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

ADDENDUM 8: **MAN OF CONSTANT SORROW**
POSTED: **SEPTEMBER 1, 2016**

Jon Cryer: Hello! And welcome to the *Undisclosed Addendum*. I am Jon Cryer, and you are listening to the podcast about all things *Undisclosed*.

And I got to figure, very few of you are listening to the *Addenda* for the first time, but if so, here's where we get to pose questions to the *Undisclosed* team. As well as get some input from some very special guests.

In Episode 8, 'Enter Sutton', the team tries to piece together a portrait of Sergeant Stanley Sutton, the eccentric and dogged investigator for Floyd County, who seemed on a mission to build a case against Joey.

And with us today are Susan Simpson and Colin Miller, hosts of *Undisclosed*. Susan Simpson is an associate at the Volkov Law Group, and she rarely, intermittently, occasionally purportedly blogs at *View from LL2.com* [laughs] How you doing, Susan?

Susan Simpson: I'm good!

Jon Cryer: Alright! And Colin Miller, on the other hand, *incessantly* blogs at *Evidence Prof Blog* – much to the chagrin of a certain state's attorney general. He is also an associate dean and professor of Law at University of South Carolina School of Law. Welcome to the show, Colin!

Colin Miller: Thanks Jon!

Jon Cryer: And we have a returning special guest this week – I am very excited to have her back, that she did not come to loathe and despise me the last time we did this, [laughs] is always a relief – and it is Marcia Chatelain, who is an associate professor of History and African-American studies at Georgetown University, and she is the host of *Office Hours*, a podcast where she talks to students about the things that are most important to them.

Welcome to the show, Marcia!

Marcia Chatelain: Thank you, Jon, I'm so excited, *again*!

Jon Cryer: Now, have you actually started the school year?

Marcia Chatelain: It starts tomorrow. There's going to be a lot of staying up and coming up with the syllabus. I'm super excited, just a little absorbed in the Joey Watkins case to focus on school yet.

Jon Cryer: And are students coming to you with their problems yet, for the show?

Marcia Chatelain: We get a full week without that—

- Jon Cryer:** [laughs]
- Marcia Chatelain:** And then they're [inaudible]. But hopefully it's none of this criminal nature, 'cause this is *terrible*.
- Jon Cryer:** Yes. It gets more awful every week. And actually, we will get right into digging into Episode 8. First I want to say: I really commend the team at *Undisclosed*, and the producers, for making what is a pretty nuanced portrayal of Detective Sutton, a man who is clearly full of contradictions. Clearly we as a society have a love-hate relationship with these kinds of police officers, and, I just wanted to put the question to you guys: Do you think that this attitude informs how juries look at police officers during *trials*?
- Colin Miller:** Well, I think it depends. I think it depends on where the trial is being held. I think in certain communities there's a great deal of trust placed in the actions of the police officers, and it almost would strain credulity for a person to believe the police officer would act outside the bounds of the law. I think in *other* communities, with different juries you get a very different reaction to police officer testimony.
- Jon Cryer:** Well yeah, I mean, he seems – as I said, I used the word 'eccentric' – [laughs] And we'll highlight the grasshopper incident, for instance. [
- You know, it was fascinating to me hearing about his unorthodox methods. I couldn't help thinking of it in terms of – and this is probably weird – but in terms of privilege. Just because this guy was kind of *wacky*, and operated outside the rules. And if he had been, you know, if he had been a police officer of color, I do wonder – would that have been different?
- Marcia Chatelain:** Well, I kind of couldn't believe what I was hearing when I was listening to this episode in terms of the *shenanigans* and the, kind of, disregard for even the most basic rules. The incident involving the deaf man and the sign language thing, *really* felt awful to listen to, because when we think about the fact that people with disabilities are *so* vulnerable to police and police brutality – there's some research that a third to a *half* of people shot by police have some type of disability – and when we look at what happened to Freddie Gray and Korryn Gaines, people who suffered from lead poisoning... *This* type of behavior on a small scale, and maybe in a smaller jurisdiction doesn't look like malfeasance, but when this kind of attitude permeates in policing it's *so* dangerous for people.
- Jon Cryer:** Well, yeah. My jaw dropped at the story of how Terry the tow truck driver was doing a ride-along, and, oh just happened to help get a 'perp'. [laughs] You know, these things, these stories are kind of entertaining in a sort of 'good old boy' sort of way, but there are real consequences to these things. That could have gone horribly wrong. And it didn't in *that* case, but it seems like, you know, if people are in vulnerable communities like say, somebody who, you know, is deaf. That situation must have been terrifying.
- Colin Miller:** Yeah. I mean, you can only imagine. And that's why Georgia has a specific rule in place saying you need a certified sign language person who can come in and translate. I mean, these are our constitutional rights we're dealing with – you don't take that lightly. And to have Sutton come in and say, "Well a decade ago I took a sign language class at the local community college", that can't be acceptable for that to be conducted. And it wasn't accepted, ultimately, which is why the evidence was suppressed.
- Marcia Chatelain:** Well, this whole episode reminded me of, you know, *Training Day* with Denzel Washington, where there's this police officer who's so unhinged that there's no rhyme or reason to the

behavior. And I think the idea of putting someone who's a suspect in a crime in a neighborhood so that people think that he's a snitch, and then *leaving* him there is just so unbelievable.

Jon Cryer:

But, on some level, I think on some level people *like* it. There's a perverse pleasure you get in watching those things – at least as they're portrayed in movies – because you're like, "Ah-ha!" They're using, like, unorthodox techniques to, you know, stick it to the criminal element.

So to some degree, people *like* that. That's why I asked the question about juries, is because I feel like, there's a reason we put up with this. You know? With shenanigans from this particular officer. But I don't know that, in other contexts, that people *would* have put up with that.

Susan Simpson:

Well, in Hollywood they do. How many movies have the protagonist the cop who doesn't play by the rules? He's the *good* guy, usually. I mean, you have, like, the overbearing bureaucracy, and the chief who has to deal with the mayor... But the cop that's always 'going solo' and getting things done his way is the *hero* in those movies. Nine times out of ten. Yeah.

Colin Miller:

Right. In the TV show *24* everyone applauds when Jack Bauer gets his man. It seems to be there are two portrayals: One, something like that where it's *The Wire*, or it's *24*, where you have a person who's law enforcement, who's operating outside the bounds, but they always get the right person. It's sort of the sniveling defense attorney who's arguing technicalities. And on the *other* end you might have a movie like *Crash* where it's just so clear in that case – the Matt Dillon character – it's a pretext, and there's no actual legitimate reason he's feeling up this character, and that's clearly wrong.

But I struggle to think of a scenario or a case where you have someone, you know, a police officer, and he's breaking the rules and he's targeting a person, and it ends up at the end of the day, they have the wrong person. And that's the way we usually see it, as: "Well, they cut some corners, but they got the right person." Or they were *so* outside the bounds of what they were supposed to do, it's wrong. But there's never that sort of middle ground where it's that classic case we're looking at where the behavior implicates the wrong person and causes this damage.

Marcia Chatelain:

And I think *that's* where juries become so susceptible. I think that you said it on this podcast – Susan said, "Don't talk to the police without a lawyer." It does not mean you're guilty, it doesn't mean you've done something bad, it means that you understand your rights, and you know, so many television shows, once the police officers are talking to a suspect, they say, "Well, let's get them before they *lawyer up*." And it *normalizes* this abuse of constitutional rights or a lack of acknowledgement that people have rights. That is so dangerous, but it's so pervasive in popular culture.

[8:01]

≈

Jon Cryer:

Now, as you guys looked at the records of Sergeant Sutton's career, obviously it's tempting to just pull out the red flags, you know? But I thought it was very interesting that you guys included a lot of the information where people were clearly very *complementary* of his style of working – that he was very good in trials. That people in the neighborhood felt very safe. That-- Well that grand juror letter, I honestly hope that those two get a chance to get together. Honestly, swipe right already!

Susan Simpson:

[laughs]

- Jon Cryer:** You guys...! Get a room!
- Susan Simpson:** I wasn't going to say it, but I had the same vibe.
- Jon Cryer:** [laughs]
- Marcia Chatelain:** Do you send fan mail when you serve on a grand jury?! Is that normal?
- Colin Miller:** No. It's definitely not normal to get fan mail after you've been on a grand jury. No, it's-- [laughs] Yeah, we had a whole discussion – we didn't include it in the episode – but certainly there was some discussion about what that letter *actually* meant.
- Jon Cryer:** But it does – the experience of being a jury member – you end up having respect for *some* people and not for other people, and you do sort of end up admiring people, sometimes, you know? Because again, they're venerated in movies and books and you think, "Okay well that guy put on a really good case" or "That woman was terrific on the stand". But it *is* a very unusual step to actually write fan mail. But, like I said, if you're going to look at somebody's whole career, you're going to mostly see the red flags. Because there's always going to be records of the problems. Do you think that's an unfair way to look at police officers?
- Susan Simpson:** In the personnel file you're going to have all *kinds* of things. Obviously the bad stuff's definitely going to go there, so it might not reflect, like, a day-to-day good performance, but it's not unfair to look at someone's record and judge them by it. Especially in this case where it seems like a lot of stuff never made it into the file in the first place.
- And-- [sighs] there is a *lot* of other context here – in terms of Sutton's career, and in Floyd County in general... There's-- I mean, as we discussed in the show, I mean, there's a lot more going on that we can't always discuss. And there are lot of people out there who still seem to be genuinely *scared* of either Sutton or just the police in general, based on things *they* endured, even decades ago.
- Jon Cryer:** One would guess, a police officer waving a gun around when he's questioning you might give you some certain sense of fear. Now how did you--
- Susan Simpson:** He was just jiving!
- Jon Cryer:** He was just jiving, though! [laughs] It was a comedy bit, that he was doing. A hilarious comedy bit.
- I'm just curious – you said that that was actually a recent discovery, how did that come to light?
- Colin Miller:** That was-- Susan, I don't know whether you knew about it, before? But I was just searching online to add to the episode outline, and I saw these two articles – including the one that Rabia read from – in 1989, talking about this incident when he was working at the Sheriff's Office. And how they were saying these are closed records, there's not really a right to access, and I looked through all the personal records we had in the files, and couldn't find anything about it.

And so I reached out to Clare – Joey’s attorney – and said, “What’s the deal with this 1989 incident? I’ve been looking through the personnel records and couldn’t find it”, and she responded with what we mentioned on the episode, which was that this was *not* in the personnel records – he had removed this job from his resumé – but she had done these several requests, and despite the fact that most of the records were destroyed, she found this *one* document, which is the one each of us had read parts of, showing this report about what actually happened there.

And you know as far as we know, no one else who has been in a case where Sutton was involved knew about this. Which, obviously you’d wanna use it at trial because it calls into question the credibility of the investigation, the testimony of any witness that he interrogated, and other matters.

Marcia Chatelain:

Is there a shelf life for that kind of information, Colin or Susan? So that, if a police officer has had these types of incidences in their record, *can* you bring it up every time they’re involved in a case? Or does the judge exhibit discretion to allow that information to come in?

[11:44]

Susan Simpson:

Well, the jury can evaluate. If it’s older, I mean, the jury’s entitled and reasonable to sort of discount it. And in this case, this was an event that happened back in ‘89. But there are certainly other incidents that have occurred that could also have been brought up.

Now, I thought that it was interesting though – for the ‘89 incident, there is in fact another record that reflects it, and it shows that on March 1st, in fact, Sutton had a charge for ‘undue force’. It somehow got changed by the time the official paper goes through – it’s now a violation of an *other* departmental policy. But, initially this was a ‘undue force’ charge, which again sounds kind of, even then, sort of under-selling what happened. As well as the fact he’d done it at least twice before.

Colin Miller:

Yeah, and Marcia, to answer that question, there’s rule – it’s Rule 403 of Evidence, which says, “Evidence is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, misleading, confusing the jury, *et cetera*.” And as you say, in terms of the remoteness, it’s sort of a sliding scale when you look at it. On the *one* hand, you’re balancing it – how important is this to the trial? And obviously something like, ‘threatening an informant with a gun’, would be hugely important, whereas something like – we mentioned the Detective in Adnan’s case, where it was, ‘changing records to qualify for overtime’, which has less probative value.

And then in terms of the *other* side, you look at it and say, “Well, how remote is this? Is this an isolated incident?” *et cetera*, and there’s no hard-and-fast rule in terms of the timeline, but as it becomes more remote, then it become more prejudicial and less valuable to raise it.

But I would think, in terms of Sutton’s behavior here, I can’t imagine there would ever be an expiration date based on how central that is to what you’re doing with witnesses during the investigation phase, and then the testimony phase.

Jon Cryer:

Do you think that’s why Tami Colston didn’t put him on the stand? That perhaps she was worried about that history being brought up?

Susan Simpson:

I don’t know, because as far as I can tell, that’s *not* something that got brought up, ever, in Sutton’s trials. I suspect that there were more case-specific reasons why she didn’t want to call him in this case.

Colin Miller:

[crosstalk] Yeah, I mean--

- Marcia Chatelain:** Was it awkward for him to be in the courtroom but never called up?
- Susan Simpson:** [sighs] She had to acknowledge it and basically apologize and excuse it in her closing arguments, so I guess *she* felt a little bit awkward about it.
- Jon Cryer:** So, how was all the information brought in? Was it all Detective Moser?
- Susan Simpson:** Not *even*. Because all Moser could talk about-- Well, Moser was never at the crime scene, he talked to some witnesses, and was like, basically, ruled them all out. So... I mean Moser was basically there to explain why Heath Wilson was not a suspect. That was probably his main purpose there. And then, they had a couple officers speak to *very* specific points, and they had one Floyd County officer that talked about, I believe, one witness's statements. But other than that, they tried to avoid cop testimony.
- Jon Cryer:** Well, okay. It seemed like – to give people a popular reference – in the OJ trial, they introduced a *lot* of the evidence through police officers. Are they allowed to bring in evidence through *other* means? Like, say, using the tow truck operator to talk about the state of the evidence, or is there some other way to do it?
- Colin Miller:** Yeah, well, I mean, generally the chief detective or police officer on the case... They're there-the model that we typically talk about in terms of trial advocacy is storytelling and narrative. And their role is to set forth this big picture to the jury and explain how the pieces fit together.
- And in essence what they did in *this* trial – apart from Moser again, just sort of saying Heath Wilson's not involved, is just, they presented the individual pieces – here is... *Mullinax*, and here is *Benson*, here are the various witnesses. And they just didn't have that contextualizing witness, because, yeah, they might have had some questions about Sutton being impeached, or just thought, "We have enough evidence to go without his testimony in the case".
- Jon Cryer:** It was very telling to me that Tami Colston put Barry Mullinax on the stand – a man whose testimony that she actually had to *apologize* for in advance. [laughs] But then claim that she didn't want to waste everybody's time by putting on Detective Stanley Sutton. But I also thought, could it have been- because it seemed like Joey had a history were he felt like he was sort of being *stalked* by Sergeant Sutton, in some respect. Do you think *that* might be why she didn't put him on?
- Susan Simpson:** That wouldn't be *why*, because he definitely did that *all* the time. I had *lots* of people who I talked to who had similar experiences. It got to the point where, like, I'll talk to someone, and I'm wondering *when the heck* Stanley Sutton actually had time to do police work. Because, as far as I can tell, he's just going around, following people in his police car.
- Marcia Chatelain:** Does he still live in Rome?
- Susan Simpson:** He does. He's currently in a nursing home, and we have not spoken to him for the podcast for various reasons, but he's no longer on the force.
- Colin Miller:** Yeah, he retired in 2005, I believe.

- Jon Cryer:** At one point, Colin, you actually referred to Sutton's tactic of posting reward posters in the county jail as "ingenious". [laughs] Were you being sarcastic about that?! Because it sounds like a *horrible* idea to me.
- Colin Miller:** Well, I mean, it depends on your perspective, right? I mean, if you're talking about it in terms of trying to find the objective truth, it's a horrible technique, and we'll delve into that more in our next episode, as to why it's horrible. And we talked about – in the Crime Stoppers episode in Season 1 – how it can lead to all sorts of false information.
- By 'ingenious', you're right, it was a bit tongue-in-cheek. In a sense we were saying, "You don't have information, Rome Police Department has ruled out Joey as a suspect, you're not getting anything in the way of viable leads, and so you post these posters, and right. You are going to drum up some interest."
- Jon Cryer:** Well, also, you have a vulnerable population. You're-- It's in the county jail. These are people whose charges are pending. This isn't like a prison, where it's all been decided. You know, this is a population that is going to see this as an opportunity to *help* themselves in a particular manner. I mean, I have to imagine that there's going to be a *raft* of cases of people who can find that these jailhouse snitches – at least from the *county* jail – you know, were taking advantage of a reward situation as opposed to making truthful things. I mean is there any way to follow up on that information?
- Colin Miller:** Yeah, we have a whole episode, or at least a good chunk of an episode, dealing with the rewards and the tips in this case. And actually, there's some interesting audio. Susan interviewed one of the jurors, and I look forward to playing her response as to what they made of the jailhouse informants in the case. I was actually quite happy to hear what she had to say about it.
- Susan Simpson:** I will say, Colin, though, I had mixed feelings about that. And in this case and others, I've experience people – jurors – who will say, "Oh, we don't listen to the jailhouse snitches," but *then*, when they're talking about the case, they will say, "So-and-so happened", or "This *happened*". And the *only* source for that came from a jailhouse snitch. So, on the *one* hand, they can consciously say that, "Oh we're going to disregard that – it's not reliable." But those testimonies still somehow work themselves into the juror's conception of how the case worked.
- Colin Miller:** That's a good point.
- Marcia Chatelain:** How is this legal *at all*? I mean, I find this, really, so troubling that you can do these types of predatory things to get people to give information. I mean, have there been really good *challenges* to this in the higher courts? It just seems like such a *bad* practice.
- Colin Miller:** Mm.
- Susan Simpson:** Hey...! I mean, if someone's going to confess, why not use that testimony? To put them away?
- Marcia Chatelain:** Oh...! [sighs]
[laughter]

- Marcia Chatelain:** It's so painful to think about! Because, I think back to Jon's point – like, how desperate you are... Right?
- Colin Miller:** Yeah.
- Marcia Chatelain:** And then- so then the defense attorney is just constantly-- I mean what are the tools to impeach someone who does this? I mean, this guy's story about being in a car filled with kids, and there's job applications, and he sees a blonde woman... I mean, like, it's *so weird*.
- Jon Cryer:** Well, what I think – if I may say – I think Tami Colston rightly assumes that this all adds to a vaguely 'guilty' *fog* that envelopes the jury. Seriously. You know, there's a point at which you throw so much information at people that they kind of *surrender*. And do you think that might be part of her tactic?
- Susan Simpson:** *Absolutely*. In her closing arguments, she goes and has-- Oh, it's the same analogy they all use – all prosecutors use in some form or another – I think her version was like the 'brick' version. And it's like, "Well look at all these bricks. We're putting a house together, brick by brick by brick. And sure! One or two bricks can be rotten, but the house is still there at the end!"
- And she's just like flinging mud all over the place and calling it a house. And the jury, at some point, is going to start tuning out. They're going to hear 20 witnesses saying something horrifying and damaging about Joey, and they're going to be like, "Okay, I'm sure a lot of that's not true, I'm sure a lot of these people want *deals*, I'm sure some of this is a slight exaggeration..." But they're going to assume there's truth to it. You throw up enough people just saying all kinds of stuff, and it's hard for the jury just to dismiss *all* of it, based on sheer numbers.
- Jon Cryer:** Well, it puts an enormous load on the defense attorney to pick through all that. You know, defense attorneys often don't have the resources to *do* that, or the time, I would imagine. At one point Joey mentioned that Sutton took the Fifth. Was he saying, technically, that he took the Fifth? Or that he just didn't speak at his trial?
- Susan Simpson:** Oh... He took the Fifth. We'll get into that more later, but yeah.
- Jon Cryer:** Oh, okay.
- Susan Simpson:** At an earlier hearing, he did state that he was going to take the Fifth.
- Jon Cryer:** Now, one thing that I remember Barry Mullinax talking about in his *mea culpa* for saying what he said about Joey, was that he said that he was actually incarcerated at the time when the shooting happened. Is there any way to check on that?
- Colin Miller:** I'm not sure, yeah. Susan, have you- have you looked into that?
- Susan Simpson:** I don't *think* he was – I mean we don't- haven't checked every single jurisdiction- [laughs] And part of it's like, it doesn't matter. *No one*-- I mean, he recanted... Whether he was or was *not*, his story isn't true.

Jon Cryer: Yes, it doesn't *really* matter in the end, because he was so incredible to begin with, I suppose.

[22:29]

≈

Jon Cryer: Now, I wanted to actually bring up something that is tangential, but this last week there was another petition in the Steven Avery case. Kathleen Zellner, his defense attorney, made a new petition to get some DNA evidence tested. But in it, it included what I thought was kind of a bombshell allegation, which was an actual computer record that Teresa Holbach's car – an intake was done on it two days before it was allegedly found. Are you guys familiar with that?

Colin Miller: Yes.

Susan Simpson: Not as much as I'd like to be. I saw it. I didn't have time to get into the details. But it seemed fascinating.

Jon Cryer: Yes, it was a very long document. It was 154 pages. It was interesting that in a petition for the DNA evidence – to retest Steven's DNA – she had to include this other evidence. Is that usual?

Colin Miller: It's helpful. Yeah, and this is something that I've discussed on my blog before, because, a lot of people have had questions in Adnan's case *why* the DNA testing petition wasn't brought before, and why it was on the backburner. Well, in addition to-- If you look at Rabia's book there's an explanation of the disagreement between the Innocence Project and Justin, where they thought the PCR petition had no chance of succeeding, and obviously it ended up being successful, but right. You want to have as *strong* of a PCR hearing as possible, and anything you can have that either weakens the State's case or bolsters your case for alternate suspects is going to help a DNA petition.

So for her to include that, about the November 3rd discovery in the computer records, that certainly bolsters her claim to show: "Look, this is a case where we're claiming they planted the blood evidence in the RAV4 and the fact that we had a computer record which is inconsistent with their claim that they discovered the RAV4 on his property on November 5th. That's *hugely* helpful in granting the DNA testing.

Jon Cryer: Yes. Because if you recall, there is a phone call from that same day – of one of the police officers calling in the plates of Teresa Holbach's RAV4 – and it would absolutely explain that if it was, in fact, brought in two days earlier. But I was curious, do these kind of petitions, where they're just petitioning to test more evidence, usually succeed? And what's the criteria for a judge to turn those things down?

Susan Simpson: That's pretty jurisdiction-based, as far as I've seen. I mean, some jurisdictions are more open to it than others. Baltimore seems to be notoriously difficult to get a DNA petition through. There are many, many cases there where they have just flat-out denied it, found procedural grounds to deny requests on, or just spent five years delaying testing. It's definitely not a matter of saying, "Hey, I have a good theory of innocence – there's DNA, let's test it." It's a *lot* harder than that.

Jon Cryer: So, it's no way to, like, figure out the *odds* of success in that particular kind of petition, because it's totally at the discretion of the judge?

- Colin Miller:** Well, in Maryland, for instance, the standard is a 'substantial possibility of acquittal'. Now, that's pretty nebulous, but that's the general idea – is if you can point to the judge a viable theory of innocence and possibility of an alternate suspect based in the testing – I guess, in the Avery case, that the EDTA and the blood being planted. But I'm not sure about Wisconsin's standard, but Maryland is a substantial possibility of acquittal based upon the DNA testing.
- Marcia Chatelain:** Is this what makes a case like Joey's so difficult, because DNA is so part of people's public understanding of these processes? That cases that don't hinge on DNA then have a new set of challenges?
- Colin Miller:** Right. And when I interviewed Karen Daniel at the Bloom Clinic at Northwestern – where they had their own separate women's division where they deal with cases of alleged female wrongful convicts, that's what she said – Is a huge part of why it's so difficult to prove wrongful convictions in the cases of women who are convicted, is that there is not the DNA evidence. And right, as you say, people have been primed to have DNA as the basis for the acquittal, and it's a lot tougher in these cases when it's not there.
- Susan Simpson:** There's actually another GIP case – that's Georgia case – and the defendant there... I mean, they got DNA testing and it went in the defense's favor, but not quite strong enough, apparently. So even though there's pretty – to *me*, it looks like compelling evidence – like, *positive evidence* of innocence – that's not good enough. Right now, that man will probably die in prison, still.
- Jon Cryer:** That was the case that Julie Seaman spoke about?
- Susan Simpson:** Yes.
- Colin Miller:** Correct.
- Jon Cryer:** DNA has kind of acquired an almost mythological importance in these kind of things because people feel like the science is *so* certain, and *so* concrete in those situations – it has a great reputation. But my understanding is, that it's actually a lot more difficult and complicated, and *less* certain than it's been portrayed. Is that the case, Colin?
- Colin Miller:** Yeah, well we discussed this a bit when we were talking about that case involving Thiru, where he had his whole 'wipe down' theory.
- But, yeah. I mean, there's the question of, you have these 13 alleles which, you know, alleles determine things like hair color and eye color, and sometimes you have a match at all 13 alleles – you're able to make that comparison. And in that case, it's pretty iron-clad. It's not 100%, but it's something where you would have a good deal of confidence.
- But then, there's a lot of these cases where, based upon the sample, you can only match at eight, nine, ten, eleven – and in *those* cases, though certainly the ten, matches on the alleles would be enough for it to be admissible. There's still a significant chance that there could be errors in those types of cases.
- Jon Cryer:** And there can be errors in the collection of it, the storage of it... That was one thing that has always amazed me, is that people have an expectation that evidence is stored in this beautiful, pristine white building – you know, within refrigerated lockers – and my understanding is that that's not how it actually is.

- Colin Miller:** Yeah, I think someone, a little while ago, tweeted a picture of the Baltimore evidence room, and it was just a complete mess. And, yeah I mean, certain jurisdictions have great procedures and great retention, and they prevent cross-contamination. But yeah, we had that whole episode in the *Addenda* about these issues in Baltimore, and it was all about cross-contamination, and these issues cropping up. And so, certainly, there are some issues in the way that we preserve and test evidence.
- Jon Cryer:** So, Marcia, so, you're listening to this. Besides being appalled, did you have any other questions, that you had?
- Marcia Chatelain:** Oh-- [sighs] I've got so much. So, I *did* have a question about the jury, but I don't know if you're doing and episode about that. Because, if this 'Sutton' guy has stalked so many people in this area, how was jury selection done in this case? Because it seems like the culture of rumors, innuendo... In some ways I feel like this feels more like a high school than the story about Woodlawn High School, in terms of people's alliances and shifting allegiances. And so, how does jury selection *happen* in a context like this?
- Susan Simpson:** [laughs] So, what's funny, is I actually... I have had one person reach out directly, from Rome, because of the podcast, and she was very- she knew people in the case, but wasn't directly connected, but just wanted to get in touch in case she knew anything. And she precursed it by saying, "Uh, I don't really have anything interesting to say, but you said you wanted to hear from people so I wanted to talk to you," like, great! It's awesome. And I look her up in the file to see if she's anywhere in there, and it turns out she'd been on the original jury selection list for Joey's case! Hadn't even known. I'm sure they dismissed her pretty quick – given that she was a classmate of Samantha and Brianne, and all them. But, there's no way to get a jury that has no connection, somewhere, somehow. I mean one of the jurors used to babysit Isaac as a kid.
- Marcia Chatelain:** Really? [sighs]
- Colin Miller:** Yeah, and Rome's not even *that* small of a town. I mean, you'll see cases where jurors are Facebook friends with people involved in the case, or they're neighbors, and it's just... Right, with these smaller communities- and again, Rome isn't even that small, it's just, you're going to have people who have some awareness of the people involved in the case.
- Marcia Chatelain:** I was just also curious about this idea, from the last episode that carries into it. About, kind of, what's *normal* and what's not. And so the shootings that are happening on the other highway – did they ever try to link *Joey* to those? Or did someone shooting at motorists didn't seem like a big deal because perhaps more people have guns? It seems like there is a 'gun' and a 'law and order' thing that's happening in this town that are mutually-reinforcing, but so problematic for the way that people deal with crime.
- Susan Simpson:** I'm still baffled by that one. I mean, it doesn't matter where you are, having someone shooting at random motorists is a big deal. So, the fact they seemed to be so *blasé* about it, I don't know what to think about that. I don't understand why-- Maybe they *did* actually look into it, you know? Maybe they just don't have it in Joey's file. Because I hope *someone* was looking into this!
- Colin Miller:** And I wonder, too – it's interesting, Marcia, that you bring that up. I mean, as we reported on the episode, there was apparently a pretty big drug problem in Rome, and now there's so many issues around the country with heroin and crystal meth, and I wonder, in some of these smaller, more rural communities, *et cetera*, if – going back to that issue of the trust of police officers – the extent to which people who are honest, law-abiding citizens, and they're called

for jury duty, they look at these police officers as protecting the community against these drug-related issues. And I wonder if that bolsters the trust in some communities, while in other parts of the country, certainly, trust in the police is almost at an all-time low.

Marcia Chatelain:

Well, we're in the strangest time, I think, in terms of criminal history. In terms of thinking about the new response to 'War on Drugs'. And, I think Keith Ellison talked about this earlier, that when you have white victims of a drug epidemic, just the incredible shift in the way that people talk about drugs as a problem, and if you think about small-town America as a place where people are making meth, or they're trafficking in heroin, you know, I think that the idea that the police *will* save the day – to stop, you know, drug crimes from happening, becomes so accepted.

And then what starts to happen is national policy about sympathetic drug abuse then kind of flows outward. And so, in many ways, I think communities like this become very influential in the national dialogue in the same ways that small towns in Maine and New Hampshire are helping to set the course of how we think about drug policy.

Jon Cryer:

But also, who *else* could they turn to? I'm trying to think of... You know, if you feel your community's in crisis, who else- where else can you turn? I can't think of anybody.

Marcia Chatelain:

I think that's a good point, and also, then there's the question of how members of the community are policing each *other* – because it seems really strange to me how *everyone* is weighing in on Joey. After this moment. The number of people who have something to say – and whether it's the rumors about the shooting, or rumors about the *dog*, it seems like people are also feeling like they are deputizing themselves to solve this crime.

Susan Simpson:

I think that is similar to what happened in Adnan's case. That happened at the time of the original investigation, too. It just happened in the favor of prosecution. There *were* people who were 'citizen investigators' – trying to find out about Adnan's guilt. And there's plenty of citizen investigators trying to find out about Joey's guilt, at the time, as well. It's not a *new* thing, as much as the fact that it's new to have people interested in even wanting to help the criminal defendant, instead of assuming that they have to be guilty; have to be bad people, and not worthy of help.

Jon Cryer:

Well, I think also in Joey's case, it sounded like there were so many cases of other sort of minor infractions – things that people just considered somewhat menacing. That people feel okay with the idea of this person being taken out of the community. So, if this is the means by which he is taken out of the community... Great. You know? I think that may be why people feel like they go along with these situations, and they tend to give police officers the benefit of the doubt. Is that there feels like there's community reinforcement that, this guy was just a bad egg.

But it didn't seem like Adnan suffered that in *particular*, except that it was obviously some amount of Islamophobia going on at the time. But, you know, obviously he was an honor student. And you know, it didn't seem in his *particular* case... But then again I guess in the trial they introduced all that evidence they felt was, you know, the, "I'm going to kill..." and they tried to paint him as a secret sociopath. Did you think that that was an effort to do that?

Susan Simpson:

I think they had less ammo to work with, in Adnan's case, for sure. But I think it's striking how in both cases, the prosecution tried to create this narrative. And is *still* trying to create this narrative – of a manipulative, deceitful person. For Adnan, it's like, he manipulated everyone into thinking he was *not* a sociopath, or not this 'dark killer'. And the fact that we don't have bad stories about Adnan is just proof that he's a manipulator "because, clearly he was

manipulating people! It's just that we don't know about it, which means he was really good at it."

But in *Joey's* case, they call him like, the spite-- In Sutton's *notes*, you can even see -- like, he actually says to someone else, that he's interrogating, "Joey sucked you in like a spider. Brought you into his web, of, like, potting and destruction. You just got wrapped up in it over your head." So, it's the same 'manipulative sociopath' narrative in both places, I think.

Marcia Chatelain:

I think that's where the 'Hollywood Effect' comes through. Because, rarely do you see a movie where a person does something wrong, and then reflects on their choices, and then changes their life in ways that aren't dramatic. Or perhaps people have struggle with, kind of, one problem, but it doesn't necessarily escalate or mean that they've duped all these people.

And I think that in both of these cases, it really calls into question, what does it mean to be adjudicated in front of a jury of your peers? What does that mean in a small community, where people have baggage? And, in Adnan's case, what does it mean when you're a member of a marginalized community, and people don't fully understand your religion, or the complexities of your immigrant community?

And so, I think that both of these stories are so helpful for people to really think about, what does it mean to have a representative sample of a population in a time when a person is tried for a criminal act?

[36:19]

≈

Jon Cryer:

Actually, I got a practical question from Twitter, that I wanted to ask, from Beth Schultz, who said, "Okay, so there's Rome PD, Floyd County PD, and Floyd County Sheriff? Can you explain those divisions and their differences?"

Susan Simpson:

So, Rome is the county seat for Floyd. It's the biggest city, by a lot, in that county. It's actually one of the larger counties in Georgia, I think. And you have two forces that coexist: You have the Rome Police Department, which typically handles all offence-- All crimes, crashes, whatever, that happen inside, like, the boundaries of the city limits. And then you have the *Floyd County* Police Department, which handles, like, crimes and general policing stuff for the rest of the county, but they also operate in the city itself, and they can, and do, take over cases in the city, as we see here.

And then the Sheriff's Office... So the Floyd County Sheriff is responsible, typically, for, like, running the jails, serving warrants -- that's more their focus.

Jon Cryer:

I've always wondered *why*. [laughs] I've never understood why. Why don't we just have 'Police'. [laughs] You know? In Los Angeles we have CHP, we have Sheriffs, we have PD, and I've never understood why we have three different groups. I mean, obviously there's a lot of different selective jobs. No problem! Just, you know, give the different jobs different names -- that's fine. I still don't understand why we need so many different agencies that overlap.

Susan Simpson:

And you can tell from the records here. I mean, just from Sutton's personnel record, there *is* jurisdiction friction, and conflicts between these agencies, and the don't get along seamlessly at all.

And to make things *more* complicated, what Rome-Floyd has is something called the 'Rome Floyd Metro Drug Taskforce', which is actually a unit combined of Floyd County *and* Rome officers that operate on the same, sort of, team, with this, sort of, like, drug mission. And a *lot* of the law enforcement personnel in this case have a history of being on that unit and working together.

But *again* – you can see conflict, even- it's not seamless by any means. Obviously, both forces, like, they don't *want* a conflict happening, and like Clare expressed in an earlier *Addendum*, I think some of their reluctance, or opposition to the podcast, is a fear that this will stir tensions between the two departments.

- Jon Cryer:** Okay, I've got another Twitter question. This is from Sean, who said, "Was there an earlier appeal that included the argument based on *Kitchens vs. State*? And if not, is that planned?"
- Susan Simpson:** No, that was never tried. Again-- [laughs] it's kind of a double-edged sword. One think I can imagine happening is even if you try to make an issue out of that- and they *did* try to make an issue out of Mullinax's recantation – it didn't go anywhere – is that, the judge is going to be like, "No one would actually believe Mullinax. It was not any harm to Joey's case, because no one listens to him anyway."
- Jon Cryer:** [crosstalk] And the prosecutor who--
- Marcia Chatelain:** And the jury heard it, right?!
- Susan Simpson:** Yes.
- Jon Cryer:** Yes. And the prosecutor herself said, "I can't even vouch for this." So that--
- Susan Simpson:** But then she goes back and tries to vouch for it, saying like, "Okay, yeah, he's a liar, but he's telling the truth where it *matters*. Look at these little details he knows."
- Jon Cryer:** Again, and adding to the fog of information that the jurors go, "Oh, okay, you know what? Yeah. He's guilty. Whatever. A lot of people think he's guilty."
- Okay, I've got another Twitter question. This is from, uh, 'Silivren,' who says, "Can Tina Proux's statement be used to prove investigative and prosecutorial misconduct?"
- Susan Simpson:** I mean, it's something I'd like to look into, but *her* statement alone – I mean, that's just her memory. I mean she even says, she doesn't know *for sure* what happened, but, obviously, it's part of the tape that you didn't hear, but she seemed *really* confident. Because I asked her pretty carefully about that. Like, "You're saying that the cops, when they went to talk to you two times, they told you that he was just trying to get a deal."
- And she seemed... She couldn't remember the exact details of it, but that seemed like a very *strong*, fixed memory in her head. But again, the cops would have likely just said, "That didn't happen." So where are you going to go from there? Nowhere.
- Jon Cryer:** Yeah. Yes, I think the question was, would it have been a Brady violation if they hadn't turned over the information that the cops got but you're saying that the cops never actually claimed that they got that information?
- Susan Simpson:** Yeah. They claim that-- Well, I mean, if it could be proven, it would be, but I don't know, in a case like this, how you're ever going to prove one witness's statement versus what two cops are saying. So...

- Jon Cryer:** I got another question – this is from Elena Hurst. She says, “I’m shocked. Was Mullinax one of the main reasons Joey was convicted? Why was he even interviewed in the first place?” Well, obviously we talked about how he was found in the county jail, but you mentioned that there are 13 other jailhouse snitches, or 12, perhaps? Were *they* brought to trial?
- Susan Simpson:** There were-- I have, like, a running list that I’ve been keeping through the case, like every time I find a new snitch that either was interviewed, or found, or spoken to, or put on the witness list. And it keeps growing as I keep finding more of them in the files. And there are a *lot* of snitches. But, you know, I guess they tried to choose the best ones they could, out of a pretty – as you might imagine, a limited pool. [laughs]
- Jon Cryer:** [laughs]
- Susan Simpson:** And-
- Marcia Chatelain:** So, Mullinax said he was there, what are all these other snitches saying that they knew or saw?
- Susan Simpson:** Totally different stories. Oh, most of the snitches are saying people confessed to them. Mullinax is the only one claiming eye-witness status, but a *lot* of snitches claim that various people confessed to them about the murder, or acts in the murder. But again, they all seem to hear or have heard a different version of events. I don’t think you can find *any* two snitches that agree on even, like, 50% of what happened.
- Jon Cryer:** And how many were introduced at trial?
- Susan Simpson:** At Joey’s trial... It’s complicated, because, like, things started falling apart. Okay, there’s Mullinax, and then there’s one other snitch you’ll get in the next episode, who snitched early and kept snitching, and maintained his story the whole way.
- Jon Cryer:** [laughs] Snitcher. Early and often. God bless him.
- Susan Simpson:** Sorry, I’m using ‘snitch’ as a shorthand; I shouldn’t even call... I just mean someone who’s in jail, and suddenly came forward claiming they had info on the case. But... Yeah. There were some... No-shows at trial, and others that changed their mind before trial started.
- Jon Cryer:** Yes. ‘Snitch’ is a loaded term – I mean, it’s inherently bad--
- Susan Simpson:** Yeah.
- Jon Cryer:** The idea is that you’re telling on somebody, when, you know, it could conceivably totally be an act of moral conscience. Or you could say Snowden was a ‘snitch’, you know? [laughs] I mean... Yes. Is there a better term? Whistleblower? [laughs]
- Susan Simpson:** Jailhouse informant?
- Jon Cryer:** Yes! There you go. Okay.

- Susan Simpson:** Uh... Well that sounds just as sinister to me, just more, like, Orwellian.
- Jon Cryer:** Yes, exactly. It's the police state. Which, of course, a jail automatically is. [laughs] You know? Did you have any other questions, Marcia?
- Marcia Chatelain:** I do wonder, with all of the, kind of, things that are brought before a jury, is there any way of assessing whether a jury understands what's happening while a trial is going forward? Does the judge ever do, like, a quick check-in like they do in class? To say, like, "Does everyone get what's happening?" Or do we just trust that they're taking notes?
- Susan Simpson:** If they *can* take notes – they can't always do that. But, yeah. We kind of just assume that they're following along. They're allowed to ask questions – to a certain degree – but for a lot of reasons, except in narrow circumstances, those questions usually don't get answered. Because you can't always answer what the jurors want to send you on the little pieces of paper. So, for the most part, they're on their own. They have to remember it, and then go back in the room and talk about it, and figure out what happened.
- Jon Cryer:** Yes, and I'm pretty sure in California you're allowed to submit questions while you're deliberating, but not at any other time. But it seems like in a lengthy trial, it's difficult to keep all that stuff at hand – for the deliberation. Obviously, you're supposed to take notes, but, you know, not everybody does – people are very cavalier about that.
- As your involvement in the criminal justice system has grown over the years, do you think that there's any way, and suggestions for... Like, I have to say, I would have *loved* a chance at the end of each day to submit some questions. I mean, obviously that would lengthen the process. Do you have any ideas or ways we could fix that?
- Susan Simpson:** There are a hundred reasons why this wouldn't work in reality, but, I just wish there was a possible... I want to have the jury get transcripts. It's unrealistic and absurd to expect them to evaluate a case after hearing oral testimony for possibly weeks on end. There's no way I could do it. And I'm *used* to listening to trials and evaluating testimony. So how is an untrained juror – for their first time ever in the court room – supposed to decide matters of literally *life and death* on the basis of what they remember hearing for two weeks.
- Jon Cryer:** Well, I think in the past, those kinds of things – when you ask for a transcript – it takes a little while for you to get it. I mean, by 'a little while', I'm talking about *weeks* before you get a trial transcript.
- Susan Simpson:** Yeah, I think practically they could get around that. And just other issues.
- Marcia Chatelain:** I think that when you talk about – I've never served on a jury, I always get dismissed – but I do think that there's something about a kind of education and literacy level that a person needs to have just to comprehend this volume of information... That I think is really *complicated*. If you want to have representative juries, there is something about whether a person has the skills.
- And it's not just a capacity question. You know, are they strong readers? Can they pay attention to long bouts of testimony? And so there's a-- I wish that there was maybe a professor in residence on a jury, to help do some teaching--
- Susan Simpson:** A neutral professor? [laughs]

- Jon Cryer:** [laughs]
- Marcia Chatelain:** Yeah! You know, just someone who can answer good questions, and just is a good teacher. Because, you know, I think about sitting on a jury like an endless lecture, and I think about my students as I prepare for class. The students who really struggle, not because they aren't *bright*, but because that information delivery may not be what they're used to. And it seems like, for something that's so important – like justice – that we have to imagine a different way of doing this.
- Susan Simpson:** Theoretically, it's the prosecutor and defense attorney who are the lecturers, and are competing lecturers, but that's sort of the goal of the opening and closing argument. It's really the: "Well, here's what you're going to learn, material is the witnesses, and then you have the professors wrap up at the end." But I think in practice that's not a particularly effective educational method.
- Jon Cryer:** Now, Marcia, just out of curiosity, have they given you a reason why they haven't let you on a jury?
- Marcia Chatelain:** [sighs] You know, my friends who are lawyers say, like, once they find out you're a college professor, it's like, "Forget it!" I mean, I've heard-- I don't know if that's true – like you're considered too smart to be on a jury...? I once made, I guess, the 'finalist' round of a criminal case...
- Jon Cryer:** [laughs]
- Marcia Chatelain:** The judge asked me kind of what I did, and I said, "Oh, I'm an educator". I think I was vague 'cause I really wanted to get on the jury. She goes, "Well what do you do?" and I said, "I teach African-American History at Georgetown" and she's like, "Yeah, just kidding, I don't think you're going to be on the jury!"
- [laughter]
- Marcia Chatelain:** And--
- Susan Simpson:** Yeah.
- Marcia Chatelain:** I understand, perhaps, why... And at the same time, my mum, who has no formal education *was* on a jury once, and she told me about an experience feeling really bullied because she wanted to stick up for the defendant.
- And so, it's a world that opens up so many questions about, you know, fairness and equity, and I think, again, if we're going to reform the system, we have to look at all the parts of it. And juries are part of it.
- Jon Cryer:** I think you've got a wonderful sense of humor about it, but I have to say, I think you should be outraged! I don't want to add to your outrage pile for this particular podcast, but you *should* be, because why *shouldn't* you be on there? Why shouldn't somebody who *has* some context and history, and *has* studied African-American History... *Why not?!*

I don't know if those particular issues, *perhaps* played a role in those *particular* proceedings – that, to my mind, would be the only reason to exclude you, like: “Oh it's about a- for a murder of an accused African-American Studies professor, or something like *that*.” [laughs] You know? It'd have to be very specific, but I think you *should* be outraged, I mean, what criteria should we have for jurors? If not *that*?

Marcia Chatelain:

Well, I think that part of the question, is, from a defense standpoint or from a prosecutor's standpoint, you know, do you want people to be 'blank slates'? And you do all the teaching that day? Or do you want people who enter with a level of context, and assess...?

Also the problem with juries is that they have been so historically *exclusionary*, that, to now be in a time where it's up to people feeling out, based on very little information. It does seem like another way where people who are considered citizens, if you're called to a jury, they're still unequal in the eyes of the functional mechanisms of the law.

≈

Jon Cryer:

Well, thank you guys so much, it's been a great episode. And, I'm looking forward very much to Episode 9 of *Undisclosed*.

Susan Simpson:

Ah.. We're not going to have an episode next week, for Labor Day...

Jon Cryer:

What?!

Susan Simpson:

Yeah, and we'll resume the week after.

Jon Cryer:

Oh... That's *messed up*.

[laughter]

That is messed up. This is, uh, another addition for your pile of outrage, Marcia.

Susan Simpson:

[laughs]

Jon Cryer:

Argh...!

Marcia Chatelain:

I literally don't know how I'm going to make it.

Jon Cryer:

[laughs]

Susan Simpson:

We'll have an interview Rabia did, and we'll resume Episode 9 the week after.

Jon Cryer:

Okay! Well, well, thank you *anyway*. If you're going to enjoy your 'relaxing' time – while we stew in our outrage... [laughs]

Well thanks again. Marcia, wonderful to hear from you again.

Marcia Chatelain:

Thank you so much, and I also really appreciate the opportunity to represent rabid fans of the podcast, in this- in this capacity.

[laughter]

Jon Cryer:

Okay guys, thanks.

≈