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

**ADDENDUM 20: THE ROAD NOT TAKEN**  
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**Colin Miller:** Hello, and welcome to this week's *Undisclosed Addendum*, where we talk about all things *Undisclosed*.

In this week's episode of *Undisclosed* – 'The Alabama Highway Part 2' – we delved deeper into the investigation and prosecution of Heath Wilson for a highway shooting that occurred on the same night and about 10 miles away from the shooting of Isaac Dawkins.

This is Colin Miller, and I'm joined this week by two very special guests: First we have Kay Levine, a professor of Law at Emory Law School. She teaches and writes in the fields of Criminal Law and Procedure, and has a particular interest in prosecutor decision-making. Before becoming a Law professor, she worked as a staff attorney for a federal judge in Honolulu and practiced criminal law in California as both a prosecutor and a defense attorney.

Kay, welcome to the podcast.

**Kay Levine:** Thanks very much for having me!

**Colin Miller:** And next we have Rick Latta: Rick is an attorney in Georgia – currently the *Undisclosed* Fellow with the Georgia Innocence Project. He started working on Joey's case at the beginning of January 2014 and returned to continue working on the case this September. Rick has also been accepted into the PhD program in the Law School of Edinburgh University in Scotland. He loves the law and wants to perform more justly. So Rick, welcome as well to the podcast.

**Rick Latta:** Thank you for having me. Hello everybody.

**Colin Miller:** Now Rick, I'll start with you. You graduated, as I said, from Georgia State in 2012, and it wasn't long thereafter in January 2014 that you started working at the Georgia Innocence Project as a volunteer attorney. And it was back then that you started working on the case of Joey Watkins. And so what do you recall about getting the case and working on it back in 2014?

**Rick Latta:** So, I started in January of 2014 as you said. I had recently been admitted to the bar here in Georgia, and I'd just got in touch with the then executive director, Aimee Maxwell. I'd sent an email, and said, "Hi, my name's Rick, is there anything I can do to help?" and she said, "Come down!" So I came down.

I spent the first day helping with letters where people were requesting help, and then the second day she handed me two boxes of papers that turned out to be Joey's case. And my understanding is that initially Bill O'Dell, was the sort of 'co-ish' attorney in Joey's case, but the lead attorney for the co-defendant Mark Free. He brought the case. And was trying to find someone to help.

And the Georgia Innocence Project had accepted the papers, but it was about this time that I joined, and so I just started working the case. At first that meant just going through and sort of un-shuffling these boxes of papers that included trial transcripts and notes that had been collected from various groups, and cataloging, figuring out what we had, and trying to learn the case. Because I had no idea about it. And going on from there.

Eventually it meant traveling to Rome a lot, interviewing different people, and beginning to start trying to put together an understanding of the case. But then, what could be next steps.

**Colin Miller:**

Yeah. And Kay, on the other hand, after you graduated from Berkley and worked in Hawaii, you then went to work as a deputy district attorney in Riverside, California for about three years, and so what was it that led you to become a prosecutor, and how did you find that experience?

**Kay Levine:**

So, I was one of those people that did *not* like law school at all.

**Colin Miller:**

[laughs]

**Kay Levine:**

Which I'm *very* open about with the law students. I really didn't like it, and found most of the conversations not particularly interesting. The only things that I found interesting were classes like Criminal Law and Criminal Procedure.

So that first year summer job, that Riverside office was hiring, and I thought, "You know what? I'll give it a shot". Because this actually seems kind of interesting and went for half of the summer, and thought: "Very good, very interesting people, but I don't see myself going back there."

Midway through my clerkship in Honolulu, I was thinking, "What do I feel like doing?" and that seemed like the most interesting job. So I went. I think mostly because my commitment was to victims, not so much commitment to police issues, but commitment to victims. So, that was an office that had a very strong victim-witness bureau. So, it *does* have a very strong victim-witness bureau, so that was appealing to me.

My time there was hectic, and I remain like, in *awe* of some of the people who are the lawyers in that office, and their commitment to what they do. But for me it was clear just after a few years that I wasn't cut out to be an advocate assigned to one side. That I was more... I had more questions about the sort of work that we were doing, and whether we were really making a difference in the lives of the people who were coming before us – either as victims or as defendants.

So, I would say, you know, looking back on it, my experience as a prosecutor gave me a research agenda for a lifetime, and the ability to ask the right questions about whether the justice system is really doing the right thing – not just *some* of the time or *most* of the time, but in the vast majority of cases.

**Colin Miller:**

Yeah. And then to your point, after that when you worked as the deputy district attorney for about five and a half years you were an attorney and criminal defense consultant, so how did you find operating – I guess somewhat on the other side of the issue?

**Kay Levine:**

Right. So that was when I was in graduate school getting my PhD, and my husband had a practice that included criminal defense, so I was practicing with him. It was less challenging than I thought it would be to make the switch from prosecution to defense. I think, you know what? Prosecutors so rarely get the chance to see and interact with the defendants as *people*. And so, I didn't really have as much experience doing that – that was really eye-opening!

I think, getting a chance to see the defendants as full-bodied people with lives and families that care about them, and reasons for doing what they do. And also, most of the people that we represented really wanted our *help*. Not because they were aggressively asserting their innocence, but they wanted somebody to help explain the system and help make their

experience of the system bearable. So that they could come through the other side and continue to live a life.

And so, performing *that* role, that suited me, actually, pretty well. And I felt like having had time as a prosecutor – although not in the same county – I had a pretty good feel for how the system was going to work. That a lot of the defendants could appreciate. Because they sort of wanted somebody that had that kind of inside view of why cases were being handled the way they were being handled, and why something would go to trial, or why a plea offer might be what it was going to be.

So, even though my prosecution experience was in Southern California, and the defense experience was in the Bay Area counties, I felt like there was kind of a nice synergy. And now, I can bring both of those experiences together in the classroom for my law students.

**Colin Miller:**

Yeah. And Rick, in terms of working on both sides of the process, last year for about half a year you were in Cambodia and doing an internship at the Extraordinary Chambers in the Courts of Cambodia, and can you just tell our listeners a bit about the work of the ECCC and what you were doing in that internship?

**Rick Latta:**

Yeah! Absolutely. So the ECCC is a hybrid court. It's been set up sort of half-Cambodian, half-United Nations. And its purpose is to try people in connection with crimes committed during the *Khmer Rouge*. So, there was a government in the mid to late '70s called the *Khmer Rouge*, and these are essentially, often known as 'genocide trials' that includes genocide as one of the claims that is being brought. But it includes other claims like crimes against humanity, various war crimes.

So, I got a chance to work with the trial chamber. So I was working with the judges, and the judges doing the actual trial. There was a Supreme Court chamber, there was an appellate chamber, and then you had prosecution and you had defense, but I was with the judges. And I found it fascinating. It was eye-opening to see how that law all works. I love it.

It's interesting, law. I think there are many ways in which the rule of law can be a real help, and I try to keep my hand in studying it and paying attention to how it's developing. And it's also just *good*. I agree I haven't had as much opportunity *yet* to see all the different sides of the law, but it's helpful, and it's good to understand that to see sort of the humanity in all the different sides – prosecution and defense.

And I was honest in the beginning when I said I *do* love the law – I think it has an important role to play. I want to see it operate more justly, as I think we all do. But no, I love prosecutors – I love defense as well.

[11:09]

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**Colin Miller:**

I wanted to go to a Twitter question. This one comes from 'Kat on Twitter' and she asks: "Why are law enforcement/lawyers/prosecutors so afraid of criticism/investigation/transparency if they're so right?"

And Kay I specifically wanted to direct this to you, because you co-authored a piece called 'The Cure for Young Prosecutor Syndrome' and that was based off of interviews with over 200 state prosecutors.

And one of the conclusions there in the piece was, quote:

*While young prosecutors begin their careers thinking of themselves as superheroes ready to try any case on the docket, and to do battle with any defense attorney who stands in the way of the conviction, more seasoned prosecutors think of themselves as arbitrators, negotiators, 'BS'-meters and*

*advocates. They have traded in their capes and swords for a more diverse toolkit that allows them to calibrate their responses based on context and resources.*

So, you mention before how your work sort of had this long research agenda, so can you tell me a bit about this article and more generally your scholarship on prosecutors?

[12:04]

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**Kay Levine:**

Yeah! Okay, so, I've been studying prosecutors from an academic perspective really, for *well* over a decade. Probably 15 years at this point. My dissertation research was about prosecutors who handle statutory rape cases in California. And then this project that I've been doing with Ron Wright, where the 'Cure' article has been one of the publications that's come out of it.

It's *all* involving interviews with prosecutors. Asking them, not really like, *why* they do what they do, but to kind of reflect on how they think about themselves, how they think about their jobs, and I take from what they tell me-- I'm able to see these larger patterns. And so the conclusion that we draw in 'The Cure for Young Prosecutor Syndrome' piece, based on interviews with hundreds of prosecutors from eight different offices in different regions of the United States, was the dominant theme that came through as prosecutors reflect back on their younger selves at how *gung-ho* and 'guns blazing' they were at the time, and how they lacked judgement.

And they were sort of all about prosecution and persecution for the sake of it without really having any sense of proportionality or pragmatism or the *cost* of what they were doing. The literal cost in terms of dollars, let along the *human* cost of what they were doing. Their sort of blind faith in victims, and blind faith in law enforcement.

And the story we heard over and over and over again was how all of that shifts over the course of a prosecutor's career. So, and I need to say: We definitely heard stories of people we call 'zealots' who did *not* make the shift – who stayed that: 'guns blazing', 'all prosecution all the time' approach throughout their entire careers. We absolutely heard stories about people who prosecute that way, and stories about those kinds of zealots *dominate* in what's been written about prosecutors generally.

And there are definitely certain offices that seem to promote that kind of 'zealot' mentality. And other offices that promote what we think of as the 'balanced proportionality' mentality. So, I think the sorts of cases that end up subject to the kind of enquiry that *Undisclosed* is doing now in the Joey Watkins case and sort of the post-conviction setting is an unusual way to get a window into prosecution overall.

I think that the post-conviction setting has some stressors on it that the standard day-to-day work of the prosecutor does not necessarily have in most offices where they're handling lots and lots of cases. In many places with this more pragmatic and proportional mentality.

So, the post-conviction setting... I mean it definitely has some stressors, and I do think there's a tendency to circle the wagons and to be *very* resistant to criticism. But our work on prosecution has really tried to illuminate more of the day-to-day functioning of how state prosecutors are working, handing the hundreds of run-of-the-mill cases that they see every day.

**Colin Miller:**

And one of those arguments in the piece, when you're talking about the difference between young versus older prosecutors, the one constant, it seems, is that young prosecutors *do* hold judges in high regard, and in both of the seasons of the podcast we've talked about potential Brady violations, where the prosecution fails to turn over material exculpatory evidence. And

I noted, Kay, that one of the articles that was building off of your piece was called the ‘Brady Colloquy’ by Jason Kreag, and in the article he says that judges should engage in what he calls a ‘Brady Colloquy’ with prosecutors where the judge in the courtroom is asking the prosecutor, “Have you turned over all the evidence?” and essentially asked a series of five questions.

And I wonder, what do you think about that proposal? Do you think that that makes sense? Or do you have any other ideas about ways to curb the Brady violations that are out there?

**Kay Levine:**

I actually think that makes a big deal of sense. You know, sometimes making something explicit and making somebody put something on the record might cause a different approach to the behavior, and it sends a different message about what is expected. If prosecutors know that judges are going to be paying much closer attention.

Miriam Baer, who’s on the faculty of Brooklyn has another article – I think it’s called ‘Timing Brady’ – where she makes a sort of similar suggestion about raising Brady disclosure obligations much closer to the surface, so that it isn’t just something happening between offices, or between the prosecutor and the defense attorney. But having the court be much more involved in the disclosure process.

So, I *do* actually think that makes a good deal of sense. And for, again, in the course of these interviews, people say what they say. And, of course, there’s some measure of ‘impression management’ any time you’re interviewing somebody about who they are as a professional... But we heard, you know, *hundreds* of times from all these people we talked to that, *they* don’t play close to the edge, nobody they *know* plays close to the edge, their *boss* would never tolerate it... And yet there *are* so many stories about prosecutors who not only play close to the edge but have gone so far over that they have subjected people to wrongful conviction.

So, I think, trying to figure out what are best practices from these offices where people just know that if you’re going to have a question about it, you turn it over and there’s no second-guessing. There’s no playing ‘the materiality game’ or hoping that you’re not going to get caught later. I think, figuring out what practices are happening in *those* offices – what sort of messaging they’re getting from their leadership – not just elected and the chief administrators but the well-respected attorneys in those offices – and figuring out how *those* kinds of messages can be shared with the other offices that unfortunately have a very bad reputation for continuing to have Brady violation problems.

So, this came up in New Orleans, for example, under the administration of Harry Connick. The office was sued, the case went up to the Supreme Court, and the theory was the office failed to properly train its prosecutors on Brady disclosure obligations. And what the Supreme Court decided was that was not the basis on which the defendant could recover any money. The individual prosecutor and the office would be immune from any suit for damages – for money liability – and *that* kind of immunity... You know there are people who could defend it.

For me, personally, I don’t think that’s the right call but the result is that in New Orleans, even *after* this *Connick vs. Thompson* case came down, continues to have problems. And some of those were documented by Alan Urusevsky, who is a clinical law professor at a different law school in New York.

So, I think that, sort of, the office culture, and the messaging from the top *as well as* more explicit involvement by judges, I really think would go a long way.

**Colin Miller:**

Yeah. And well, the Connick case is certainly a case that as you say, immunizes the prosecutor. There’s the other case we’ve discussed, which is *Kyles vs. Whitley*, which says basically that the police are an extension of the prosecution. And if the police fail to disclose evidence that’s a Brady violation as well.

And Rick, our next question is from ‘AR’ on Twitter and he asks: “So Heath says he was on Highway 27 and Sutton told no one. Does Sutton have a feud with the Watkins family? Why

focus on Joey?” And just to contextualize this again, and we know Heath Wilson was on Highway 20, and maybe had involvement with that shooting, and the shooting of Isaac Dawkins is Highway 27.

And through all these years there’s always been the claim that Heath Wilson was *not* on Highway 27 on the night in question and as we reported in *Undisclosed*, the notes of Sutton seem to say that Heath indicated he *was* on Highway 27 on the night that Isaac Dawkins was shot.

And so, we mentioned before, you worked on this case in 2014 and now you’re back in 2016, what was your thought process when you heard that, in fact, Heath Wilson had apparently told Sutton he was on Highway 27 on the night of the Isaac Dawkins shooting?

[19:36]

**Rick Latta:** I was surprised, but not terribly surprised. Because Heath Wilson has always seemed very interesting to me as another possible suspect. So, evidence suggesting that he was on the right highway on the night, in a sense sort of fit with some of my suspicions. But I found it very interesting.

And I found that interesting and I also found interesting what Clare was saying about looking back into the 911 dispatch cards – that one of them may have been corrected. That the 911 caller said they were on 27 – the right highway – passing the Kawasaki dealership, and the Kawasaki dealership is on 20. And so there was some discussion, and the road was changed because they just assumed the 911 caller meant 20 *not* 27.

**Kay Levine:** The other thing about this – about the ‘Heath’ story that I just found stunning, but is consistent with Sutton not turning over the statement about his admission to be on Highway 27, is that the officers put together this *binder* of photographs of all the blue, bluish-green, imported little sedans in the *whole* Floyd County area--

**Colin Miller:** Right.

**Rick Latta:** Yeah. They drove around--

**Kay Levine:** And they went around and took photographs of cars they thought... And all parking lots, and whatever. And the *one photo* they *don’t show* to the eye-witness is the photo of Heath’s car!

**Colin Miller:** Right.

**Kay Levine:** That is *completely* unexplainable. Consistent with the story of, you know, the why they didn’t turn over the statement either.

**Colin Miller:** Yeah. And that ties into the next question I had, Rick, which is that I saw the GIP tweeted a few days ago that: “*Undisclosed* pod fellow Rick Latta giving a talk about *Timberlake vs. State*: Just because you’re innocent doesn’t mean you get out of prison”. And that involves a somewhat similar issue in terms of not disclosing a photograph, and the consequences in the post-conviction context. So can you tell us a bit about that case? It was a 1980 case out of the Georgia Supreme Court, and what that case held?

**Rick Latta:** Yeah! So the Timberlake case was important because it lays out the six prongs that are needed in order to request a new trial based on new evidence. And the talk that I was giving was

about another one of our clients here at GIP – his name is Bharadia – there was physical evidence in the case, it wasn't tested. We finally got it tested for DNA and came back excluding Bharadia and implicating the alternate suspect.

But he's still in prison, and he's still in prison because Georgia said this second prong of diligence – Bharadia should have tried harder to have the evidence tested at the trial. And because he didn't, he's going to stay in prison. *But*, now that you've asked, I'm blanking for a second on Timberlake.

**Colin Miller:**

Well the Timberlake case – it was a murder case where the defendant, Timberlake, had allegedly killed the victim at a Texaco station and on appeal the defendant claimed various Brady violations and grounds for a new trial, and one of them was... Going back to the point Kay made about not showing a picture of Heath Wilson's car was that the prosecution hadn't turned over this photograph of an alternate suspect in the case and that was George Parton. And despite that – for some of the same reasons you noted in the case that the GIP is handling now – the court found even if there's evidence of innocence or Brady violation, that based upon lack of due diligence, couldn't be granted a new trial.

**Rick Latta:**

Yes. Exactly. So yeah, we're running into this. We run into this a lot, unfortunately. And so there's something to do with my talk – whether this is what we want to be doing, sort of, as a *people*. Do we want to be leaving people that we know to be innocent in prison in the interest of finality? Or, however you want to phrase it?

**Colin Miller:**

Yeah. And if we look at this, you know, obviously this has been a fight for both Adnan and Joey – both of the defendants we've talked about in both seasons of the podcast. And if Adnan's order for a new trial is upheld, and/or if Joey is given a new trial, then one of the possibilities that's been floated is an Alford Plea.

And Kay, in looking through some of the coverage of the West Memphis Three case, I saw quotes by you about the Alford Plea. And so if you could remind our listeners of what the Alford Plea is, and I guess share what your current thinking is on an Alford Plea in these types of cases.

**Kay Levine:**

Sure! Yeah. The typical guilty plea involves a defendant, first and foremost, admitting his or her guilt to the crime. And in a dialogue with the judge – the judge asks a series of questions to make sure the defendant knows what he or she is doing, is willing to do it this way – admits guilt, and then provides some, what we call *factual basis* that allows the judge to feel confident that this defendant actually did what he or she is admitting to having done.

And only if a plea *needs* this 'knowing and voluntary' test is the judge supposed to say: "It's acceptable under due process for us to enter a guilty conviction instead of having your case go to trial."

A case called *Alford vs. North Carolina* asked the US Supreme Court, well if a defendant says, "I *want* to plead guilty, but I'm not going to admit that I actually did it, would it still be acceptable under due process for a judge to accept the plea as a form of conviction?" And what the Supreme Court said, was, you know, "Yes, it would be." It would be fine. Defendants are allowed to make a strategic choice that on the advice of counsel or to get out of custody, or take a *shorter* amount of custody – take advantage of whatever *bargain* the prosecutor's asking for, if a defendant wants to do that and still insists that he or she is innocent, then the court ought not to stand in the way.

The Supreme Court *did* make a point of saying that individual judges or individual jurisdictions could say, "For our purposes, we don't like this kind of Alford Plea. If a defendant wants to take the deal, the defendant has to admit guilt. You can't get the benefit unless you also take responsibility."

So, there *are* individual judges and there are some jurisdictions – counties or cities or states – that have decided as a matter of law they’re simply not going to let a defendant do that. The taking of an Alford Plea – some people think of it as a ‘no contest’ plea, the way you would do in a traffic case, but it’s as if they were saying, “On the advice of my attorney, in order to limit the consequences of going forward, I’m going to plead guilty even though I still insist that I am innocent.”

So, the taking of an Alford Plea has come up just really a handful of times in these incredibly serious cases, and the West Memphis Three is one of them – a series of defendants had been convicted, evidence had been brought forth that maybe the conviction was completely inappropriate, they would get a new trial, but they still face the consequences of staying in custody through that new trial. And there was some uncertainty about what might happen.

And so, the prosecution offered them the ability to take an Alford Plea, meaning: “Say you did it, and we’ll give you credit for time served, and then you can be done.”

It also came up in a case from Texas, the defendant is Kerry Max Cook, who was one of the founders of the play called *The Exonerated* that was traveling the United States several years ago – Kerry Max Cook was prosecuted for the rape and murder of a young woman in a West Texas town. He was prosecuted three or four times, convicted, sent to Death Row, and his conviction was overturned. Mistrial, convicted again, and sort of back-and-forth, back-and-forth.

By the time it got to the fourth or fifth trial, after the appellate court in Texas had told the prosecution that the amount of misconduct in the case was *appalling*, and they would no longer be allowed to use the testimony of their main witness who had since died, the prosecution decided rather than try Kerry Max Cook *yet again*, they would offer him the ability to do an Alford Plea.

And after consulting with his *very* experienced attorney, he decided to do it. And the way he tells the story he regrets it every day. He wishes that he had fought for his innocence, because he’s still in the system as a convicted murderer. Because, he took the plea. Admitting, that is taking the deal, a conviction is entered on the record even though he’s innocent.

And in the case of Kerry Max Cook, shortly after he took the Alford Plea, DNA evidence established that he was *not* the killer. And yet, there’s nothing that can be done about it because his plea was in fact, ‘knowing and voluntary’ under the Due Process Clause.

**Colin Miller:**

Yeah. And Kay that’s, as you know, a reason why a defendant like Cook or the West Memphis Three might take an Alford Plea is because there *is* risk on retrial, and our next question comes from a Redditor named ‘Taroush’ and notes on the other hand: If Adnan or Joey decides, “I’m *not* going to take the plea deal” after getting a new trial, and there’s a new trial, in the case of Joey Watkins at least, he can be given the *death* penalty in Georgia.

And that links in with an interesting development in Georgia, which is overall, nationally, administration of the death penalty is down significantly, but in Georgia it’s *up*! They had nine executions this year, which is the highest in the country, and it’s almost *double* the highest previous total in Georgia, of five, which was in 1987, and then again last year.

So for both of you, I wonder, living there in Georgia, what do you think explains this increase in executions taking place in Georgia in the last couple of years?

**Rick Latta:**

I have a suspicion. My suspicion is that it’s been coming. I think we’ve taken a sort of ‘death penalty’ happy stance for a number of years now, and it’s finally coming to fruition, if that makes sense?

**Kay Levine:** Yeah. My sense is that, you know, the executions that have happened or that are scheduled to happen are from cases that are *extraordinarily* old. They're two decades, sometimes three decades old.

I actually don't know. And it's hard for me to explain why Georgia would be an outlier, compared to some of the other states that have stemmed the tide somewhat, or taken a different path. I don't actually know.

But there is something in Joey's case: You mentioning that if he were to be retried he could face the death penalty. Do you know, if in the first case, it initially started as a death penalty case? Were those the initial charges filed against him and then the State backed off? Or the jury voted for life?

[29:34]

**Rick Latta:** I'm going to have to go back and look but I don't remember that being the case. I think they did not convict on malice murder, right?

**Colin Miller:** Right.

**Rick Latta:** But I am not remembering them seeking the death penalty.

**Colin Miller:** Yeah, I don't think they did. The only thing we've mentioned this season was a Montana case where Susan had talked-- Where they had the death penalty case on the table and the prosecutor had made this show on the first day of the trial, sort of taking that off.

And I guess, with Kay, all the work you've done with prosecutors, I'm not sure if you've listened to that episode, but it was a case in Montana, and this is similar to what Barry Scheck writes in his famous work of this prosecutor: They're on their first day of trial and it's a capital case, and they make a big show in front of the judge and the jury of saying, "Well, I'm going to take the death penalty *off* the table, so you're no longer holding the defendant's life in your hands."

What do you think about that tactic, that some prosecutors employ?

**Kay Levine:** Wow. I mean, I think it is *appalling*, actually. I mean it is such a public display of, "Look at me be merciful here." And so, it's a way to gain the trust of the public, but in such a public way -- that strikes me as very unprofessional. Like if you and me and lots of other people who think about prosecution believe that capital charges should *never* be filed purely for leverage. Or as a political tactic, *ever*. That is *such* a violation of the prosecutor's obligation as a minister of justice.

So, if this prosecutor's office wanted to pursue this as a capital case and believed that it had the evidence to pursue this as a capital case, that's what it should do. And if it *doesn't* think it should be a capital case, then they should take the capital filing off the table. But to do it in front of the jury is so *manipulative*. That it can *only* be as a way to sort of garner trust for the prosecution's side of the story. So, that really strikes me as unprofessional.

But the *reason* I was asking about whether capital charges were originally filed against Joey, is that we *have* jurisprudence from the Supreme Court that says after a successful appeal, the prosecution is *not allowed* to up the charges against the defendant.

**Colin Miller:** Right.

**Kay Levine:** To do so amounts to a presumption of vindictiveness.

**Colin Miller:** Yeah, that would be *Blackledge vs. Perry* is the key Supreme Court case... Yeah.

**Kay Levine:** Right! So if suddenly Floyd County wants to turn this into a capital case when this never was a capital case before, I would think that the defense has a very strong case for the presumption of vindictiveness.

But *nothing*, in fact, has changed in the 15 years since the crime was committed that would make this suddenly a capital-eligible murder, when it never was eligible before.

**Colin Miller:** That's a good point.

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**Colin Miller:** And sort of on the other side of Georgia Law... Mentioned, obviously, the uptick in the administration of capital punishment in Georgia. On the other hand, I saw an article, and this is just bizarre to me: This is just in the backdrop, we have all these police shooting cases, and the article noted that Georgia used to be the only state in the country that allowed police officers who faced possible indictment to *sit in* on the grand jury proceedings and hear all the evidence before making a closing statement, without facing cross-examination.

And then I saw, Kay, that you were cited in the piece on this. Empirically it said that there were 184 deadly Georgia police shootings and not a single police officer had been prosecuted. And now, Georgia *did* get rid of this, but as you say, there's still a lot of work to be done in Georgia, right?

**Kay Levine:** That's exactly right. Georgia, I think, was the *only* state that had such police-friendly provisions for officer-involved shootings at the grand jury stage, and there was a *lot* of legislative activity on this issue last year.

The *Atlanta Journal Constitution* did a number of stories about this and documented that there had been, I think, 184 shootings and not a single indictment of a police officer, and that helped fuel the legislative fire. But prosecutors and police officers did not support all of the reforms that were suggested.

And the one that is still currently, I think, very much under debate is whether there should be an independent prosecutor every time there is an officer-involved shooting. That is, there's too much allegiance and affection between a prosecutor's office and the police agencies that service that county that the prosecutor cannot be objective. Or, at the very least, if the prosecutor *believes* she could be objective, the *appearance* of favoritism is so strong that the grand jury outcome will always be questionable.

So, when this was all being debated last year at the legislature, prosecutors and police – to my understanding – they would *not* sign on to that provision, to staff an office of independent counsel through the state AG's office, or, I'm not really sure what the institutional arrangement was going to be, but they wouldn't sign on to that. They would agree that: Okay, so, the officer is no longer going to be allowed to make a closing statement not subject to cross-examination – that they agreed that that goes too far – but the independent counsel provision they wouldn't agree to.

**Colin Miller:** Yeah, and Rick, my next question, and this comes from 'Sally Doherty', and I guess there's the specific question of Heath Wilson, and the broader question is: As someone who's worked on this at two different points in your life – the Joey Watkins case – Sally asks: "Wait, what? Heath got home just before 8:00 pm all shook up and got his mom to ring 911, reason undetermined. Why would Heath get his mom to ring 911 about an incident he was the

aggressor of? Maybe Heath shot at Isaac not intending to harm, but saw him crash and then got his mom to call 911 about the accident.”

And so, my question to you is, working this case as I said, two different periods, what do you think overall about the viability of Heath Wilson as an alternate suspect? And then, *big picture*, do you have any grand theories about this case and what might have happened?

**Rick Latta:**

So, first on Heath: There are a couple of things that make him interesting for me. The first thing that stood out was that there were eye-witnesses to both incidents. This was the first thing that stood out to me. There’s an eye witness in Isaac Dawkins’ shooting. There’s eye witness accounts of this other incident on 20, involving definitely Heath and his girlfriend Tracey Dunn, and when I read the transcript of the eye witnesses’ accounts – sort of, put them side-by-side – this is *my take* – but you could almost take any paragraph from either account and interchange them without breaking the story.

And the two accounts, to me, read like they were talking about the same incident, almost. And in numerous different ways, right? In both cases the person being chased sped up, and the person following sped up and kept up with them, then they slowed down. Then the person slowed down rather than going around, then they pulled out of the lane to let the person go ‘round, but instead, the person slowed down and pulled into the other lane behind them... On and on. The similarities were striking. So I think he’s very interesting as an alternate suspect.

The issue with Heath Wilson as an alternate suspect, as you have mentioned in the podcast, is the *timing*. The timing is tight. *But* the timing is tight in every different direction involving everyone in this. And that’s just going to be the case. There was a shooting while cars were travelling down the road, and after the shooting of Isaac Dawkins, the car that was pursuing him that appeared to have been where the shot emanated from sped off down the road. It all happened quickly – it was all in motion – and we know that the attacker fled quickly.

So, you would *expect* the timing to be tight. So, for me, I think Heath Wilson is the person who I keep coming back to. It’s not the only, sort of interesting other lead, as you discussed on the podcast – there were shots fired at cars from a field around this time, there were incidents of other people being shot while driving down the road, and there was a tantalizing-- And it was still just a little piece of information by the time I left in 2014 about a similar incident in neighboring Bartow County. So there were lots of different, other possible leads. But I think Heath is the one that seems to keep coming back.

And then your second question about the case: I’ve forgotten it now.

**Colin Miller:**

Your overall perspective on the case in terms of Joey as a person, I guess, in terms of the behavior of defense counsel, prosecutors and police.

[39:01]

**Rick Latta:**

Yeah... So, it’s interesting. When I first got the case, I was, I believe, the first attorney with the Georgia Innocence Project to look at the case. And so, it was starting from the ground up. And it took a while to sort of get involved in the case.

The case has a lot of-- First of all, first impression. And I think this may be everybody’s first impression – is that it’s enormous. And completely unwieldy, and there’s very little physical evidence. There’s *tons* of witnesses, *tons* of testimony, and there’s a lot of sort of *gossipy* nature to it. And so it’s hard to get one’s head around. And arms around.

I think Joey’s an amazing person. And I’m absolutely convinced of his innocence. And as the end of your last podcast mentioned, coming up is going to be some discussion of the cell phone tower, cell phone evidence. And I think listeners will find that fascinating. It made the basis of the first *habeus* petition for Joey. And so *that* helped me. That and other evidence helped me get an understanding of the case and get an understanding of Joey’s innocence.

And then also just working through the different pieces. On its surface, you know, I was turned off by the dogs. You know, when you have somebody implicated in killing dogs, you know, my initial instinct is, sort of, to recoil. But as with that evidence and the rest, each *step*, as I would look into a piece of evidence that seemed very damning against Joey, it would fall apart.

And mentioning the dogs, about the police and the prosecutor – as I said earlier, I *love* the law. It's the thing that I feel like my hope in life is that this is the area where I might be able to help. I think it's not the *only* source of good, but it's *one* possible one, and so I'm all in. And I like defense attorneys. There is *definitely* a place for prosecution; it's important. We don't want to live in a society where women can be brutally mistreated, where people can commit murder, then prosecutors help stand against that. *But*, we have to be careful how that work is done.

In this case, there will be some things coming up – especially about the dogs – to foreshadow, if that's okay, where what I consider to be serious, legal potentially, but definitely moral violations were committed and that stuff has to come to light. I mean we have to think, Joey's case, and all of these cases give us an opportunity to think about specific incidents, and think, sort of, globally. Like this talk thing I did.

You know, we want to think as a people: What do we want to do when we find out someone's innocent and they're in prison? Do we want to be the sort of people that will say, "Yes, you've proven your innocence, but we think- we feel like you took too long doing it, so we're going to leave you in prison." That's your global—

**Colin Miller:**

Right.

**Rick Latta:**

Then, we also have individual issues about how individuals are acting within the system. And this is a good case to look at that. It's an odd-- And maybe every defense attorney feels this way, but it's been a long battle to try to get the information that ought not to have been that hard to get. Like going to Rome so often, and digging. As you mentioned, part of my job recently has been digging through just every single piece of evidence inventory log – so far I've made it from December of '99 through the end of 2003. And not just our case, but *every single piece!* [laughs] That exists at the Floyd County Police Department. That is because they accidentally destroyed their chain of custody evidence--

**Kay Levine:**

[sighs]

**Rick Latta:**

When they imported from one database to another.

So then, how do you deal with that? I mean, you're in a crunch time, you've got the legal side – you know there's a lot of case law study that goes in – you have to do a *lot* of different things.

And also, do you have time to sit there and try to figure out what to do about getting a hold of what evidence still exists? In these manila folders that sometimes relate to the date stamped on them, and sometimes *don't*. I don't know. There's a lot. And so it's taught me a lot about the system. It's an important system. It's not as we conceive it on *Law and Order*, but it's an important work. And so I think, you know, *own it*. It's good.

**Colin Miller:**

Yeah. And Kay, Rick talked there about the specific and the global, and so I wonder first, your specific take on this season of *Undisclosed* and Joey's case, and then second, the more global is: One of the other pieces you wrote is about looking at prosecutors in three dimensions as opposed to two dimensions, and one of the big criticisms of *Serial* and *Making a Murderer* – or even *our* podcast – is the lack of the prosecutorial voice, and I wonder what your take is on... I mean, obviously there are reasons why the prosecutors won't take part, about that sort of *missing* from what's being presented to the public.

**Kay Levine:** Right. So I have listened to *most* of the podcast from the season. To me the evidence is very striking. I'm falling on Rick saying every time they looked at something it seemed to fall apart. That's the impression I got listening to the podcast. And that's listening with a skeptical ear, because I think, you know, from my training I try not to second-guess other people's cases.

And I'm asking questions, along the way of, "Well did you talk to *that* person? And did you do *this*?" And you guys seem to have done it! You've followed all the leads that would naturally occur to *me*.

The amount of *gossip* among these late-stage adolescents talking about who's driving around when, and they're hanging out in the Home Depot parking lot... And there's *nothing* consistent. So, I don't know.

And the fact that Tami Colston has never spoken to you. I can understand *why* she's never spoken to you, but I sure would like to hear from her!

**Rick Latta:** Yeah.

**Kay Levine:** About what she was thinking and what she was doing. And from my understanding, she's now a judge, is that right?

**Colin Miller:** Yes. She's a judge.

**Kay Levine:** Yeah. So, I think that's troubling. And somebody in this last episode mentioned that Stanley Sutton is now in a nursing home and so it's unfair that you're not talking to *him*, or whatever. It doesn't strike me that it's unfair – it's unfortunate, right? That he won't come on and sort of actively explain why he did what he did. So there seem to be *very* big problems in this case.

*Making a Murderer...* I watched the series on Netflix. I have rarely seen a case with more reasonable doubt than that one. The kind of police work. The commonality between these two cases is the *police work*. It leaves a lot to be desired. From the perspective of a citizen who wants the police to do a good job to catch the people who actually did the thing, they give me *no* confidence, based on the police work that you guys have uncovered and the Netflix producers uncovered.

And I understand the Netflix thing is a documentary – they have a point of view – but without the prosecutors stepping in to say, you know, "The things that were left *out* of the story..." or "The things that were left on the cutting room floor are *A, B* and *C* and that's why the case was so strong." We don't hear those things. From the people I know who are still actively involved in prosecution, they say: "Well, when a case is actively being appealed it's inappropriate for the prosecution to talk."

Well, I think that's *true*, and yet if there were actual things in the trial record that the prosecution would point to as, "This was the solid evidence of guilt – this was what we built our case around", and the Netflix filmmakers or the *Undisclosed* producers left that stuff on the cutting room floor, I think the public ought to *know* about that. Because we are interested in getting the full story of justice. No member of the public is interested in seeing someone who's actually a murderer walk free. But we want to see the full story of justice.

But I think prosecutors – individual prosecutors – may be in a tough spot because they work for somebody else. That was *not* the case for Tami Colston. It's my understanding is she was the *elected*--

**Colin Miller:** Right.

**Kay Levine:** Prosecutor in Floyd County. So, she would be speaking for herself, and her own decisions. She's not subject to the bureaucracy of her office.

Other individual prosecutors along the way, they may not have such liberty to speak if the person who they work for doesn't want them to speak. But it *does* leave the public with a *lot* of questions about how exactly is law enforcement operating? There are lots of tools at their disposal – not nearly as many as are shown on shows like *CSI* and *NCIS* where so much of the technology is invented for TV.

**Colin Miller:** Yeah.

**Kay Levine:** But there are a *lot* of tools at their disposal, and so when you hear about *lapses* and *sloppiness* and the hiding of statements, or the incomplete taking of witness statements, it's hard to feel confident that the officers did all that they could do to make sure they got the right person.

In this case I think, if they hadn't arrested Joey, and I'm still not entirely sure how they settled on him so quickly... That is not clear to me, but Heath is the *obvious suspect*. The one in the area driving a car that matches the eyewitness description, engaging in the *exact same behavior* on the night in question. He's the *obvious* suspect.

So, that he was dismissed so quickly, suggests to me that there was a reason that they wanted to dismiss him so quickly. And, again, that doesn't give me a whole lot of confidence that the police were pursuing this in any kind of objective and professional way.

[49:48]

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**Colin Miller:** Yeah and the last question I have is: You were just talking, obviously in the back-and-forth, about all this true crime media, and of course for understandable reasons the focus of these podcasts and documentaries is on wrongful convictions, but the interesting thing that I see in your CV is the last four years or so you've been working on a grant, and this deals with what I would call, sort of 'disparate enforcement', and it's a huge part of the criminal justice crisis we have, that's very much separate from the wrongful conviction issue. And this is an NSF grant you're working on, and what you're working on is called 'Race, Place and Discretion and the Handling of Drug-free Zone Charges'. So could you share with our listeners a bit about *that* project and the scope of it?

**Kay Levine:** Yeah! Sure, so my co-authors are three criminologists – Elizabeth Griffiths, who's on the faculty at Rutgers, and Volkan Topali and Josh Hinkle who are on the faculty at Georgia State. And our grant was initially about investigating the pursuit of drug-free school zone charges in a diverse region like Fulton County, Georgia, where Atlanta is the major city but then there are other suburban regions.

And our intuition on the drug-free school zone charge is that it gets policed very differently in dense urban regions than it does in suburban and rural regions because the school zone is defined by a radius 'as the crow flies', 1000 feet from the outer boundary of the school. If you are caught possessing with intent to sell, or selling, drugs or narcotics within 1000 feet of the outer boundary of the school or park or playground or public housing unit, then that subjected you to a *significantly* enhanced penalty. Here in Georgia for the first offence it could be up to 20 years for the first offence. Up to 40 years for the second offence.

So our intuition was that well in the dense urban core, like in the inner city, *everywhere* within 1000 feet of a school or park or playground, or public housing development – *absolutely everywhere*. You can't *spit* without being close to one of those things.

So, that means that *every* drug sale that takes place in the inner city is going to be subjected to that heightened penalty. And what we know from decades of criminology studies is that people sell drugs basically within their neighborhood. They are not driving, like 20 miles away. So, it's the people who live in the inner city, are *selling* in the inner city, would be subject to the heightened penalties. And people who sell in the suburbs or rural regions where things are *much* more spread out – we don't have this dense population core – there's a lot more flexibility.

So that was our intuition. And that's what NSF funded us to research. What we *found* is that, that's not actually the case. That we found surprisingly *few* of these drug-free zone charges that are being filed by the Fulton County DA's office.

So, our investigation has since turned to trying to explain why that might be. Because the leadership of the Fulton County DA's office is *not shy* about filing crimes when there are facts that support them. So we have spent the last several years, not just trying to identify the patterns in drug enforcement generally, but to try to come up with some explanations for *why*, given the opportunity to file the zone charge left and right, they simply don't seem to be doing it.

**Colin Miller:**

Well yeah! It's very interesting. I look forward to seeing the results of that.

Well, Rick and Kay, do you have any additional thoughts about the Joey Watkins case or *Undisclosed*, or any questions for me?

[53:02]

**Rick Latta:**

Well one was, and you sort of alluded to it, there was one of the questions that were included in the primer for this thing today – was from a listener. They were asking about why Heath's mom might have called, and I thought it was interesting – I think we have thought it was interesting – Officer Boyd with the Floyd County Police Department said that he got an "earful" from Heath's mom about arresting or suspecting Heath of anything.

So, this was sort of a suspicion on my part, is she may have called and it may have been, possibly, that she knew people in the Floyd County Police Department. And so she was calling to get a chance to speak with someone. So, that's sort of my suspicion.

**Kay Levine:**

Hm.

**Colin Miller:**

Hm.

**Rick Latta:**

But then *also*, I want to give a quick shout-out: There was a mention in this most recent podcast about some evidence that was discovered in 2014. There was the gunshot residue test that had been performed on the victim--

**Colin Miller:**

Right.

**Rick Latta:**

Isaac Dawkins. And it's discovery.

And although I was there, technically it wasn't me. It was an intern. Super great guy named Paul Martin, and he had gone with me. And it was the first time that I had gone to Rome to speak to-- They were the first police department, the first sort of people that we just sort of went to try to look at their records to look at evidence, to make copies.

And we had these big, three-ring binders that they gave us, and Paul was going through one of them, and he was like, "What's this?!" and he pulled out a very large envelope that said "Evidence" all over it, but it had never been checked in.

It was Paul Martin, who's awesome.

**Colin Miller:**

Got you.

**Kay Levine:**

Do you know if they were able to test it after all these years? Or it had so eroded, that there was no DNA?

**Rick Latta:**

I have no idea. It wasn't even actually closed. So, it was discovered and the three-ring binder of notes that I believe belonged to Moser, who was the lead investigator in the case, and the officer that I was there with – who wasn't Moser – sort of dumped out in his hands some of the contents and you could see it was like little plastic vials...?

**Kay Levine:**

Mm-hmm.

**Rick Latta:**

That had sort of Q-tips inside them. The Q-tips were obviously discolored, because it'd been 14 years. But I don't know if they ran tests. I mean, I don't know how informative it would be *anyway*, because I don't know if it's just some sort of a perfunctory thing that they do, or *why* they do it, but there was no gun found in Isaac's car. I don't know if there's a reason to think that Isaac was shooting at all.

So in answer-- That's a *long* answer. Short answer, I don't know, but I don't...

**Kay Levine:**

Mm-hmm.

And Colin I have one for you: Do you know where this case stands in terms of post-conviction at this point? Like, has a *habeus* been filed already on the basis of what you all have found?

**Colin Miller:**

We are on the brink of something being filed, and hopefully for Joey's sake, and the podcast's sake to a lesser extent, in the next month or two there will be a filing. And so, certainly listeners should look for that coming soon. There *will* be something that will be coming out, legally speaking, in Joey's case.

**Kay Levine:**

So all the various pieces, whether it's the 911 box of records disappeared, or the thing about the gear-shift in neutral, the story that was made up about the car got pushed on the roadway, I can't remember who's story that was--

**Rick Latta:**

Beckstein...?

**Kay Levine:**

Somebody had actually got out of the car... Beckstein! That's right.

**Colin Miller:**

Right. Todd Beckstein.

**Kay Levine:**

Car got pushed into the roadway, like, that whole thing?

- Rick Latta:** Yeah, yeah.
- Kay Levine:** *All* of these things are mounting together in support of one large claim of actual innocence? I mean, his trial defense attorneys did *some* of this, but my sense is that they were not nearly as effective as they *could* have been.
- Colin Miller:** Mm-hmm.
- Kay Levine:** Even with the information they had at the time. I mean, again, I try not to second-guess what people do, as an outsider--
- Colin Miller:** Right.
- Kay Levine:** But it seemed like there were quite a few avenues that they *could* have pursued and didn't. I don't know, is that your sense, too?
- Colin Miller:** Yeah. 'Actual innocence' is very difficult to prove, and luckily I believe we've found ways with the evidence and some of the law in Georgia that the filing in this case will *not* have to establish actual innocence to be able to get him a new trial.
- So, I think we have ways to get around that. Yeah, procedurally-speaking, and substantively speaking I think there is a way around that. Yeah.
- Kay Levine:** Got it.
- Rick Latta:** And it *was* based on other evidence, but the first post-conviction – before we got involved – *did* include a claim of actual innocence.
- Colin Miller:** Right. And it also involved the cell tower evidence, which is the next episode. So, as you mentioned, Rick, we very much look forward to presenting a second round of 'ping' to the listeners with the cell tower evidence.
- Kay Levine:** Good. Well you guys are doing a dynamite job. I'm glued.
- Colin Miller:** [laughs] Well great, yeah! Thanks so much for listening and thanks to our guests today. So Rick and Kay, again, thank you very much for taking part and listening to the podcast, and for your great questions and answers, and... Take care.

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