

POLITICS

# What happens when you're the subject of a federal investigation?: Ohio Politics Explained



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*This story is part of a series advancing the upcoming trial of former Ohio House Speaker Larry Householder and former Ohio Republican Party Chairman Matt Borges set to start Jan. 20 in Cincinnati*

Defense attorney David Axelrod has a business card roughly the size of an index card. The back includes directions for clients if the FBI comes knocking:

In all-capital letters, the final tip reads: "WHAT YOU DO IN THE FIRST 10 MINUTES, MAY DETERMINE THE REST OF YOUR LIFE."

## **Timeline:** Selling out in the Statehouse

Axelrod, of Westerville, defends individuals accused of public corruption, white-collar crimes and tax controversies. He represents former Ohio House Speaker Cliff Rosenberger who resigned in April 2018 amid an FBI probe into his travel with lobbyists and lavish lifestyle. Rosenberger has never been charged.

Axelrod talked with reporters from the USA TODAY Network Ohio Bureau on the Ohio Politics Explained podcast about how an FBI investigation can turn someone's life upside down and what federal prosecutors must prove to win their case. Answers have been edited for space but you can listen to the full interview on the podcast.

## **What advice do you have for your clients if they get a knock on the door from the FBI?**

**Axelrod:** "We've all seen the Miranda warnings on television. You have the right to remain silent. Anything that you say can and will be used against you. You have a right to counsel. If you can't afford it, counsel will be appointed.

And in my experience, when the FBI knocks on the door, they usually do it at a time when the people they want to interview would have their guards down, often at dinnertime on a Sunday or at 7 a.m. in the morning when everybody is sleeping and everybody forgets that. They forget the Miranda warnings and more often than not, they talk before they hire counsel."

"Take those rights seriously and exercise all of them."

## **How long does it take for a bribery case to go to trial?**

**Axelrod:** "It depends on how they were investigated. Let's take the case of Larry Householder, which I'm not involved in so most of what I know comes from the media.

They did wiretaps. You can tell that from looking at the affidavit that was released publicly. Wiretaps are labor intensive and oftentimes there are hundreds, sometimes thousands of hours of recordings. And as a defense lawyer, you've got to listen to them."

"Now, I'm old enough that I grew up trying cases on paper. When I was an assistant U.S. attorney, we used to go in the courtroom with boxes of documents. Now, they're flash drives. In a case in which I'm involved right now, the Department of Justice has given me discovery consisting of 2-point-something terabytes. That's 3.2 million records not 3.2 million pages.

So you have to find ways to digest the information and that process is just very time-consuming. The amount of time that the Householder case is taking is not unusual."

## **Why do so few cases go to trial?**

**Axelrod:** "The system is structured to encourage guilty pleas. In federal court, I think the statistic is something like 95% of cases or something like that (end in pleas.)

There are a couple of reasons. One is that federal law enforcement agencies are very good. Particularly in cases like narcotics cases where the question is did he do it or didn't he?

They've just got the defendant nailed. They've got wiretaps, they've tracked people with GPS and tracked their mobile phones."

"The cases where they more often go to trial are the cases where what happened is not an issue but rather what the defendant had in mind when he did it is an issue."

Sentencing guidelines also use the amount of money involved to increase sentences and penalties. Axelrod says that's not always a great measure. "The amount of money involved isn't always a great proxy for the evil that's being done."

Additionally, "there are incentives, particularly if you think you're going to be convicted, to just accept responsibility for your offenses and to tell about the other people who did them with you."

"You get a reduction under the (federal sentencing) guidelines for acceptance of responsibility. So if you come in early and you say, 'I did it and I'm sorry and let me tell you about the other people who did it with me, ... you get a shorter sentence.'"

## **The House Bill 6 investigation involves dark money as a proxy for bribe money. How easy is that to prove?**

**Axelrod:** "In my experience, assistant U.S. attorneys who try these cases don't like dark money. Oftentimes when you get into the conversations surrounding dark money and how it's used and who does what in exchange for getting those kinds of campaign contributions, you're essentially seeing sausage being made. It's politics and politics can be really ugly.

There can still be a quid pro quo. It can still be used for a bribe rather than a campaign contribution, and that's part of the challenge for the government to show that it's not a legitimate campaign contribution where you give money to somebody who is of like mind to you, in the hope that he or she will vote for whatever it is that is important to you – as opposed to giving money to them in exchange for the vote. Sometimes that's hard to prove."

## **In 2006, the Department of Justice sent former Ohio House Speaker Larry Householder a letter saying that no charges were going to be filed in that investigation. What is that letter called and how common is one?**

**Axelrod:** "It's called a closing letter and what it says is our investigation has been closed. It doesn't say we've found you innocent because they haven't. They've found that they couldn't

find whatever they were looking for."

"There's no requirement that the Department of Justice or any other agency issue a closing letter and most often, they don't. They just let it fade away."

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USA TODAY Network Ohio bureau reporters Jessie Balmert and Laura Bischoff have been following the House Bill 6 scandal since the story broke. They will continue to follow developments and the trial. Follow them on Twitter at @lbischoff and @jbalmert for updates.

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