
UNDISCLOSED SEASON 2: **THE STATE VS. JOEY WATKINS**

ADDENDUM 10: **CLOSED COURT**
POSTED: **SEPTEMBER 22, 2016**

Jon Cryer: Hello! And welcome to the *Undisclosed Addendum*. I am Jon Cryer, and you are listening to the podcast about all things *Undisclosed*. We've done about 10 of these *Addendums* so far, so I'm pretty sure you're up to speed on what we're doing here. Basically we talk about the last episode of *Undisclosed*, and we also bring on some really cool guests to mull it over, and maybe get off on some weird tangential topics. Often the tangential topics are as much fun as the rest of it.

So, in Episode 10 of *Undisclosed*, 'Out of Character', we went thorough the 'prior difficulties' that supposedly went down between Isaac Dawkins and Joey Watkins, and how they were used – or perhaps *misused* – against him.

Now, with us today is one of the hosts of *Undisclosed*, Susan Simpson, ladies and gentlemen. She's an associate of the Volkov Law Group, and this is a part of her bio I don't generally talk about: She actually specializes in the Foreign Corrupt Practices Act, which, to me sounds dirty.

Susan Simpson: [laughs]

Jon Cryer: Ah... It sounds like, "What are these foreigners up to?" Is it nasty? I don't know. [laughs] But thank you for being here, Susan.

Susan Simpson: Glad to be back on the *Addendum*.

Jon Cryer: And we have a couple of other guests, this week. We have Clare Gilbert, she is returning from the Georgia Innocence Project – she's an attorney and the interim director, she blogs at *Georgia Innocence Project.org*. And prior to the Georgia Innocence Project she worked several years as a public defender, and as a policy lawyer with the government accountability project. Hey there, Clare! Welcome back!

Clare Gilbert: Hello! Thank you, glad to be here.

Jon Cryer: And in addition to Clare, we have Bill Rankin. He is a legal affairs reporter for the *Atlanta Journal Constitution*, he covers the federal courthouse in Atlanta, the Federal Appeals Court, and the Georgia Supreme Court. He's worked at the newspaper for 27 years, but he is also the narrator of *Breakdown*, an *Atlanta Journal Constitution* podcast that's now in its second season, and I've been so enjoying it.

Bill, thank you so much for being here.

Bill Rankin: Thank you so much for having me, it's great to be here. Y'all have a great thing going.

Jon Cryer: Thanks! Now, Bill, you've been following the Ross Harris case on *Breakdown*. Now, when it first occurred it was, you know, very sensational, it was in all the papers. But it's been out of

the national news for a while, so can you tell the listeners a bit of background on that case and where it is now?

[02:36]

Bill Rankin:

Sure. Ross Harris was a web guy at-- He worked at Home Depot just outside of Atlanta, and one morning he took his 22-month old son Cooper to have breakfast at a Chick-fil-A, not too far from his work. They had breakfast, and he had to drive about a quarter mile to drop Cooper off at day-care. He had to take a left at a stoplight not far from the Chick-fil-A. Instead, he went straight to his work and parked in his office parking lot, and left Cooper in his car for seven hours, and the temperatures inside his car went way above 100 degrees and Cooper died. It's a terrible, very sad case.

And what came out was, as Cooper was dying, Ross Harris was 'sexting' other women during the day. And Cobb County prosecutors are charging him with murder. One of the murder counts says he *intentionally* left Cooper to die, to essentially live a child-free life, and be able to swing whenever he wanted to. And they tried to pick a jury in Cobb County in the spring, but there was so much antipathy against Harris from the jurors – there was one juror who said she would agree to give him the death penalty, even though that's not an option in the case – and so they moved the trial down to Brunswick, where I am right now, which is along Georgia's coast.

And they're trying to pick a jury right now, and we think, we'll have a jury by the start of the week, and the trial should start October 3rd. One thing's interesting is that the news of the case made it all way down here. I mean this is a national story, and I think it's 62 of the 72 jurors so far have said they already knew about the case, and more than half of them already thought he was guilty.

One thing's kind of interesting is that when I listened this morning to this week's episode about the evidence that was put up against Joey is that in the Harris case, they're saying he intentionally killed his son. To show motive, introducing.... The prosecutor's asked the judge to be able to introduce all this evidence about his 'sexting', his cheating on his wife, and there is a *lot* of it. And Harris' defense lawyer objected, saying it was way too prejudicial, but the judge is letting it in.

So, it reminded me this morning about what happened in Joey Watkins' case. It's a little bit different, but it's 'bad character' evidence. That's what it comes down to.

Jon Cryer:

For me, listening about what Joey's trial was like, it struck me as, well it's understandable that a fair amount of this is fair context. If you hear a case of a woman who's been stalked for a year, and finally she's attacked by somebody, the fact that she was stalked for a year is relevant. Even if the actual incident is hard to prove. So, where is the line, you know? I don't know how judges draw that line.

Clare Gilbert:

I think in Georgia, the line lies in the difference between 'prior difficulties' and 'similar transactions'. So, in Georgia, prior difficulties is really about the relationship between the victim and the accused, and that was what the focus of this week's episode was.

Next week's episode is all about similar transactions, and that's where a *lot* of the most severe and damaging character evidence comes in, and stuff that really seems not related, or connected at all. But the line in Georgia seems to be that if it is pertaining to interactions between the victim and the accused, then that largely gets to come in, pretty much across the board. With very little restrictions. There are supposed to be tighter restrictions on what comes in, as far as similar transactions are concerned.

Jon Cryer:

But it seems like in the Ross Harris case that those don't apply – neither one of those seem to apply.

- Bill Rankin:** Right. Well they're using it to try and show motive. That's exactly right. You know the Judge – Matthews – in the Joey Watkins case, he read that limiting instruction, which tells the jurors that they really need to be careful how they considered the evidence... I had to listen to that three or four times.
- Jon Cryer:** Oh my goodness. Wait, I wrote it down. Wait, I'm going to repeat it to you. [laughs] Because I would be *baffled*.
- Listen to this:
- I instruct you that before you may consider any other transaction for the limited purpose I have referred to, you must first determine whether this accused committed the other transaction, and if so, whether any such act was similar enough to the crime charged in this indictment, so that the proof of another transaction in light of the limited purpose for which has been presented to you, would tend to prove an element of the crime charged in this indictment.*
- What?!* I have some point of reference, in terms of, you know, I find criminal justice fascinating, so I have *some* understanding of this, but if I was a layperson on a jury, I mean, I literally had to sentence-by-sentence parse it out after I wrote it. I wrote it down!
- Bill Rankin:** It's extremely difficult.
- Susan Simpson:** And it's not that there can't be relevance to this kind of information. I mean, especially for prior difficulties. There are obviously cases where that is clear, relevant, important information to understand both the prosecution's evidence and the guilt of the accused. But it also opens the door for so much evidence that I suspect, at heart, the prosecutor's motive has nothing to do with proving the crime at issue – it's to prove what a bad person the defendant is. That's really what they're hoping the jury's going to take away.
- Because, look at Joey. Well, especially with Ross Harris. I mean, my god. The jump from, "He had affairs, therefore he didn't want to have children anymore" is so bizarre. It's not like it's...
- Clare Gilbert:** Especially when there's so much evidence of how much he loved his son, and how many people were coming forward saying his son was the light of his life.
- Susan Simpson:** Is there really even, like, a cultural trope that people who have affairs want to get rid of their kids to... Have affairs? It's not a thing. Like, people have both all the time. [laughs]
- Bill Rankin:** His ex-wife is going to-- An ex-wife who had been cheated on, and just completely humiliated in the national media by his actions while they were married – I think her testimony could be pretty strong. If she said he loved his son... He would never do something like that. That's what I expect her to say.
- Jon Cryer:** Didn't the authorities find he had accessed a website that was about living a child-free life? And that *that* was what apparently set them off on this particular angle?
- Susan Simpson:** No, he checked out a Reddit sub-Reddit briefly – looked at it, and went away again.

- Bill Rankin:** That's right. He looked at three posts that had nothing to do with living a child-free life, although he did go to the 'Childfree Life' sub-Reddit, which they say is suspicious.
- Jon Cryer:** But again, it seems like that colored the *whole* investigation.
- Susan Simpson:** *That's* the motive. Their source of motive in this case. It's that he once looked at a sub-Reddit, briefly, and went away again.
- Bill Rankin:** Also, he was on what's called a 'Whisper' account with another woman, as he was eating breakfast that morning with his son – his son's last meal – he's trading messages over this anonymous messaging service, where the woman said, "I hate being married with kids". And Cobb Police have admitted that they initially thought that *he* wrote that, when in fact the woman he was texting with wrote that.
- Jon Cryer:** Yes, it seems like sometimes misunderstandings send investigators off on a tear that they end up validating through other means, even though the original source information is incorrect. That certainly happened in the Adnan Syed case. It seems like they-- Obviously they saw the cell tower pings in Leakin Park and decided, "Oh, okay, let's create our *whole* case around this thing" – this information that turned out later to be, basically erroneous.
- Susan Simpson:** What's interesting, though, is that did not initially happen in Joey's case. I mean, for obvious reasons he was an immediate suspect, and the cops looked at him immediately, and then they went, "Well... This kind of isn't actually-- If you're looking at *everything*, it isn't matching our initial impression." And they'd started to move on. Until they went back to the original line of investigation, for various reasons.
- Jon Cryer:** Well, until the family of Isaac brought in Stanley Sutton. Which also mirrors Adnan's case, because I think the introduction of the Enehey Group brief that was sent to police, and apparently the woman who wrote it was on the phone to police *daily*, according to her. And clearly, the families involved, of the victims in both cases had some effect on the course of the investigation. Is that typical?
- Susan Simpson:** I will say, the family's involvement is not particularly relevant, because the family is going through trauma and grief on a scale that can't be comprehended from daily life. Like, it's typical to have a family that's desperate, and pointing at whoever they can to try and find an answer for what happened to them.
- So, for me, I don't see how that's relevant, but the cops do. It's what the cops latch on to, is what matters. It's their job to find what is relevant and look at that. So the fact that the family might have suggested something... I don't think is really an issue in itself.
- Jon Cryer:** I certainly don't *blame* the family, or think they're doing anything inappropriate. It's just, in these two cases, clearly their intervention had a big effect on the police, for whatever set of reasons.
- Susan Simpson:** But it can often be that the family doesn't know that there's an issue in this person's life and they can give very good information concerning where to look. So, I think it's totally valid for the cops to look at that, they just need to make sure there's an evidentiary base before pursuing it.

[13:41]

Jon Cryer: So, in terms of when they are introducing all this other evidence of prior difficulties, and such, does the entire responsibility of keeping that out fall on the defense attorney?

Bill Rankin: And the judge.

Clare Gilbert: Right. The judge is supposed to decide whether or not the evidence is showing motive, intent, or state of mind, but if there's concerns about it, the defense attorney needs to raise an objection. They don't even need a pre-trial hearing on issues of prior difficulties.

Bill Rankin: Was there a pre-trial hearing on this issue?

Clare Gilbert: They *did* have a pre-trial hearing on the issue of 'similar transactions', and they did talk a bit about the prior difficulties, but very briefly. It was almost as if Tami Colston was like, "I'm doing this just out of the kindness of my heart", mentioning that this stuff was going to come up, "even though the law doesn't require me to give notice or ask to discuss this in advance".

Jon Cryer: So, a prosecutor is just free to bring this up, you know, on an individual basis? They don't in any way have to give any warning that these are issues that they are going to bring up in the course of the trial?

Clare Gilbert: That is my understanding, from reviewing the law on the facts surrounding this particular case.

Jon Cryer: So that brief that was read – where they were saying exactly that which they intended to bring up – that was not something that they have to do? They just did that as some sort of gesture?

Susan Simpson: Well there's two issues here: There's the 'prior difficulties' *and* the prior 'similar transactions'.

Clare Gilbert: The prior difficulties is what's between the victim and the suspect, and *that* is what they did not need a full-blown hearing on. The similar transactions gets a lot more into the risk of bringing in overly prejudicial character evidence, and that is what you *do* need the hearing on. So there *was* a hearing on that. And prior to that hearing beginning, Tami Colston brought up, "I'm also bringing in prior difficulty evidence, and this is what it is". But they didn't really do any kind of hearing on that.

Susan Simpson: And also, one of the charges against Joey in this case was the crime of stalking. So that was sort of a loophole that they could use to get in a lot of evidence that seems otherwise irrelevant, by saying, "Oh, it's evidence, not for the murder necessarily, it's evidence that Joey was stalking Isaac, knowing full well that the jury is going to use it as evidence of the murder.

Jon Cryer: Well, just out of curiosity, did the defense ever point out that – specifically since the charge is stalking – that Isaac followed *him* as much as he followed Isaac, would seem to completely mitigate that. Did the defense ever bring that up?

Susan Simpson: In a respectful, sort of, muted fashion – which I understand *why* they have to do that, because, again, that is a very hard defense to raise. You have this kid who was murdered horribly, and you get there in front of a jury and say, "Yeah, but he was chasing this violent defendant

around". Yeah, it's a hard sell. So I understand why that would not be something they'd want to play up, particularly.

Clare Gilbert: Yeah. They did do it in a very, kind of, subtle way. In fact, the first time I read through the transcript I thought that Bill O'Dell did a pretty good job of it, particularly with Jay Barnett – who was one of the first witnesses in the trial – he very respectfully, through his questioning, got out that it was *Isaac* that was following Joey in the incident pertaining to where they went to Joey's house, and I thought he did a good job on that, but they didn't sort of wrap it up and tie it together and hammer it home, for exactly the reasons Susan just said, and that Joey talked about in the episode.

Jon Cryer: Well, because actually none of the incidents, to me, actually read like *stalking* behavior – none of them. Can you guys think of one?

Susan Simpson: There isn't. It just didn't happen.

Bill Rankin: You know what's frustrating to me, as a listener – and I'm listening very closely to Joey Watkins' tale – is that we can't hear the trial testimony. And I think if you *could*, you would certainly would have a much deeper understanding of whether these people are telling the truth or not. It's very frustrating that the court is not allowing the recording to be released.

Susan Simpson: And plus there's also the rest, that I don't know how to avoid, but when I'm there reading a transcript, and speaking for one of these witnesses, I'm going to read things like it implies something different, or somehow project my interpretation onto their words. Which isn't fair to them, either.

[18:07]

Bill Rankin: Right. I don't understand why they're doing this. I mean, I know there is a case right now – there's a lawyer – Ashleigh Merchant – she's actually provided some commentary on the *Breakdown* podcast – she was in a court in Douglas County before a long-time Superior Court judge, David Emmerson. And she was representing a client, and she said during the hearing Judge Emmerson treated her terribly, with no respect whatsoever, and that the tone and demeanor would clearly show how inappropriately he behaved.

So she asked to get the court recording of that hearing, and if I recall, Emmerson said that his court reporter is a contractor and so it's not essentially a public record; the transcript is. [laughs] He offered Ashleigh Merchant the opportunity to come to the courthouse and *listen* to the recording of that hearing, but she couldn't *copy* it – which I guess, I don't know what good *that* would have done – so Merchant sued the judge and the court reporter.

Their case went to a judge in Fulton County – which is home of Atlanta – because that's where the court reporter lives. The judge *there* dismissed the case, and *now* it's up on appeal to the Georgia Supreme Court. And it seems like as all this is going on, all the judges around Georgia have closed ranks, and they're not releasing what is arguably a public record – which is the recording of a trial or a court hearing in a public courtroom.

So, I'm – as someone who makes podcasts – extremely interested in how the Georgia Supreme Court rules. I think they should rule sometime this year, I would hope.

Susan Simpson: Yes. This goes way beyond just Joey's case.

Clare Gilbert:

Yeah, it's just so odd that they did the same thing in Joey's case, in that they said: "You can come and listen to it yourself, if you would like, but you can't copy it."

It's like, you can come and look at these documents – the documents are open for you to come and see – you can write down what's on the documents, but you can't make a copy of the documents. I mean, that would be absurd. But this is the equivalent in sound – it makes no sense.

Bill Rankin:

If I was a news organization and I wanted to cover Joey's trial I would have to file what's called a 'Rule 22', which is what you need in a Georgia courtroom to videotape or record a trial, if you're a TV station or a radio station. So if that had been done at that time, you know, and the trial had been covered, *somebody* would have a copy of it, *somewhere*. And I'm sure they would make it available.

But, now, because the trial's over, it's too late. It's very troubling, to me, you know? Because, public court, you know, that open court, is a fundamental bedrock principle that we have, that courts need to be open.

So I'm very interested to see what the Georgia Supreme Court does, and maybe I will hear a lot about Joey's trial at some point.

Susan Simpson:

Yeah. And it's not just a media issue either, too, I think it's a very fundamental right for defendants.

I just spoke to an exoneree in a different state – not Georgia – in *his* case, the judge gave a pretty outlandish instruction to the jury. The transcripts didn't have it – the transcripts did not show this instruction being made in the way the judge did it – and when they tried to get the audio and they couldn't, and then... "Oops! The audio got destroyed... My bad!"

So they had to get 11 affidavits of people in the courtroom who heard the judge say this, and who were to prove that, yeah, the transcript doesn't show it, because his court reporter did him a favor, but the judge *said* it.

Jon Cryer:

Sounds to me like an abuse of the fact that they just happen to have a private contractor as the stenographer. Because I don't know what *purpose* protecting the recording would do for the stenographer. I don't know, there's no professional purpose *not* releasing that would serve.

Bill Rankin:

I can think of two reasons.

Jon Cryer:

Oh thank you, okay. Good. [laughs]

Bill Rankin:

Well, when I first tried to get courtroom proceeding for the first *Breakdown* episode, which was a case out of West Georgia of a man wrongly convicted of murder. He had a *habeus* hearing down in South Georgia where he was in prison, and I called the court reporter and asked her if I could come down and tape record the *habeus* hearing, and I felt like I was talking to Charlton Heston. You know? I wasn't going to get it out of her cold, dead hands! I mean really!

[laughter]

Bill Rankin:

She said, "You're going to have to go to the Supreme Court" to give it to me and she essentially hung up on me and it took a *lot* of coaxing and a *very* nice judge to finally allow us to go down

there and record it, and I don't see *what in the world* could have gone wrong, but I think maybe the court reporter was worried that I was going to try to check and see what if she had put down in the transcript was right or not. That was *not* my intention, I kept telling her that.

But I think that could be one reason, and the other reason is – more disturbing – is that maybe some judges don't want people to hear what goes on in their courtroom. And they control... You know, the judges truly control whether things are going to be released or not.

[23:14]

Susan Simpson:

That is the disturbing thing. In this case there is *no other possible issue*. There isn't any valid reason I can think of for why they would not want to release the audio here. And we have the transcripts – we're not going to put the court reporter out of a job – the reporter's not the one objecting here. Basically they're saying that it is somehow against the interest of the State to let people hear what a judge says in court. Or what witnesses say in court.

Jon Cryer:

Well it seems to me like the State is using, basically what private attorneys do, which is just placing impediments in front of the opposition. Which, to me, is immoral for the State to do. I know that it puts them at a disadvantage in terms of courts, but it's not their *job* to make it hard on the defense, it's just not.

Susan Simpson:

Or, more disturbingly, possibly, what if this is something that's been going on for a while? And I've at least heard claims – there's obviously no way to evaluate it, because we can't have the audio – but in other cases, that this is something that happens, that judges repair their mistakes by glossing over in the transcripts what happened. And if they've come to rely on that, they don't allow the audio to ever get out, no one's ever going to know it.

Clare Gilbert:

And I thought it might be... When they initially started raising these concerns – putting my conspiracy theories aside – I thought it might be some kind of proprietary issue, like Susan just mentioned. You know, if *anyone* can request the audio of a trial, and then perhaps go and have someone else prepare the transcript, and that potentially puts a court reporter out of a job.

But *here*, the transcript has already been prepared – they offered us another copy of the transcript for free, *and* we also offered to pay for the audio itself, if that was the issue. And none of that was acceptable.

Jon Cryer:

How did you get the audio of the Mark Free trial?

Clare Gilbert:

Well... [laughs] That's a long and complicated story, but the *brief* version is that we asked for it over and over and over again, and then we offered to pay to have it transcribed, to get the transcript of it, because we at *least* needed to-- We were trying to find out if the audio still existed, or if the tapes had been destroyed. And so, in the course of locating the tapes to see how much the transcript would cost, the court reporter just decided to give us those tapes.

Susan Simpson:

And it's worth noting-- So when you, Clare, when you called me, you were like, "Um, I have all the tapes from the Mark Free trial. Is that okay?"

[laughter]

Clare Gilbert:

Yeah, I had to call-- I had to confirm with, like, three different lawyers before leaving the courthouse. [laughs] Because it felt very strange to be leaving the courthouse with dozens of original trial tapes.

- Jon Cryer:** Did you think you were going to be accused of *theft* or something?
- Clare Gilbert:** I just thought like, “When in Rome...” You know, I was like we’ve got all this beef with the State and the police for not preserving evidence, and here I’m about to walk out of the courthouse with, you know, 20 trial tapes in my purse, it just felt wrong.
- But I documented it all in the courthouse, I documented everything in writing, we’re keeping them in, you know, a secure location here, I told the court reporter if she ever needed them back we would give them back to her...
- And the issue there was that they could have been destroyed at any time because there was no requirement for her to preserve them, because there was a ‘not guilty’ verdict.
- Susan Simpson:** And to give some backstory here, there has been, in previous attempts to obtain information from the court and the police, and at one point there was an incident where Clare was accused of stealing, and, like, hiding, the police department’s evidence. So I know that was something that Clare was right for being aware of.
- Clare Gilbert:** Right. Well not so much *stealing* but borrowing.
- [laughter]
- Susan Simpson:** Borrowing without returning!
- Clare Gilbert:** No, no, they said that I *did* return it, that was the *odd* thing. They said that I--
- Jon Cryer:** You’re not very good at this ‘stealing’ thing.
- [laughter]
- Susan Simpson:** But Clare, also that after they said, “Oh we don’t have the file any more, and you were the last one to take it.”
- Clare Gilbert:** Right, right.
- Jon Cryer:** But you had returned it?
- Susan Simpson:** She never had it in the first place! [laughs]
- Jon Cryer:** Oh! [laughs]
- [27:30]
- Clare Gilbert:** So, what happened was, when they made the copies of the police file for me, they returned both the copies and the originals, and asked me to match them, to make sure they got all the copies correct.
- So I did, and in the course of doing that I got like three pages of an original mixed up with the copy. So the next time I went back to Rome I returned those three pages of the original. And

then I went back *again* to copy some more of Stanley Sutton's police file notes. And this time, when I looked in the file, 100% of Stanley Sutton's police file notes were no longer in the file. Someone had gone in and removed them all. And... So I asked about this. I said, you know, "One of the pages of Stanley Sutton's notes got cut off, there was a page referring to Yvonne Agan, who's a major witness in this case, and I wanted to copy it correctly, and his notes are *gone*, so can you ask whoever took them to put them back?" And the police department told *me* that there was a witness, or that a witness to *me* being the one who removed all the police notes, and that their understanding is that I had taken them.

But the strange thing is that they then reappeared on the officer's desk a few days later with a note that said that these had been returned by Clare Gilbert. Which is *not* true, because I did not take them and I did not return them. And when I asked the secretary about it at the police department, she said that wasn't correct, either – that the only time I had returned anything were those three pages at the very beginning that had got accidentally got mixed in.

Jon Cryer: You are not a good thief at *all*. I was going to say that--

Clare Gilbert: I know...

Jon Cryer: You are a terrible thief-- [laughs]

[laughter]

Jon Cryer: You have to put work on that, Clare. [laughs]

Clare Gilbert: And the motive is all wrong, there! To-- [laughs]

Jon Cryer: Yes! [laughs]

Susan Simpson: Like that matters in Rome, Georgia.

Clare Gilbert: Yes.

Jon Cryer: Yeah...

Bill Rankin: Well, it begs the question: Why were you asking for them in the first place?

Clare Gilbert: Exactly!

Jon Cryer: [crosstalk] Exactly! What thief steals something and then goes back and says, "Hey! Where's the..." I guess, if you're a *brilliant* thief, that's the thing. Actually you're a sociopath. It all makes sense now. [laughs]

Clare Gilbert: [laughs] That's right.

[31:20]

Jon Cryer: We have a few Twitter questions, that actually I wanted to get into. When you guys were talking about the various incidents that were used as ‘prior difficulties’ – by the way, prior difficulties... Difficulties for me are like, when I can’t open a jar of peanut butter, you know? [laughs] This kind of stuff seemed a little more serious than that.

But there seemed to be a lot of confusion about the death of Isaac’s dog, Sally. Because, at one point in the podcast, you state that they never found the body, which, to me-- A couple of people said, “How do you know that the dog is even *dead* if you never found the body?”

Susan Simpson: Well, Isaac returned home one day and he found the dog, and he went and buried the dog, right after he found it. No one else ever saw it. But he told friends and family that when he’d gotten home, he’d found her shot in her pen. And after his death, his friends and family told that to the police.

Bill Rankin: How did they know it was a .22?

Susan Simpson: [laughs]

Clare Gilbert: That’s the \$64,000 question.

Susan Simpson: Let’s just say that it’s an issue that will be explored in detail later.

Bill Rankin: Looking forward to it.

Jon Cryer: But since he buried the dog, there’s no way to possibly, you know, exhume the dog, I would imagine.

Clare Gilbert: There would be a way to exhume the dog – if they could *find* the dog. And, he apparently told his mom where they buried the dog. They apparently looked for the dog extensively on their property and at this other location where he supposedly buried the dog.

But our understanding from the State is that they never found the dog, they never dug the dog up. They *should* have no idea what the dog was shot with.

Susan Simpson: It seems like the people I’ve talked to remember different things about what he said about where he buried the dog. So they reported different things. It had been a few months at that point, so they’d probably just forgotten. But the end result is that no one could agree on where Isaac said he buried the dog.

Jon Cryer: I’m confused? Did *the State* actually look for the dog? Or just--

Susan Simpson: Yes.

Jon Cryer: Oh, okay.

- Susan Simpson:** They did. They didn't find it.
- Jon Cryer:** They actually-- The police actually made an effort to do that, okay.
- Clare Gilbert:** And apparently, the FBI, too. Well--
- Susan Simpson:** Yep.
- Clare Gilbert:** The FBI, apparently, came out to the property to look for the bullet that *should* have been in the dog's head – so I'm not sure why they were looking on the property – but they were trying to find any sign of the type of weapon that was used to kill Sally.
- Jon Cryer:** So, at one point, it had been said that the Georgia Bureau of Investigations had been involved with this, but I did not realize that the *FBI* was involved as well.
- Susan Simpson:** They were.
- Clare Gilbert:** Neither did we.
- We thought it might be a misprint, or something misspoken, but they were indeed involved, which is a very interesting story that I'm sure will come up.
- Susan Simpson:** Yeah, I totally thought it was just GBI. I was like, "Oh, they meant 'GBI' – it's confusing, lots of acronyms." And Clare was like, "I'm not so sure about that." [laughs]
- Jon Cryer:** Well, that's one thing, Susan. A lot of the time you look over these documents extensively and intensively, and I find when I'm reading these documents, there's so much stuff that I gloss over, I go, "Oh, probably somebody just made a notation error, or something like that." Do you-- Every time something jiggles you a little bit, do you look into *everything*?
- Susan Simpson:** I wish! I try to, but in this case, I mean I didn't miss that it says 'FBI', but I *totally* said, "Oh, of course they meant GBI!". Which was a mistake.
- Clare Gilbert:** And the thing that struck me about that was that it was Stanley Sutton who said it, and it seems like the police themselves wouldn't mix up GBI and FBI – they said it in a couple of places.
- Susan Simpson:** But the transcriber might. Again, we need the trial audio!
- Clare Gilbert:** Right.
- Bill Rankin:** Right.
- Jon Cryer:** But again, I don't know why the *FBI* would have jurisdiction over this.

- Clare Gilbert:** Oh... They found a way! [laughs]
- Jon Cryer:** [laughs] Oh, good!
- Susan Simpson:** Where there's a will, there's a way.
- Jon Cryer:** Yes. If they, like, called internationally at one point, or something, or, you know, there's always *some* angle. It's like with the DEA being involved in Adnan Syed's case. Like, I understand all law enforcement is sort of on the same team, but why these things need to take the course they take is absolutely a mystery to me. And again, all arguments in favor of *my* big idea for the podcast, which is, just make them all one thing. [laughs] Let's not have sheriffs and cops, and this and that, and all one, just *police*. They can all just be police, and they can all be together and work together and be happy people and everything's perfect.
- Susan Simpson:** Jon Cryer's utopia?
- Jon Cryer:** I know, yes, exactly. [laughs]
- [35:27]
- Clare Gilbert:** One of the things that really struck me about this first 1-A in the Notice of Intent to Raise a Similar Transaction, which was the notice about the dog. Susan brought it up in the episode that the notice that Tami Colston gave was that between June of 1999 and August of 1999, Isaac Dawkins' dog was shot. And the dog was shot because Isaac Dawkins was dating Brianne Scarborough [sic].
- That is the timeframe during which – June 1999 to August 1999 – Tami Colston was under the understanding that Isaac and Brianne had dated. Tami sent an email to Isaac's mom one-and-a-half months prior to filing this notice of intent to raise similar transaction, and the subject of the email was, "Similar Transaction Evidence".
- So Tami is sending an email to Isaac's mom asking her *specifically* about similar transaction evidence. And the copy of the email that we have that says, "Re: Similar Transaction Evidence", and that response from Isaac's mom addresses information about the dog. So clearly Tami had asked about the dog so that she could write about it in the similar transaction evidence. And Francine says, "The dog was shot on October 1st, a Friday."
- So why is Tami, with this very clear information that the dog was shot on October 1st, from the *source*, turns around and says under penalty of perjury in a document she files with the court, that the dog was shot between the eyes between June of 1999 and August of 1999, when Isaac and Brianne were dating, is disturbing to me.
- Susan Simpson:** There's a lot that's disturbing about this notice. It's not just-- That one is more glaring and upsetting because she asked a question, got an answer, and ignored it. But there are a lot of times in this notice that to *me* it looks like she genuinely didn't know what she was talking about – she wasn't intentionally distorting something, she just didn't have a clue.
- And yet she just went right ahead and presented this narrative of something Joey had done that there's not a witness saying. It's not like she'd been listening to a witness and getting it wrong, because the witness got it wrong, she's just listing bad things that Joey did, and not caring if there's any truth to it.
- Jon Cryer:** Did Joey's defense attorney confront her about this?

- Susan Simpson:** Well, they got this notice in *June*, and the trial started in June. So it's not like they even had a lot of time to figure this out. It took me a lot longer than two weeks to figure this out, and I have all of the records to look at.
- Jon Cryer:** Well, that's what occurred to me, is there's so many incidents that-- There's *five* incidences you said, and a defense attorney has to bat down *every single one*. It just seems like it's putting enormous pressure on the defense, and I guess, you know, obviously, it's in the judge's purview whether it should go that way, but you know, I don't know *how* you're supposed to marshal that amount. It's throwing everything but the kitchen sink at the defendant. I don't think it's fair.
- Clare Gilbert:** Yeah, there's actually *20* incidents raised in this notice of intent to raise similar transaction. Provided to the defense two weeks before trial.
- Susan Simpson:** Bill, is this something you've seen a lot, in Georgia? In cases other than the ones on the podcast – the ones you report on for the paper?
- Bill Rankin:** Well, I *do* see a lot of cases with similar transaction evidence, and it *does* seem like they come fairly late in the process, and how defense attorneys have to scramble. I mean, just think, if you're a public defender and you have 200 cases, and you don't have an investigator, and all of a sudden you get a notice, you know, let's say a *month* before trial, of similar transactions. How in the *world* do you have the time and the resources to investigate all these incidents? It's beyond me. If you have a well-funded defense, you know, you have a lawyer or two, and they have one or two investigators, maybe they can scramble in time and check it out.
- With the internet now, you can find out a whole lot of things. But I've seen lawyers who have been cross-examining witnesses on the stand, with is it with Giglio and Brady? In some instances you get to get it on cross examination, you know, the notice, and you get the evidence. So I've seen lawyers cross-examining a witness while a co-counsel will be on the internet trying to find holes in what they just received in court. It doesn't seem that fair to me, but that's the way it plays out... Often.
- Susan Simpson:** That's Jencks material, and the defendant does not have a right to it until *after* the direct examination of the witness.
- Bill Rankin:** Yes.
- Clare Gilbert:** And in *this* case, there were 101 named State's witnesses. They brought forward this intent to raise similar transaction with 20 different incidents, in here. It was three weeks before trial, and there was never a continuance in this case. This case went to trial on its very first trial setting.
- Jon Cryer:** Well, also the defense didn't see much of this coming, because so many of the witnesses seemed to have changed their story. Is there any way to see that except, I guess, once they're on the stand? I guess that's when you get word that they've changed their story. Were the defense attorneys privy to their witness statements? Their original witness statements?
- Susan Simpson:** Some of them. They didn't have the first ones, because they didn't have the notes from the-- But they had the recorded transcripts.

Clare Gilbert:

Right.

[40:52]

Susan Simpson:

And Clare, I don't know if you had a similar experience, but when I finally realized-- I got into the case well enough to see the bigger picture, and to realize that all of these stories came out after Sutton... I was kind of blown away, because Moser *was* investigating for seven weeks, and he was, like he was being thorough, he was looking into things, he was talking to people. And *no one* mentions that these really terrible things Joey did to Isaac? Why would his friends and family *not* disclose this to the police investigating the case?

Clare Gilbert:

Right. I cannot even *begin* to approximate how many hours I have spent on this case, and I didn't realize until I heard *you* talk about it in the podcast last night!

I mean, that's-- And then, all of a sudden I was like, "Whoa, that's right! And you know, it's only a couple of months in, but because Moser had talked with these people, a lot of his conversations were described in his notes, I just hadn't realized that the brunt of these allegations came out, really, only after Sutton had gotten involved. It's very powerful.

Jon Cryer:

Have you guys been able to *talk* to any of these witnesses whose stories changed?

Susan Simpson:

They never seem to want to talk to us, for some reason.

Jon Cryer:

Well, yeah, obviously there's that moment where Sutton prompts him with the 'Pool' reference, but that- when I listened to it it didn't immediately ring an alarm bell from *me*, but again, I'm a layman, only because, you know, people sometimes forget names, perhaps they've told a story before and there's an element they didn't relate the second time, so did the context of that really bother you?

Susan Simpson:

Well that wasn't even in the episode, originally. As we had the outline, and as we were recording, I brought it up as kind of a throwaway comment between takes, "Oh just know that Sutton has to help whisper answers to Jay, to help him remember," and they were like, "Uh, we're adding that now."

Jon Cryer:

[laughs]

Susan Simpson:

It's not that *that* information itself is critical. But what it does show, for me what's so striking and glaring about it, is how comfortable this witness was with trying to whisper an off-the-record question in the middle of a tape recorded interview to the lead detective. So if he's willing to do that in the interview, what's he doing when the tape's off?

Clare Gilbert:

Well, and that's the *other* thing. You've got Isaac's best friend, who ends up, by the time of trial, being a *new officer* in the police department with Stanley Sutton, who is obviously a very *senior officer* – a very persuasive and powerful officer, and very, *very* committed to Joey's guilt. And I just can't imagine what pressures Jay Barnett might have been facing at the time.

Jon Cryer:

Is he still a police officer?

Susan Simpson:

He is.

- Jon Cryer:** So, I imagine he's not talking to you either.
- Bill Rankin:** So Adam Elrod – his testimony all kind of tore apart, seems to me – what did he have to gain by coming forward?
- [43:43]
- Clare Gilbert:** I think the large reward was a motivating factor for a *lot* of these people. There were posters plastered *all* over Rome. There were *billboards*. It was up in the jail. It was on everybody's mind that this reward that started at \$10,000 and went up to \$15,000 and then \$20,000 and may have gone up even higher than that, according to people with whom we've spoken. I think that for several people that played a role.
- Susan Simpson:** Mm-hmm. I think there was a carrot *and* a stick going on. Witnesses had reasons to be motivated to talk, both for gain, and to avoid certain risks.
- Clare Gilbert:** That's right.
- Bill Rankin:** That reminds me of the Justin Chapman case in the first season of *Breakdown*, where two key witnesses basically did him in with very questionable testimony. And they both split a reward three weeks after the trial. It was never disclosed.
- Susan Simpson:** And we can't even find out here, what happened to the reward, because we're still looking into that.
- Jon Cryer:** So there's no records of whether it's been dispersed yet, or not?
- Susan Simpson:** This is not a Crime Stoppers. There's no organization here that handles a reward; no formal one. So there's not even like, an entity responsible for even knowing where it went. It's a 'black box' of money that went somewhere, possibly. It had to go somewhere. I mean, unless it's just still sitting' there, somewhere.
- Jon Cryer:** Yeah there's a lot of social media anger directed toward Adam Elrod – as a matter of fact, here's '@GMangine' who says: "Adam Elrod is as much to blame for Joey's conviction as Brianne".
- And it does strike me as unfortunate that he's got Brianne, he's got Josh Flemister, and he's got Adam Elrod, and it just seems like, well, now it's amazing that he had a shot at *all*. Considering that so many people seemed willing to say awful things about him.
- Susan Simpson:** And I don't think it's fair to blame Adam, necessarily, because I think Adam is the one who suffers from his own issues, and he was just a *super* convenient tool for the prosecution to use.
- Clare Gilbert:** That's very generous of you, Susan.
- [laughter]

[45:37]

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Jon Cryer:

We've gotten some, general questions like James Weirick who is the host of the *Undisclosed: Military Justice* podcast that just dropped asked, "Why do the young males of Rome spend so much time in displays of machismo?"

This might be rhetorical... [laughs] But you went into it a little bit on the podcast, which is that teenagers don't have much to *do* in this town. I want to say by the way, I've gotten a certain amount of ire on social media because I referred to Rome a couple of times as a small town and several people said, "No, no, we've got a hospital and universities..." and so my apologies, first of all.

Susan Simpson:

I have to feel like there's some level of defensiveness going on there, because Rome is not tiny – it's a legit thing. It's got, I mean, it's got Berry College and it's got a good hospital system, but I think people from Atlanta for instance would call Rome a small town.

Bill Rankin:

I'm in Atlanta, so I live in Atlanta – right outside – and you also need to think that this was almost 20 years ago, so I would think Rome is probably grown a little bit since then. I mean it has a minor league baseball team and I guess when you're up on the mountains, when you're up high you can see it kind of spreads out a pretty good bit, but downtown's very compact and small. It's not, you know, it's not substantial in any way.

Clare Gilbert:

I think another good word for Rome is 'isolated'. Because it does have that feeling. It's difficult to get to, it's off of the main highways and I think that might be a bit of a factor here as well.

Jon Cryer:

So, you feel like the teenagers don't feel like they socially have mobility in terms of going to other towns or feeling like they're part of another community? They kind of just have to stew in their own issues?

Susan Simpson:

I just think it makes it a lot more interconnected and it does possibly have more of a small-town feel than necessarily its size might suggest. But I just think it's all a matter of where you live, what you're used to, what you call 'small' and 'not small' towns.

Jon Cryer:

Well, my mom grew up in a very rural small town in Indiana and all the teenagers had to do there was drink and crash into things with their cars. That was like the entirety of their after school activities. Or they would occasionally steal farm equipment and crash that. It was very much a *Footloose* situation. [laughs]

But nowadays, my son's 16 and you know his day is incredibly scheduled, you know, and I think part of that is a reaction to teenagers when they don't have anything to do, end up doing things that they probably *shouldn't*.

And may I suggest for the town of Rome maybe it's time to get a community theater production of *Hairspray* going for the teenagers? [laughs] I'm just spit-balling here, folks. Just something--

Susan Simpson:

It's amazing how many of the stories from, I guess when they were a bit younger, but like, so many of the stories from these kids – when they were kids – involved going to the skating rink. I mean when I was like a *little*, little kid I used to go to Sparkles for like skating parties, but when these kids are like teenagers, they're still going to the skating rink. Which I found kind of odd. Just from my perspective growing up not *too* far away, in Atlanta.

- Jon Cryer:** But they have the machines that give you the tickets, and once you get the tickets you can take the tickets up and trade them for some cool stuff! That--
- Susan Simpson:** I mean, like *skating*, skating.
- Jon Cryer:** Oh!
- Susan Simpson:** Like, like... Like *Xanadu* style. [laughs] Is that the right movie?
- Jon Cryer:** Yes! Roller disco. Uh, *Xanadu* is a great reference. *Roller Boogie*, another good one.
- [laughter]
- We don't have to go through the whole *canon* of roller disco movies at this moment. But yes. I find that teenagers will, you know, they'll gather at Shakey's Pizza, they gather wherever they don't feel like they're a problem, necessarily. You know?
- Susan Simpson:** Being watched. [laughs]
- Jon Cryer:** Exactly.
- [49:13] ≈
- Susan Simpson:** Bill. I had a podcasting question for you: Since you're kind of going through similar stuff as we are. And I'm sure the State of Georgia is loving the fact they now have *two* podcasts focused on criminal justice problems in their state and there could easily be more.
- Did you have like any sort of internal discussion in choosing an active case to be the one you followed? Because I saw when you chose that – and it's an interesting case – but I remember thinking, "Wow, that's brave." Because trying to follow an active case for the podcast seems like: 1) hard, and 2) just so unpredictable.
- Bill Rankin:** Well, I have to say the comfort level of doing one where I have been able to research a case for about six months as opposed to doing one that's ongoing, was dramatically different.
- I didn't know how this would play out. I mean, as the trial goes on... And we try to put a podcast together every Monday, which is kind of overwhelming, because I'll be writing about the case as it goes on as well for the newspaper.
- Thankfully I have a colleague, Christian Boon, who's here with me, but I think what we saw was the interest in this case was over the roof, so I was a little wary before I started – *quite* wary, when I started. But the more I delved into this case the more I've been fascinated by it.
- And, you know, if anything this podcast has done, if it's raised awareness of telling people they need to think about their kids in the back seat. I feel like I've accomplished more than I could ever accomplish. If I could help a parent remember their child.
- Jon Cryer:** Just out of curiosity, are they, when they're interviewing potential jurors, are they asking if they've heard the podcast?

Bill Rankin:

They have. In Cobb, I think maybe one or two did down here... I haven't heard. Most people say they have listened to *Making a Murderer*, or looked at the OJ case when they're asked about legal documentaries.

One thing did come up that was kind of funny down here: So, it was in Brunswick over the summer, over eight weeks in the classified ad section somebody had taken out an ad under the heading 'Reasonable Doubt' and it said if you're interested in the Ross Harris case that's coming here please listen to *Breakdown*. And I did *not* take out that ad.

[laughter]

But the Cobb County DA's Office was so concerned about it they filed a subpoena to the *Brunswick News* advertising director demanding that he show up in court with the name of the person who took it out, where the person lived and how much he paid for the ad.

And the newspaper got with its lawyers and they realized this wasn't a journalism protection like you're protecting a confidential source, this was a business transaction, so they actually turned over the name of the person who took out the ad. And the Cobb DA told me that once they found out this person wasn't involved in the case or was a Glynn County juror they dropped it immediately.

I'd still like to know who took out the ad.

Jon Cryer:

Me too.

Now, does it feel to you like you have a very, very special responsibility? Because I listened to the podcast and I came away with a very specific feeling about the case, and not necessarily that the way that you built it convinced me of that. I don't know if that's what you were going for or not. But do you feel a special responsibility to *not*, you know, foist a particular view of the case on people?

Bill Rankin:

Yes, my primary responsibility in my mind is to be fair to both sides. And to present both of their positions as completely as I possibly can. As I do with all the stories I write for the newspaper, which I've been doing for as you said, I just had my 27th anniversary. I take that responsibility incredibly serious. To my soul.

Jon Cryer:

Yes. I've spoken with some journalists who feel a certain amount of frustration that objectivity is so required because, you know, it often gives equal value to things. That you know, when you're actually in the room, *don't* have equal value.

You'll see, you know, *one* witness who just seems unbelievable but what they say you have to report, and I have spoken to journalists who have some frustration about that, but obviously the need for it, to have objective journalists, outweighs that frustration I would imagine.

Bill Rankin:

It does to me. Absolutely.

Jon Cryer:

And we've got one other social media question that I wanted to pose: This is from 'The Stig, Norway', who is Norwegian: "As a non-American, the police and legal system in the US seems completely insane. Do you feel the same?" [laughs]

And I thought in the middle of all this that's actually, you know, I thought about it for a moment, I thought, you know what? No, it doesn't. You know, it's a process that's gotten very *convoluted* but it doesn't feel that way to me. Do you guys feel the same?

- Susan Simpson:** Flawed is not insane. And I also suspect that – well, not even *suspect* – it’s just not a US thing. There are countries out there that have definitely gotten more together than we do. But the idea that this is a US problem is very short-sighted. This is *not* something that only happens in the US system. In the Common Law system, or even like outside of developed countries there are, I’m sure, plenty of countries in Europe where this is happening all the time. Perhaps gets even less exposure than it does in the States.
- Bill Rankin:** I would agree that it is flawed, but I think that the most wonderful thing about our justice system is that for the most part it’s open. So, if it is flawed you can expose it and corrections can be made. They’re not *always* made, but they can be made and people respond. You know, and the light shines on them sometimes. So, I think that is a very redeeming factor of our justice system.
- Susan Simpson:** What can be seen can be fixed. Absolutely.
- Clare Gilbert:** Yeah. I also agree. I’m a believer in the system, and I think it *has* flaws and *can* be improved, but the potential is there and it just takes people being diligent and open-minded and it can work.
- Susan Simpson:** Yeah.
- Jon Cryer:** So, release the tape of the audio, Georgia--
[laughter]
- Clare Gilbert:** [crosstalk] Yeah.
- Jon Cryer:** How about that?
- Susan Simpson:** Yes.
- Jon Cryer:** And it points out the huge issue of privatizing any services in the criminal justice system with prisons and obviously court reporters that can’t be a *dodge* to transparency.
- Bill Rankin:** Right. And also you think about this old equipment, which I guess you probably found, they have Four-tracks. These stenographers would have four tracks, they would have four microphones across the courtroom.

It’s very antiquated but now. It’s all becoming digitized, so it’s going to be so simple, you know, to share it. You know most modern technology things are made much more efficient and easy and that’s the way this is becoming.
- Susan Simpson:** Yeah, it’s almost like the courts are saying, like, “Oh yeah, we are founded on this ideal of open courts and scrutiny to the public, but it’s also really difficult for the public to actually scrutinize it. Now that it’s easy for the public to scrutinize it, we don’t really want to have it open anymore.”
- Bill Rankin:** Right. Very true

Clare Gilbert: Right.

Bill Rankin: Well, you got seven justices on the Georgia Supreme Court, we'll see what they say.

[55:58] ≈

Jon Cryer: Well thank you guys so much, this has been great once again, such a pleasure. Thank you Clare, and once again I want to give a shout out to the Georgia Innocence Project.

And if you're thinking about donating to a criminal justice-related organization they're a great one. They're not working out of the strip mall anymore...?

[laughter]

Jon Cryer: Or are you?

Susan Simpson: Different strip mall.

Jon Cryer: Right, okay, it's a different strip mall.

Clare Gilbert: We're in not--

Jon Cryer: They're in a much better quality strip mall now. [laughs]

Clare Gilbert: We're not working out of the *nail salon* anymore.

Jon Cryer: Yes. Oh, good.

Clare Gilbert: We're still in a strip mall.

Bill Ranking: You're not by the bowling alley?

Clare Gilbert: We *are* by the bowling alley--

Bill Rankin: Oh.

Clare Gilbert: We're in the basement. We're in the basement of a strip mall.

Susan Simpson: The basement of a strip mall.

Jon Cryer: I'm sure it's very quiet there and- and good for--

- Clare Gilbert:** Oh... Yes.
[laughter]
- Susan Simpson:** I'd like to also give a shout-out to Caplan Cobb who is helping *Undisclosed* with the lawsuit with a motion to get the trial audio.

Mike Caplan was also the attorney that you heard on Bill's podcast, Season 1 of *Breakdown*. He represented Justin Chapman.
- Jon Cryer:** Is there any way that the listeners can support this, like, can they email a public servant of some kind or is there any way that they can help?
- Susan Simpson:** Listen to the audio when we get it.
- Jon Cryer:** Yeah! [laughs]

Well no, I'm thinking, you know, sometimes you can write a strongly-worded e-mail... [laughs]
You know, because those work...!
- Susan Simpson:** Yeah... Well, in this case I think we give the court system a chance to-
- Jon Cryer:** Mm-hmm.
- Susan Simpson:** To work things out--
- Jon Cryer:** To work things out.
- Susan Simpson:** And hopefully we'll have at least just a fair--

Right now they're not even giving a reason why they can't give it over. So I think I'll give them a chance to actually articulate that and we'll see where we go from there.
- Clare Gilbert:** And it is the state attorney general's decision on what to do with these trial tapes. They are the lawyers for the courts. So I can't imagine that people expressing their sentiment to the attorney general would hurt.
- Jon Cryer:** So *do it*, people. [laughs]

Okay, well you guys so much. Thank you Bill, it's truly a pleasure to speak with you and meet you. We'd love to have you guys back any time you want to to come back.
- Clare Gilbert:** Thank you.
- Bill Rankin:** Thank you so much, it's been a pleasure

Susan Simpson: Thank you Jon.

Jon Cryer: Ok, bye-bye guys.

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