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

ADDENDUM 14: **FRACTURE**
POSTED: **OCTOBER 20, 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*. Now if I sound a little odd this week, it's because my computer had a full-on 'HAL' emotional breakdown-- [laughs] And I am actually phoning it in this week. But I hope you'll just roll with it, it's going to be a great show.

In Episode 14 of *Undisclosed*, 'Pressure Points,' the team attempted to figure out why so many witnesses in the Joey Watkins case changed their stories from when they were first interviewed, to the time they testified at trial. In physics, the term 'observer effect' refers to changes that the act of observation will make on a phenomena being observed. Is this the criminal justice equivalent? Were the investigators themselves changing the nature of the evidence?

And with us today are two of the hosts of *Undisclosed*. We have Susan Simpson – she blogs at *The View From LL2*, and she is an associate at the Volkov Law Group. Hello, Susan!

Susan Simpson:

Hi Jon! Glad to be back on the *Addendum*.

Jon Cryer:

Yes! We've missed you! It's been too long. And we also have the talented and beautiful Colin Miller! He's an associate dean and professor of Law at the University of South Carolina School of Law, and he blogs at *Evidence Prof Blog*. Hey Colin, how you doing?

Colin Miller:

I'm doing great, Jon, how about you?

Jon Cryer:

I'm doing well, and I'm just hoping you enjoyed my reference in the intro there. That's the only reason I did it – to impress you.

[laughter]

Colin Miller:

Mission accomplished!

Jon Cryer:

Okay. [laughs] Alright.

And also joining us today is somebody who will be familiar to people who have been following the Adnan Syed case closely, it is Amelia McDonnell-Parry. She's a former founding editor and chief of women's blog, *The Frisky*, but having retired from the 'lady blog' game, she's now a freelance crime reporter for outlets like *Rolling Stone.com*. And in addition to being an obsessive tapestry weaver. But to this crowd she's definitely best known for scowling at Thiru Vignarajah and asking him how he sleeps at night. Welcome to the show, Amelia.

Amelia McDonnell-Perry:

[laughs] Hi. I'm very excited to be here.

Jon Cryer:

Big question: did he ever *answer* you?

- Amelia McDonnell-Perry:** No, he kind of was walking away as I asked, and I was like so upset by the whole debacle that I immediately ran off to the 7-11 to have a good cry. [laughs] And then proceeded to go about my day. But, the other reporters, I think, thought I was... Well, I don't know what they thought. I think they were sort of stunned.
- Jon Cryer:** [laughs] They thought you were bad-ass.
- Amelia McDonnell-Perry:** I just couldn't help it.
[laughter]
- Amelia McDonnell-Perry:** I don't know. I don't know that they quite saw it the way I did. So... [laughs] Maybe not. Maybe they thought I was rude. But that's fair.
- Jon Cryer:** [laughs] Well--
- Amelia McDonnell-Perry:** Whatever.
- Jon Cryer:** I imagine the way that he sleeps at night is with both literal and metaphorical blinders on.
- Amelia McDonnell-Perry:** Yes. I think he sleeps quite well, unfortunately.
- Jon Cryer:** But actually it's interesting. You and I had a conversation for *Rolling Stone*, where we talked about journalism and the limits of objectivity--
- Amelia McDonnell-Perry:** Yeah.
- Jon Cryer:** When it comes to reporting courtroom proceedings. We also talked about the limits of journalism just in general, because of, like, space limitations and stuff like that, but what I thought was ironic was *that* part of the interview got cut because of space limitations.
[laughter]
- Amelia McDonnell-Perry:** Yes! Exactly. Exactly. Yeah. I think especially crime reporting, crime journalism is especially hindered just by the very fact that, you know, early on in any sort of case once somebody's arrested, you know, *they're* not going to be talking to the press, their *attorney's* not going to be talking to the press, and so your only sort of story – unless you really sort of go out of your way to seek out witnesses – is going to be coming from the police or from the Prosecutor's Office.

So you're already getting sort of a one-sided narrative. Which is why I tend to take the tactic of just admitting that it's very difficult to be an un-biased journalist when you're doing crime reporting. And I kind of try and go out of my way to cover stories with a focus on the defendants and what their point of view is. Because it's very often lost.
- Jon Cryer:** And obviously, unfortunately, once the *appearance* of objectivity doesn't exist, then all sorts of questions get lobbed at journalists. So--

Amelia McDonnell-Perry:

Yeah.

Jon Cryer:

You know, obviously we're now dealing with this in an election where, politically, there's two *vastly* different candidates, and reporting them in the same way is almost *inherently* – or seems to a lot of people to be inherently – unfair to one of the politicians. But once objectivity is abandoned, where does journalism go?

Amelia McDonnell-Perry:

Well it's like, you know, the idea that there are two equal and just as valid sides to every story is actually just kind of... Crap. Sometimes they aren't equally as valid. They just aren't. Like, you know, if you're having a discussion about climate change for example, there's science, and then there's *not science*. You know what I mean? And so they're not equally valid. Sorry guys!

And you know, the way you cover certain stories, sometimes there *is* a more obvious sort of *right* side. And I think it's best for journalists to sort of be up front about-- Instead of pretending they're being objective or pretending that they are, you know, firmly down the middle. At least just being sort of open about where their own leanings are. But then still being committed to reporting on the case as factually as possible.

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Jon Cryer:

Now, interestingly, actually, in the Adnan Syed case there's been a *lot* of recent developments. It seems like it's in the news all the time. But in the last week the State of Maryland announced that it was going to grant *parole* hearings to hundreds of juvenile lifers. Colin, could you actually get into where this came from? I mean, it seemed like a very sudden thing for the State to announce.

Colin Miller:

Yeah, there was a law suit filed earlier this year, I think maybe April, by the ACLU of Maryland, because there's a Supreme Court case out there – the Miller case – that says, you can't have mandatory life-without-parole sentences for juveniles. And a lot of courts across the country have actually expanded that holding.

And in Maryland, the deal is that essentially for the last few decades, although you have these life sentences that are *technically* with the possibility of parole, there's no parole being granted. And so the lawsuit by the ACLU says we have all these juveniles – almost 300 in Maryland – who have been given life sentences, and that's *functionally* the equivalent of 'life without parole' because, they're not getting parole since the 1990s.

And in response, the State of Maryland now has said, "We're going to hold these parole hearings for juveniles". And the question the ACLU is stating: "This is perfunctory – it's not actually going to achieve anything." And the State's saying, "No this is legitimate – we're going to give them the chance to get parole." So, it'll be interesting to see over the next few months how this develops.

Jon Cryer:

So, if I'm understanding this correctly, some people think it's just a *ploy* by the State?

Colin Miller:

Right. That's what the ACLU has said. Is that these are going to be *pro forma*. And there is not actually going to be parole granted to any of these juvenile lifers. And it's essentially procedure being put in place that the State is saying complies with Supreme Court precedent, but that substantively, you're not actually going to see juvenile lifers in Maryland being given parole.

- Jon Cryer:** And in Adnan Syed's case, my understanding is that it would be very difficult for him anyway, because he still maintains his innocence.
- Colin Miller:** Right, exactly. That *is* a functional bar to parole, if you are maintaining your innocence. So obviously he's been granted a new trial, if that becomes finalized, then either they're going to drop the charges, or we're going to have a new trial, or there'll be a plea deal. But assuming for whatever reason that that order by Judge Welch is thrown out, his maintaining his innocence is, in effect, a bar, where he's not going to get parole because we have to have acceptance of responsibility to have a person being paroled.
- Jon Cryer:** But I also noticed that Brian Frosh who... I believe he's the *state* attorney general? Am I correct in that?
- Colin Miller:** Yes.
- Jon Cryer:** That he's actually pursuing trying to reform the *bail* system because he thinks that it discriminates against people in poverty. That seems like a very progressive stance for him. Which to me signals that maybe there's hope! Maybe if we write him enough – if people express their opinion – that maybe he might reconsider the Adnan Syed case?
- Colin Miller:** Yeah, and that's – in terms of Frosh's position – that actually stems out of Georgia. And it's actually a case that is relatively close to Rome, Georgia, where the Department of Justice actually filed an *amicus* brief saying that the *whole* system of bail that we have – and especially in Georgia – is unconstitutional.
- And Frosh's statement sort of mirrors that and says we are in essence having this carceral system for pre-trial detainees charged oftentimes with relatively minor crimes. And so it seems he's responding to what's going on in Georgia. And yeah, I mean the question is: Would he be similarly responsive to calls to action in Adnan's case?
- And that'll be interesting because if the new trial order is held up, that's very much going to be a question of: Is this a case where they just they just drop the charges and maybe pursue other people for the murder? Or are they going to do the whole decision to bring this to trial again and try to get a conviction despite the chances of that actually occurring being pretty low.
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- Jon Cryer:** Now actually I wanted to pose this question to all of you – an interview came out recently – Sarah Koenig actually did an interview with a podcast called *Criminal Injustice*, and she mentioned in it that she had very mixed feelings about the Adnan Syed ruling getting vacated.
- Amelia McDonnell-Perry:** [sighs]
- Jon Cryer:** Because she felt that as a journalist when she approached it, she felt that the system *worked*.
- Amelia McDonnell-Perry:** [laughs]
- Jon Cryer:** Which seems to me a stunning statement coming from somebody with, you know, more than a passing understanding of the facts of the case. [laughs] But I--

- Amelia McDonnell-Perry:** I...
- Jon Cryer:** I just wanted to get your reactions on that.
- Amelia McDonnell-Perry:** I... *Can't*. With her. On this. Anymore.
- Jon Cryer:** [laughs]
- Amelia McDonnell-Perry:** I'm sorry. I don't-- That stupefies me. That that's what she said. About that case at *this* point. After *everything* that's come out. After-- I mean, I sat with her in that hearing, in the media section – well, she was there a couple days – I *don't understand* how at this point that's her perspective. I feel like it's almost willfully naïve... I feel like, I don't understand. You have left me sort of speechless on this one.
- Jon Cryer:** [laughs] Well--
- Amelia McDonnell-Perry:** I'm just sort of like, *flabbergasted* by her.
- Jon Cryer:** Yeah, my jaw dropped as well. Because it seemed like, even just looking at the evidence that has arisen until late, it seemed like she was casting aspersions on the investigations since *Serial*. Like she felt like it wasn't coming up with evidence of anything of any real import.
- Amelia McDonnell-Perry:** She's so *jealous* that she didn't find all this stuff that *Undisclosed* did. Sorry!
- Jon Cryer:** [laughs]
- Amelia McDonnell-Perry:** It's true.
- Jon Cryer:** Well, I have no idea. I'm not going to cast aspersions on her, I've enjoyed her reporting... And I understand that, you know, we talked about this – about objectivity – you know, and I've admired to some extent her unwillingness to take a stand on some of this stuff because I feel like she's a journalist, you know, and that's an absolutely fair position to take. But it seems like she's ignoring the Crime Stoppers evidence, she's ignoring the *clear* evidence that Adnan's attorney apparently was clearly going through the ravages of a terrible disease, but also may well have been fraudulently billing him for things that she wasn't doing. It's clear she wasn't pursuing witnesses. So, I don't get how... And that stuff was clearly proven!
- Amelia McDonnell-Perry:** Yeah.
- Jon Cryer:** It's not a matter of conjecture. Much less all the troubling evidence about police misconduct and all *that* stuff. While it hasn't been proven, it sure looks bad that the DA was trying to talk a witness out of testifying. And that evidence that Asia McLain gave was essentially uncontested. They never put on anybody or offered any evidence to suggest what she said was not true. So, you know, I was *baffled* by that interview.
- Amelia McDonnell-Perry:** Same.

- Susan Simpson:** I just wonder what she thinks happened to Ezra Mabel, Cement Burgess, Malcolm Bryant... It's all just, "*Oopsies!*" Nothing happened... Everything was right in the system? Everything worked how it *should*? Ritz did the right thing in all three of those cases and just happened to end up with innocent men in prison?
- Amelia McDonnell-Perry:** I was going to say, has anybody sent her the Department of Justice report on the Baltimore Police Department? Because she might want to give *that* a read.
- Jon Cryer:** Well... But I think, on some level, because the Adnan Syed case didn't necessarily provide a larger narrative, I believe Islamophobia came into play to some degree, but it didn't tell the story of a guy mired in poverty, and that's why the system crushed him. It didn't show evidence of a larger story to her – at least in *her* mind – do you think that maybe that's why she didn't feel it resonated as a bigger story?
- Colin Miller:** This sort of goes back to – Jon and Amelia – your discussion about objectivity. I think that Sarah, from everything I've seen from her – including this interview – is that she takes great pains to be what she considers to be even-handed and objective. And is trying to give everyone a fair shake. And... I mean, that's sort of the position I think she's coming from. She doesn't want to label this as a case of police or prosecutorial misconduct, or where the system is broken, where she's trying to look at it from all angles and perspectives. And, I think some times that can go too far, in how she portrays it. But that's my sense of what she's trying to do here.
- Amelia McDonnell-Perry:** And it's to the, sort of the idea that not being connected to sort of a larger story. I think one thing that's really important for people to start sort of taking away from cases like this – like Joey's, like Steven Avery's case – all the many, sort of, black men and women who've been killed by police all across the board, and all the various problems that we see in law enforcement, and within the criminal justice system, is that there are these big, big stories – these huge, shocking, front page stories.
- But there's also, you know, these kinds of misconduct occurs in minor ways, regularly, all the time. That's what's so interesting about the Department of Justice Report for Baltimore, is that it really sort of reveals how... Yes, there are these big cases where they are on the cover of newspapers and get a lot of attention, but there are *everyday* sort of injustices that are inflicted on common citizens.
- I have a friend who lives in Massachusetts. A white guy who's never been arrested for anything and who had, you know, a really terrible experience over a routine traffic stop that turned into him getting a year probation on what was ultimately an unlawful arrest. I mean, you know, you can ask lots of people. People have what's considered sort of 'small' bad experiences with law enforcement, but they're nevertheless emblematic, I think, of just different types of misconduct that have kind of become *procedure* in some ways.
- So, yeah, they may not be connected to a larger story, but maybe that *is* the larger story, and nevertheless it's still really important! You know, it doesn't make it any *less* true.
- Jon Cryer:** Well, yeah. Very often the justice system fails in these *tiny* ways but it has real ramifications for people.
- Amelia McDonnell-Perry:** Yes. You know, the sort of things that you have to *miss work* because you have to go to court dates.
- Jon Cryer:** Exactly.

Amelia McDonnell-Perry: You know, in the case of my friend, he was put in a cell. Wasn't even allowed to attend his own hearing so he couldn't even-- He had prepared all these legal arguments for why certain charges should be thrown out, and he wasn't even allowed to attend because he wasn't able to. They – for whatever reason – made him do pee testing, and he wasn't able to do it, and so they immediately picked him up and put him in a cell. He couldn't even attend his own hearing. And then, the judge wasn't going to let him out unless he took a deal. You know? And little things like *that* just completely get in the way of a person's right to due process.

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Jon Cryer: Well, I wanted to get around to talking about Episode 14 of *Undisclosed*. And in this episode we saw how it seemed that the aggressive investigation of the crime seemed to be having an effect on the witness accounts of the evidence. And in Susan's interview with Corey Jacobs it seemed as though his evidence of Joey's, I don't know what you would call it, because he didn't even *confess* to the crime, really, he was *talking* about the crime... It seemed so general that I'm trying to figure out what on earth he said at the trial that made that seem damning.

And I was curious, Susan, what exactly did he testify to at the trial? Considering that his evidence seemed so meagre?

Susan Simpson: He did say he heard Joey confess to the crime. His description is pretty vague, but basically he says that he heard Joey talking about how "*they*" – with no names specified at that point – waited for Isaac at the college, followed him out of Floyd College, then pulled up behind him and shot him, and then went to Mark Free's house.

Colin Miller: That'll become important when we get to the cell-tower pings, because as Susan notes, his testimony is that Joey – and presumably accomplice – were able to *arrive* at Floyd College and wait on Isaac to leave before following him. So we'll definitely follow up on that more in terms of the timing for that.

Susan Simpson: And what amount of time did they expect to take him to get there.

Colin Miller: Right. Yeah. And as I noted the story that he tells, also, is that after the shooting, that Joey goes up to Mark Free's house. Which, again, we'll get to the timing more specifically, but again that doesn't really work out.

Amelia McDonnell-Perry: Yeah. I found it really fascinating how, coming into the conversation with you, Susan, he was like, "Oh yeah, Joey *definitely* bragged about killing Isaac." And by the end he was like, "I don't know, maybe he was talking about a John Wayne movie." *What?!* Those are *completely* different things. It's amazing how he went from one extreme to this totally other sort of perspective on his own sort of, *testimony*. On his own sort of memory of this event. In what seems like a fairly short conversation.

Susan Simpson: Well he didn't have full information about what happened at the trial. I think if he'd known in advance that he *was* in fact the only person who ever heard Joey confess, he could have been more prepared for that. But he *didn't* know, so I think that he had a genuine reaction to that.

It seemed to me he really was shocked and suddenly realized, "Oh wait, my actions *did* have a very serious effect on someone else's life." Whereas before, he had convinced himself that actually, "You know what? Maybe I was trying to get reward money that should have gone to someone else, but he *was* confessing to people, so the fact that I'm saying it... That doesn't harm anyone; there's no real damage from that."

Amelia McDonnell-Perry: It's like he... You know, his own sort of view on what he overheard Joey saying. So initially, it was very much a confession, based on his sort of-- He had this whole idea that other people were testifying to the fact that Joey was going around bragging. And then once he found out, "Wait a second, *I* was the only one who was saying that? Hold on..." It's like he suddenly realized, "Wait... Maybe... Did I *really* think he was bragging...?" And he really started to doubt his own outlook on whatever it was he overheard.

Susan Simpson: Yeah, that's assuming he overheard anything. I'm very skeptical that ever occurred.

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Jon Cryer: Well actually I've got a question from social media. This is from 'Beau Kwillion', who says a couple of things: "Joey feels like Corey was coached, but I kind of wonder. He refers Susan to the trial transcript more than once, that we heard. That seems odd for a layperson and also makes me wonder – does he *know* that they don't have the trial audio; only the transcript? Has he been listening to the podcast to know that?"

Susan Simpson: I am not *certain*--

Jon Cryer: Yeah. I was actually curious how you initiated contact with Corey – is he aware of the podcast? Has he listened to it?

Susan Simpson: I think he has to be aware. He did *not* tell me that he was, but I got a sense he was aware something was happening, and being reported on Joey's case. Well, he definitely knew this was being reported on – I told him who we were and what we were doing – but he didn't say if he actually listened or not.

There was a *lot* of things that Corey said that, to me, raised serious questions about the source of his information – either from back in 2000 or more recently. You heard at one point, he talked about how he'd initially heard it was a shotgun. Well, he couldn't tell me who he heard that from or how he got that rumor. But, it's interesting that the shotgun thing... That's *not* a rumor that was widespread. In fact, the only people that I can find that spoke about a shotgun being involved were, *a*) Stanley Sutton himself – as you heard in the Kelli Robinson tape – and, *b*) Buddy Vines – he's the guy that got an assault conviction for assaulting Joey in '99 – is not Joey's biggest fan, to put it very, very, very mildly, and later tells Sutton, "Oh yeah, Joey pulled a shotgun on me and a friend this one time... Or possibly two times..."

And Corey, no. He played down his friendship to Buddy – I don't know if they *are* friends. I have no knowledge of *that* – but to me it says that Corey's either talking to Buddy Vines about what Buddy's telling Sutton, or Sutton's telling him directly.

And I lean towards the latter because you *also* hear Corey talk about not knowing there was a .22 pistol and a 9mm involved. Well that's very specific – and very oddly specific – because that the theory – the .22 pistol – that's a theory that was pretty much a *police-only* theory.

So, you never know how rumors work, but to me that's a very clear indication that Corey's knowledge is coming directly from Sutton himself.

Amelia McDonnell-Perry: Here's a question about Sutton: I'm just getting the vibe from Sutton that he *really* has it out for Joey – like, separate from this case – like he has a personal sort of *beef* with him. And like, even Joey seems to suggest that Sutton has it out for him for some reason. Have you guys talked with him a little bit more about that? Did they have, like, an existing sort of, I don't know... *Feud*? Or had he encountered him *before*?

Susan Simpson: No... Yeah, he had encountered him before. I mean, yes. I get the sense too that Sutton maybe had something more personal going on. But other than the fact that he thought Joey had called in a fake bomb threat, and had told him that: "Oh, we're going to take you away and send you into foster care if you don't tell us right now" and all that.

But that was when Joey was much younger. And then Joey *did*, briefly, have a thing with his stepdaughter, which I guess could also be *possibly* some source of animosity? I don't really buy that, though. So, it's hard to say what was motivating Sutton, Other than perhaps the total, *total*, absolute certainty in Joey's guilt that overwhelmed all the evidence he was actually seeing.

Jon Cryer: Well, also you pointed out that the police officers' first impression-- Or *part* of their first impression of Joey was provided by the cell phone evidence which was *wrong*. Which was in error. And I was curious about that, because it's interesting that a similar thing happened in Adnan's case, where the police got cell phone evidence, and clearly made investigative assumptions based on *that*, and that stuck with them for *months*. They never changed their minds, when clearly the evidence was not as important as they thought, originally.

Susan Simpson: Yeah I mean this stuff isn't-- It's not intended for law enforcement.

Jon Cryer: But so my question is: Do you think it was a function of cell phone evidence being relatively new at that time? This was the year 2000. Obviously Adnan's case happened in 1999, so being that this is a fairly new technology for police officers to use in an evidentiary fashion, do you think that *that's* why they kept getting the wrong documents?

Like, in Adnan Syed's case they only got the call logs for the outgoing calls. You know, obviously incoming calls would have provided a huge amount of information. But to our knowledge we don't know if they ever even *requested* it.

Susan Simpson: There *are* law enforcement officers now with more experience with this sort of thing, but in general I don't think it was a new technology then. I think you have similar situations going on today, and that this was *not* intended for law enforcement purposes. It was not intended to be something that a cop could pick up and say, "Oh look, so-and-so's guilty." It's just an internal billing record, or just a log of some internal event that they monitor for their *own purposes*.

And there was never a reason for them to add a disclaimer that says, "Oh and by the way, when you request this you're only going to get the calls that were made on this network. And if your suspect made calls on, you know, *another* network it's not going to show up here." That's just not the *purpose* of those documents. So, anytime you've got officers using a technology they don't understand, and records they don't understand, they assume you understand, it's going to lead to these kind of troubles with the investigation.

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Jon Cryer: Now Susan, at one point it sounded like you were dubious that none of the reward money was ever paid. But I'm curious. Do you have any information that says that there *was* a reward paid? Or are you just dubious that-- The *idea* of it never getting paid?

Susan Simpson: Well, first of all, the money – *supposedly*... Again, and this is all just what they were saying. So, we know that \$3,000 that Governor Barnes offered, that does not seem to have been paid out.

The records there show that in order to claim it, you have to wait until all the appeals are done. So, it'd be 2003, and then-- Well I guess at that point Leigh Patterson would have had to write in and say, "Hey, give the money out." That didn't happen.

That still leaves \$17,000, that we don't know where it went. And for, apparently, \$7,000 at least, and that money was put from many anonymous and small donors... Apparently, into a bank account.

So, it had to go somewhere! Unless they just still have it sitting in some bank account waiting to be paid out to some witness now, which I don't see how that would have happened. That money had to go somewhere. *Someone* got it.

Colin Miller:

There's the money from Georgia Power, too, which I don't know exactly how that works, but they put in all that money. So, the question would be, if that money *didn't* go to anyone, shouldn't there be accounting showing it went back to Georgia Power at some point? The Hammond Plant, where Isaac's father worked?

Jon Cryer:

I thought in those situations you *pledge* money, and then you wait until somebody actually collects it, and then you give it out. So the money doesn't necessarily *move* anywhere. So you say, "Okay, if this is what I'm willing to pay."

Susan Simpson:

But according to the reports here there *was* an account opened at the bank. So there was actually money put into an account at the Greater Rome Bank.

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Jon Cryer:

And I had another question: It's unclear to me, how was Sutton able to get Joey actually *arrested*? I know there was a restraining order, for the situation with Aislinn, but then it appeared he got arrested and it wasn't clear to me what he was arrested for.

Susan Simpson:

He was arrested for *stalking*. And that never actually-- That charge kind of disappeared. I suspect what happened is, later on when they got Joey's phone records, they could see all the calls that-- It was only for *his* house, so they couldn't see Aislinn's phone calls, but his records show that she was calling him too.

So, when they had a stalking charge based on him supposedly calling her, like without her wanting him to, that sort of undermines the evidence for that charge. That's just my guess for why they never went anywhere with it. They didn't actually pursue it besides holding Joey for 72 hours.

But what happened was, there was an incident in early-ish to mid-August, after which Sutton somehow started talking to one of Aislinn's relatives. I do not know how Aislinn's aunt and Sutton got into contact, but they did. And she apparently, like, recorded a phone call with Joey, according to Sutton's notes, and gave it to Sutton...?

I don't know anything more about that. If it really exists, it's gone. And she started, like, opening lines of communication between the Hogues and Sutton, and at some point Sutton goes down to Polk County and talks to the officers there, and they arrange for a stalking warrant to be taken out, which is then brought back to Rome to arrest Joey on.

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- Jon Cryer:** I got a social media question, from '@Happily Reha' and she said: "What was the point of the cops telling Kelli that Joey was such a bad guy? And what was the timing of Aislinn's restraining order, Joey dating Kelli, and the cops meeting with Kelli?"
- Susan Simpson:** Well, it wasn't actually a restraining order. I think I misspoke when I was talking at some point in one of the clips. It was a stalking charge, based on phone calls, and the only incident it mentions was about a month before the charge was actually done. So, it's kind of unclear what the full basis was supposed to be.
- Anyway that was, like, in August, and I think in early September is when Joey met Kelli and they began dating. And then a month later in late October is when the police went to Kelli's parents house and talked to her there.
- Amelia McDonnell-Perry:** Hmm.
- Jon Cryer:** Yeah. So, we got a lot of questions from people saying, "Is it common for police officers to give dating advice?!"
- [laughter]
- Amelia McDonnell-Perry:** Seriously!
- [laughter]
- Susan Simpson:** Uh.... No. Not to my knowledge. I have not encountered that before.
- [laughter]
- Amelia McDonnell-Perry:** I mean what's the *goal* there, though? You know I *get* the police are talking to Aislinn because she was dating Joey at the time that all this was going down, but like what's the point of talking to Kelli? She wasn't around during the actual alleged *murder*, so she would have no knowledge of what happened.
- Susan Simpson:** It's like Clare said: It wasn't an investigation, it was a PR campaign. It was to isolate Joey. And if they could get Kelli on board with their theory of: He's an abuser... Hey, it helps their case.
- And you hear them at one point tell Kelli: "We have three or four girls who are saying once they break up with him, he turns really possessive and abusive." Well, one of them is obviously Brianne, who we also hear from the tape has been calling Kelli to tell her to warn her about what Joey's going to do to her. And the other one is *probably* Aislinn...? Although Aislinn herself, as far as I can tell, it doesn't seem like that came from *her* mouth, necessarily. At least not to the way that Sutton seems to portray it.
- But as for these 'other girls', I think it's pretty clear that was made up because none of Joey's other exes ever said that. So it's not clear where Sutton could have gotten this from. Other than, you know, making it all up.
- Colin Miller:** It's interesting because-- And I mean, this sort of goes back to what we said with Corey... It seems the strategy here probably was to go to these witnesses and make it sound as if: "Oh

everyone is saying that Joey was with said he confessed, and *everyone* that Joey dated said he's a terrible guy."

There's a podcast that Malcolm Gladwell did this year called *Revisionist History* and there was an episode about why the 'underhanded free throw' never took hold. And he cites this psychological paper on these threshold models of collective behavior. And the question is: "How do certain things take hold and other things don't take hold?" And how do you sort of tip the scales, *et cetera*?

And it seems like, in *this* case, and maybe in many cases involving small towns, and you have the investigators, and they're planting this theory... Whereas one person in and of themselves – Corey Jacobs *himself* might not have come forward and said that Joey confessed, but if he's being told – or in this case if Kelli's being told – all these other people are saying something similar, then that might in fact influence the way they perceive events they have experienced, and might change the way they present those to the police or a jury.

Susan Simpson:

And the case was flexible. They could take bits and pieces of each story they got, keep the bits that helped them and throw away the ones that didn't. And it didn't seem to cost them anything at trial. Because then we have Corey and his very first statement, coming forward with a story that this guy, 'Booney', is the actual shooter. And, of course that's totally gone by trial... He only mentions Mark Free as someone who might have been involved.

But the fact that he initially said it was someone else – or heard a rumor it was someone else – was never used to undermine his credibility. And it's not totally clear who he's referring to, because the guy he mentions in the note, is 'Booney Chris Wade', which is two different people. 'Booney' is a guy named James Wade, and his *cousin* is Chris Wade.

And James Wade has since passed away, but I actually spoke to Chris Wade about this, and he was shocked. I think his first words to me were: "If this guy was naming me as a shooter in a murder case, to Sutton, and I've talked to Sutton plenty of times, about other cases but never this one, why did Sutton never come to me and ask me about it? How could I have been *named as the shooter* in a major murder case and no cop *ever* asked me about it?"

And I told him I don't know, I can't explain it either. That's why I was trying to talk to him. And he was asking, "Well, if Corey Jacobs had first said it was 'Booney Chris Wade' who did the shooting, and at trial says 'Mark Free,' how could he have gotten convicted? And how come Joey didn't just start representing his damn self? Because there's no way you can get convicted when that happens."

Which is, you know, not a bad point. Unfortunately...

[33:58]

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Amelia McDonnell-Perry:

I did want to ask about Joey's attorneys – I imagine that you guys are going to focus on this on an episode coming up soon. But I'm just so curious how his attorney's could cross-examine a witness like Corey, who seemed to be pretty *blatant* about the fact that he was motivated – even though he was sort of coerced into testifying, by Sutton – that his motivation for saying what he knew was the money.

And it seems that there were a number of things that Joey's attorneys could have impeached him on. I mean, the fact that he said that he and Joey went to the same school, and Joey never *went* to that school. Like, how did his attorneys do in terms of cross-examining witnesses like that?

Susan Simpson:

The 'school' thing is one of the few areas they did try to impeach him on. Which, you know, it's interesting, but I didn't realize that. So, I'm sure the jury didn't either – what they were

pointing out, wasn't just that Corey was wrong about them going to school together, it was that Corey was wrong about this idea that he would have recognized Joey. I mean, casually like that. And again, Corey did acknowledge-- He's like, "Yeah, I ultimately came forward because they were offering money." So, that's out there. They don't need to-- That's a fact.

So, you can't just, like, try and tackle him on that and then say, "Okay he wanted money, it's done." So, what they should have done is just done their research and looked into the facts of what he was saying.

They should have talked to Jody Jordan, the guy Corey says he was with when Joey started confessing, because Jody Jordan does not remotely corroborate what Corey says. They should have looked into things like the whole 'Booney' story. They should have looked at things like this whole 'shotgun' story more, to figure out what the origin of *that* was.

But by just trying to hammer Corey's character, and not actually showing how, for instance, he says he walked *away* from this discussion before Joey ever said what happened after the shooting, and at the trial he says, "Oh yeah, Joey said they went to Mark Free's house." I mean that's a *pretty* big inconsistency. But that never comes up.

Amelia McDonnell-Perry:

I find it interesting this whole idea that Joey, or that *anybody* who really did commit a murder, would like, be standing in a Home Depot parking lot just bragging about it to people who knew the victim, or knew of the victim. I feel like this is something that's occurred in other cases too: "Oh! So-and-so's *bragging* about how they committed the murder!" Has it ever actually turned out that somebody who's bragging about committing a murder *actually* committed a murder? That just seems like something you wouldn't do.

[laughter]

Susan Simpson:

Especially not when there's billboards like, basically over the street you're *on*, announcing, "\$10,000, \$20,000 for information leading to an arrest."

Colin Miller:

And it's kind of fascinating, because, I don't know if any of you are following the *Breakdown* podcast, on Justin Ross Harris...?

Amelia McDonnell-Perry:

Yes!

Colin Miller:

But that was also a Home Depot parking lot where he actually worked, and I noted on Twitter the similarities because the trial just started, and in this most recent episode of *Breakdown*. It's these witnesses talking about the demeanor of Justin Ross Harris after finding his child dead in a hot car, and you see how their stories evolve. And it's very similar to Mr Hogue in this case, and how his initial story of how Joey seemed completely normal, on the night of January 11th and all of a sudden that later on gets changed to a very different demeanor that's used to implicate him. And so it was striking to see the similarities in these two cases.

Amelia McDonnell-Perry:

Yeah. That's what I find so hard about this kind of thing, because the minute you even start to *think* about whether or not somebody is associated with a horrible crime – about whether they could have killed somebody, or whatever, and then you start thinking about their behavior, it's so difficult to not be suddenly suspicious of things that are really not suspicious at all.

I mean, I find myself doing that, you know? I don't do it anymore, but early on I would look at the Adnan case and be like, "Well, he did this, is *that* suspicious? Am I being duped? Am I an idiot?" Like, you know. But it's all that kind of stuff where, if he'd never been associated with, you know, Hae's murder, would never in a million years have occurred to me to be suspicious

behavior. So... I guess I'm wondering how the police are able to sort of determine whether or not a witness's statement about somebody's behavior in light of a terrible crime is suspicious or not. Or if they're describing it in a way that's actually really truly genuine to how it was. Like how do you-- I mean, is that why witness testimony is sometimes taken, to a certain degree, with a grain of salt?

Susan Simpson: They determine it whether or not the person they're fingering matches the suspect that they're looking at. [laughs] As far as I can tell. I mean, the thing is, if someone's guilty, everything they do is suspicious. There's a crime connected to that, so, sure, it can be viewed in a suspicious light. But those same behaviors are not unique to a guilty person. I mean yes, if that person did it, it could be related to that. The fact that they were nervous could be related to that. But people are nervous all the time, and like, I think *most* of that time, they didn't actually kill anyone.

Amelia McDonnell-Perry: Mm-hmm.

Jon Cryer: Or you can conversely use – if they're *not* nervous – you can use *that* against them in court.

Susan Simpson: They're a psychopath!

Jon Cryer: You can say, "You went to buy a coffee, right after *this*?! What a cold-hearted brutal killer" [laughs] You know?

Susan Simpson: And if your day changes at *all*, that's--

Amelia McDonnell-Perry: Mm.

Susan Simpson: That's--

Amelia McDonnell-Perry: But then do you never-- If you're an investigator do you not look at behavior at *all*, because it's so easily, you know, misconstrued? I mean, to go back to Colin's, you know, *Atonement* reference--

Susan Simpson: It's just like everything else thought, it's just one more data point.

[39:02]

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Jon Cryer: I've got a, uh, Twitter question from 'Jay Slipchee' [laughs] Says: "Aislinn's father testifies that Joey told her his friend was killed, but did Aislinn herself ever admit to hearing this?"

Susan Simpson: No. Aislinn's *never* said at any point that she heard anything like that. At the trial, Tami Colston just blames everything on the fact that Aislinn was sick. As she puts it, "Sick as a dog." Just sick, sick, sick. So sick, apparently, that she can't hear a bullet going off when she's on the phone with Joey. And so sick that when Joey tells her, "Oh, my friend just got killed." She doesn't even hear it. When he's sitting on her bed. I'm not sure... My impression, actually, is that Aislinn wasn't even *aware*, necessarily, that her dad had even testified that he'd heard Joey say this.

- Jon Cryer:** That's amazing to me. Since she was never called, she could have attended the trial because...
- Susan Simpson:** No, no she was called! She testified at both trials.
- Jon Cryer:** Oh! Wait, she testified at both trials? And so, she wasn't asked about that?
- Susan Simpson:** Well yes. But she didn't know that it meant her dad *had* testified to that.
- Jon Cryer:** I'm sorry. It's just amazing to me within a *family* that that kind of thing could be overlooked. You know? But I guess it doesn't make for great small talk over dinner.
- Amelia McDonnell-Perry:** I just thought it was so fascinating, the fact that this case is so fueled by *gossip*, early on. People talking about who did what, how much Joey hated Isaac, *yada, yada, yada*... But then it sounds like once it got actually *serious*, like Joey got arrested and going to trial, and a number of people are going to be testifying, like, it's almost like they almost sort of *avoided* talking about what they all said in court. It's like Corey had no *idea* that nobody else was saying that Joey bragged.
- Susan Simpson:** There were many different segments of society that were witnesses at the trial, and they all didn't know each other. So, you have the one group of people close to Joey and Brianne, and it seems like they were talking a lot, constantly throughout it, based on their notes and the trial testimonies. Like Jeremy Shuler, Adam Elrod, Chad Redden, and Brianne were *definitely* in contact.
- But they wouldn't have any knowledge of what, say, Corey Jacobs would be saying – not someone they hung with, not someone they would have-- It's just not a source of information they would have had access to. So, all they're doing is repeating the same rumors they've always heard all along. With no idea of how those rumors are being added together into the case that Tami Colston ultimately brought.
- Amelia McDonnell-Perry:** Right. And I guess they're not requesting trial transcripts to see what else went down on all the other days they weren't there. Like I would, if I was called to testify in a case.
- Susan Simpson:** [laughs] What actually happened? I mean, Aislinn never knew that the whole idea was that no, Joey hadn't just been driving down to Cedartown, saw Isaac, and popped off a shot, and went about his way. Because to *her*, from her perspective, and her phone calls with Joey, and him arriving at her house, that's *how* it had to go down. Because that's the only thing that makes any sense. She didn't *know* that someone saw a blue car heading northbound, just before Isaac was shot.
- Colin Miller:** And she didn't know about the phone calls, right? With Joey actually being in Alabama, which is of course the revelation when Clare and you disclose that to her.
- Susan Simpson:** Yeah. I mean, Sutton told her. He showed her phone records, and they're actual phone records from the phone company that show the calls Joey's making, and, "Oh, look! There aren't any calls from Alabama" the day of the murder or the day after, even though Joey says he was in Alabama both days.
- Amelia McDonnell-Perry:** Oh.

- Jon Cryer:** But it really speaks to how to-- Like, I am convinced that in the Adnan Syed case the police confronted Jay with the evidence – the cell phone evidence – that they had against Adnan. Because I don't personally believe Jay's account at *all*, anymore. But I do believe that it's possible that he thought that at the time the police definitely knew, or had superior information, that pointed to Adnan's guilt. That he may well have not been, you know, trying to finger somebody he knew to be innocent.
- Susan Simpson:** Mm-hmm.
- Jon Cryer:** And I think it's a common phenomena where people just *assume* that police, the authorities, the courts, have superior information: "They know the deal better than I do, so you know, I can just sort of sit back and let justice take its course."
- Susan Simpson:** And if you *don't*, then you could be the next one fingered for the crime. From Jay's perspective.
- Colin Miller:** We see that explicitly, in the interview of Debbie – the friend of Hae and Adnan – where essentially she goes from being good friends to Adnan thinking he's innocent, and is asked, "Well you've changed your view, and now think he's guilty, and what's the reason?" and she says, "Well, the police were at school and they were telling my friends and me that they have all this evidence..." And you can easily see how an impressionable young person – whether it's in Adnan's case or in Joey's case – that they think that the police, if they're going to arrest someone they have the right guy, and that can influence the way that they remember and perceive events.
- Amelia McDonnell-Perry:** Yeah.
- [43:28] ≈
- Jon Cryer:** I had another question from Twitter: This is from 'M Rudolph Comedy' saying, "Everyone heard rumors about what happened and who did it, but what was Joey hearing at this time?"
- Susan Simpson:** Joey was hearing that *Paul* did it. And this'll be a big part of next episode. But Paul and Joey had a mutual friend named Josh, who was telling *both* of them that the other one had confessed to the murder.
- Amelia McDonnell-Perry:** Wow.
- Jon Cryer:** This is Josh Flemister?
- Susan Simpson:** Yes.
- Jon Cryer:** Yes. Okay.
- Susan Simpson:** So Paul Allan... Yeah, Joey was pointing the finger at Paul Allan. Because, based on what he was hearing from other people about-- There are other people aside from Josh, said that they heard Paul confess to the murder. But then again there's multiple people who claim to have

heard from a friend of a friend that Joey confessed to *someone*. So these third-hand confessions that, you know, you don't have names for them but supposedly they're made – they're going all over the place.

So yeah, that gets used as evidence against Joey as well, because they claim the fact that he pointed the finger at someone else was evidence that he was actually guilty. But, again, if that's evidence of guilt, then there are a *lot* of people in Rome guilty.

[46:29]

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Jon Cryer:

I actually have one more question: This is from 'B Lee Cree' who says, "In cases like Joey's, why don't defendants waive jury trials more often? My understanding is that a case that is very weak on evidence would be much better decided by a judge who understands the process completely. The jury in general can be so easily swayed by a motion and/or misunderstanding of the rules of law."

Colin Miller:

That's something that's a great question, and it really is a matter of preference. There isn't really great state data but there is federal data. There was a study done – *The Classic American Jury Study* – and that said in federal cases, pretty much the conviction rates are about the same, with jury trial the same as judge trial – about three quarters, about 75% of cases I think it was a little bit lower for judges – I think it was about 73%.

So, in essence, statistically you're about the same. And the question is: Is this a case where you want the learned, more objective judge deciding from the bench? Or the men and women in the jury box?

And I think why a lot of people opt for the jury trial is, if you can convince even one of those jurors to be a hold-out, that's a hung jury and it's a mistrial. Whereas with the judge, is that, with that one person there ends.

A lot of people think that they can see through BS and are able to make the decision, and so, I think... It's complicated. And a lot of people will give you different advice as to what to do, but I think at the end of the day you're pretty much at the same, statistically, going with the judge versus the jury.

Amelia McDonnell-Perry:

Is that an option in every state? For somebody who's been charged with a crime?

Colin Miller:

Well, it's an option. It just depends on the jurisdiction, and whether you need to get the permission of the prosecutor and the court, so... Like in the federal level, for instance, the only way you're going to have a bench trial is, assuming it's a case where the Sixth Amendment right is triggered, is if the defense, the prosecution *and* the judge all sign off on it being a bench trial.

Amelia McDonnell-Perry:

Oh, okay.

Jon Cryer:

I've never heard of this option. And I'm embarrassed to say it. I think it'd take a pretty ballsy defendant to just say, "You know what? Yeah. I'll take my chance that this judge, you know, doesn't hate me yet, you know?" [laughs]

Amelia McDonnell-Perry:

Yeah.

- Jon Cryer:** I could see why people would not opt for that, unless they had a lawyer who was really good at making the case for it.
- Colin Miller:** And you can imagine how that would *completely* change the way that a lawyer operates in the courtroom where, as it's now, if you piss the judge off by making a bunch of objections and doing things... I mean that's going to be somewhat damaging for your career and all that, but you still have the jury that's making the decision.
- Whereas, if it's a bench trial, it's that same person you're objecting to, and maybe acting in ways that might anger them. And then that's ultimately the arbiter of fact, so, it's interesting in terms of that decision.
- Susan Simpson:** And in this case you've got a judge in a small town who is dealing with Tami Colston and Stanley Sutton every day of his professional life. Unless you have knowledge, like, *precise* knowledge otherwise, it's safe to assume that they have a working relationship and it is not going to be likely that they are going to be comfortable declaring that someone is massively telling falsehoods to the court. So, you're going to lose that credibility battle just going in, before you've said a word.
- Amelia McDonnell-Perry:** Yeah.
- Collin Miller:** And that's the basis for the Sixth Amendment Right, by the way. If you go back to the founders, the jury *is* the buffer to the potentially biased judge who, again, yeah, is dealing with these prosecutors and police officers on a daily basis.
- Amelia McDonnell-Perry:** It also seems like, from a spectator's perspective, if you're actually watching a trial where it's a bench trial, I feel like you're not getting as clear a perspective on a case. I sometimes just feel like certain things just kind of get glossed over, or sort of run through sort of quickly with a judge, because they understand certain procedures and they understand, you know, certain things, so they can kind of like rush through them.
- Whereas, as a spectator, anyway, a jury trial, to me, is sort of more interesting because even though as a spectator you're not *on* the jury, you're sort of getting-- Your outlook on the case is sort of similar, in the sense that you're getting law, and everything like that. I don't know, I appreciate a jury trial more as a a spectator, from that perspective.
- Colin Miller:** Yeah. And another aspect of that too, is, you know, an interesting thing: When you have character evidence, in the episode where we dealt with hearsay and all that, is in a typical trial – though it didn't happen here – the judge is going to filter out a lot of evidence and the jury's never going to hear it.
- And, the *legal* thinking in terms of a bench trial is, "Oh, well the judge hears that the defendant failed a polygraph, or has all this bad character evidence" and he's going to filter that out but he's still going to *hear* it. And the question is to what extent a judge can really compartmentalize and say the evidence is inadmissible. He obviously still read it. Or saw the video. Or heard about the polygraph.
- So, that's part of the thinking too: Is that the jury in many cases is never even going to hear the evidence, whereas the judge of course, in a bench trial, would hear it and deem it inadmissible, but it's tough to sort of remove that taint.

Susan Simpson: In this case here we have – and we’ll look into it more later – but we know the judge told them that he found certain witnesses credible, that would have damned Joey. So, I mean, Joey would have lost in a bench trial, it’s safe to say.

Jon Cryer: Also aren’t judges often *elected* officials?

Susan Simpson: In Georgia, yes, they are. Which is a crazy system that needs to be fixed. But that’s another topic. [laughs] Georgia has some issues with judges. Like, Georgia has some *bad*-- There’ve been some bad choices in their judges there. Which is-- I feel like it’s a good example of the whole state, as to why judges should not be elected in the first place.

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Jon Cryer: Um, well, you know that’s all I got – Amelia did you have any more questions?

Amelia McDonnell-Perry: I *did* kind of have *one* question, about-- I’m just kind of curious how, now that you’ve been working on this case for quite a bit, and you spent a lot of time looking at how the police investigated it, how the sort of small town dynamics in Rome, law enforcement, and it’s residents compares to what you saw in the investigation of Adnan by the Baltimore Police Department? Like, I don’t know, I’m just kind of curious what things have stuck out, in terms of similarities and differences just in the way the cases were approached.

Susan Simpson: The Baltimore Police Department is a *lot* more efficient in this kind of deal. [laughs] They were much, much more organized about getting this stuff done, quickly closing it up...

I mean, this case took a *year*. For the Floyd County Police to get an arrest. And it was a *lot* of, kind of, aimless interviewing, random, supposed witnesses that, you know, typically were – I mean, “less than credible” is putting it charitably. It was as *lot* harder for them. They were not as experienced at quickly getting the evidence they need, closing it out, moving on to the next one.

But, then again, they’ve also only got, you know, four or five murders a year to deal with. Whereas Baltimore has, not quite four or five hundred, but almost there. But other than that, the tactics are very similar.

[laughter]

Jon Cryer: Do we have any other things that we wanted to touch on?

Amelia McDonnell-Perry: Follow me on Twitter, ‘XO Amelia,’ that’s where I spend my time doing most of my writing these days, so...

Susan Simpson: And don’t forget to check out the *Undisclosed* website for documents referenced in the episode, and some of the documents we didn’t get to cover in the episode. As well as transcripts – for instance, we have a full, attempted, transcript of the Kelli Robinson recording, as well as the statements of all the people referenced.

Jon Cryer: Well, thank you so much for being here this week, Amelia, such a pleasure.

Amelia McDonnell-Perry: Oh...

Jon Cryer: Always great to talk to you.

Amelia McDonnell-Perry: Thank you so much.

Jon Cryer: And if I get any information on how Thiru actually sleeps I will let you know.
[laughter]

Jon Cryer: And thank you, Colin and Susan once again – I missed you guys!

Colin Miller: It's good talking, Jon, we'll talk again soon. We have some interesting things coming up on a couple of fronts.

Susan Simpson: Yes indeed.

Amelia McDonnell-Perry: Please.

Jon Cryer: Oh great, I am looking forward. Well, talk soon guys. Bye bye.

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