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**UNDISCLOSED SEASON 2: THE STATE VS. JOEY WATKINS****ADDENDUM 15:  
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**Jon Cryer:** Hello! And welcome to the *Undisclosed Addendum*. I am Jon Cryer, and you are listening to the podcast about all things *Undisclosed*.

In Episode 15 of *Undisclosed* – ‘Josh’ – Colin, Rabia and Susan dissected the acknowledged false confession of Josh Flemister – how it came about, how it was mis-used, and how it sent the entire investigation of Isaac Dawkins’ death in the wrong direction.

Now, with us today is one of the hosts of *Undisclosed*: Ladies and gentlemen, 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*. Welcome to the show once again, Colin Miller!

**Colin Miller:** Hey Jon, happy to be here.

**Jon Cryer:** Thank you! You always are! You’re never glum. [laughs] You’re never like, [affects downbeat voice] “Hey Jon... How’s it going man....” [laughs]

**Colin Miller:** As a professor I always love talking about the law, so... I’m always happy.

**Jon Cryer:** Seriously?! You do? I mean, you’d think it would be like shop talk for you, like, “I do this *all day*. I’m tired of this!” But no?

**Colin Miller:** No... I’ve heard, you know, chefs go home and night and they just make themselves, like, a cheese sandwich or something, but no. I’m happy to talk about the law 24/7, basically.

**Jon Cryer:** And we are the better for it.

Also with us today is a young lady by the name of Rebecca Lavoie! She is the co-author of four true crime books, including *Our Little Secret* and *Dark Heart*. She’s also the host of two hit podcasts – *Crime Writers On* and *These Are Their Stories*, which of course is the *Law and Order* podcast that I was lucky enough to participate in a couple of weeks ago, and got to listen to that – it is *the bomb*.

By day, Rebecca oversees digital news and program content for New Hampshire public radio, and if it sounds excessively florid, in my introduction of Rebecca, it’s because technically she’s also my boss because she’s the producer of *Undisclosed*. [laughs]

**Rebecca Lavoie:** [laughs] I don’t know about that... I’m just stuck on the fact that you said I was a *young lady*.

[laughter]

**Jon Cryer:** Well... You *sound* incredibly young, and--

- Rebecca Lavoie:** Yeah... And... it's my birthday today, and I'm not so young, I'm 43.
- So, at this point in my life anytime anyone refers to me as 'young' I'm *all* about that. So thanks for that!
- Jon Cryer:** [laughs] Well have a happy birthday! Oh my gosh, I did not realize!
- Rebecca Lavoie:** Well thanks!
- Jon Cryer:** Okay everybody on the show, [sings] *Happy Bir-* no. We're not going to do that, don't worry.
- [laughter]
- Jon Cryer:** Another lovely young lady who I'd like to introduce everybody to – actually I can't, because she's already been on the show once – but she's Madelaine Baran. She's a reporter for American Public Media's Investigative Reporting and Radio Documentaries Project, and in that capacity, she's the host of the fantastic podcast *In The Dark*. Madelaine is a Peabody Award winner, for the documentary *Betrayed By Silence*, which examined the child sex abuse scandal in the Arch Dioceses of Saint Paul in Minneapolis.
- Welcome to the show, Madelaine!
- Madelaine Baran:** Great to be back!
- Jon Cryer:** Yes, thank you, thank you, thank you! By the way, *In The Dark* just wrapped its last episode of the podcast and it's just been a tremendous work. It's a remarkable animal, actually, I mean it's the forensic investigation of an investigation-- [laughs] And it came up with some kind of disturbing findings.
- So, first of all, how long have you been working on that?
- Madelaine Baran:** For about a year, full time, with a team. So yeah. Non-stop for a year.
- Jon Cryer:** It seems like an investigation just creates an enormous amount of paperwork to look through. So was it just you? As you said there was a team, so how many people were sifting through all this paperwork?
- Madelaine Baran:** So, it was me and producer Samara Freemark, associate producer Natalie Jablonski. We had a data reporter, we had a couple of other reporters filled in to do some reporting here and there, editors, researchers... So, you know, it was a team. I mean, yeah. There was documents, but also, as in this case, the investigative file hasn't been released. A lot of it was trying to, like you say, like investigate the investigation. But without having access to the file. So there's a lot--
- Jon Cryer:** My god, I didn't know that. So that's remarkable, because that makes everything much, much, much, much harder. [laughs]
- Madelaine Baran:** [laughs] Yes!

**Jon Cryer:** I'm sorry to hear that. So in the course of this, what would you say surprised you the most about this investigation?

**Madelaine Baran:** Gosh. I think... Once we knew who did it, it was devastating for everyone who knew Jacob. As a reporter, it made our findings all that more devastating. That you know, we could have never imagined that the crime was conducted in a way that all of these mistakes would be particularly awful. You know, that once we know that he drove a blue car, that he was in this driveway... I mean all of these things were lining up so you could see all the failures of law enforcement were not just things that they should have done that they didn't do, but they were things that they should have done that they didn't do that probably would have made a big difference in this case.

And then I think just some of the-- Like, I didn't go in, you know, knowing that I would find anything wrong with the investigation. I think I was surprised with just how basic some of the problems were. You know, like the neighborhood canvas? I wasn't expecting to find that they hadn't talked to all the neighbors. At all. I mean that was a big surprise to me because I had just assumed that the problems with this case would be more complicated than that. But that really wasn't the case.

**Jon Cryer:** Well, I have to say what surprised me most was that I came to the realization – and I'm embarrassed to admit this – that I've never held a sheriff accountable for the level of crime, you know, within a jurisdiction. Like, here in California we had a very colorful sheriff – Lee Baca – but he was clearly a political figure. You know, it never even occurred to me, "Oh you know, we should hold him responsible for whether he's actually solving these cases!"

**Madelaine Baran:** Right. And *that's* a conversation I hope we can really help fuel, because this isn't just something that happened in this one place in central Minnesota. This is a problem across the country, where there are agencies that have clearance rates for violent crime in the single digits. Which, when you think about it, is pretty alarming, because what that's meaning is if you're the victim of a violent crime, like there is such a *little* chance in some places in this country, and it's just not an area that is studied very well.

So, there are some places that do an *amazing* job – particularly in rural America – you know, we looked at some places that had a significant amount of violent crime, and yet were managing to solve a *lot* of it, and then other places that were solving almost nothing. What I would love to know is what accounts for that difference? What is the one place doing that is working so well that the other place isn't doing?

**Jon Cryer:** Well, what alarmed me about the statistic was, as you mentioned in your podcast, that the clearance rate is really just when a crime happens and then somebody is *charged* with the crime – that's not, found guilty, you know, that's just the cops found somebody they think did it. But as we know, in *Undisclosed* and all these things, that very often the cops may charge the wrong person. So the statistic may be even *worse* than it seems.

**Madelaine Baran:** That's a good point, yeah. Yeah. The other thing it's protecting against is the cases where it's clear who did it, but for whatever reason they can never be prosecuted. But yeah, it doesn't include all the people who are wrongfully convicted, you know, subtracting them out of it. So yeah, I hope it raises the question.

And I hope it also changes kind of how people look at unsolved cases. I don't know what it is about crime in particular, but it lends itself to the reporter really just trying to almost play the role of detective without sometimes acknowledging that that's a detective's *job*.

I think there are podcasts that do a really good job of that, like *Undisclosed*, and then I think there's sometimes in reporting like this idea that, "Oh, we're all in this together, we'll figure this out!" Well, wait. There's someone who's *job* it is to figure this out.

**Colin Miller:**

Yeah. And for listeners who might wonder – by the way I think Episode 8 of *In The Dark*, that was my favorite episode of many great episodes in the season – but after that I looked up for Floyd County, where Joey's case took place, and the clearance rate there for homicide cases for 1965-2014 is 69.06%. And specifically in 2000, when Isaac Dawkins was killed, there were six homicide cases and four of them, including the Dawkins homicide, they were cleared, in Floyd County in that year, so, that's some context.

**Madelaine Baran:**

I think a good other number to look at... If you look at the Part One clearance rate, for violent crimes, that can often be more revealing because there's more crimes. There'll be like, 10 murders in a place, and all 10 might be murder-suicides, and they'll be easily solved.

So, it looks like they're doing a great job at solving crime, but when you look at the other violent crimes, they're *not* doing such a good job. So, that information is usually in the annual report of a sheriff's office, or like a state crime bureau, so yeah. I would recommend checking that number out, too.

**Jon Cryer:**

I would understand that the statistics could conceivably be very misleading in these situations because you're dealing with... A lot of these crimes come in clusters. So, you'll have one year where, you know, these crimes spike, and then in another year it's incredibly quiet. And how do you judge overall? I mean that sounds like the Floyd County statistic.

But Colin you were mentioning that that statistic for Floyd County goes all the way back to 1965 – that's a huge statistical data set, actually. And 69% sounds awfully good, but as we know, the police tactics are pretty aggressive in Floyd County, to say the least. So, you know, again that shows a downside of possibly something that appears good.

**Colin Miller:**

Yeah. And it's sort of like the TV show *The Wire*, when you look at producing the numbers and how you'd find certain numbers, and you can make something look better, or worse...

I think, Madelaine, the great thing with Episode 8 is that it really shows those clearance rates are relatively meaningless, in the sense that it shows there was an arrest, but we don't know if that arrest was correct or incorrect, we don't know if there was a conviction, we don't know whether that conviction was thrown out, so it's tough to say if there's much you can draw – either positive or negative – from it, any bare statistic.

I think some of those-- You mentioned a jurisdiction in Hawaii where it's single digits, and obviously in *that* case, that is something where there's gross failure. But, you know, you look at a rate of 66% or 70% – I don't know if that tells you too much about efficacy.

**Madelaine Baran:**

Yeah. And this is the bigger problem. It's-- We're obsessed with crime in this country but we're not as obsessed with the *solving* of it. So we don't have good data. And it seems like something that, you know, the public *should* have good data on. I mean, how else are we supposed to judge law enforcement, or determine, *are* they being effective or not? I mean there's a couple of measures, but it seems like a *big* one would be, you know, how well do they do when it comes to solving crime?

[11:54]

**Jon Cryer:** And speaking of investigations of investigations, this week's episode of *Undisclosed* brought up the topic of how Josh Flemister's false confession – something the police probably should have known, or at least suspected was untrue – ended up being the basis of his arrest, as well as the whole direction of the investigation. So, Colin, I have a couple of questions: Can prosecutors knowingly even *use* witnesses who they know are telling lies?

**Colin Miller:** No. They can't. They are not allowed to knowingly suborn perjury. Now, what Tami Colston would say in this case, is, "I called Josh Flemister, and we're *telling* you his testimony *is* a lie, so I'm couching this by saying he lied about this story, and I'm using it to show that this was a false alibi that Joey solicited."

So, you can do it *that* way, if you are informing the jury, "This was false and I'm telling you it's false, but it still supports our theory of the case."

**Madelaine Baran:** Like this particular technique of saying: "Well I'm going to let this false testimony in because the *reason* it's false actually backs up the State's case." That the State would say that.

**Colin Miller:** Yeah. Not very often. It would be the case where essentially the prosecution is claiming the defendant tried to solicit fake alibis. Which is the theory the prosecution propounded at Joey's trial – the he tried to solicit a fake alibi from Josh. But other than that, there really wouldn't be a reason for the prosecution to call a witness who had knowingly created a false story.

**Madelaine Baran:** Yeah.

**Jon Cryer:** But, now also the police should have *known*- I mean, it seemed like there were many details of his confession that were clearly wrong. But *they* knowingly used it as a means to get an arrest warrant for Joey. Is that even something that's frowned upon? Is it uncommon?

**Colin Miller:** It's very uncommon, and it's unethical. I mean, in this case, as we laid it out, you have Stanley Sutton talking to an agent from the Georgia Bureau of Investigations, and the notes say, "We have no evidence to arrest Joey in this case." They then travel up to Virginia, talk to Josh – and you can hear it in the interview: They're asking Josh "What happened after Joey shot Isaac's truck?" And he says, "Well, it veered off to the right, into the woods."

And everyone knows, looking at the evidence, this is a case where the truck veered across the median, into the south-bound lane, and crashed to the side and are left there, and they're sort of asking, "Are you sure it veered off to the right?"

And it's clear to anyone that he's making this up – that there's no way he would be mistaken on that – and yet, a few days later, that is what leads to the arrest warrant and there's not really accountability in the case, but they got away with it.

**Rebecca Lavoie:** I have a question for you, Colin, about the timeline of the arrest warrant? And the confession?

**Colin Miller:** Mm-hmm?

**Rebecca Lavoie:** So, Josh came back to town and went to the police and told them he had lied, right?

- Colin Miller:** Right.
- Rebecca Lavoie:** Now, did he tell them that before or after they tried to obtain this arrest warrant for Joey? I mean, did they know that he had recanted his confession when they were still pursuing his arrest warrant?
- Colin Miller:** No. This was *after* they had gotten the arrest warrant and arrested Joey and Mark, that he recanted, or at least *quasi*-recanted.
- Jon Cryer:** But I suppose at that point they feel like they had already gotten a bunch of *other* evidence, at that point, I would imagine?
- Colin Miller:** Right. Because, their claim is, eventually that obviously Josh *wasn't* there for the shooting, that's certainly not the theory of the case at trial, and they're claiming is even with Josh recanting.
- Well, a) it's still evidence that Joey tried to solicit an alibi, even though it makes no sense given that Joey's alibi was he was in Alabama, fishing with his uncle Toby. And it's doesn't make sense that he would have tried to get Josh to say, "I was actually with Joey on the day in question and we went down to Cedartown."
- The cell tower pings clearly show he was in Alabama and making phone calls while he was fishing with his uncle.
- Jon Cryer:** One question about Joey's cell record: Josh at one point claimed, I think, in the call to Samantha that Joey called him on the night of the murder. Now, is that reflected in the cell phone record?
- Colin Miller:** I'd have to look. I'm not 100% sure whether there was a call between Joey and Josh on that night – I don't know off-hand if he called him.
- Jon Cryer:** The reason I ask is that if the police, again, having been apprised of the call between Samantha and Josh, they would know that he is lying. If he says that and they clearly already know – they already have the cell phone records.
- And it just kills me that basically Josh wanted to get laid, and that's why all of this happened.
- Rebecca Lavoie:** [laughs]
- Jon Cryer:** I don't mean to make light of it! Basically he was trying to get a date with Samantha, and in order to do that he was trying to say, "Hey, Joey's not such a bad guy, I was with him that night." And, you know, obviously he's a flawed guy, Josh, and I have to say I was *really* struck by Joey's forgiveness of him. Considering all of the stuff that went down, it's remarkable.
- Rebecca Lavoie:** I have to say, that is the thing that has really struck me in the last couple of episodes – hearing Joey's voice – and we've been hearing him intermittently in the podcast. But, as you guys know, I get all the tape, and I put it together to make the episodes. So, I hear his voice sort of as this disembodied character, and I hear Susan and Rabia and Colin talk about him and then I pop in the clip of Joey talking about himself and I have really been... Really moved by listening to him in the last couple of episodes.

This is the guy that I think Clare described initially when she was talking about why she was so *gung ho* about taking his case. He's coming across... You're really getting a sense of his evolution as a person.

How empathetic I feel towards him is an indication of how *far* he's come, and makes me really want to know more about what his life has been like in prison.

**Madelaine Baran:**

Right. Like how did he make this turn? He says, "I started out being so angry" – and understandably so. But then when he was in prison, right? Didn't he say that he was sort of seeing guys with similar problems? And kind of getting a better understanding about why someone would make those kind of statements or make that kind of stuff up. I think a lot of people would probably just carry that forever.

**Rebecca Lavoie:**

Yeah. And I've interviewed somebody who was in prison for a murder, who *he* definitely blames all the people who talked to the police when the police came to talk to them, and like, told them all the stuff that they knew, or thought they knew, and a lot of them were wrong.

But Joey seems to really squarely be putting the blame on Sutton, and sort of seeing Sutton's fingerprints all over all of the statements that led him to being where he is. I think it's really, really interesting that he has that large view.

**Colin Miller:**

Yeah. I think that being in prison exposes you to an education that might be on par with going to law school in terms of understanding what's going on.

And Rebecca to your point, exactly. I think he sees it now more as Stanley Sutton the puppet master, and Josh was a pawn, sort of used by Sutton and the Floyd County police department, as opposed to someone who was acting in bad faith and ill will, and trying to implicate him in this crime.

**Jon Cryer:**

Also, Joey seems to have a remarkable perspective on his *own* 'bad acts' – you know, the things that basically poisoned the atmosphere to such an extent that when this came down, everyone pointed a finger at him. Again, that's really remarkable.

When he's been robbed of any context, you know, he's just sitting in prison and he's basically robbed of all his real interpersonal context. Because he doesn't have contact with friends, with family, with the people that *usually* make you introspective. Because I feel that in *prison*, I don't know. I don't know that I'd be looking back at my past misdeeds. I'd just be trying to survive every day. But that's just me. [laughs] So, when I go to prison, you know that's what I'll be thinking about.

**Rebecca Lavoie:**

Yeah. I mean, me too. You know, that's just a testament to my-- I don't know if any of you have ever visited anyone in prison, but it's *horrible*. It's not where you want to be. And I can imagine it would not be hard to fall into sort of a vortex of *what ifs* and missing people, and blaming the people keeping you from your friends and family. Yeah.

Whenever you hear about somebody getting that larger point of view, it is something that it's easy to imagine how the journey could go the other way, you know?

**Madelaine Baran:**

Yeah. Especially when you just think about the psychological toll of being in prison – to have a lot of clear thoughts and reflections in that environment is remarkable.

**Colin Miller:**

Yeah, and especially in the context of... If we're assuming that Joey is innocent. I mean, you can imagine a case where the person is guilty, and that would be a case where they should

recognize they belong to be there. And if you're *innocent*, you've been there since you were, you know, a *teenager*, and someone was responsible for your arrest... I would love to think that I could be as forgiving as Joey and would have learned and spent that time – last decade and a half – really growing as a person. But I don't have any certainty whatsoever that I would have taken the path that he took.

**Jon Cryer:**

Yeah. It is hard to imagine. And I think a lot of people talk about that when they talk about Adnan Syed – that he seems to have a remarkable peace, when people *do* have contact with him, that he has a remarkable peace with a situation that would drive most people to just... *rage*. Yeah, I can't imagine this is *common* in people that are wrongfully convicted, but I imagine that they probably all go through similar stages of grief. You know, it's probably similar to the Kubler-Ross scales of grief on death and dying, where they finally come to some level of acceptance of their situation.

[21:16]

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**Jon Cryer:**

Okay. So, I was actually going to get to some social media questions. The first one is... Okay: "How on earth was a police interview conducted in a motel in another state, legal and admissible?" And that was by 'Sunday Funday'.

**Colin Miller:**

Yeah. I mean the answer is that unless a statement that was made was deemed to be coercive to an extent that it is involuntary, it's fine. They can go out of state, they can interview in a hotel room, they can interview at a fast food restaurant, and that's not going to interrupt admissibility, unless we think that they have coerced the person into making the statement.

**Madelaine Baran:**

Like if you feel like you're being *detained*, I guess would be the question, right? Like if for some reason he felt like in the motel room he was really being detained, would that make a difference?

**Colin Miller:**

In terms of whether they need to give the Miranda warning. So, yeah. In terms of whether someone is in custody, the question is whether the circumstances make it so that an objectively reasonable person would feel that they're not free to leave, and if that's the case, you have to give the Miranda warnings before you interrogate the person.

In this case, though, there doesn't look like there was any indication that they were forcing him to stay in the room, and so in this case there wouldn't be a reason to have that deemed inadmissible.

**Madelaine Baran:**

Okay.

**Rebecca Lavoie:**

I've got a question about that statement, Colin, too: You know in the Steven Avery case, and in the Brendan Dassey case, we saw that his taped confession was thrown out for being involuntary. And you're allowed to lie, obviously, as an investigator, to somebody you're talking to, but do you think that played into it a little bit? Like the fact that they told him he was going to be able to leave?

And in this case they were telling Josh that what he said wasn't going to hurt his friend. You know, "We're not going to use it. It's not going to be because of *you*." And I know that that's *allowed*, but that really struck me as – especially somebody in an impaired condition, under the influence of drugs and alcohol – to me it struck me as problematic, unethical certainly, but, you know, *problematic*.

I don't know, does that ever come into play? When people are looking back at statements that people gave?

**Colin Miller:** Yeah, certainly. And actually if you look at a lot of the cover sheets in Adnan's case, it'll list: Is this a male or female? What's their age? What's their position? And then it'll have actually in the cover sheet it's listed: "Did the person appear to be under the influence of drugs or alcohol?"

I actually think in Joey's case they had that too, as a standardized form. So that's one of the observations they're supposed to list. Whether the person appeared to be under the influence.

**Jon Cryer:** But they didn't mention anything at that time, right?

**Colin Miller:** They did not. I'll also note, Jon, by the way I just texted Susan, and Susan tells me that there is-- I'll actually read directly from her text, going back to the question of whether Joey called Josh that night: "No calls to any Josh number all that day."

So, according to Joey's phone record, he never -- on January 11<sup>th</sup> -- made any calls to Josh.

**Jon Cryer:** Thank you, Susan Simpson.

**Rebecca Lavoie:** This is something he had said to Samantha, right? That's why you asked that question?

**Jon Cryer:** Yes. My point being: The police had some way to measure whether he was being truthful in his conversation with Samantha. Because clearly his conversation with Samantha was what made them travel down to Virginia to interrogate him, in this respect.

**Rebecca Lavoie:** Samantha was a good interrogator, by the way. She--

**Jon Cryer:** Yes!

**Rebecca Lavoie:** I actually like her style of questioning way better--

[laughter]

**Rebecca Lavoie:** Than, Sutton's on that tape. I was kind of thinking she was doing a good job of sort of drawing him out, you know? Asking him in different ways... I don't know. I thought it was a really interesting piece of tape that you found there.

**Madelaine Baran:** Yeah. And how she was kind of, "Oh, they're a good family, you know, I kind of think he did it." You know, just seems like not getting it to a point of so intense that he would be like, "Wait a minute. Is this an interrogation?"

[laughter]

**Colin Miller:** Right.

**Madeline Baran:**

But I had a question about that: So, Sutton asks Samantha to do this? To call and record this conversation with Josh? Does that create any kind of legal issue? That she's doing this at the direction of law enforcement?

**Colin Miller:**

It does not. And it's similar, again, to our first season case where there was Hope Schab, the teacher at Woodlawn High School, who the police basically used as the conduit to get information from the students.

Now, the only question would be whether Georgia is a 'two-party consent' state. If you're sure to say that she's acting on behalf of the police... But I don't think that Georgia *is* a two-party consent state – 'two-party consent' meaning if you're going to record something and use it, you need to have the consent of both persons on the recording.

And so in this case if Samantha knows obviously she's recording it but Josh doesn't, *that* could create some issues, but I think Georgia is just a one-party consent state.

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**Jon Cryer:**

I got another question from social media here: This from 'Hug a Tree Mom', who says, "So many recordings by civilians – is this normal? How many civilians recorded conversations for this case?"

**Colin Miller:**

Right. I mean, we had Corey Jacobs in our prior episode, wearing the wire. And he was much less artful than Samantha, which is what led his friend to think he was wearing the wire. And they had to do the whole subterfuge of the pull-over to take the wire off him.

No, I mean it's not normal at all. I mean, you might see it in a RICO case; a mafia, mob, a *gang* case where you're sort of doing a 'little fish, big fish' type deal, and you get the little fish to get a plea deal and witness protection and they wear a wire.

But in this case where it's just a standard murder case you would definitely *not* expect to see this number of private recordings.

**Jon Cryer:**

We got another question from social media: "Why did Joey's attorneys not bring up the fact that Shana said Josh didn't confess? This one is still driving me in circles!" And this one comes from a young lady by the name of Susan Simpson.

[laughter]

So I think it's a *deeply* troubling question, because we got nothing. Susan, you'd be the one to answer that! If you were on the show at this moment.

But actually I do have a theory: That since the prosecutor was already saying that Josh's confession was false, and admitting that fully in front of everybody, that the defense attorney probably felt like that was information that the jury didn't necessarily need. Does that make sense?

**Colin Miller:**

Yeah. It definitely makes sense. And the question is, again, going back to what we discussed before, where the prosecution's argument to the jury was that Joey had solicited this false alibi.

So, it was a tough water for the defense to navigate, because, to your point, Jon, they're bringing more attention to the fact that Josh's story is fabricated. Is that coming back upon

the defense, sort of twofold? Where you look at it and say, “Well this is even *more* of a ridiculous attempt by Joey to solicit the alibi.”

So, they were sort of stuck between a rock and a hard place in terms of how they would handle the ‘Josh’ evidence.

**Madelaine Baran:**

Yeah. How do you *deal* with that? Because you’re right. Everything that you say... Whether you go one direction or the other, it seems like you’re helping the State’s case.

**Rebecca Lavoie:**

One of the things that strikes me over and over again... I’m also listening to this case on *Breakdown* right now: The Justin Ross Harris trial. Obviously Bill Rankin is kind of showing us what’s happening in that courtroom. And there seems to be a big difference-- And I know that there are quality prosecutors and defense attorneys everywhere, and there are prosecutors and defense attorneys everywhere that *aren’t* as high quality... But it’s almost like the visibility that case has – everybody’s bringing their ‘A-game’.

And I really don’t feel like a lot of the stuff that cases... That prosecutors don’t think are going to get a ton of play later in a podcast, later, that millions of people are going to listen to- I don’t know. It doesn’t really feel like they brought their A-game in this trial, I guess.

And when I hear the tape from the courtroom – and I know we’re hearing the tape from a different trial – it doesn’t really feel like everyone was on the front part of their feet when they were working this case, from *both* sides, not just from the defense side, but also from the prosecution side.

**Madelaine Baran:**

I think it speaks to the importance of reporting. You know, if someone’s sitting there in the courtroom... At least to get the minimum checked on what’s happening. To know that these cases are being covered. That there are reporters there asking questions. So, you can’t have – because someone’s paying attention – you can’t have the most ridiculous things happen without it being remarked upon. If you have the right reporter there.

But for the most part, so much beat reporting is gone now. And so, at best, you’d have someone who’s not often specialized at that kind of reporting. Or you’d have no one at *all*. And that’s mostly what happens in courtrooms in this country – there’s *no-one* there, other than the people involved.

**Jon Cryer:**

Well also, the lawyers are human beings, and they’re doing their job. And some days you’re totally on it, at your job, and some days you’re just not. You know? And unfortunately, people’s lives hang in the balance. I don’t know that I would have gone to trying to make the point that Shana had said that they didn’t actually confess.

I don’t know that I would have gone to that because the prosecution was already saying that this confession was false, but you must have known details from Joey because Joey was guilty. You know, that was the fact that Shana-- That doesn’t blow *that* fact out of the water. You know, that Shana didn’t hear Joey actually confess. So that’s maybe why it didn’t come up.

**Colin Miller:**

Yeah. And in terms of what I would have like to have seen, this is interesting. Because this again relates back to Adnan’s case, and false confessions. What I really think they needed to draw out to the extent they could, was what we have from Josh saying: “I was able to take information the police gave to me while interrogating me and regurgitate it to them, filling in some of the blanks, and for instance, *that’s* how I knew that the police were claiming it was a 9mm gun that was used in the shooting.

Because they told that to me and I incorporated that into my story.” *That’s* what I would have focused on as defense counsel in the case, was to show how this was a false confession. It

didn't come from *Joey*, trying to create a fake alibi, but in fact came from the police during the interrogation, giving information to Josh that then he could then use to flesh out the story.

**Jon Cryer:** Yes, and we got a question from 'KMG88' saying: "Think hard. You might not remember, but I think you did" – all in quotations – saying: "Was this audio available to Joey's attorney?"

Which is, of course, pointing out that at one point – I don't know which of the Shifflet twins said it, but – one of them said: "You said it at one point, but I'm not sure you recall it."

And basically totally coached Josh to remember one particular detail. Again, was this audio file actually available to Joey's attorney?

**Colin Miller:** I'm pretty sure that it was. I'm pretty sure because we had the recantation that Josh did to Joey's attorneys, that they *did* get a copy of the recording with Josh. I'm not 100% sure, but I think that's the case.

**Jon Cryer:** And we don't know if the attorney actually brought it up in front of the jury?

**Colin Miller:** I don't think that specific statement was brought out at trial.

**Jon Cryer:** Can I ask you, Colin: How *long* was the trial? Just in terms of days.

**Colin Miller:** I think it was around a week. A week, give or take a few days.

**Jon Cryer:** Really? So they were able to get, was it... There were 20 incidents of 'prior bad behavior' on Joey's part – they were able to get all of that in a week?

**Colin Miller:** Yeah. I mean it was... It was pretty compact. I think they were pretty efficient – the prosecution – in doing that.

**Jon Cryer:** The reason I ask is because, you know, when you're serving on a jury there's just this *fog* of facts, you know, and if it was a trial that lasted, say a month, or two months, or something, there's a point at which your brain probably checks out.

Because you're just taking in so much. I'm just thinking – there's so many differing stories, there's so many things to keep track of, and obviously, you know, we're doing a podcast that's 20 hours of material, 20-plus hours of material, even *that* seems like an enormous amount of detail to process just as jury members. And to a large extent, I think that they got a guilty verdict because there was this fog of 'guilt' around Joey. He just *seemed* guilty.

**Colin Miller:** Yeah. And we've talked to a few of the jurors in the case – we'll get to juror deliberations later – but what they said actually was, in addition to it being a relatively compact trial, that the judge actually had them staying until around midnight to have their deliberations, as opposed to cutting it short. And, so yeah. I mean it was really a pretty compact theory that they were considering this in and the judge was trying to keep it in check and making sure that it didn't extend out too far.

[32:57]

**Jon Cryer:** I've got another question from 'Susan Nyberg' who says, "Are judges offended when they learn of manipulation of witnesses? Like the rule of law has been dissed? Did the judge in this case express any exasperation at the false confession that was gotten by cops?"

**Colin Miller:** No. And that's interesting because, you know, Rebecca mentioned the *Breakdown* podcast as well... And I've sort of been flabbergasted at some of the evidence, especially the lay opinion testimony about Justin Ross Harris's demeanor after seeing his child in the car, and looking overall at some of these Georgia cases it seems very much pro-prosecution and pro-admissibility of evidence.

I've been really surprised to see just how much the scales of justice in Georgia seem slanted against defendants.

**Rebecca Lavoie:** And it is very, very rare for a judge to weigh in on *anything*, unless it's in the courtroom. I mean, you're not going to hear, for the *most* part, a judge talking about a case unless it's a long, long time after it happened.

I mean, for *our* books, we've tried to talk to judges about things that happened in the courtroom, especially with hindsight, and, unless somebody has you know, moved on to a different circuit or a different role, I find that it's almost impossible to get answers to those questions. You can *ask* them, most judges will, you know, let you *ask*, but they won't answer, so I don't think that's something we're likely to get clarification on.

[34:28]

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**Jon Cryer:** I've got another one from the very entertaining handle of, 'I Pinged Off L689B' – I thought that was kind of brilliant.

[laughter]

But they ask: "Going back a few episodes, was there any DMV checks run to see if Corey Jacobs rented any new cars or motorcycles?"

**Colin Miller:** We have not gone that far down the wormhole, so we haven't checked. At least, I haven't. I'm not sure whether Georgia Innocence Project has, but I'm not aware of any search to find out if there were automobile purchases by Corey back in 2001.

**Jon Cryer:** Okay. And here's another one from 'Benjamin Hodges', and to give you a little context, last week we got into a discussion of journalism and objectivity in courtroom proceedings, and he asks: "Regarding your discussion last week regarding subjectivity, to what extent to you consider *Undisclosed* to be an objective analysis of these two cases?"

**Colin Miller:** Yeah. That's a tough one. I will say, I was recently reading-- There's a social psychologist – Emily Pronin, she's at Princeton – and she has done a lot of research on what's known as the 'Bias Blindspot'. And it says, you know, like 85% of people think they're less biased than most other people.

So, I don't have any illusions that we're completely unbiased. But it's interesting because there's certain points in our investigation where it shifts. So, at the point where we're deciding

whether to take a case – this Joey Watkins case – you almost start as us as a team looking at it and trying to find every reason to believe he’s guilty.

And so you wouldn’t take the case, because you don’t want to have a podcast about a guilty person. Then you decide to take it, and you start talking to his family, and investigating the case, and I think it’s almost impossible to remain completely unbiased.

I mean, I try to do the best I can, personally, to look at everything objectively, but, you know, after seeing the effect it’s had on his family and hearing him talk, it’s almost completely impossible to remove that from your mind.

So, I would like to *think* I’m as unbiased as possible, but I have to sort of recognize that almost certainly, I am, in looking at the evidence now, biased in favor of his innocence.

**Rebecca Lavoie:**

Yeah. And I don’t think that’s your guys’ job. I mean, this comes up sometimes when I’m talking to you about the content of the podcast. I don’t think you guys are telling us that you are journalists. I mean, you are doing some reporting, you’re finding things, you’re investigating, but, you are clear, you are looking into this because you think it was a wrongful conviction.

And so the podcast’s *job* is to make that case. So, I don’t know. I think objectivity would be a weird thing to ask you to hold yourselves to. Although, I do think it’s really great – especially with you, Colin – when you pop in and give larger contextual, sort of, view, and things about evidence, and also when you ask questions. I do think you ask a lot of questions, you know, “Playing devil’s advocate here...” That’s an expression I’ve heard you say, I think about a dozen times in the last few weeks in the podcast. You *are* comfortable, you know, sort of poking at, or maybe “From the other point of view it’s this, this, or *this*.”

So, I don’t know. I don’t think it’s necessarily what people expect. Or, you know, I don’t think it takes away from their enjoyment of the podcast that you guys do have a point of view.

**Colin Miller:**

What do you think, Rebecca, when you write your true crime? I mean when you write these books. What’s your take in terms of along the spectrum from starting the investigation to writing it? Whether you’re neutral or...?

**Rebecca Lavoie:**

Yeah, well we’re definitely objective. I mean, we’re definitely coming at it from a journalistic point of view and applying a lot of those standards. And also, trying to find things that haven’t been covered. So there *is* new reporting that is covered in the books, and very often – you know, *of course* – it is impossible, as I’m sure Madelaine will agree, to not – during this process – decide what you think happened, or what you think is true. Or how you feel about the people involved.

And then sometimes when you dig stuff up, you find something that contradicts that. And for *us*, because we get so deep into these stories, it does take a reset, so that we can write it and report it objectively. Because it might not be what we’d hoped. You know what I mean?

[laughter]

Sort of fits our thesis, you know? I mean we had planned a chapter about how somebody’s personal life affected them in such a way, because it’s a theory we’ve based on things. And then you look, and their personal life is completely different than you thought it was! So it’s, “Ugh, okay. That would have been great but we’ve got to let that go.”

[laughter]

So, yes. Speculation is a no-go, as lots of lawyers who work with our publisher, and also they make us source every quote, every fact, every *thing* in the book. So, we’re not able to throw

a lot of speculation in there unless we are *very, very* clear that this is speculation. [laughs] You know? Or you attribute the speculation to somebody, which is very often, sort of how we're able to do it. You know, a cop will speculate, or a lawyer will speculate, and we can quote that cop or lawyer and so we can include the speculation without it being *our* speculation.

So, there *are* some ways around it, especially in a long-form story. But yeah, it's got to be a little bit more objective. But the storytelling components are still there! And you guys have to think about storytelling too, with *your* podcast. You know, making us care, having there be an arc, you know? We talk about that a lot, and I know you guys do too.

**Jon Cryer:**

One thing that impressed me about the first season of *Undisclosed* was that it was clearly a work of advocacy. I mean, Rabia was very upfront, you know, her particular relationship to the situation.

But yet, it was very clear that you were simply examining whether the evidence held up or not. You weren't looking to point fingers at other people... It seemed like a very, rational, reasonable investigation of whether this evidence is what it seems.

And I think you guys were very upfront about that. You know, obviously when you're upfront about the fact that you're an advocate, that clears the way quite a bit, because you go, "Okay, that's what I'm hearing at this moment."

**Colin Miller:**

Yeah, I mean, I think that as long as you're upfront about all of the biases and motivations you might have in a case... And yeah, obviously the first season case, Rabia has the personal connection – there's no way to avoid it.

And I think if you're upfront about that, people are much more willing to accept that, yeah, it's not going to be completely objective, but it's tough to have anything when you're reporting, that's completely objective.

[40:24]

**Madelaine Baran:**

With me as a reporter... I mean one of the checks you have is your editor, and sometimes, you know, *multiple* editors, where you're really engaged in this process of trying to constantly disprove what you've found out, or report so much to see if you're wrong.

And I've never done a long story where my hypothesis was entirely correct going into it. And so, if I had that happen I'd almost be really suspicious of it. That: "Oh it was exactly as I thought!" [laughs] You know? Like all I needed to do is confirm it.

So, usually you find yourself in situations where things are obviously more complicated than you think. And a lot of the reporting that I do as an investigative reporter is looking into certain things, and they just don't check out, and you drop them. So, it's like being comfortable with doing *that*. With saying, you know what? This just isn't a story at all.

Or being open to the possibility that six months in, people that you think really messed up are not the people who *really* messed up. Or that, you know, it just takes it in a different direction. Or you think there's a mistake, and you spend all this time trying to figure it out and you're like, "Oh no, actually that wasn't a mistake at all." So, that's like a common part of the process, from my end, with these longer projects.

And the editor is there *constantly* asking: "Okay, what about *this*? What about *that*? You need to talk to *this* person to make sure that this isn't the case." And you sort of live in fear of being wrong. You have a healthy, high level of fear of being wrong. Which is helpful I think, in this profession.

[41:53]

**Jon Cryer:** I'm glad we're on this topic because there's been something in the news recently: Adnan Syed's lawyer, Justin Brown, has filed for bail for Adnan. And now, I know that recently Maryland is going to be giving parole hearings to 300 juvenile lifers, which meant that Adnan could get a parole hearing very soon, but this is *bail* – this is a different animal. And the file had several very fascinating facts – some would say 'bombshells', Colin!

**Colin Miller:** Some!

**Jon Cryer:** [laughs] Some would regard them as bombshells. But actually they are not the bombshells of which Colin has been speaking. Am I right, Colin?

**Colin Miller:** Correct. These are separate things that have been brought up in the motion – they are not things that I have previously referenced.

**Jon Cryer:** But they *do* bring up an interesting question that has to do with journalism and objectivity. First, my understanding of the briefing – and I just finished it this morning, actually – was, that it makes the key point that Adnan was 17 at his time of arrest but mistakenly he was booked on a capital offence, which would have been if he was 18. And he was denied bail on the basis of that. And that's obviously unfair.

It also pointed out the many changes of Jay Wilds' account of the crime, but it also brought up the fact – that I was unaware of – that Jay Wilds has had an extensive criminal history since the crime in question. Including, you know, many allegations of battery, including one allegation of strangulation – or, actually, I believe, *two* allegations of strangulation. And the reason I thought this was interesting, and interesting to talk about in the context of what we were talking about, was, apparently this criminal history has been something that people have been aware of for a while.

My understanding is that Sarah Koenig was aware of it when she was doing *Serial*. And yet, it was not mentioned in *Serial*. And it would seem to the layperson that a person who claims to have been at the crime, an accessory to the murder, who is later accused of something in the same 'wheelhouse' that that would be contextually important to something like *Serial*.

But why would a reporter keep that out? Of course, it would be best to just ask *her* – I don't have her phone number. [laughs] So, it's not a possibility. I'm just asking, in *practice*. I mean, obviously, these crimes happened – and by the way, some of them are just allegations – so I don't know to what extent he was either charged... I don't know. There are some things that are mentioned as 'convictions', I don't know which specific crimes were convictions, but obviously these are occurrences *after* the murder of Hae Min Lee. So, you know, who knows what brought them about and whether they have any actual bearing on what happened to *her*.

But it just seems fascinating to me that an investigative reporter would completely leave that out. Especially when you've got a whole episode called 'The Deal With Jay' [laughs] You know? Which seems like... And in the filing, it's brought up as context to the fact that Adnan has been a non-violent person all his life, except for the alleged crime, even in prison! All this time, there has not been any violent infractions that he has been charged with.

Whereas you look at Jay Wilds who has been absolved of this crime – he admitted to being an accessory to – and yet he's gone on to to apparently be accused of or committing many crimes. So it would seem like that would be a natural fit in an investigative reporter's report. Wouldn't it?

**Rebecca Lavoie:**

I wouldn't include it. And I'll tell you why. Or I would have serious reservations about including it. I mean it's one thing to say this can impeach a witness in court. But, timeline-wise, most of the things that are laid out in that motion occurred *after* the trials and after the crime.

There is an editorial choice made in *Serial* to only refer to Jay by his first name, so I *do* think there was some sense of – for whatever reason – privacy, given to him in context, probably because they didn't have his cooperation in the interviews.

But *also*, think about what we say all the time about wrongly-convicted people, or people we *think* are wrongly-convicted. Look at Joey for instance. Look at horrible relationship dynamics he had in his past. Look at the fact that he was reckless – *admittedly* reckless in a lot of ways in his life – and we are very, very comfortable saying, “Yeah but you know what? That doesn't make you a *killer*. That doesn't make you a killer in *this* particular instance.”

So, where I do think it is worthy of being-- Where I think it's completely relevant to bring up in the motion in terms of impeaching him as a witness. As an *editor*, I would also question whether or not it belonged in this story that we're talking about. And Sarah was very specifically talking about a story that took place in 1999.

And so whatever criminal history Jay had at *that* point was sealed – because he was a minor – to me *that's* that history that would have been the one that was relevant, because it would have spoken to the motivations of the police, or *his* motivations to give a confession. But what's happened in his life since then, for me, I don't think was part of the story she was endeavoring to tell. Which was whether or not Adnan had a fair process and whether or not he belongs in prison today.

She did try to get access to Jay, to sort of test the truth of his story. I do think she could have done more about looking at the confessions, how they were elicited, and some larger, broader context of the Baltimore Police. She had been a crime reporter, after all, in Baltimore, and I feel like that was missing from the podcast. The practices of the department at that time, that was, for me, the missing piece.

But I don't think Jay's life after the trials and after Adnan's conviction, for me, would have been something I would have put in to that reporting. That's just my opinion, of course, I'm sure there are other opinions out there.

[laughter]

But I think there are other ethical problems with it.

[47:34]

**Madelaine Baran:**

I mean, and this is a general problem too, when you're talking about something or you're raising questions about: “*Was* the right person convicted of this crime?” Because what you're doing then is you're raising the doubt, you know, the question on people's minds: “Well, did any of these other characters do it?”

And as a reporter, you know-- [sighs] So attentive to you know, *not* naming people who haven't been charged, really trying to stay away from that... Yeah. I mean, you really have to think about the big picture of this. Are you doing things that are actually going to contribute to the thing you're trying to prevent? Which is people's lives being ruined by rumors and speculation and false allegations.

So it's treacherous. I mean, I would need to know *all* of it to really know what I would do in that situation.

**Jon Cryer:**

Yeah. It's tricky ethically, because I mean, you could be named, you know, ‘Stabby McStabberson’ and talk about how much you love stabbing people, but if you're accused of stabbing someone you didn't actually stab, you shouldn't go to jail for it. [laughs] You know?

- Madelaine Baran:** That scenario would be problematic!
- Rebecca Lavoie:** It would be problematic, yes.
- Rebecca Lavoie:** What is wrong with your parents, Stabby McStabberson?!
- [laughter]
- Jon Cryer:** Yes, that's really the investigation that needs to happen, is how did you end up 'Stabby McStabberson'? The proud McStabberson name has been dragged into the mud.
- Madelaine Baran:** Well it was a great name, though.
- Jon Cryer:** Yes.
- Madelaine Baran:** And I guess he fulfilled it.
- [48:51] ≈
- Jon Cryer:** So next week, actually, the *Undisclosed* podcast will be all about the bail filing. And I'm very much looking forward to *that*. Are you already at work on that, Colin?
- Colin Miller:** I am about halfway through the draft, so we'll be recording that later this week and it'll drop at Halloween!
- Rebecca Lavoie:** And a quick plug, this week on *Crime Writers On* we're going to be talking about the motion in the journalistic context. We're going to talk about Sarah's reporting, her inclusion of it, her *lack* of inclusion of some of that detail, how we feel about it, and also just taking a look at the motion as it *reads* – as a non-lawyer reader – putting the case together. Because it does make a very cogent argument about the weakness of the State's case – I think *more* so than any other single document I've read so far.
- Jon Cryer:** Yes, it's very *compact*, which I was thrilled about. [laughs] But now you mentioned actually that Sarah Koenig was a crime reporter. I thought that she said that she *wasn't* a crime reporter at the beginning of *Serial*?
- Rebecca Lavoie:** You know, maybe she wasn't a crime reporter, but she was a reporter in Baltimore, at the *Baltimore Sun*, I believe.
- Jon Cryer:** Yes, I know that. Yes.
- Rebecca Lavoie:** And she also has done crime reporting on *This American Life*. So, to say she was not a crime reporter by the time she did *Serial* is not quite accurate. She did that story about false confessions with Jim Trainum, she did the story about the killer with the same name as the guy who ended up taking his job as a doctor... I mean she's done other crime *stories*. So maybe she doesn't see herself as a crime reporter who covered courts who had to scour through

filings, who read motions, and who knew attorneys, but she *definitely* reported on crime before. So that's-- I don't think a 100% an accurate assessment.

**Jon Cryer:** A distinction without a difference, as it were.

**Rebecca Lavoie:** Perhaps.

**Jon Cryer:** Perhaps.

**Rebecca Lavoie:** Jon, I actually have a question for Madelaine: I listened to the final episode of *In the Dark* today, and it dropped this morning. And if any listeners of this podcast have *not* listened to *In the Dark*, you're missing out. Go back and listen to it. If you love hearing about how the justice system's messed up, like you will love, love, love *In the Dark*.

So, in this final episode you talked about how the police never found where Jacob's body was buried and they never found where the crime was committed against him. And how they sort of made claims about the guy who did it being the perfect criminal; not having friends, not talking to anybody. And you sort of were able to debunk all that stuff?

**Madelaine Baran:** Mm-hmm.

**Rebecca Lavoie:** And this is the question we keep talking about on *my* show, at this point, do you feel like your show is much, much stronger *because* Danny Heinrich has confessed to this crime? And you're able to point definitively to all these mistakes that were made, and show that they were, in fact, mistakes?

**Madelaine Baran:** Absolutely. So, this, I think, is the difference in what we're doing. We did not want to tell a mystery story with an ambiguous ending. So, we needed to know who did it to have the strongest possible story, and we didn't think we were going to get it – or might not get it.

So, to have it, yeah, I mean it *really* makes the story much stronger. And also it tells the public exactly what went wrong in this case, in a way that we couldn't do if we didn't know who did it. I mean, if you think about Episode 9, these additional failures that: Okay, well *here* is where this boy's remains were. And we know that, and yet, wait a minute, this is a spot where investigators should have known about. And this was a spot they haven't searched. And this is a spot where there is a guy who owns the adjacent property who says, "Well, this certainly looks like a grave to *me*." It's really, pretty illuminating about the law enforcement failures, and how devastating they were. And how some of the answers seemed to be in plain sight.

And so, to know what those answers are, I think, was just a huge help in trying to look at what mistakes really mattered. Because before we had the confession, we knew where the law enforcement agencies had deviated from the standard practices, but what we did not know was which mistakes really made a difference in this case.

And so now we can look very clearly at that, and be able to talk about that.

**Rebecca Lavoie:** I definitely listen to a show like *Undisclosed* differently, after listening to *In the Dark*. Because it's one thing for people to say that they think that the police made so many mistakes... It's another thing to get so many examples of mistakes, and then think when you're listening to these other cases – like the Justin Ross Harris case – also, yeah they really messed this up!

It's very similar to what happened, you know, in *In the Dark* – you hear this 'police not doing their jobs' stuff, it's just very, very interesting and very, very good. So, kudos to you.

- Madelaine Baran:** Thank you! Yeah. And it's great to talk to you, and thanks for having me on your show, too.
- Jon Cryer:** Well, thank you so much for coming back, Madelaine, you're always welcome. We're actually looking down the barrel of not having that many shows left. So, we may have to have, like, a big reunion episode where we have all the guests [laughs], and we'll all just yammer over each other. That sounds like fun to me.
- But thanks again, Madelaine.
- Madelaine Baran:** Yeah, thanks so much. Good to talk to you all!
- Jon Cryer:** And thank you, Colin and Rebecca! Once again, I'm learning something new every week, and I am just so very grateful.
- Rebecca Lavoie:** Oh, I'm thrilled to be on the other side of the microphone for the *Undisclosed* family.
- [53:39] ≈
- Colin Miller:** Rebecca, I have a question for *you*: You obviously are producing our podcast, and you have your podcast about all these true crime podcasts... When you're a 'partner in crime' and you're thinking about your next story, I mean obviously you've taken the form out of doing these true crime books, but any inclination for you for your next case? To maybe do it in podcast form?
- Rebecca Lavoie:** Yeah! I mean, it's definitely something we talk about, it's something we've talked about potentially adapting a story we did *not* do a book about, into a podcast, but, and the one thing I'll tell you – like Madelaine said – it takes a lot of people to do this really, really well. And I kind of feel like, right now, given that I work in a newsroom, there's like, a lot going on, but making a show in your basement, it's definitely a lot easier to talk about things---
- [laughter]
- Rebecca Lavoie:** Than it is to make a thing that people talk *about*. I don't *have* – I'm not surrounded by – a newsroom here in my basement. I don't have an editor. I don't have researchers and data reporters sitting here with us. And I think that's what makes the good ones *good*. If you listen to the really excellent ones like *In the Dark*, like *Accused*, like *Offshore* – the new show that I know that I got you hooked on – there's a *team* of people making it good. It's not just one person's reporting or point of view, and that's next-level, so, maybe down the line. [laughs] Meantime, I'll stick with commentary.
- Jon Cryer:** Also, I may make a small suggestion: A lot of people on social media are asking about your *book* and whether there's an audio book available. Well, why don't you and Kevin just record audio books of your books?!
- Rebecca Lavoie:** It's funny you should mention that – we just talked about that on a recent podcast – we don't own the audio book *rights* for our books.

**Jon Cryer:** [gasps] What?!

**Rebecca Lavoie:** Yeah. So if people want to hear our books on audio, they should send a note to Penguin Random House, because we have *asked* for the rights. We have not been able to secure them, and they're not doing anything with them. So, anyone interested in hearing any of our books in audio, yeah! We've got equipment. If we had the rights we could record it, or if they wanted to do it, they could. Maybe with a little bit of public pressure, that will happen. So, Penguin Random House is the place to go, Kevin Flynn and Rebecca Lavoie's many books *would* be available on audio if they were to help us make that happen.

**Jon Cryer:** I am genuinely shocked with that information. [laughs]

**Rebecca Lavoie:** Show business! You should not be shocked!

**Jon Cryer:** You're right! You're right.

**Colin Miller:** It's not just show business, it's law professors – we publish our articles in law reviews and that's a big thing I'm always telling the junior professors is make sure you retain your intellectual property rights because there are limitations unless you get an exception where your own law article you can't use in other venues. So, yeah. IP is a huge area out there that is not very well understood.

**Rebecca Lavoie:** One of the things I was thinking about reading in this motion yesterday, which by the way, I know I keep saying it, is really a good read. It's a well-written, very concise motion. It would be really great to have an audio version of *that*. You know, if someone from the law firm were to read it, I think it's something that people would listen to.

**Jon Cryer:** We should have James Earl Jones do it.

**Rebecca Lavoie:** [laughs]

**Jon Cryer:** You know, and get some real gravitas.

**Rebecca Lavoie:** Morgan Freeman.

**Jon Cryer:** [laughs] Yes, Morgan Freeman, exactly!

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