



Fox Rothschild Podcast

The Presumption of Innocence

Episode 80: Method, Not Madness: How Forensic Psychiatrists Help Criminal Defense

Featuring Matt Adams of Fox Rothschild and Dr. Steven Simring

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

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. At the intersection of mental health and criminal law is a vast and consequential area of study and practice, impacting everything from charging decisions, competency determinations, culpability defenses, sentencing, confinement conditions, and pre- and post-conviction supervision determinations, just to say a few. In episode 50 of this podcast, we talked with Elizabeth Kelley, who literally wrote the book on representing people with mental impairments.

Today our guest is a highly regarded forensic psychiatrist, Dr. Steven Simring. Dr. Steven Simring is really well regarded for his work in the field of psychiatry as a clinician, a forensic mental health evaluator, a teacher and a policy commentator.

Dr. Simring, welcome to "The Presumption of Innocence."

Dr. Simring: Thank you, Matt. I am a legend in my own mind.

Matt: Well, you're a legend in the legal profession for sure. And I, I think there's so many places that we could start when discussing this very dense topic. But this is where I want to start. And this typically is a stated observation or hypothesis about the United States that we would typically hear after some heinous, violent act of criminality. But I'm going to pose it to you this way: Do we have a mental health epidemic in this country? And if so, why?

Dr. Simring: Yeah, we do. There's not enough money. You want to find the solution to any social problem? Look at the funding of it. There really isn't. There are many, many factors that go into this. Probably it all started 50 years ago when before-- or 60 years ago-- when before that, maybe longer

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



ago than that, people with serious mental illness were locked up in mental asylums. And then, for better or worse, they all started getting let out of mental asylums. And the reason --two reasons. One, civil rights back in the seventies. And the other, effective antipsychotic medications. So all the seriously mentally ill who had been locked up in mental hospitals were now on the streets. They did not get better. They started roaming the streets and they ended up in prisons and committing crimes. So that is one thing.

The second thing is, without good hospitalization, with the, uh, freedom of treating people as outpatients, there isn't enough money and isn't enough insurance to do it. And--

Matt: And --

Dr. Simring: Add to that-- sorry-- you add to that drugs. And drugs are always lurking in the background. Drugs of abuse. Now you, you have to remember, I always tell my patients, you know, if I give it to you, it's a medicine. If you take it on the street, it's a drug. So abuse can be misuses of medications that I use. For example, speed. But that adds to that lack of money, lack of facilities and drugs. And there really is a mental health epidemic with a lot of untreated people going around.

Matt: So, so then against that backdrop, and against the fact that we do see this intersection of criminal justice and psychiatry, walk us through what forensic psychiatry really is as a, as a discipline.

Dr. Simring: Yeah. If you think of it in the broadest possible terms, everybody who gets into contact with the legal system, including civil cases, certainly matrimonial cases, has to be quote "a little crazy." Because if any of you have had personal experience in a lawsuit, you realize the enormous stress it puts on you. And I think that's often underestimated. And the really best lawyers understand human psychology. It's been said, for example, that, people involved in the criminal system are bad people who try to look their best. And people involved in the marriage, matrimonial system are good people who you see at their very worst.

But there's no question that litigation puts stress on you. There's also no question that sitting behind many, many kinds of crimes --and even civil issues --are issues of temper, anger, depression, many, many, many things. It's my job as a forensic psychiatrist to separate from this vast majority of people who have illness, the significant illnesses which are recognized by the law as a defense, or as something which the law recognizes as a legal principle that's going to deal with some charge or some capacity.

Matt: So in, in my practice, I've used forensic psychiatry and evaluations by you and, and your colleagues in, in really two ways. First is sort of the time of the offense and, and what somebody's mental state was then, and others is the evaluation of what that person is like today as the process is unfolding. Why don't you walk us through those perspectives, right? Because they are uniquely different in the aperture by which that person's mental health is being viewed.

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



Dr. Simring: Absolutely correct. And you have to start with that. And if you don't start with that, you're going to be in a lot of trouble. You have to look at what a person's mental state is at a relevant time. So to give you an idea on a crime, there are two relevant times. One relevant time is the time of the crime. Could have been last year, could have been five years ago. What was he or she thinking at that time? The second is today, in court, how is he or she dealing with the legal system?

Now, there are various different standards for legal insanity or for so-called diminished capacity and many other --mitigation-- that goes back five years ago when the murder was committed. Today the issue is, is that person capable or competent to stand trial? So what he was like five years ago is unimportant. What he is like is today.

Give you another example: In a will contest where somebody is dead, the important thing is what was his capacity, testamentary capacity, at the time he did the will. There is no today because he's dead. And in order to do that, you gather whatever evidence you have. But the question always is, what was his thinking like at the time he signed the will?

Another example in medical permission, somebody, uh, accepts or refuses surgical treatment. What is his thinking like at the time he accepted or refused?

Matt: So, let's take that and tease that out a bit more. So, what are the, the, the common types of evaluations that you are called upon as a expert in forensic psychiatry that focus on the time of the offense?

Are these the type of-- and, and I know we've worked on a couple cases together where my clients were, during the commission of the alleged offense, were in a state of a bipolar episode, for example. And that doesn't necessarily knock out their culpability, but it does help explain their conduct, right?

Dr. Simring: Absolutely. We're working on a case now, I'll give no details because it's a current case. But in this case, this individual in my office was perfectly reasonable, as rational as you and me now. However, we were looking at something that this individual allegedly did, I think it was recently, four months ago. And I had to look at all the evidence: Witness statements, what she said, what her doctor's reports were, what the police said at that time four months ago. And the claims that she was trying to make had to be evaluated in the way I could reconstruct her mental state, say in September of 2025. Her mental state now, or when I saw her in January of 2026, there were really no question, she was 100% okay to proceed with the case.

But the issue was, what was she like then? And that really is what framed our discussion.

Matt: And then, if we're talking about more of the competency questions, in terms of what somebody's state is now, how do you look at that differently?

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



Dr. Simring: That's a lot easier actually, because you're looking at that person now. Often I'll see somebody in the jail, and in the jail I'll ask that person, for example, do you know where you are? Do you know why you're here? Do you know the charges against you? Do you know what the penalties are of these charges? Do you understand that you have an attorney and what your attorney is supposed to do? Do you understand there's somebody on the other side, and what's his role and what is he going to do? Do you know what a judge does? Do you know what a jury does? In case the jury goes. This is everything today that's going to happen today.

So if the individual tells me --he's in jail for murder, for example-- and he tells me, well, I'm here for a shoplifting. Now there are two possibilities. One is there's a big problem here in competency. Two is that he's malingering or faking. But those are really the only two possibilities.

If I say to him, next, who is your lawyer? And he says, Mr. Adams. And I say, who's Mr. Adams? He says, well, he was second president of the United States. Again, uh, I have to evaluate that if he really believes that, this would seriously affect his competency, but of course, I have to rule out malingering.

If I ask him in this, you are charged with murder, I'll tell him, what does that mean? And he tells me, well, it's killing somebody. And I say, how long can you go to prison for? Now if he says 30 years or 25 years or life, or 20 years, that's okay. He's not supposed to be a lawyer. But if he says, I'll get 30 days, there is something wrong. So these are the things I look at in evaluating competency today.

Matt: And if looking at the sort of retrospective on competency or mental impairment at the time of an offense that is a historical benchmark, for example, what types of things do you often find in, in those circumstances? Because it, it, it's, right, it sounds like it's a lot more difficult, because you could have somebody that's totally rational, totally answering your questions about competency the right way. But if they were in the throes of a, for example, a manic episode back when, when the offense conduct occurred, they could be, totally different. And in some, some instances, I, I would imagine you don't have all of the facts to bear, you have to tease them out.

Dr. Simring: Well, that's always the main issue, exactly. In the case, again-- and I I can refer to it with not telling you anything about it-- this client of yours was perfectly okay the day I saw her last month. So there was no question about her competency to go to trial. On the other hand, when I looked at what happened in September, there were real issues about what really she was like. So let's move from that case, because this is a current case.

In looking at a case-- well, lemme give you a very bad example. I had a case recently of an opinion given by an, uh, expert on the opposing side who said, I examined Mr. Jones. He, he looked perfectly okay and I think, he's legally sane. And I said, well, I looked at this report of this expert. What evidence did this expert look at? Well, he talked to the guy. Well, that is not enough. I considered

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



that the dirtiest word in our profession, the dirtiest filthiest word in our profession is "net opinion." Net opinion is a term of art, meaning ipse dixit. It means an opinion the expert offers with absolutely nothing behind it. Unfortunately, there are experts who do it, although the training is better nowadays, and young doctors are a lot better than young doctors when I was coming up.

In a good opinion, in offering opinion at time one, when the crime was committed in a criminal case, I want to see very, first of all, police incident reports. Nowadays, the police incident reports are not enough. I want to see body camera footage so I can see what actually happened from the point of view of the arresting police officer. I want to see Ring camera footage, which you always get. There used to be surveillance cameras, but now every neighbor on the street has a Ring camera, and you can see all that. I want to see witness statements of everybody who had to say anything. I want to see the defendant's own statement if he gave a statement. And then I want to evaluate the Miranda warning that he was given, because he may challenge the statement or challenge Miranda.

I then want to see all the laboratory evidence. I want to see his toxicology. I want to see what happened after the police brought him to the hospital and his blood. One of the simplest, most important questions is, was he drunk at the time? Was he on drugs? Now, that's not dispositive. He could have been on drugs and mentally impaired. But very often what people claim is mental illness is nothing more than simple intoxication. I have to see that.

I want to see the background, I want to see the investigation. Police. Sometimes the defense lawyer will have his own private investigator interview all the friends and all the neighbors. Next, I want to see his medical records. Sounds like a heck of a lot, and it is. I want to know not only his psychiatric records, assuming he has psychiatric treatment, but since most people don't get psychiatric treatment, I want to see the records from his family doctor and his internist. Because very often family doctors and internists put lots of information in there, even though they're not psychiatrists.

I want to see his educational records. I want to see his job records. So, uh, at risk of boring you with all this stuff, it's a lot of paperwork. But an opinion is worth nothing unless it's put in the background of what you get, so that the determination of what his mental state was like at the time of the crime is a lot more difficult than evaluating what it's like today.

Matt: And what type of conclusions can you draw about somebody related to their mental state at the time of the crime? Is this about defeating mens rea, that the culpable mental state did not exist, which is required of the offense conduct?

Dr. Simring: Absolutely. Mens rea is probably the single most important thing. But it's more complicated than that. In order for someone to be guilty of, uh-- somebody kill somebody. The question is, first question is he legally insane? Now, my standard is bounded \

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



by the governing state law, and it varies from state to state. One, the differences between a forensic psychiatrist and somebody who doesn't know about forensic, is I have to be familiar with the law. Now I got to be real careful not to play lawyer because it's a real trap to get into an area I don't know. But I need familiarity. So if I just say for example, like some psychiatrists, oh, this guy's depressed, he's all messed up, that's not helpful. What is the standard? In the law the standard, number one, for legal insanity-- which is the biggest, hardest standard-- is in a statute called NJSA 2C:4-1. And what it says is, an individual's legally insane if, at the time of the offense, he did not understand the nature and quality of his act, and he did not know that it was wrong. This is a codification of what's called the M'Naghten Standard.

Matt: And that's New Jersey's, New Jersey's variation

Dr. Simring: New Jersey, look, I'm in New Jersey, man. Now it's different if I am a, a witness, an expert witness in a federal case, I have to go by federal statute, which is slightly different. And I have to word it in terms of the federal statute. So as a forensic psychiatrist, I'm not an expert on the statute, but I have to know what the heck the statute is, and --

Matt: It sounds like a pretty tough nut to crack if --

Dr. Simring: Well come on. We all, don't feel sorry for me. We all have tough jobs. I I can't say --

Matt: No, but, but I, when I, when I, when I say that, I mean it's a high standard.

Dr. Simring: I'm a big hero. I like being a hero. Come on, Matt, we're all professionals and the work we do is tough. And sometimes clients, they realize until they have to pay a fee, then they don't realize how tough the work is. But it's it, what we do is hard work. and, and, being a professional is tough.

Matt: Gimme an example. Give me an example of when somebody has met that high standard.

Dr. Simring: Come on, my father, God rest his soul, my father said to me, why do you want to be a doctor for? Go into business, you'll make money. And I, I, I thought, I didn't know what the heck he was talking about, but he's right. You don't make money doing what you and I do. We get paid nice hourly salaries, but if you want to make money, you buy properties and you flip 'em. But that's not what we do. We're involved in highly technical things, and I, one of the things that makes me a forensic psychiatrist rather than a regular psychiatrist is I know what you do as a lawyer and I appreciate it, and I talk your language.

Matt: Bring me to that, bring me to that person that has met that high burden. What types of things would you be able to glean about them through the forensic psychiatric process to be able to meet a standard? Gimme a hypothetical where that exists.

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



Dr. Simring: I've only given, I've only given you one standard. There are other standards. And there are, there are comparable standards in civil law, such as the ability to make a will. I mean, there are other standards as well. But in practical terms, in a collaboration between a forensic psychiatrist and an attorney, often what I'll tell the attorney is, well, your client doesn't meet the standard. But there are many things that I found at the time of the incident that may go to mitigation. And all is not lost. I'm in it with you for the long run. It's your client. It's not my patient, but I am working with you like an investigator or a fingerprint expert, and I'm going to help you make a case if there is a case.

So let me tell you things that may help in mitigation in this case. Let me tell you about his depression that doesn't rise to the level of legal insanity. Let me tell you about the stress he's under, having lost his wife. Let me tell you about his withdrawal from alcohol, in the early stages of alcohol withdrawal. There's a lot of things I can tell you about that help you short of legal insanity. So that could be an extremely important thing in the ongoing collaboration.

Like doctors, lawyers are sophisticated-- many of them are not-- and sophisticated lawyers understand these nuances and will work with a forensic psychiatrist all the way through, through the sentencing and even after somebody gets out of prison.

Matt: I've never once had a case where I've had a client meet the standard of legal insanity. But almost always the evaluative process that we go through is helpful in mitigation, whether it be in sentencing or what have you.

What does it look like when somebody is legally insane at the time of the incident, but not incapacitated at the time that the legal proceeding works. How does that look?

Dr. Simring: Well, it's an individual with schizophrenia who's taking his medication. And by the time you see him, the medications work and he's perfectly calm and rational on medication. At the time he did the crime, he did not take his medication. At that time he thought, for example, that the little old lady that he saw in the train station was sent by Satan. And she was hearing his thoughts and she was saying to him, you are going to be killed. And he was hearing Satan tell him that the next older white woman you see with white hair, elderly, is a sign from the devil and she's going to kill you. And therefore I had to stab her or she was going to stab me. Here's an example of somebody who's legally insane. Again, that he's not faking it. You always have to keep that in mind, but put your cynicism on the side for a moment. This is what he tells me. So I can conclude --and I have all the records, that he just got out of the hospital, he didn't take his medication, he's had a dozen breakdowns before which were similar. In his schizophrenia when he stops taking medication, he invariably thinks the devil is giving him messages. He hears voices and on and on. So there is a good faith background to this.

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



And what he went through, unfortunately, this-- and this was a real case of somebody who dropped his grandma off at Penn Station. Nice little old lady with white hair. And unfortunately, this man who had been homeless there and wandering around, thought genuinely she was the devil and killed her. Now, as a footnote to that, there was a big civil litigation against the station by the survivors, and they, as a result of that, they beefed up their surveillance. But that, that's sort of a side issue. This woman was killed dead. This was a tragedy in every way. But this man did not know what he was doing is wrong because this man was acting in self-defense. Just like you and I can act in self-defense, the only difference is if you or I act in self-defense, it's real. His self-defense was delusional. So he had a self-defense defense, except it was based on genuine delusions. So that's what a typical person looks like.

Matt: Wow.

Dr. Simring: You got the history, you have the act, you have the logic, and you have, in a strange way --not a strange way, but in a logical way-- almost every juror can understand self-defense. Almost any juror can understand that if someone coming at me with a knife, I'm allowed to take action. The link is, this guy genuinely believed it, so it's not so mysterious. I have to, uh, explain to the jury in their good reason that he's not faking. Because everybody approaches this with skepticism. I have to lay out the evidence that there was no motive, that he's done this many times before, that he was genuinely hearing the voice. I have to lay all that out when I testified to the jury in a contested case.

Matt: Now you, you've started to talk about your process. And it's immediately apparent at how voluminous records are a must, because you, you need to go back and really scour every indicator of, past potential mental health issues and, and, and what have you.

Move me then through the next phase in your forensic psychiatric process of evaluating a criminal accused. I'd imagine that would be a, a meeting with that person and a clinical environment.

Dr. Simring: Absolute, absolutely. So, so, uh, the first phase, of course, is you, the lawyer, calls me and you hire me. And you say, you give me a thumbnail description. And I will ask you, the referring lawyer, well, what's your theory of this case? What do you think? And you'll tell me as a lawyer, I think this was somebody with mental illness off his medication, and I think you'll meet the standard. I say, okay, very good, gather all the records. And I'll get all the records, either electronically or on paper. And all the videos, a lot of videos nowadays that you look at, which are extremely, extremely important. It's amazing what you see in videos that doesn't come across. I then--

Matt: What comes to mind to me is that surveillance video that we had in a case once of the, the gentleman in the manic issue that was taken right in a public place and, and you immediately could

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



almost by just watching the video, be able to see that he was flying high and he was just not in reality.

Dr. Simring: Absolutely.

Matt: But he still, still didn't meet the legal standard of insanity.

Dr. Simring: Right.

Matt: It was just effective mitigation.

Dr. Simring: Absolutely. The guy actually was a physician who was a, somebody with bipolar or manic, depressive disorder-- this years ago, but I tend to remember these cases. This was somebody with manacle or bipolar disorder off his medication, a physician who had really ruined his life by not complying with medication and had acted this way. And again, didn't quite meet the standard, but there was a lot of mitigation that you were able to use.

So anyway, after I review all the records-- and lemme give you just a few little uh, uh, points on that-- in the video, I wanted to make the point, the kind of video that's available nowadays is amazing. There didn't used to be bodycams. Now they're pretty universal. I had a different thing. I have a case now of somebody who's accused-- uh, this had to do with automobile thing --and he had a dash cam on his car. And I had the evidence from his car, from his own dashcam. So these are very, very compelling kind of things.

And then of course there are issues like toxicology, that is, what drugs or medicines. Uh, it's not just drugs, but if this is a person with schizophrenia, has he been taking his medication? How do you know if someone's taking their medication? You know, statistics show that less than a third of patients take medication. So was he really taking it? The only way to really know is look at the blood.

So anyway, we have the initial consultation, we have the record review, and then it comes what used to be called the IME, the initial medical examination. We still kind of call it the IME. It's an old-fashioned term. I meet with the guy, in jail or in my office. I feel very strongly about not doing Zoom exams unless there is absolutely no other choice, at least on an initial exam. There is nothing like being in a room with another person, seeing him, smelling him, feeling him. Now, I don't have voodoo powers, but when you're an experienced clinician, you get a feeling, you know, like the old-fashioned internists who used to go into a room and say, this guy's got heart failure. Or he has diabetes 'cause they'd smell something in the room, or they would see something on his hands. When I evaluate somebody, I read their tattoos. Their tattoos tell me a lot about who they are, and you don't see that on a Zoom. I ask 'em to take their shirt off. I look at physical things that they're complaining about. So I avoid Zoom if I can.

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



In jail, I will never interview somebody behind a screen. I always insist on being in the same room with them. If they want a corrections officer, the corrections officer has to be out of earshot because it's none of their business what we talk about. I start with introducing myself, making certain, giving my own little mini Miranda warning, which means people who I interview have a tendency --because I'm an older guy who looks like a doctor and talks like a doctor-- they'll unburden everything. And I don't want that. Especially if I'm a prosecution expert. I don't want to be an agent, an investigation agent. So I'll tell the individual, look, I'm a doctor. I'm a nice doctor. I think I'm competent. But I'm not your doctor. And you don't have the kind of confidentiality you would have if you were seeing your own doctor. This is not like talking to a priest. I will respect your privacy, I'm not going to post it on social media. But on the other hand, everything you tell me will go to the prosecutor, the lawyer, in a report and may end up in court.

I'll then ask the person at the beginning, tell me what happened. And I am a really strong proponent of what's called the open-ended interview, which means I don't ask 20 questions. I say, tell me what happened. And then when they start telling me, I say, and then. You know, like the old cartoon of the psychoanalyst sitting on the couch? I try to be kind of like that. And then, and then. Because I don't learn anything from what I say, and I, I'm a pretty good interviewer, but the-- and I've taught interviewing-- but the skill to interviewing is to keep your mouth shut. I would tell medical students that, you want to be a good interviewer, keep your mouth shut. And I would say, and then explain that, please. Tell me more, please. Oh, that's interesting. Or I'd, furrow my brow. You, you can't see this, but I'm a good brow furrower. And, and letting him or her explain themselves to me.

Then I would get everything I can about what happened on that day. I'll start by saying, go back, tell me everything that led up to it. And they may say, well, it all started when my wife and I got married and we had problems. Now this, he killed his wife. And this is now five years later. Tell me everything that happened. Tell me where things deteriorated. Tell me what happened.

I had a case recently of a man who stabbed his wife, and it was not done in anger. It was done because he had a major depression and he was trying to kill himself, and the wife got in the way. And as unlikely as that sounds, I testified for the defense and the jury accepted it. And, and nobody thought that he was angry at the wife, but he was angry at himself and he ended up killing himself in the end after he was found legally insane.

So then I do the IME, the initial medical exam. After I get the "what happened"-- and sometimes this has to be in two or three sessions, 'cause you know, after an hour and a half I get tired. Some therapists or some psychiatrists go on hours. I can't, after an hour and a half I want a break and I'll come back another day. It's intense.

I then say to them, I want find out about your past background. Where were you born? Were your parents together? Are they still alive? What was your mother like? Father? How about your

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



background? What church did you go to? What kind of educational background did you have? What was your dad and mom like? What were your siblings like, if there were siblings? Your grandparents? When you were a child, were you ever sexually abused as a child or physically abused? Tell me about your education. And on and on and on. I want to learn about the background of this individual. The background is not as important as the description of what happened at the time, but it is important. The reason I mean by that is, is I had a, I was once a prosecution expert, and the defense expert said, this man is legally insane because as a child in Puerto Rico, he had sex with animals. I said he had sex with animals as a child with Puerto Rico. That's very interesting. A lot of farm boys do that, believe it or not. But what does that have to do with the fact that he killed somebody 30 years later? Oh, somebody who had sex with animals has to be insane. This is an example of a non sequitur. It's interesting that he had this background in Puerto Rico. It's even interesting that he was abused in Puerto Rico. But it had nothing to do with the incident between him and the falling out with his friend.

After I do the background, I do what's called the mental status evaluation, which means evaluating the absence or presence of depression, anxiety, mania, hallucinations-- that's voices or visions-- delusions, which are false beliefs, obsessions, so forth. I then arrived at a diagnosis. And the diagnosis must be done according to the Diagnostic and Statistical Manual of the American Psychiatric Association. Now, that's something a little misunderstood. The DSM-5 so-called is not a Bible, as some people ask me. It's not even a law book that you are bound by, but rather it is a professionally accepted grouping of criteria. And any psychiatrist or psychologist who offers an opinion, if it's not offered within the guidelines of the DSM-5 is going to be discredited. I then offer an opinion.

Matt: I was, I was going to say, what's next? When you offer your opinion, how do you know when to put it in writing and when not? I imagine that's a consultation between you and the attorney.

Dr. Simring: Absolutely. I'll call the attorney. I'll say, I got good news. I got bad news. I got mixed news. I actually don't like to tell the attorney I have bad news. Because I know what the stress the attorney is under, and I, I don't want to, you know, some doctors like to rub it in. I know what you're facing with your client. I'll say, look, your client does not meet the standard of legal insanity, but let me tell you some things that may be helpful in understanding him and understanding this person, and let's work together on these things. But he does not meet the standard, so you do not have an insanity defense. Also, your client is competent to stand trial today.

Matt: How do you know if somebody's faking it, Dr. Simring? Because there's obviously so much at stake, right? There's a clear motivation where somebody up against a wall, boxed in by the pressure of criminal charges, there's a clear motivation to, when left with no, no way out, kind of invent some kind of effort to, to go down a mental health path. That may not be apparent, but what are some of the tells of a person who's not being truthful about their impairment?

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



Dr. Simring: Well, this is a very important question and a sophisticated question. There are faking or exaggerating medical symptoms, including psychiatric symptoms, is called malingering. That's a term of art. That's not the same as lying. If you tell me that you were in Philadelphia yesterday and you weren't, that's a lie. That's not malingering. You weren't Philadelphia. If you tell me that when you signed the contract, we agreed on something and we didn't, that's not malingering, that's lying about a contract.

Malingering is defined as the faking, fabrication or exaggeration of medical symptoms. Now, it can be in a civil context where somebody's faking back pain, for example, in order to gain compensation or exaggerating back pain. It can be in a psychiatric context where they're faking voices or faking delusional beliefs. So that's called malingering.

The next question is, how do you detect malingering? In a practical sense, what people don't really understand is most false claims are invented by attorneys looking for defenses, not by clients. A lot of people don't get that. So sometimes I'll read the papers and the claim is that they are an individual is, deeply depressed or hearing voices. And when I examined the person, they don't say that.

Well, I'll give you, give you an example. Uh, recently this was a competency, not even a legal sanity. It was a competency evaluation of Puerto Rican person in the U.S. in a Hudson County jail. And the lawyers said he was mentally retarded and therefore incompetent. We don't say mentally retarded, we now say intellectually deficient, but it's the same thing as mentally retarded. He wasn't psychotic or out of touch with reality, but he was so retarded that he couldn't understand what was happening. I interviewed the guy for the prosecutor. He was not only not retarded, he was bright. Bright as heck. And he was able to make jokes with me. For example, you normally, --and, and it was a language issue, he wasn't, English wasn't his greatest, but he didn't want an interpreter. He, among other things-- remember they're claiming he's mentally retarded among other-- usually in a mental status evaluation you say, who's the president of the United States? Who was the president before that? Who came before that? What's the capital of New Jersey or the United States? What's the day, the season? So I said to him, uh, who's the president of the United States? He says, Trump, I like him a lot. And I said, who was the president before that? He said, Biden, he was terrible. And how about before that? Obama, he was even worse. And I said, how about before? Anyway, that kind of thing. And I said, well, why do you think Trump is so great? He says, well, he's getting rid of all the immigrants. Now, what I think, what you think politically is irrelevant. The issue is this is a person that had a, not only knew the name of the president, but had a coherent understanding of the president's basic message. I'm not evaluating whether I like it, but he understands it. Somebody who is really intellectually dull would not understand that.

Matt: And the, and the malingering comes into it if, if his lawyer, for example, might be telling him, go ahead and, and sort of drum up some symptoms or, or, or something like that.

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



Dr. Simring: Well, you would think, that Matt, but it doesn't usually work that way. Usually the lawyer makes it up and doesn't even talk to the client about it. The lawyer has no defense. The lawyer kind of figured this is a Puerto Rican guy with a thick accent, with long hair, and he doesn't look so smart. But if the lawyer only talked to him, he would've realized what a bright guy this was.

So back to your question about malingering. This isn't true malingering. This is a legal claim, which is not substantiated.

Now let's--

Matt: What does true malingering look like?

Dr. Simring: Well, true malingering may be when I said to him, uh, who's the president? I, I, I, I don't know that exactly. Uh, I, I, uh, and, and where are you right now? I'm in a, I'm in a, uh, a jail. Where, where are you in the jail? I'm not exactly sure. Now he can make that up of course. But when you ask enough questions, you can get a pattern of, of whether he's malingering. Now if you're not certain, there are psychological tests, pen and paper tests, which can help measure malingering. Where on the basis of the test you could see what they say. For example, there's a psychological test. Psychological tests are always tricky. They're very, very tricky. And there's a test where there are really easy questions and really hard questions, and they're in order. If the subject answers the hard questions and can't answer the easy questions, beep, beep, beep. He's faking. That's malingering. You can't answer the hard questions and not answer the easy questions.

Similarly, the lawyer for this individual-- not the lawyer, the psychologist they hired, who claimed that he was mentally retarded or intellectually deficient, had really nothing. He said he did psychological testing, and that showed, that he was, uh, deficient, but the, the test showed nothing at all. So, this is sort of an example. Uh, tests can be helpful. Tests can show patterns of malingering, but they can't definitely show it.

The second way you find malingering is, uh, any physician. If you're, for example, you're an orthopedist and somebody is malingering back pain. As a trained orthopedic surgeon, you know what back pain looks like. You know where it radiates. And if the guy says, it's in my back and it's going to my stomach, well, it just doesn't work that way. Similarly, psychiatric, if somebody said, I, I was perfectly okay until the day before I robbed the bank, I had somebody. And at that point, Jesus came to me and Jesus said to me, I think you ought to rob a bank. Well, that's not the way mental illness works, exactly. Just 'cause he says Jesus told him, that just ain't enough.

Matt: So let's shift gears a minute, Dr. Simring. Uh, research over several decades, sort of consistently shows that alcohol and substance use disorders are strongly associated with an increased risk of criminal conduct. What does your professional practice and experience show about that basic

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



hypothesis. Is, is it, is it borne out that there is this high correlation between people that are abusing substances and, and, and criminality?

Dr. Simring: Absolutely no question about it. Absolutely no question. When you see people, any police officer could tell you that, of how many people at the scene of violent crimes are drunk or high on drugs.

The psychiatric or the forensic ramifications could be a little more complicated. What is the role of the substance? What is the role of the underlying mental illness? Just give you one example: There is a concept which is called diminished capacity. This is sits right under legal insanity. It's 4-2 rather than 4-1 in the New Jersey criminal code. And the idea is that you may meet that standard if you can't form criminal intent. In other words, if you are so mentally ill that you can't form the intent to commit a murder, therefore the charges will be dismissed because you don't have mens rea. This is a slightly different concept from legal insanity, but I'm making a different point.

What if you go to a party and you are, any one of us can identify with this has been drunk. And almost every, I don't drink a whole lot of alcohol, but I've been drunk at parties and I know what it feels like. And you wouldn't want to get me in a car or do anything because when you're drunk, even on alcohol and marijuana, which is perfectly legal now, you are just not yourself. And if you're drunk enough, you may not even remember what you did.

In the legal standard for diminished capacity, along with another statute, 2-8, which is the standard for intoxication, the words are very clear that if the lack of mental capacity is due to voluntary intoxication, doesn't count. You may be intoxicated. It may be true that you didn't know. It may be true you had no capacity to form intent, but if it was the result of voluntary intoxication, it doesn't matter.

Matt: Yeah, I've, I've, uh, I, I've had clients-- and, and you know this in, in recent experience --where my working hypothesis that I was trying to tease out through forensic psychiatry was that some level of criminality was created by medication interactions. When the medication was discontinued, for example, in reflecting on that and, and, and analyzing it, you, you came back to me with another entirely different working hypothesis that the really controlling variable was alcoholism and not what I had originally posited. You know, how, how often do you find that you're going down a path where counsel has asked you to evaluate if there was some sort of underlying substance abuse-type issue going on at the time of the offense, at least for purposes of mitigation?

Dr. Simring: It's extremely common. And it's a tribute to you as an ethical attorney that when I told you that it wasn't what you thought it was, you said, thanks, doc. I'll move on and, and go on. There's some lawyers who get angry and don't hire me again. Oh, it happens, uh, yeah.

Matt: Or don't invite the, don't invite you on their podcast.

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



Dr. Simring: And don't invite you on their podcast, that's for sure, let alone invite me back to do another case. I've had some lawyers who got so pissed off that they wouldn't hire me for 30 years. And, uh, and carried a grudge because I wouldn't agree with them. But most good sophisticated attorneys go beyond that. And they understand that there are areas they're not expert in.

Now, I always start by saying, look, I'm not the last word. I could be wrong. Let me give you my reasoning. And you're always free to get somebody else, to get another opinion. If you're the prosecutor, it's harder to get a second opinion. If you're a defense attorney and you have enough money, you can get all the opinions you want and you can use whatever opinion you want. But I think most attorneys, if they have confidence in the expert and, and, uh, they, and they, you know, we'll, I'll argue it out with you. And if they have confidence, we'll ultimately have to go down a different, path. Or I'll try to say, let me see how this can help you.

Now, our criminal justice system is really a fault-based system. When you get right down to it, it's a moral, fault-based system. And juries want to know who's at fault. And juries understand that if someone is quote crazy, if someone is truly mentally ill, they don't want to punish them. Juries get that. And juries don't like having the wool pulled over their eyes. If juries see that it's a lot of razzle dazzle and there's really nothing to it, juries have a nose for that kind of thing. It's really quite amazing.

So, if for example-- remember I used the word voluntary intoxication doesn't count. Well, what does that mean? What if it's involuntary intoxication? What if someone gave you a drug in your drink or put alcohol in your soda and you didn't notice it that was a little harder and you acted in such a way? Well, that would count because you didn't do it, someone did it to you. Another example is there is a rare condition called alcoholic idiosyncratic intoxication. That means-- my mother was like that my, my late mom, both parents bring them both up from from the grave. My mother never drank, never, never, never drank. I remember we went to an affair and they served her a drink and she had one drink and got totally drunk. That's called idiosyncratic intoxication. She had no tolerance for alcohol. Therefore, she may not be held responsible because she had no way of knowing what a drink would do to her. It's rare.

The average person who claims that says, what's your pattern? Well, I've had four rehabs for alcohol. I go to AA, uh, I, the guy I said, he said, well, I only had a, I only had a case of beer. I said, oh, you only had six beers. No, doc, I had a case. What's that, 24 beers? I mean, that would kill me and you, but this guy was used to it.

So again, getting back to the whole fault-based idea. If I give somebody medication and they have a idiosyncratic reaction to the medication, and they become psychotic on my medication, they will get off, because it isn't their fault.

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



Matt: Dr. Simring, let me conclude in a way that I frequently do with, my guests on this program and frequent listeners will, recognize the question that's about to come. But I want you to dust off your crystal ball, and I would like you to project into the future a bit. What does forensic psychiatry look like 10, 20 years from now?

Dr. Simring: Well, I'm glad you asked 10 or 20. I'm very pessimistic in the next three years. The current administration is absolutely anti-science, anti-human, anti-person. research funds have been drastically cut. I think some we're going to have a brain drain and some of our best scientists are going to go abroad. There's no money for treatment, there's no money for research, there's no money for any of these things. So I think we're in for a very, very tough time. At Columbia, in New York, where I'm most associated, a lot of people have lost their research grants. And money for treatment is slim.

I think the horizons are really very promising you know, it's really an unconquered world. Mental illness in some ways is our last frontier. We know more about cancer than we know about mental illness, and there's a whole lot we don't know about cancer. But we're not going to find out about it without research and without treatment. And as long as our government is on this downhill course, we're going to have a rocky time until things change.

Matt: And what ways do you think that technology will impact forensic psychiatry. In particular, I'm thinking about AI. AI has really, in my lifetime, been one of the most rapidly evolving technologies to sort of jump on the scene. And I'm somebody who remembers life before the internet, as I imagine you do.

Dr. Simring: I remember life before the radio. Well, certainly life before television. I've been around longer. Yeah, I, that's probably your question behind the question is AI, and that's everybody's question. And, AI is of course, uh, you know, it's a fact of life. But you have to approach it with the same professional attitude as you approach everything else.

For example, you know, everybody knows about lawyers who got into trouble by AI generating briefs and hallucinating cases that don't exist, and there's no excuse for that. Similarly, doctors are using AI to write reports, and the only reason for that, it starts with an L and ends with a Y, called lazy. It's the easy thing to do. AI is a helpful tool to help formulate things. I, I haven't, I've used it only in very minor ways now. But if I ever used AI to help formulate one of my reports, I would read every word of the report to see if I agree with it. And all the time I saved on the front end, I would spend on the backend checking what AI is doing.

I think we have to think of it as a tool. It's like saying, wow, look at this. But remember before word processing, you had to use a typewriter. I go back to that. And you used Wite-Out if you made a mistake. Well, we had word processing, we said, wow, there's nothing to be done anymore. But there

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



is. And similarly with AI, it's a wonderful tool, but you have to understand what it does, what its limitations are, and how to use it. It's especially good at generating ideas.

Matt: What kind of psychiatric issues are you seeing based on the proliferation of social media and how does that correlate with criminality?

Dr. Simring: Oh, man. Social media is just, a, a, talk about a mixed blessing. You know, I was certainly born before social media and, and, uh, you know, you can, you could put it down, but on the other hand, social media can do wonderful things like locating lost people and, and, uh, and people in third-world countries getting together and, and, uh, formulating, uh, movements against their, their oppressive governments. So there are many, many good things. Even things like, having parents notified when a school is closed.

On the other hand, the abuses of social media are unbelievable and they're all generated by money. This is not random. It's all done to make money. And it especially affects young people and affects people who don't have the judgment to understand what they're being directed to and how they're being directed.

You know, there's a new law in Australia where children under the age of 16 are banned from social media. I'm not sure how they enforce it, but at least it's a good idea. When I see--

Matt: That's the rule in my house.

Dr. Simring: It's, it's really, Matt, I mean, uh, and you look at young children, it's, uh, they don't have the perspective. I mean, they're smart as we are, but they don't have the perspective to understand. I remember when I was young, we used to have courses in understanding television advertising. To be a good consumer of TV advertising. Now that's a TV advertising on steroids. You think you're talking to your friends, but you're being directed by algorithms to all kinds of things, which are directed by money or political forces or selling yourself. It's really a very ugly, dirty business. So it, it's like AI. You can ban it for your young children, but there's going to be an age at which you can't ban it. And the best thing you can do is educate your children as what it really is all about. That if your daughter is seeing an ad that you are a hundred pounds and you're too fat and you should go down to 70 pounds, they ought to know that this is not a good thing.

Matt: Yeah. You know what I, I, you, you mentioned advertising education and, and, and we'll wrap here, but it, it strikes me that I remember health class back in the age when cigarette advertisements were allowed, one of the exercises was the health teacher made us get into groups and thumb through magazines looking at advertisements for tobacco, and then how to redo those advertisements in a way that was truthful. And I remember that, you know, the, the advertisements would say, you know, feel great smoking our light cigarettes, or something like that. And we were, our task was to parrot the ad back as a truthful ad about what the real risks of smoking were. And

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.



we, we were so successful as a society with the smoking cessation and the, and, and other phenomenon that have come through our culture. And I'm, I'm, I'm thinking we're going to need a real movement like that as well. Because you, you have people that are being triggered to criminality, both violent and nonviolent, through messages that are being fed to them from algorithms, just like you say.

Dr. Simring: Your example is brilliant. And it's brilliant-- I mean, if I weren't a doctor, I would've been a high school teacher because I feel that's where the real opportunities are. Your teacher was brilliant. Your teacher didn't just ban it-- because when you ban something with a kid, they react against it-- your teacher embraced it and said, now let's look at the beast and take control of it. That's what I have to do.

Matt: I remember that the advertisement was for Newport cigarettes and it said "pleasure." And we, and, and we changed it to "misery."

Dr. Simring: Wonderful. Just wonderful. Yeah. You know, there was a movement of, uh, with seat belts. One of the most important movements, the seat belts was they got to all the Hollywood film producers and they said, look, unless you have an action film, would you ask that the people use seat belts? You know, you can't do it if it's a, you know, a criminal chase, they're not going to put on seat belts. But if it's a romantic comedy, have them put on seat belts as, so you see Brad Pitt putting on a seat belt. And it worked.

Matt: Yeah. It's, it's unique. Well, Dr. Steven Simring, it's been a fascinating conversation.

We could probably talk all day about the intersection of criminality and mental health. But we'll leave it there for this time. but please do join me again, Dr. Simring. It's been really fascinating to chat with you. That's all the time we have on this episode of "The Presumption of Innocence."

Until next time, I'm your host, Matt Adams. Take care.

The views expressed in this podcast are those of the participants and should not be considered the views of Fox Rothschild LLP or its attorneys. This podcast is for informational purposes only, is not legal advice, and does not create an attorney-client relationship.

Copyright © 2026 Fox Rothschild LLP. All Rights Reserved.

All content of this podcast is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact BizDevMarketing@Foxrothschild.com for more information or to seek permission to reproduce content.