseed, a fabulous organization that showed that when people are saddled with criminal court debt, 38% of them commit new crimes to pay back old debts. So literally just the way in which the system entrenches poverty and hardship is spurring people who might not otherwise have committed crime into engagement with crime or harm.

Matt: Yeah, those statistics are astonishing. One of my favorite chapters in the book was where you talked about judges. And the name of the chapter is "All Rise." It's chapter two. People, go out and buy this book. It's tremendous. But it's called "All Rise: Judges Bail and Being Human on the Bench."

You started out by quoting John Roberts at his confirmation hearing. And he basically said that judges are like umpires in a baseball game: They don't make the rules. They apply them. And then he concluded his remarks by saying, nobody ever went to a ball game to see the umpire. But you then peel that back and say, we have problems in almost every facet, but none more striking when you talk about the judges. And I immediately, when I read this chapter, went to judicial shortages. There, in New Jersey, one of the states where I practice law, we have had for quite some time-- particularly in our urban environments-- we have had judicial shortages that have extended periods of incarceration pretrial where people are detained, pretrial. We have people that are sitting waiting for their day in court, so to speak, because the system can't handle it. It's overloaded.

We have a political mechanism to fix it in a way, which is to get more judges. And New Jersey judges are not elected, they're appointed. But legislative gridlock at times has created some inability to get that, that moving. You write about the role of judges. And in response to John Roberts, if you'll indulge me, I'll just read a couple of your words.

You say, "Here's the problem. No one has ever given an umpire the right to decide if their fellow man should be left to die in a field or a fetid, flooded jail cell." And the alliteration of that is, is almost as striking as that image that it conjures. So, talk to us about that human element in all of this, that this



umpire that's out there, sort of either deciding to toss a life away or perhaps save a life, is subject to the human condition.

Emily: Absolutely. So John Roberts was making those remarks in the same time period as Hurricane Katrina hit New Orleans. And people were left in jail cells to die. They were fighting for their lives in flooded cages. And I mentioned this juxtaposition, I wanted to start with this juxtaposition, because yeah, it does highlight the absurdity of comparing the role of the umpire to the role of the judge, where the stakes are just not the same. That is not the same game. It's not even the same field or stadium.

But also, it really encompasses the problem with how we approach, how we support judges. So the chapter deals a lot with, first of all, who gets to even become a judge. There's a lot of problems in our field with the lack of different perspectives on the bench. Because most people on the bench come from really similar backgrounds, and that is not healthy for the system as a whole because different perspectives make a better system, and different life experiences--

Matt: Too many, too many prosecutors on the bench if you ask me.

Emily: Too many prosecutors, but also too many people who've never been followed around by a security guard to see if they're shoplifting, right? Too many people who've never been pulled over for driving while Black. I mentioned it in the book, how my life was changed, in particular, by two Black judges who were deeply meaningful to my outcomes in life.

All too often we as a profession, and the legal profession as a whole, has not set itself up to be inviting to people from different backgrounds. There are all kinds of barriers that are keeping this profession majority white and majority wealthy. And I think that itself hampers the delivery of justice. Because a person isn't really ever able to have a shot at getting a peer perspective if they come from the community who is most impacted by our criminal court system.

But just beyond that, the other thing that John Roberts remark really highlights for me, is we expect that being an umpire is enough. We say, okay, you can get up there in that bench and you can put on that robe and then you're just going to be fair, right, you're going to be totally fair. Which ignores the fact that all of us come to wherever we are in life-- I'm sitting before you right now with all of my experiences, prejudices, fears, dreams, ideas of the future, conception of reality. And the thing about criminal law is that it really taps into our limbic system, right? The subject matter of criminal law. Sometimes it's just annoying stuff, but sometimes it's really scary stuff. Sometimes it is stuff that plugs directly into that space in the brain where bias flows because it intersects with fear, with tribalism, with our allegiances, the groups that we support or identify as. And we don't give judges hardly any training for the vast scope of the role we require of them.

Not just training on like, how to set aside a lot of your personal perspective and experiences and try to really reach for neutrality and how to really listen. We don't really train them on how to engage the full background and prospects of members of the public who come before them. And we really don't train them on science and how to analyze the vast quantities of scientific evidence and pseudo-



scientific evidence that they're supposed to be making a call on. We just expect that the robes are magical.

My prescription for our judge situation is not only that we need to seek out wildly different perspectives, but we need to rethink how hard this job is and give people the tools they need to avoid the pitfalls that result in studies that say stuff like, judges sentence children more harshly if their preferred sports team has lost within the last week or two.

Matt: That is just absolutely remarkable, astonishing and terrifying at the same time.

Emily: It really is. I mean, it's, it's all the judges are harsher before lunch when they're hungry, they're nicer after lunch. It's just like such human stuff, really human stuff that we should be livid about as a profession and working hard to change. And in fact, it largely goes ignored.

Matt: And I talked a little from a personal perspective as a young lawyer when I first came into the field some of the observations I made. But there was one passage in the book that really kind of just jumped off the page. I had to thumb through the copy that you sent me to go find where I underlined. And it said, "One of the hardest things to get laypeople to see when you operate daily in the criminal court is how mundane the injustice is." That, of a lot of powerful stuff in this book, that is one of the most powerful passages. What did you mean?

Emily: I meant that our criminal court system is a little bit like if you took the processes of the DMV and you gave them life or death consequences, right? There's a sort of bureaucratic way of setting someone aside, setting their needs aside.

I'm just going to make up an example so that I'm not inadvertently telling a client story. I tell a lot of client stories in the book. I have permission and the wonderful collaboration of my clients to tell those stories. But in this case, I want to give you the perfect example, so I'm going to put together a hypothetical. Let's say you've got a young person who has been sentenced to probation. And this young person was supposed to go check in with probation, but something happened during the week they were supposed to check in, which is that their partner had a baby. And you know what it's like-- maybe you know what it's like to have a newborn at home?

Matt: I have three.

Emily: Okay, you got three. So three times over, you know what it's like: the excitement and the sleeplessness and you're basically a parent zombie for like months. And let's say that this person is doing everything right as a parent, right? They're present in the home. They're working hard to support their partner. They've found a safe place to live. But they didn't check in with probation. So that next court date comes and probation has filed a violation saying, hey, you didn't check in with probation. In the world of almost any group of humans on the planet, if you brought any 12 people from the community together, you said, hey, this person is being a great parent, but they missed a meeting. What do you want to do? I think most people would say, I want this person to continue being a great parent. I want this kid to continue having a two-parent home. Let's maybe ask this



person what they need. Are they getting enough income? Do they have enough diapers and formula? Like how could we help? But in the criminal court system--

Matt: Get them a planner for God's sakes, you know?

Emily: Send a reminder about the, yeah, give them a chance. We operate in the criminal court system in a way where that failure to report may be prioritized over all the other good things a person is doing in their life. And the system's mundane desire to process a consequence-- there's been a problem, now we need to process a consequence --can result in this weird environment in which you're in a room and people are like stamping paper and delivering outcomes with no emotionality in their voice, the way they do a million times a day. But to this young parent, they're going to be taken away from their family for two weeks, stepped into jail. They're going to lose the job they fought so hard to get. Who knows if the family's going to be able to make rent? And it's all done with the demeanor of issuing a driver's license.

So that's what I mean about the crazy-making feeling of being in this world of life-altering decisions delivered with almost a sense of boredom.

Matt: It really summarizes all of what you take in hundreds of pages to spell out as the problem, right? It's every facet. It's not just this one. It's not just that one. Political debates in our country tend to just oversimplify things dramatically, right? And so I hosted, a couple episodes ago, a debate of a proponent of cash bail. I wanted to get his perspective-- I don't particularly believe in cash bail, but I wanted to hear his perspective-- against a cashless bail advocate, a community bail fund advocate. At a certain point, I felt like I was refereeing a wrestling match because they were both so passionate. I agreed with one over the other, but was trying to give them both a fair shake. And at the end of the day, the issues-- in a way, upon reflection-- almost got obstructed by the passion.

And in so many of the issues that involve buzzwords, like criminal justice reform, bail reform, we have this just visceral desire to just go to our corner and scream at each other from the corner without looking at the fact that the system is holistically, top to bottom, broken. It's not unfixable. It's not. Let's scrap it and throw it away.

I mean, I also had Erwin Chemerinsky, the Dean of UC Berkeley Law School, on the program, and he said, you know, we may need to just scrap the Constitution. And I've had other folks that say, no, that's a little extreme. But one thing about this book is it really does dive into all phases. And when you outline in part one, you start with the power of public defense, because that's obviously your background. And I think it's a very compelling way to begin the book and really gives you the bonafides to go into the stuff that you'd go into from there.

But it's not just judges, you talk about what you call the grind, the maze of court dates and their consequences. And that was really the hypothetical you just used. You talk about policing. You talk about the media. The game of telephone and this expediency over transparency and this notion of why we're hiding the ball with discovery. You talk about the bad science. You talk about juries. You talk about prisons and our prison infrastructure. You are not short on criticism of virtually any facet of the system. Is there, in your opinion, any facet of the system that's okay just the way it is?



Emily: Just the way it is? I mean, I think that would be giving up. We can always improve things, even things that are working really well. I will say that was a really deliberate intent in the book. Because so often laypeople encounter this subject matter in deep dive format. And that's awesome. Like you might hear a whole campaign policy document about mandatory minimums, or the death penalty, or the way parole is just cycling people back into the system and spurring recidivism. But the truth is, all of these pieces of harm and inequity work together. They amplify each other. The lack of discovery covers up the bad police investigation. Which then sanitizes the media blowing that bad police investigation into something huge that it shouldn't necessarily be. And results in the sentencing with bad factors that can put people in prison for years and years and years in ways that destroy their life and the lives of their families.

I mean, so it's all a huge Rube Goldberg machine. And we have to talk about all the different pieces of it, or else you can't make steps in the right direction because you may fail to see that by fixing one piece, you actually have failed to fix something else that's going to undermine your solution. So we have to approach it as a whole apparatus.

Does it need to be entirely scrapped? I'll say this: Every society should have a system for finding the truth and creating accountability when people engage in harm. They need to be fair. Ideally, they can be not unduly drawn out. But what we have right now, as I point out in the book, isn't built to find truth and accountability. It's built to secure a speedy punishment.

So, if I were to point out anything that I think is working, I will tell you I'm very proud of the solution I've spent the last seven years of my life working on. As you mentioned at the top, my work at Partners for Justice is to expand and transform public defense. And what we're really doing is, we're recognizing that when a person becomes a public defender client, it's 'cause something really bad is going on. Either there's some kind of underlying factor that they're struggling with that has impacted their conduct and made them become a public defender client. Or, let's say they were doing nothing wrong, just walking down the street one day, subject of a bad ID, and they get wrongfully arrested. Simply because of that arrest, they're going to experience a whole host of life fallout that can derail their planned future. So what we do is basically infuse public defender offices with the capacity to work on housing, employment, educational access, treatment support, benefits, transportation, family unity. Really, really, really, in a client-led, community-led way, saying to people, tell me what you need right now. What's going on, and how can we fix it?

I often describe it to people as like, it's the kind of help you would give your loved one if they were in this position to try to help minimize the damage. And that work, just taking care of people and then telling judges and prosecutors the story of how well those people are doing, has been staggeringly effective. We've eliminated about 9,000 years of potential incarceration, literally 9,000 years since just 2018. When we look at last year's cases where we did all those services and also told the story of what happened in court through mitigation, about half of those cases ended either in dismissal or a path to dismissal.

So, we can meaningfully reduce conviction, reduce incarceration, get people out of the system, and more importantly, out of the system with the kind of support that they need to be okay, right? Because being out of the system and still being street-unhoused and lacking a necessary medication



that you need in order to function in your daily life, that is not okay. You haven't really helped. You've avoided incarceration, but to what end? I'm very, very proud of what public defenders have been capable of when they are fully resourced and empowered to give care. And I think that that aspect of finding care in ways that don't short-circuit accountability ... that's what unifies the initiatives I've seen working the best right now.

Matt: Her book is *The Price of Mercy: Unfair Trials, a Violent System and a Public Defender's Search for Justice in America*. We're speaking with Emily Galvin-Almanza, we're going to part two now of the book. And you set the stage of the problems top to bottom, inside out, three-dimensional lobotomy of the criminal justice system exposing what those of us in it kind of know, but rarely want to say out loud. And then you don't stop there. You go into part two where you propose these solutions. And this is not some highfalutin academic exercise. These are like real things. So talk to us about how you landed on the things you talk about in the book for this section. Because this is where you could have, I guess you could have wrote multi-volume on the things that needed that need to be fixed, right?

Emily: Yeah. And also like, how many brilliant solutions there are all around the country. I mean, what pains me is that there's like easily five or 10 times as many amazing initiatives out there as I could possibly cover in just the space that I had. But what I really tried to look for was I went back through each chapter where I had issued critique and I wanted to find something that was already being done concretely-- something with results, something we could look at and turn over and decide its value-- that many members of the public wouldn't know about. Because I think for most people, when they think of big intractable problems in our society, they feel like those big intractable problems are unsolvable, and we're like searching for solutions, we're searching for ways to make it, we don't know what to do.

And in the criminal court system, I'm not sure that we have it solved right now. But I would say that there are a gajillion cool initiatives that make things better, that are super feasible, that literally all we need in order to have a better world is just the political will. I'll give you one example of the thing I was sort of trying to highlight for people. If you want to reduce one homicide, eliminate one homicide in a given region, you probably need to add about 17 cops to the block on which you want to eliminate one homicide. Which is, as you might imagine, very expensive. Seventeen cops are expensive. However, if you paint the sidewalks, paint the crosswalks, add a little lighting, green a dilapidated lot, you can reduce homicide by 75% in that same region. So you get a better bang for your buck. And even if I'm wrong, even if the study I decided turns out to have been terribly not true-- which I think will not be the case because I literally hired a research assistant with a PhD in study design, so I'm very confident in the studies I cited. But even if I'm totally wrong, you're still left with a more beautiful block of properties. You've increased property values. You've made a better place to live. I mean, so many of these solutions, you know, after-school programs that can reduce youth violent crime by 50%, right? Fixing up dilapidated houses, which drops crime in the vicinity for every house you fix up. Adding greenery to buildings, which not only reduces property crime outside the building, but reduces domestic violence inside the building, because for some reason it seems like people just act better around a lot of trees.



All of these are interventions that give us both a better world and a safety benefit. And I say that even--

Matt: So there's--

Emily: The same thing about my work is that even if I'm wrong, and my client does not live out their best future dreams that they were hoping for, they may have gone from being unhoused to being housed, or unemployed to employed. And that itself is enough, you know?

Matt: Incremental steps.

Emily: Incremental steps. I mean, I think, I often describe the work as abolition in action. Because I don't think incremental steps are enough to get us where we need to go, but I do think that-- turning again to Partners for Justice as an example-- every single time we give a person the support that they are asking for, and as a result they do not go to prison, we have proved that prison was unnecessary in that instance. It's like building a mosaic, right? The more instances in which you prove the lack of necessity for the punishment system and the great necessity of smarter interventions, the more you've made the case for ultimate abolition.

Matt: Yeah. And the praise of your book is just remarkable. I love the work by Michelle Alexander, *The New Jim Crow* and --

Emily: Me too.

Matt: She has given some praise for the *Price of Mercy*, and if I may just read it because it's very well said. "A searing, compassionate and utterly necessary book that pulls back the curtain with the clarity of a lawyer and the heart of somebody who's seen the criminal legal system's devastating consequences up close."

That is precisely what *The Price of Mercy* is, and it's really been a pleasure here today talking with you about it.

In our waning moments together, who is it that you want to read this book-- besides everybody that you want to go out and buy it-- but who are you trying to empower with the message and the deconstruction of the problem, and then the concrete policy steps that you offer as the solution? Who are you most geared at trying to empower?

Emily: I mean, this book is a love letter to public defense, and obviously it's for my clients and my colleagues and it's for our community to a large extent.

But I'll tell you what. The people that I most want to read this book are lawmakers and the folks who might yell at them. By which I mean, the people who are in charge of deciding criminal court policy. Largely, that's state and local lawmakers. The federal government doesn't actually have a ton of power because the Constitution, of course, reserves criminal law to the states. I would love for those people to just grab the book. If you already agree with me, I'm going to give you a ton of data and fantastic argument and supportive things you probably already agree with. If you don't agree with



me, give me a chance to show you where I'm coming from and the evidence that underlies these positions. Because I think that we have a path here to making a world with much more safety and accountability, and also much more opportunity for health and prosperity.

And then I say the people that yell at them, because as much as you might be able to get lawmakers to read your book, it takes a constituent to call up their representative and say, hey, this intervention is really cheap and can drop crime on my block by 50%, and I want this thing. Why can't I have this thing I want?

I want to empower ordinary people to have the evidence they need to kick up a ruckus with their local lawmakers.

Matt: Speaking to a local lawmaker, myself, you actually did empower me with this stuff in this book. All of which I agree with, but to have the empirical studies, and the way that you back up your words, is really empowering.

And, um, I kind of knew that's where you were going to go, that's why I asked you. But that is all the time that we have on this episode of "The Presumption of Innocence." Emily, thank you so much for joining us. Please, everybody get out there and buy this book. It's terrific. *The Price of Mercy: Unfair Trials, a Violent System, and a Public Defender's Search for Justice in America*.

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

Emily: Thank you so much for having me.