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

ADDENDUM 22: **UNDISCLOSED AT EMORY LAW**
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Colin Miller: In this week's episode we discussed Joey's trial and two pieces of surprise evidence the prosecution introduced at that trial – the testimony of the mother of one of Isaac's close friends, Yvonne Agan, and the 'grave dog'.

In this *Addendum* you'll get to hear some of the legal implications of this evidence, because it was covered in a class at the Emory University School of Law. Julie Seaman, a member of the Georgia Innocence Project's board, is an evidence professor at Emory, and has been using Season 2 of *Undisclosed* this past semester to teach her students about how the evidence rules can work in the real world. The panel at the class consisted of Susan, as well as Joey's attorneys – Clare Gilbert and Ben Goldberg. Jon Cryer was there too via Skype, so you'll hear him, but we apologize for the poor quality.

Also, as a warning, there will be a thorough discussion of the dogs in this case.

[1:09]

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Julie Seaman: The way that this really came about was, I'm the current board chair of the Georgia Innocence Project. And so when I learned that we were going to be partnering with the *Undisclosed* podcast on this case, I thought, "Wow. That could be kind of a fun thing." I hesitate to use the word 'fun', both in connection with law school, and also--

Audience: [laughs]

Julie Seaman: You know, with what's a very serious case, because obviously someone's life is at stake, and someone's freedom is at stake. Nonetheless, we try to make law school fun sometimes, and so I thought it would be fun since we do in Evidence – in the Evidence course – we take a 'problem' approach, and we read the rules and we read the cases with them. We look at problems and we say, "How would the rules apply to this hypothetical problem?" And sometimes we look to real cases in the real world, because that's more interesting and more fun for the students.

So I thought, "Well, let's use *this* case, and see how that works." It was a bit of an experiment, partly because I didn't know – and still don't know – exactly when any item of evidence is going to be covered by the podcast, if at all, and so we couldn't *always* do it, but we tried to do it and sometimes it worked out really well.

Like, for example the week that the podcast talked about Isaac's dog, Sally, who had been shot between the eyes while chained in her pen. That happened to be the week that we were covering the evidence rules that have to do with character evidence and also with unfair prejudice, and balancing prejudice against probative value.

So, it was a perfect example to use in class, and we *did* use it in class, and so we're going to just now do a demonstration, picking out a few items of evidence and working through it as we would in our Evidence class, as we have been doing throughout our semester.

So with that introduction, I guess we'll start.

So, as I just said, in Episode 6 we learned about Isaac's dog having been shot. And the timing was a little unclear, but it seems that the dog was shot in October, in the October before Isaac's murder. And at the trial the judge allowed the prosecution to present testimony evidence about this incident and of, kind of, suggestions, other rumors, and testimony that Joey maybe was responsible for shooting the dog.

And so what would be the evidence issues that would arise if we were – suppose you guys are the defense attorneys and the prosecution wants to offer evidence that Isaac's dog has been shot in this way? Why would that be relevant at all, at the trial? Allie?

Allie: Um...

Julie Seaman: So yeah, speak into the mic so 2 million people can hear you.

Audience: [laughs]

Allie: Okay! Well it could be relevant to-- In order to prove some sort of motive that Joey-- The fact that Joey *wanted* to kill Isaac's dog is a sign that he had a problem with him. And now it's establishing prior history between the two of them.

Julie Seaman: Okay, perfect.

So under the rules of evidence, 'prior acts' are not permissible and not admissible – and we're talking about the *federal* rules of evidence; different from the Georgia rules in some respect, which we're going to talk about.

But under the federal rules, Rule 404-B says you can't use evidence of prior bad acts essentially to show propensity, that the person's a bad person, or because they did this act before it's more likely that they did it on this particular occasion; *propensity*.

But you can use it to show other things like preparation, plan, knowledge, intent, identity. So here, the other purpose of the evidence would be, say it again...?

Allie: Motive.

Julie Seaman: *Motive*. Right. So it tends to show a motive. So that's the *non-propensity* purpose.

Maybe we should turn to the panel for a moment, if anyone wants to comment on how, if at all, the Georgia rules regarding prior bad acts like this are different. In particular this 'bent of mind' admissibility that Georgia has or *had* at the time of the trial?

Ben Goldberg: Yeah. So, I guess, even though Georgia had a separate statute at the time – now Georgia has adopted the federal rules – but at the time Georgia still had a statute saying you can't introduce character evidence for propensity purposes. At the same time, we had this funky rule called 'bent of mind', which, if any of you try to distinguish that from propensity, you won't be able to.

So, basically, we said on the one hand, propensity evidence is not admissible, but on the other hand we have this 'bent of mind' exception. And that allowed judges across the state, prosecutors across the state, to go ahead and introduce this propensity evidence.

Now, we've done away with the 'bent of mind' except for we still have some exceptions that differ from the federal rules, for example in DUI cases, particularly. A prior DUI will come in

against someone who's currently charged with it, almost automatically. We also have the exception about the sex crimes, that you guys have probably already learned about, that the federal rules have. But the 'bent of mind' – that was a terrible aspect of Georgia law.

It's good we did away with it – and I don't know that the judge in this case let it in under that particular exception, but back then almost anything could come in under that exception, I think.

Julie Seaman:

Yeah. It seems like the judge didn't talk about *motive* or didn't talk about 404-B at all, or whatever the equivalent of 404-B would have been. But just... Yeah. That all this stuff just came in.

Jon Cryer:

I was curious: What caused the state to change the rules and adopt the federal standard? I mean obviously it wasn't the case of Joey Watkins, because they don't seem all that troubled by *his* conviction. But what caused it to change?

Julie Seaman:

So, do you want to talk, Ben?

Ben Goldberg:

Well, what I can say is that the defense bar in Georgia for a long time was pushing for it because of some of the funky aspects that Georgia had, like 'bent of mind'. And that obviously usually hurts defendants and hurts the prosecution. So, the defense bar pushed for it for a long time, and eventually they made concessions that the prosecutors agreed to, and *vice versa* and eventually it was just pushed through really decades of lawyers and legislators in Georgia trying to confirm to the federal rules.

Susan Simpson:

And I think Georgia was one of the last, if not, *the* last place to actually get rid of this.

Julie Seaman:

Yeah. I think Georgia was like the 44th or 45th state to adopt the federal rules of evidence, either in whole or in substantial part. So, virtually all of them have. I mean, New York has its own code of evidence, California has its own code, but those were codes that were written that were sort of progressive at the time they were enacted.

Whereas Georgia had this kind of 'common law' mixture of all these old kind of weird rules. And so it was quite a long time coming getting the federal rules adopted, and that happened in 2011 or 2012, so it's been a few years.

If anyone has questions... yeah. Angel?

Angel:

So we kind of learned in the federal rules that there is a bit of judicial discretion in allowing evidence, even if it *is* admissible... So, there's Rule 403 that allows them to decide whether evidence is unfairly prejudicial. So, was there like a correlate of that at the time of Joey's trial?

Ben Goldberg:

Yes, they still had that balancing test at the time.

Julie Seaman:

Yeah. So, speaking of 403, I'm glad you raised 403. So, that's another big issue that I mentioned a few minutes ago. So when we talked about the dog, and so, when we balance probative value against prejudice in 403...

Do any of the students want to talk for a minute about how, when we talked about this in class, what did you think about the prejudice versus the probative value, and kind of the

factors that we talked about that the courts use to figure out prejudice against probative value?

The *balance* is it favors admissibility – as we talked about – the prejudice, the unfair prejudice has to be much more than the probative value, in order to keep it out. So, the rules want to let this sort of stuff in, but certainly based on what we heard on the podcast, and the panelists can elaborate, but this was so extremely prejudicial. You know, as Susan said, was probably *the thing* that turned the whole trial against Joey.

So, Angel?

Angel:

So, in listening to the podcast, a woman was interviewed about what she thought about a dog being shot, and she immediately said that it meant that the person who had done it had to be the worst person in the world.

And so that, kind of goes to me. Goes to the point of being unfairly prejudicial. If you're allowing evidence like this to be brought in front of a jury. And if it's being said that this was a past act that goes to motive, there's already kind of a line of logic that leads to this that isn't it doesn't automatically follow that Joey killed Isaac just because his dog was also killed. So...

Julie Seaman:

That's right. But remember: It doesn't have to *automatically* mean it, right? It just has to be relevant to show it.

You're nodding your head, right.

So, a brick is not a wall, as we've said many times. So it just has to make it slightly *more* probable or *less* probable than it would have been without that evidence. It doesn't have to be strong.

But, when we're balancing on 403 and thinking about probative value, the strength of the evidence – if this evidence was *so* questionable about whether Joey had anything to do with the dog – and so with the federal rules and the way federal courts should apply them, that should be a factor in weighing the probative value. And saying the probative value is less, because this is so tenuous.

Rick, did you have a comment? Just take the mic, though.

Rick Latta:

Hi. Just to point out quickly with the case of Sally, so Isaac's *own* dog. The defense didn't object. So at trial, no objection was raised to evidence of Sally coming in, which always makes it easier--

Julie Seaman:

Right.

Audience:

[laughs]

Rick Latta:

To bring evidence in.

Julie Seaman:

Yeah, objecting would have been helpful. And does anyone have any idea about why the defense might not have objected?

Susan Simpson:

Well... I've got a few ideas.

- Audience:** [laughs]
- Susan Simpson:** I think in general though, that the whole lack of actual foundation here didn't just confuse the jury; I think the *judge* got confused.
- I think he was mixed up as well about what sort of evidence was actually in there to support these claims. Because, there was a *lot* of talk about the dogs, and sidebars, and openings.
- Like, Tami Colston, the prosecutor, referenced on *several* occasions how she'd be bringing the evidence of the dog in. So, unless you're paying close attention and going through with a chart – like we did with the transcript – it's easy to lose sight of the fact that actually, the evidence of the dog, *most* of it didn't make it in. And what *did* come in was like a few tiny threads.
- But given the whole universe of dog evidence, only a sliver ever actually showed up at trial.
- Julie Seaman:** Just on that point about the 'universe of dog evidence': Can we talk about a couple of other things about Sally?
- So, one is that at the trial – at Joey's trial – one of the witnesses, and I can't remember which one, testified that Mark Free said "We've taken care of the dog". And maybe a few witnesses said that, but at least one witness said that.
- And so, what does that make you guys think of? Any objection that you guys would think of? So a witness testifies, "Mark Free told me we took care of the dog."
- Audience:** [murmurs]
- Julie Seaman:** Hearsay! They're all saying hearsay.
- Audience:** [laughs]
- Audience Member:** [inaudible]
- Julie Seaman:** Yeah.
- Audience:** [laughs]
- Julie Seaman:** So yeah! What *about* that? I mean, is there any exception that anyone can think of that would have let that hearsay in?
- Audience:** [silence]
- Julie Seaman:** Right!
- Audience:** [laughter]
- Julie Seaman:** So what's going on with that?

- Audience Member:** So, initially it was-- The guys is Bill Passley...?
- Susan Simpson:** Paisley.
- Audience Member:** Oh right. Paisley. Excuse me.
- Susan Simpson:** I think.
- Ben Goldberg:** Who was the one who testified at trial, that stated in different ways, but one way he stated it was, quote: "The dog was taken care of." And he attributed this statement to Mark Free. Was not objected to by the defense. Later he's asked to make an assumption about what dog Mark was referring to--
- Julie Seaman:** Mm-hmm.
- Ben Goldberg:** And the defense *did* object to that. But there was never really a ruling on that objection – it just sort of washed away, kind of. And he went back to it anyway.
- Julie Seaman:** And so when you say, "what dog?", do we want to talk about, what other dog it might have been?
- Susan Simpson:** Yeah... So 'Grave Dog' is the other dog in this case.
- I don't know who came up with the name – I think we kind of both simultaneously started calling it 'Grave Dog'. And we don't know Grave Dog's origin story, necessarily.
- But what happened was that at the start of Joey's trial, Tami Colston says: "Oh look, I have something new: This weekend I found out from the victim's father that there was a dog that was shot and killed and placed on Isaac's grave. I didn't know about it before, so I didn't have time to, like... I couldn't tell the defense about it, because I didn't know, but I still want to get all this evidence in about it."
- And it comes in. They do object to that, but the judge also relies on the fact that they didn't object to Sally as a way to 'bootstrap in' the Grave Dog stuff.
- So, what the jury took away, was that Joey and/or Mark had found some-- Presumably a stray... Shot it between the eyes like they'd shot Sally. This is in February, so after Isaac is buried, and they'd found Isaac's grave and dumped this Grave Dog's body on top to rot.
- And a few days later, or some days later, after the body was rotting, Isaac's father came to the gravesite and saw the dog. At this point the dog had been moved into the ditch over the road, but he could tell from all the flies on the grave that originally the carcass had been placed on the grave itself.
- So he bagged up the carcass and tossed it into a little creek that was down behind the grave area – sort of like a ditch, creek, in the pasture. And, he forgot about it. He told one person about it, that was a now-deceased member of the Floyd County Police Department, and *he* said: "Never tell anyone about this." So he didn't.
- Clare Gilbert:** Well *did* he not?

- Susan Simpson:** He told-- Well, Sutton was apparently the only person he told. But Freeman said: "Make sure you don't tell anyone else about this; no one else can know."
- Clare Gilbert:** Right. So, he supposedly told Sutton, though...?
- Susan Simpson:** And, which, Sutton said, "Only Freeman can know."
- Clare Gilbert:** Right. Which was the father's-- He testified at trial that that was the father's impetus for going to the Floyd County Police – to get Stanley Sutton involved on the case. Was the fact that there was this 'Grave Dog' that had been shot in the head just like Sally was shot in the head.
- So, even though that's the reason why he would have went and got Sutton, and Sutton was brought on the case within a *week* of this timeframe, the defense doesn't learn about Grave Dog until the Saturday before trial – a *year and a half* later.
- Susan Simpson:** Yeah. And it's not until November – so, 10 months after Isaac's death – that Grave Dog's even brought up again. So that's the time when Josh Flemister is in Virginia, giving his confession, while on the road-trip up from Georgia to Virginia, Sutton stops at like a pay phone, or cell phone, we don't know, and makes a call to Isaac's father and says: "Go find that dog carcass. I think we might want it." So--
- Julie Seaman:** And that evidence about Grave Dog came in at trial, and was there any objection?
- Male Audience Member:** Yeah.
- Julie Seaman:** Yes.
- Ben Goldberg:** Grave Dog was objected to. As Susan was pointing out, part of the judge's decision in overruling the objection was the fact that they failed to object at all to *Sally*, but yeah, it was objected to, sort of on two different grounds – relevancy, and also that any probative value was outweighed--
- Julie Seaman:** Outweighed.
- Ben Goldberg:** By the prejudicial effect.
- Julie Seaman:** Okay, yeah. So, if there had been any, *any* evidence whatsoever that Joey had anything to do with Grave Dog, and/or Sally, then it seems like it would have been the correct – probably – ruling to let it in. Right? Because it *would* strongly show a motive.
- But the fact that there was literally *nothing* – well, nothing to tie Grave Dog to Joey at all, and the questionable evidence to tie Joey to Sally, makes the balance of prejudice and probative value look very, very different. Right?
- Ben Goldberg:** The evidence associating Grave Dog with the actual grave itself is somewhat more tenuous, I think, maybe, than is on its face apparent. *Nobody* ever saw the dog on the grave.

- Julie Seaman:** Right.
- Ben Goldberg:** So the only time the dog was seen was next to the road, outside of the graveyard. *But* there were flies around the dog--
- Julie Seaman:** Right.
- Ben Goldberg:** And there were flies around the grave, and so that's how the assumption was made that at some point the two must have been associated.
- Clare Gilbert:** The judge even said, I think Abernathy – the defense attorney was in the process of objecting – and the judge says: “I came up in the woods one time on rotting liquid and flies coming out of a carcass.” And Abernathy's like: “I just lost my train of thought.”
- Audience:** [laughs]
- Clare Gilbert:** And then he ruled against the defense, and it came in.
- Julie Seaman:** Yeah. But *that* kind of points out the differences between-- A lot of it is winning on the evidence rulings, right? At the trial? But then a big part is just telling the story and closing, you know, if not at least during the witnesses' testimony and cross-examination in the closing argument...
- I don't know how that went but it seems like it was really tenuous as to whether the dog even was *on* the grave, or was away from the grave. No-one ever saw the dog on the grave, and whether the attorneys really hammered home these weaknesses in these extremely, you know, powerful items of evidence...
- I'm not sure what you guys think about how that was done, whether that was done...?
- Jon Cryer:** I had a question just in terms of: Wasn't there a *stalking* charge also against Joey? In terms of that being a reason for them to bring both Grave Dog and Sally into evidence?
- Clare Gilbert:** There *was* a stalking charge against Joey, but that was never mentioned in connection with trying to get the dog evidence in.
- Jon Cryer:** Well, just because to me that, you know-- First of all, it's odd to me that shooting somebody's dog is considered a motive to then go and shoot *them*, as well.
- Audience:** [laughter]
- Julie Seaman:** Right. So what it is... Yeah, no. That's a good point.
- So, what it is is that it shows that he, if he shot the dog in that way, it shows that he hated Isaac so much that he *would* have had a motive to kill him. That's the reasoning. The lawyer brain working. I mean, you're right, it does seem a little backwards.

- Clare Gilbert:** Well, I think the juror took that a little differently. And I think that this was probably how many of the juror's took it. Was that, there *was* no motive in this case, right? I mean, he's going to go kill a high school classmate who dated his ex-girlfriend for a few months, that now they're *both* broken up... They're *all* broken up and happily dating other people.
- So, *that's* what the jury was fixating on: "There's no motive! There's no motive!" Like, "Why would he do this?" Well... If you make Joey out to be a sociopath who does not function in the psychological realm that the rest of us do, then all of a sudden *there's* the motive: The motive is that he's crazy.
- Susan Simpson:** Yeah.
- Clare Gilbert:** And that he doesn't think the way we do. And that is demonstrated by the fact that not only does he shoot *Sally* between the eyes, and Isaac in the head, but he shoots Grave Dog in the head and leaves it on the grave.
- Susan Simpson:** They substituted, like, motive with evil.
- Clare Gilbert:** Right! Yeah.
- Julie Seaman:** Are there any more questions about the dogs before we move on, maybe talk about another item of evidence? Yeah.
- Audience Member:** So once the evidence of the dog being shot was let in, the determination of whether Joey was the one who actually the one who did it, that would be the 104-B question, right?
- Julie Seaman:** Right. Yeah.
- Audience Member:** So at least under the federal rules the burden of proof is the preponderance--
- Julie Seaman:** Right.
- Audience Member:** Versus 'beyond a reasonable doubt'. So, I was curious if you could speak to that a little, because it seems it was really the thing that swayed the jury against his character. But it seems they have a lower burden of proof in determining whether Joey shot the dog, right?
- Clare Gilbert:** Well it seems--
- Julie Seaman:** Yeah.
- Clare Gilbert:** It's even *more* complicated than that--
- Julie Seaman:** Well, right. But, so to answer your question: That's a great point. And you're right. And so, for all of these other acts that might come in to show any of the 404-B purposes, you know, motive, or identity, or plan, or knowledge, or *any* of them, whether that other thing happened, and whether the defendant is the one who did it is all judged by the preponderance of the

evidence. Not by the criminal standard, beyond a reasonable doubt, which is how, ultimately, the jury will have to decide the case.

And so that's right. If the judge thinks that a reasonable jury could find – more likely than not, which is the preponderance standard – that Joey killed the dog, then that would be the threshold for the judge to let it in. You know, putting aside the 403 prejudice issue.

Yeah. I mean some states *do* require a higher standard – I don't know what it was in Georgia, maybe there *was* no standard in Georgia to let this stuff in, but yeah. That's exactly right.

Clare Gilbert:

And the other thing is, that there was another connection that the State tried to make. And they tried to get that in through the ballistics examiner, Jay Jarvis, who worked at the GBI.

What happened was, Sammy Dawkins finds Grave Dog in February, bags it up in a plastic bag and throws it in a ditch. Then comes back in November, upon the apparent suggestion from Stanley Sutton that Grave Dog's probably important to the case. Retrieves Grave Dog, and Grave Dog ends up at the GBI crime lab.

The crime lab then does, basically, a necropsy on Grave Dog, to figure out cause of death, and Grave Dog has been shot in the head between the eyes. They do an x-ray, Grave Dog has a bullet, and Grave Dog has pellets throughout his body, which show up on the x-ray.

So, according to a couple of ballistics experts, which you'll learn about in the podcast, the theory is that this dog at some point in the past had been shot with a shotgun and had the pellets, what, buckshot, or something...

Susan Simpson:

Yeah.

Clare Gilbert:

Or birdshot. And later the cause of death was the bullet between the eyes. So Jay Jarvis is brought to testify at trial about this to try and-- Well, the prosecutor is trying to link Joey to all of this. What he wants to do is get in the x-ray. But he's the ballistics expert – they can't get in the x-ray through him, they didn't call the pathologist who *did* the necropsy on the dog, and Jarvis sat up there while Tami Colston explained to the judge why this x-ray was relevant.

Because it shows that the dog was shot between the eyes with a bullet. If they could have just shown the x-ray. And the defense is jumping up and objecting, and objecting and the judge refuses to let the actual x-ray *itself* be introduced or shown to the jury, but they do let the testimony come in about the x-ray. *After* receiving repeated reassurances from Tami Colston that *the bullet was never actually extracted from the dog*.

So we know that Isaac was shot with a 9mm. We don't know-

Susan Simpson:

We *think* we know.

Clare Gilbert:

Well we *think* we know. We don't know what Sally was shot with, because they could never find Sally, *allegedly*. [laughs]

Susan Simpson:

[inaudible] [laughs]

Clare Gilbert:

And so, if Grave Dog was shot with a 9mm that would *tend* to, at least suggest that it might have been the same shooter who shot Isaac. And if they can link that to Joey, then there's your case.

The *problem* was: The prosecutor's stepping forward, saying over and over that there was no bullet extracted from the dog. The judge is asking, the defense is asking, and they're saying, no - all they did was x-ray.

And the judge is like: "You took the dog into the crime lab to see what kind of bullet it was shot with and you didn't extract the bullet?" – "No, we didn't."

Well, sure enough, they *did* extract the bullet. It was a .22. It wasn't a 9mm.

And in fact, Jay Jarvis, the witness who was on the stand while they were having this conversation had *brought* the .22 bullet extracted from the dog in a clear plastic container with him that day *to court* and gave it to the prosecutor before he testified.

Julie Seaman: [exhales sharply] While she-- And she-- And *then* she said that it wasn't extracted?!

Audience: [murmurs]

Clare Gilbert: Correct.

Julie Seaman: Wow.

Susan Simpson: I will clarify that his chain of custody reports that he gave it to her. We can't confirm beyond that, that he actually *did*.

Clare Gilbert: *No*, he told us in the interview that he gave it to the prosecutor's investigator.

Julie Seaman: Okay so students, you *can* do that.

Clare Gilbert: Right.

Audience: [laughs]

Julie Seaman: Wow.

So, I just wanted to talk, because it raises a lot of evidence issues, about the testimony of Yvonne Agan.

And I told you a little bit about it, but just to summarize: So, on the Friday before the Monday that the trial was starting, something like 18 months after the shooting, this witness, Yvonne Agan, contacted the prosecution and told them about this incident that happened – supposedly – in December of 1999 just a few weeks before the January shooting. And the trial judge allows her to testify.

And her testimony is basically: Isaac shows up on my doorstep that night, he's all alone, he's a good friend of her son, but her son wasn't home – he was sleeping out at someone's house. And her husband wasn't home because he worked out of town, but she was on the phone with him.

And so, Isaac shows up. He's white as a sheet, he's trembling, he's petrified, and he says: "I drove up to my house and Joey Watkins was sitting in my driveway facing me – his headlights

facing me – kind of like grinning or smirking at him. And so Isaac says he took off and Joey followed him. And her testimony was that Isaac said that Joey shot at him.

And so, he drives to Yvonne Agan's house and so, I guess he lost Joey in the chase, and she takes his keys and moves his car around to the back of the house and covers it with a tarp to prevent Joey from – they keep using the term 'spotlighting' – looking around and finding him. And he slept on the sofa. They moved the Christmas tree away from the window so he could look out the window and see, if Joey were to come. And he slept there or, you know, *didn't* sleep, but he was on the sofa for the night.

And then, when asked about, "Did you tell anyone? Did you report this to the police?" She says, "No. Isaac didn't want me to report it to the police. He said that no one would believe him."

And so, she says she sort of tried to tell Stanley Sutton at some wedding they both went to. She told him she needed to talk to him. But she *didn't* talk to him. And then ultimately she found out, like a week before the trial was starting that the trial was starting. And she decided, "Oh, I better call Stanley Sutton and tell her about this kind of important thing that happened."

So, that was the way the testimony went. We can talk about it later, but at Mark Free's trial later, she testifies a little bit *differently*. But just in terms of at *Joey's* trial, if you guys were analyzing that issue, it raises, obviously, a lot of different evidentiary issues.

And so, first of all, the in-court witness is Yvonne, and she's testifying that Isaac said all this stuff to her. So all this stuff Isaac said to her is hearsay.

Why's it hearsay?

Audience Member: Because Isaac is not present. He's not in court, and it's an out-of-court statement for the truth of the matter asserted.

Julie Seaman: Okay, right!

Offer to prove the truth of the matter asserted: That Joey followed him, that Joey shot at him – all this stuff that's recounted is offered for its truth, and so it's definitely hearsay.

So what would you do with that? Would it be admissible hearsay? Inadmissible hearsay?

Angel?

Angel: I think unfortunately, in my opinion, that you can find an exclusion or exception to cover it.

Julie Seaman: Okay, what exception might cover it?

Angel: And excited utterance?

Julie Seaman: An excited utterance. Okay... Right. So how would that go?

Angel: Since she said that he was seeming very stressed, and like, shaken and was looking out of the window. If he was said to be under the stress of the situation...

Julie Seaman: Okay, right. That's exactly right.

So, it probably would have, or *should* have come in as an excited utterance. Was there an objection to that hearsay?

Ben Goldberg: There was an objection overall to the testimony.
Julie Seaman: But not a, specifically a hearsay objection?

Ben Goldberg: I don't believe so.

Julie Seaman: Yeah. I don't think so either.

Ben Goldberg: [crosstalk] And also, I mean, no confrontation clause objection.

Julie Seaman: Right...?

Ben Goldberg: I mean, I would say that if something has a hearsay exception, when you're making your objections in the future and something comes in under hearsay, don't necessarily give up on it then. Things can come in under hearsay exceptions, but still be violate of the confrontation clause, and--

Angel: Well, if he was found unavailable by being dead?

Julie Seaman: Well, what would we do with the confrontation clause?

We *just* covered the confrontation clause last week.

Audience: [laughter]

Julie Seaman: The issue here under the confrontation clause... So, the confrontation clause is part of the Sixth Amendment. And under the confrontation clause the accused – so a defendant; a criminal defendant – has the right to be confronted with the witnesses against him. Which is interpreted to mean he has the right to cross-examine witnesses against him.

And so the issue is: Who counts as witnesses against him?

And so *hearsay* declarants – the person who says the hearsay out of court – counts as witnesses against him. So Isaac would be the person, and the *question* under the confrontation clause – as we learned under the Crawford case – anyone out there remember?

Becca?

Becca: That admission of testimonial hearsay against a criminal defendant violates the confrontation clause *unless* the declarant is produced at trial and the defendant has an opportunity to cross-examine, *or* the declarant is unavailable and the defendant had a prior opportunity to cross-examine them.

Julie Seaman: Okay. You're right.

So, there was no opportunity prior or current – obviously – to cross-examine the declarant, who is Isaac. So, the question is: Is it *testimonial hearsay*, right? And so, *is* it testimonial hearsay?

Because it's-- And this is the thing the court's been working out since the Crawford case was decided a little more than 10 years ago – what does it mean to say 'testimonial hearsay'? Because not *all* hearsay is going to be covered by the confrontation clause at all.

So here, what do you guys think? Does anyone want to answer as to whether you think it's testimonial hearsay under Crawford and the cases that came after Crawford? Allie?

Allie: Well, it's certainly not slam-dunk testimony, hearsay. Most of the examples that were given have to do with the witness – the declarant – going to law enforcement and interviews, and specifically linked to their testimony, and then we get into these timelines when they call 911 and the police come to them. So, they start dealing with whether or not it's an emergency situation.

Julie Seaman: Right.

Allie: In this circumstance, it doesn't *seem* like Isaac meant to accuse *anyone*. It was finding comfort in a friend and telling someone what had just happened. I don't think that could be called formally testimony or formally accusatory in any way.

Julie Seaman: Yeah. And I think you're right. The most recent case – *Ohio vs. Clark* – definitely supports that, at that recent case from 2015.

So, if the court has made it pretty clear that person's talking to *non-law* enforcement. Here he's talking to his friend's mother, right? So that's *not* going to be testimonial hearsay. I think that that's pretty clear it's *not* testimonial hearsay. So, probably the confrontation clause is not going to help you there.

And the other thing is, back to hearsay, in Georgia they have this-- We talked about the 'residual exception' – the kind of catch-all. If you can't find a hearsay exception, the one you can just, you know, try and use? And Georgia had one, and I think actually they *did* try to talk about it in the trial – that *necessity* exception.

And so, a lot of stuff came in at this trial under the necessity hearsay exception, which is just basically the declarant is unavailable, and it seems trustworthy. So, both of the parts of the residual exception that we talked about in class. You know, you need it, and it seems pretty good; pretty reliable. So that's what the judge seems to have said.

And then what about impeachment? Can we talk a few minutes about impeachment?

So, she said all this stuff at trial, but she hadn't said *anything* up until then. Can we impeach her with that? Is it a prior inconsistent statement? The fact that she *didn't* say this before and now she's saying it? No? You think no?

So, sometimes if a person *makes* a statement, and they leave a lot of stuff out, and then they make a statement later, and they put all this stuff in, the courts will find that that's a prior inconsistent statement – you can impeach the witness with that.

So, you could *try* to make that argument, right? It seems like if this had happened the person would have said it before. Before, you know, before two days before the trial?

- Ben Goldberg:** I think it would have been different if she had had an interview with the investigators and they had asked her questions about what she knew, and she omitted it.
- Julie Seaman:** Uh-huh...
- Ben Goldberg:** But simply not coming forward... Silence in this case-- I think silence can sometimes be an inconsistent previous statement, but not here.
- Julie Seaman:** You're now revealing that I just teach this stuff, I don't know what actually happens in the courtroom.
- Audience:** [laughs]
- Julie Seaman:** So, the fact that the person never makes a statement and then they *do*, can you never impeach them with that?
- Ben Goldberg:** No, you can still impeach them.
- Julie Seaman:** And how would you do that?
- Ben Goldberg:** I can't really cite a particular rule, but you basically would just say, you know, "18 months have gone by, Miss Agan, and you haven't said a word about this, have you?"
- Susan Simpson:** Her response is that she *did* – at a wedding, the summer before. So, about five months after Isaac's death, she went to an actual wedding with, well, Stanley Sutton's *nephew*, and saw her friend Stanley there, and said, "Hey! I have something very important to tell you, but this is not the right occasion at a wedding. Let's talk later." And then...
- Ben Goldberg:** Nothing.
- Susan Simpson:** Another year goes by... And right before trial, her son comes home and says, "Hey! Joey Watkins' trial is next week." And she's like: "Gosh, darn it! Stanley never got back to me. I should probably call someone."
- Audience:** [laughs]
- Susan Simpson:** So...
- Julie Seaman:** And, just... You know. Can you imagine Stanley *not* getting back to someone on that?
- Ben Goldberg:** [laughs]

- Julie Seaman:** You know? Like he was going out, rustling up evidence, under every rock. He was turning over every rock. Then someone says, “I have this really important thing to tell you about-- Isaac told me that Joey shot at him and...” Oh, I just-- Sutton forgot.
- Audience:** [laughs]
- Susan Simpson:** There’s no way. Someone was telling me this weekend that all of her friends started suspecting that Stanley Sutton had the ‘hots’ for her – as she put it – because he thought she might have known some *vague thing*. He was there, once or twice a week, coming buy, saying, “Oh, I was in the neighborhood, I wanted to say ‘Hi’ and use your phone...”
- Audience:** [laughs]
- Susan Simpson:** Well we know Agan and Stanley did talk. But if Agan had said, “I have something important to tell you” Stanley would have been there. Constantly.
- Clare Gilbert:** There *is* a note. In Sutton’s notes he makes a notation that he had seen Agan around the time when we think this wedding was--
- Susan Simpson:** Same day.
- Clare Gilbert:** The same *day*, actually! And... Susan can find *anything* in an old newspaper.
- Susan Simpson:** Luckily, Rome documents *everything*. Any engagement, any wedding. You have, like... The whole list of attendants are there.
- Audience:** [laughs]
- Susan Simpson:** It’s great.
- Clare Gilbert:** But it doesn’t say anything, other than, “Spoke to Yvonne Agan.”
- Susan Simpson:** And that she worked at the Georgia State Patrol.
- Julie Seaman:** Okay, which brings us to the next impeachment method – *bias*. Okay, so she had a pending felony charge. She had worked for the Georgia State Patrol. She had been charged with-- What exactly what was she charged with? You guys know? Yeah, Rick?
- Rick Latta:** Correct me if I’m wrong, but my understanding is: Selling blank drivers’ licenses...?
- Julie Seaman:** Okay...
- Rick Latta:** Is *this* what it was?

- Julie Seaman:** Like basically selling fake IDs?
- Rick Latta:** Something in that vein.
- Julie Seaman:** Okay.
Susan Simpson: I forget the actual charge's name. But it was like, 'fraudulent issue of IDs'.
Basically, it was people who couldn't pass their driver's test for like, commercial licenses, she'd--
- Julie Seaman:** Pass them--
- Susan Simpson:** Make them, yeah.
- Julie Seaman:** Okay. So what do you guys think about this pending charge? Could she be impeached with this? Yes...?
- Audience Member:** So, under the federal rules, she probably would have been impeached under 608, which is when a character's untruthfulness comes out. Only issue is, though, is that it's a *pending* conviction, and not a current conviction. It's when this kind of problem comes in, because there's no present conviction there.
- Julie Seaman:** Okay. Under the federal rules, a *conviction* – if you want to impeach her character for truthfulness to show that the witness is not a truthful person, and therefore more likely to be lying on the witness stand – if she has a conviction, then we would look at Rule 609.
She *doesn't* have a conviction, you're right, so we're looking at Rule 608. And under 608 we're looking for: Did she do something that demonstrates a character for untruthfulness? And in that case she could be – remember – *asked* about it. But the evidence couldn't be actually introduced.
And so, would *this* be the sort of thing, under 608-B that you could ask? That the cross-examiner could ask the witness about this? The context that underlies the charge – selling licenses to people? Or, you know, getting people, like, licenses that couldn't pass their test.
Does that demonstrate her character for untruthfulness?
- Audience Member:** Basically, if you'd asked about it, it wouldn't be an issue. But under 608-B, you can't provide any extrinsic evidence--
- Julie Seaman:** Exactly right.
- Audience Member:** It's barred under the federal rules.
- Julie Seaman:** Okay, right. So, you couldn't use extrinsic evidence. But, under the federal rules, she could have been cross-examined. This is fraudulent.

So, it's not like a prior violent crime, where it doesn't go to her character for truthfulness. This is fraud. And so, certainly she could have been asked about it in the discretion of the court.

And the *problem* was, or maybe *one* of the problems was: They don't have that rule in Georgia – or didn't at the time. So, there *was* no 608-B equivalent in Georgia, and so because there *was* no conviction, she could not be asked about this prior untruthful behavior. Is that right?

Ben Goldberg: Well, she could be asked about bias... How that would influence her testimony, in terms of... I mean, this is the same DA's office presiding over her pending case that's prosecuting the trial that she's testifying in. And she could--

Clare Gilbert: It was the same judge!

Ben Goldberg: Same judge... Okay. And so, at least at the *time* – I think the rules are different now, but at the time you used to be able to ask, and they did in this case, the judge allowed them to ask her about whether she had a pending charge. He did *not* allow them to go into the specific nature of it, and that's within his discretion at the time.

And I'd say, one thing that they omitted, that you'd absolutely want to do here – and I guess this probably wouldn't be-- I think you'd be able to do this under Georgia law – you'd be able to ask her, regardless of whether you could name the offense that she was facing a charge for, you could ask her about the amount of time she's facing.

Because that's really what the issue is. She's testifying to curry favor with the prosecutor... For what? To keep her own butt out of jail. So, you'd be able to go into the specifics: "Well, you are facing 1-10 years in prison on this case that you have pending, aren't you, Miss Agan?"

And I think even though the extrinsic evidence wouldn't be admissible, and maybe the judge could exclude the name of the charge that you're facing, you would be able to still impeach them with the amount of time they might be looking at.

Julie Seaman: Right. So there's two separate types of impeachment that we're talking about: So, one is the bias, and that is: She has one charge pending and she has a motivation to curry favor with the prosecution and to try to get them to cut her a deal. So, that doesn't depend on the specific underlying facts, but as Ben said, just about what kind of punishment she might be facing, or what kind of consequence. So that's bias.

The 'untruthful character' part... That's a completely separate thing. And under the federal rules, there wouldn't have to be any charge at all. But if you've done conduct that shows untruthful character, like we've talked about – *lied* on a job application or something. That's not a crime – you're never going to be charged with it – but it shows that you're an untruthful person.

A witness who has done things like that can be asked about them – *any* witness – because that goes to their untruthful character, that's 608-B. And *that's* the specific rule that there was no equivalent for in Georgia at the time, and maybe even still.

Susan Simpson: It's worth noting, too, that it's kind of odd that there *wasn't* a trial here, or a verdict. Because Agan, or, the whole 'ID' issue started in 1998, and she didn't go to trial until four years later – after Mark Free's trial – and she testifies at both trials how "very strange" her case just keeps getting pushed back, and pushed back, and she has no idea why.

I mean, one way to avoid having a witness impeached for a conviction for a crime of dishonesty is to make sure she's not convicted yet.

Audience: [laughs, murmurs]

Julie Seaman: Yeah. And there was something like that also in Adnan's case, right? Was there something, not specifically about impeachment, but *holding back the charges* for a super-long time, until...?

Susan Simpson: That was holding back the sentencing of Jay, so they could represent to the jury that he was facing jail time, when they knew he wasn't.

[45:25]

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Julie Seaman: Any other questions, comments, for our panelists?

Audience Member: Could the defense have also brought in her preexisting relationship with Isaac? And with the officers that were investigating the crime? With Sutton, in terms of bias impeachment, I don't know, like, if she had-- If there were like, text messages between her and Isaac or something, and it showed that they had a relationship, and she had a motive to maybe fabricate something for him? I don't--

Susan Simpson: They had to bring that in to get the evidence in in the first place. Under necessity. Because the other part of that was like 1) *unavailable*, and 2) what was the phrase? Particularized...? [inaudible]

Ben Goldberg: Guarantees of trustworthiness.

Susan Simpson: So they had to show guarantees of trustworthiness. Which was in the form of their supposed close relationship. They had a friend of Isaac testify that Isaac liked to go out to their house, and hang out with his friend's mom, and tell her all kinds of things, and have heart-to-hearts with her.

So they *did* introduce that, but not for *impeachment* – that was by the State. In order to get it in as 'necessity'.

Julie Seaman: Yeah... I don't know if it really would-- The fact that she was close with Isaac, I don't know if it shows *bias* to the prosecution so much, because presumably if she wants to help Isaac, helping Isaac would be, like, what? Finding out who actually killed him.

So, it's more-- I mean, I think the party is less the victim, I think, and more the State. If you're talking about bias toward or against the party.

Rick Latta: Also, maybe one other issue is that a lot of these things get dropped on the defense at the very last minute. So, one thing about Grave Dog is that they had no idea about Grave Dog until literally the Saturday before the trial started on Monday.

And this was actually one other objection that we forgot to mention earlier: They objected because-- For scientific evidence, and they were going to have the GBI expert testify about Grave Dog.

You're supposed to get at least 10 days' leave. And the DA said, "Well, I just found out about it a couple of days ago, and I couldn't do it." And for some reason or whatever, that worked.

So it's a super-busy Saturday, before trial, and, there just wasn't time, I guess. There wasn't time, I guess, there just wasn't time to go back and try to find subpoenaed phone records for [inaudible]. It might have been smart.

Julie Seaman:

Yeah. Yeah. I mean also one of the reasons why I think this has been interesting, and we were talking about the theme of 'law on the books' versus 'law on the ground', you know, where the rubber meets the road in the courtroom.

And the differences between how we would analyze it in the classroom versus how it turns out in the courtroom. And certainly, one of those differences *is* the time pressure and the fact that all of these things are being dumped on the defense, as Rick said, at the 11th hour. With literally no time for them to investigate it, or even *think* about what to do with it.

So, I hope that that's been interesting for the class in terms of seeing how this case turned out. I hope it hasn't been – on the other hand – like, turning everyone into cynics about how the justice system actually operates, but--

Ben Goldberg:

This is *exactly* how it operates.

Audience:

[laughs]

Susan Simpson:

If you're not *now*, you will be soon. Sorry!

Audience:

[laughs]

Julie Seaman:

Yeah... They're still idealistic! We don't want to take that away from them--

Audience:

[laughs]

Julie Seaman:

So soon. But, you know, if anyone wants to say anything about that or ask any final questions to any of the panelists, or to John...

Chelsea.

Chelsea:

My question is: What kind of recourse does the defendant have when his counsel-- When they're not objecting to things that are material to his defense in the case?

Julie Seaman:

Yeah. Great question.

Ben Goldberg:

So this is pretty complicated, and you'll learn about it, but there's a claim you can raise on appeal called 'ineffective assistance of counsel' under the Sixth Amendment, under the Georgia Constitution's provision about your right to effective assistance of counsel.

And you know, I do a lot of appeals, that's mostly what I do, people appealing their criminal conviction. It's a very, very frustrating area of the law. Because let's take one piece of evidence that the prosecutor tries to introduce, and the trial lawyer objects to it, and the judge lets it in anyway, okay?

Then let's take the same example, the prosecutor wants to introduce this evidence, and like in this case, the defense lawyer *doesn't* object to it, okay?

The *same* evidence in both situations, but it is going to be *so much harder* for you to win your appeal when you have to raise it under 'ineffective assistance' than when you can raise it as a direct trial error.

But that's the remedy. It's a very, very high burden. Very difficult to overcome, to prove that you were deprived of your constitutional right to effective assistance. It gets raised every day in courts around this state, and if you were to read the opinions that come out of the Court of Appeals, the Supreme Court – it gets raised in *almost every appeal*.

Which is not good, because the appellate courts are so used to it that it kind of dilutes from when there are actually good claims. But I've had it in about 50 cases, and I've won on that issue a couple of times. Very difficult.

Clare Gilbert: But, it *didn't* get raised here. The ineffective assistance of counsel did *not* get raised on the direct appeal in this case, *because* the attorneys doing the direct appeal are the same *law firm* that did the trial. So, they *can't* raise 'ineffective assistance' against themselves, or their malpractice insurance... [inaudible]

Ben Goldberg: Obvious conflict of interest.

Audience: [laughs]

Clare Gilbert: So... Ineffective assistance of counsel *was* raised at the *habeus* proceeding, but by that time it's kind of so far removed it really just focused on the *habeus* proceeding was about the cell phone evidence and the defense's inability to understand and effectively use the cell phone evidence to prove Joey's innocence.

Audience Member: I'm just kind of curious as to how you guys see your role in the podcast.

Are you advocates for Joey Watkins? Or are you closer to journalists trying to present an objective account of the facts? Where do you guys see your role in all of this?

Clare Gilbert: Advocate.

Audience: [laughs]

Julie Seaman: Well that was Clare, right? So--

Clare Gilbert: [laughs]

Julie Seaman: You're his attorney...

Clare Gilbert: Yes.

Jon Cryer: [laughs]

- Julie Seaman:** And Susan, how about you?
- Susan Simpson:** The work I'm doing is similar to my own cases. I'm approaching it as an attorney, because I *am* an attorney. But at the same time, I have no *duties* to Joey. I have no obligations to him... there are things where I'm sure Clare is like: "God, Susan, why'd you put that on the podcast?!"
- Audience:** [laughs]
- Clare Gilbert:** Every week!
- Audience:** [laughs]
- Susan Simpson:** So, there's definitely stuff where if I was his attorney in court, I would never bring it up. I would never talk about it. But because it's – for *me* – about showing how the system work-well, *didn't work* in this case, I'm not worried about harming Joey by showing evidence that might *look* bad, but is still a part of the story.
- It's kind of freeing in that respect. Because I *can* tell the whole story. I don't have a client's best interest to worry about. But at the same time, we've obviously looked at the case and reached a conclusion. Which... I've been asked about this before – the whole 'journalist versus lawyer' thing.
- And I don't know enough about journalism, probably, to answer it appropriately, but for *me*, I see nothing un-objective about thoroughly looking into a case, reaching a consensus and a conclusion, and presenting it that way.
- Julie Seaman:** Yeah. But one of the things I think also, that the podcast really reveals is: How, if you think about the amount of work that has gone into what the podcast has done, and the amount of resources on this case... There's *no way* that, most of the time, private attorneys – which Joey *had* – a very well-respected private firm – they don't *do this*.
- And public defenders, I mean, they're handed the file *that morning* and told to dispose of the case. And so if this is what it takes to reveal what actually happened, or to reveal the problems with the investigation or problems with the prosecution, there's just no way that the vast majority of defendants are getting anywhere close to a fair shake at that.
- Clare Gilbert:** And that's what's been so interesting about it from our end. I mean, Rick had worked on the case for almost a year before he left. And I worked on it for many many months before the podcast got involved, and then we worked on it together. But just the way they can sort of drill down into all these little things that, at the time I'm like "Where are you *going* with this?!"
- Susan Simpson:** Often nowhere.
- Audience:** [laughs]
- Clare Gilbert:** Yeah... Often nowhere. But a lot of times they're really able to kind of weave it all together and put the facts in a new light that's, like, I listen and I'm like, "Whoa. I never thought of it that way."

And that happens, I mean, almost every week. And they're saving the best stuff for last, in the podcast. I mean, and they've had to push back production another *month*...? I think, in order to—

Susan Simpson: Yeah. And cut out a lot of material too. We just couldn't-- I just had so many, like, side stories I really wanted to get into, but at the end of the day it's like, actually, it's kind of just entertaining, and not moving the case. So they got axed.

Clare Gilbert: But there's still a *lot* that *is* moving the case, and it just makes you wonder, like, what about all these other cases?

Julie Seaman: So you have finals coming up. I hope you all keep listening!

Audience: [laughs]

Julie Seaman: I hope you all keep listening.

Jon Cryer: What I've enjoyed about the podcast is less of the advocacy aspect, and just the in-depth investigation of the process. And that to me is of incredible, immense value just to people who aren't law students or people involved in the criminal justice system.

That's the reason I became involved. Just, I'm fascinated by watching this process, and then I get to actually ask all these questions of the people who are actually getting into the nitty-gritty is incredibly valuable for me.

Julie Seaman: Okay, so a couple more questions?

Audience Member: So I think-- And I love that the podcast has introduced a lot of people to the *idea* of wrongful convictions. I like that it's introducing to me how you kind of overturn that.

And so the idea of *new* evidence being able to reopen a case, if it is *important* enough, struck me. And I guess I'm wondering: Based on all the evidence that you *do* present on the podcast, what's in your thinking? How on *earth* can this not be evidence that should reopen the case?

And then after that, so then, if you ever *do* get that point where the case is reopened, looking at the federal rule of evidence 803-22, I think, that says that *past convictions*, like the facts of those past convictions can just be imported all into the new trial, so how do you fight that uphill battle of...?

Julie Seaman: Well we don't need to-- That's a hearsay exception; we don't need to worry about *that*.

But just in terms what's going to happen going forward? Do you want to talk about that at all?

Clare Gilbert: Well, what I *can* say is that what you were just talking about, it sounds like there is *so much*, but it doesn't actually turn out to be that much that we can use in court.

And we go back and forth trying to figure out exactly what that's going to be. But it's pretty limited. And we want to be smart about what we use. We want to use the most powerful, important things.

So, I think you'll be shocked at how *few* things we end up using, but it's this process that led us to identify those things.

- Julie Seaman:** Well, because you can't re-litigate the case if it was already litigated, right? So that *does* go to your question about the hearsay exception about the prior conviction. You know, it has to be *new* evidence to be able to get anywhere. And that's why the podcast, I think, investigation has been really-- It was the *only* chance for Joey. Because there *had* to be new evidence uncovered, or he was done. You know?
- Susan Simpson:** Proof of innocence is not enough.
- Julie Seaman:** Right.
- Clare Gilbert:** Neither are recantations.
- Audience Member:** The investigation seems remarkably unethical. Just the way they trawled the jail for witnesses, and told the FBI he was leading a gang. How do you prevent that from happening? I mean, is there any outside body that governs, police? Law enforcement?
- Since it's all internal policy that creates no rights in the defendant... Is it effective at all?
- Susan Simpson:** Transparency. Access to court records. Making it public.
- Clare Gilbert:** And I also think, *awareness*. Like, people being aware of the fact that this occurs, will shine a light on the police and hopefully, over time, prevent those practices.
- Ben Goldberg:** But, it would be difficult to find a remedy against investigators that even produce – I'm not saying that's true in this case – but produce fake evidence. Things of that nature. That you know, it's very difficult to sue the government. And I'm not a civil lawyer, so I can't expound upon it, but you'd have a lot of obstacles to overcome there, unfortunately.
- Susan Simpson:** The problem is the victims of these sorts of activities are the people in jail for crimes, and their families. And no-one believes them. No-one's going to listen to them.
- The Watkins family's been telling people for *years* about the things that happened to Joey. They gave up because no-one wanted to hear it. And no one believed a word they said, because they're just sad that their brother and son went to prison. And they're just holding on to any kind of tiny thread of hope.
- Obviously the police didn't do this.
- Clare Gilbert:** But Isaac Dawkins is also a victim. Because the real perpetrator is still out there.
- Susan Simpson:** Right.
- Julie Seaman:** Thank you guys all so much for participating.

Audience: [applauds]

Julie Seaman: Thank you to all of the people on the panel, to Rick, to Jon for Skyping in with us, this has been really great, interesting, and I'll see you at the Hearsay review class on Wednesday.

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