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

ADDENDUM 9: **FREE SAMPLES**
POSTED: **SEPTEMBER 15, 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*. Here at the *Addendum*, we get the chance to hash out the latest episode of *Undisclosed*. We answer listener questions, and we also get the opinions of some of our most interesting fans.

So, in Episode 9 of *Undisclosed* – ‘Free’ – the ‘UD three’ examined the case of Mark Free, the supposed ‘trigger man’ in the murder of Isaac Dawkins, and his tenuous ties to Joey Watkins.

And with us today are two of the hosts of *Undisclosed*: We have Colin Miller, who’s an associate dean and professor of Law at the University of South Carolina School of Law, and he blogs at *Evidence Prof Blog*. Say ‘Hello’, Colin.

Colin Miller:

Hey Jon, how’s it going?

Jon Cryer:

And we also have Rabia Chaudry, and she would rather I *not* read her bio, because she’s sick of hearing all the bios, but I’m going to read it – for one reason, and one reason alone. Because not only is she an attorney, and a fellow at the US Institute of Peace, and not only does she blog at *Split the Moon.com*, but she is now a *New York Times* best-selling *author*. So, ladies and gentlemen, Rabia Chaudry.

Rabia Chaudry:

[laughs] Thanks so much for that intro Jon. It sounds so good to hear it, again and again, and again...

Jon Cryer:

[laughs]

Rabia Chaudry:

And again. [laughs]

Jon Cryer:

Now that you are a big *New York Times*, fancy, best-selling-author-type person, have you decided that you’re going to have some sort of authorly affectation? You know, like how Tom Wolfe has the white suits and stuff?

Rabia Chaudry:

I think I should adopt an accent. I’m just trying to figure out which one, right now. I don’t look good in white – that’s not going to work for me – but I think an accent would be appropriate.

Jon Cryer:

[laughs]

Rabia Chaudry:

You know, the *New York Times* best-selling list is amazing, I’m so happy that we were able to get on it, and, you know, I think Adnan might be one of the first people incarcerated to make that – well, maybe not, I don’t know. But anyway. I figure the next time it should be something more along- sort of, *Fifty Shades of Grey*. We’ll see. I like a lighter read.

Jon Cryer: [laughs] Okay! Well, I going to make a suggestion here, and hear me out. I'm thinking: a monocle. I just-- Nobody else is doing it.

Rabia Chaudry: A monocle.

Jon Cryer: Yes. You can be like the Flavor Flav of the *New York Times* best-selling author set.

Rabia Chaudry: I guess if there's one way to make myself look *less* attractive, then that would be it. But I will consider it.

Jon Cryer: [laughs] Well thank you for considering it.

But now, this brings us to our special guest of the week. And for those of you who listen to true crime podcasts, you're probably already familiar with his voice. He is Jim Clemente, and he's a retired FBI supervisory special agent, as well as a profiler, and a former New York City prosecutor. During his 22-year career with the FBI he's investigated cases from bank robberies to serial killers, as well as public corruption in the White House. He's a technical advisor, writer and producer for *Criminal Minds*, *Quantico*, *Blind Spot* and *Secrets and Lies*, he appears regularly as host and a guest on the YouTube channel *Crime Time*, but, of course, I'm a huge fan of his from his podcast, *Real Crime Profile*, which he does with Laura Richards and Lisa Zambetti. But, I got to say, I'm really looking forward to your two-part investigation special that's going to be on CBS – *The Case of JonBenét Ramsay*.

Welcome to the show, Jim.

Jim Clemente: Thank you very much, Jon, and Rabia, and Colin. I'm really excited about doing this. I mean, you guys have done some *amazing* work, and you all should be applauded as heroes.

Rabia Chaudry: Thanks for coming on, Jim.

Jon Cryer: Well, I wanted to ask you, just about the JonBenét case, for a moment. So, in looking at the Ramsay case – it's been 20 years. I think you had just started at the FBI when that actually occurred?

Jim Clemente: Actually, I had just started at the Behavioral Analysis Unit. I had already been in the FBI about 10 years when it occurred.

Jon Cryer: Ah! So, now, looking at the case 20 years on, was there any information about that? I mean, now, you weren't involved in that case at the time, am I correct?

Jim Clemente: As a matter of fact, I wasn't, right in the beginning, but because it was initially a kidnapping, it's an FBI matter. So everybody in the FBI was notified about it, and because, at the time, I was an expert, and building my expertise in child sex crimes, that was also an issue that I was very much involved in. It wasn't until about a year later, when I was promoted into the behavioral analysis unit as a profiler, that I actually worked it as a consultant – as we do from the BAU, we consult on all violent and sexual crimes across the country.

Jon Cryer: So, after 20 years, was there any information that still surprised you? Or gave you a new take on the case?

[04:20]

Jim Clemente:

You know, Jon, it was pretty amazing... Yes. We applied new technologies to old evidence, and found some new evidence as a result. We also talked to people who had never spoken publicly before about what they knew. So, our show's an active investigation. We actually just documented an actual investigation. I pulled together a bunch of my colleagues that I had worked together with on the case over the course of the last 20 years, and we did a re-investigation. You know, Dr Henry Lee, Dr Werner Spitz, Jim Fitzgerald, James Kolar, Stan Burke, and Laura Richards and I put this team together and she's from Scotland Yard, and *she* had done one of the cold case evaluations of the JonBenét Ramsay case with us, years ago. Each one of us has a particular area of expertise – and that's the beauty of what we did in the Behavioral Analysis Unit. People tear it apart from their different perspectives, and you really drill down and argue about things, and what comes out at the end is pure genius.

Rabia Chaudry:

So Jim, you know, one of my questions when I listen to you, and how you go back, and you've looked at some of the evidence again, and applied new technologies... I'm just curious, because, for example, in *Adnan's* case, private investigators and private individuals can't really access – if there is physical evidence somewhere, in a locker somewhere, we can't access it. It has to go through some kind of legal proceeding, like his attorney, if there's a proceeding that it makes sense to subpoena the stuff through, then they'd have to do it. Or the State themselves could do it. Were you guys able to access that kind of evidence yourself? Or, was it just what was existing already?

Jim Clemente:

Yeah. The scientific evidence? No. But what we did was, we actually reconstruct the entire relevant floors of the house, in a 70,000 square foot warehouse, so that we could actually do a crime scene reconstruction there, and look at the ingress and egress, and the movement of people, and where they were at particular times. And we could actually test many of the theories that were out there. Also, we were able to actually develop a comprehensive theory based on everything that's out there, as opposed to just picking and choosing things. Like a number of different sides of this issue have always done. Because James Kolar is a law enforcement officer, we did have access to *some* of the documentary evidence that may not have been sort of available to the general public.

Colin Miller:

And Jim, I wanted to ask – it's interesting because *Adnan's* case very much comes down to these 21 minutes after school, and being a very short window of time to commit the crime, and I know that a big part of your investigation, from what I've seen in preparation for this show, is this ransom note that was found at the Ramsay house. And 21 minutes comes into play with that too, right?

Jim Clemente:

Yes. It's pretty-- It's actually *eerie*, I think. So, we did a test demonstration of how long it would take to actually just copy the ransom note in the exact form that it was, and it took us 21 minutes and 28 seconds, I believe. And doing that, though, we went back and realized that a number of the 'i's – and there were like, a hundred 'i's in this letter – that the letter itself – the original letter – had every single 'i' dotted and 't' crossed. And we had *missed* a bunch of them, so, whoever did this *meticulously* wrote that letter, taking their time, making sure everything was perfect, and even did a practice note. So, there are a number of things that that brings out in our show, and we'll discuss them in great detail.

Jon Cryer:

Can I ask, how did the show come about? Were you approached by producers? Was this your idea to assemble this team?

Jim Clemente:

Yeah, absolutely. I was very frustrated over the course of my career, at not having this case being resolved. Jim Fitzgerald – I worked with him in the Behavioral Analysis Unit, I worked together with him my entire FBI career – right before we retired we made a pact that we were

either going to write a book, or do *something* to get the information out. Since I became a producer out here, and I saw that you could reach millions of people instantly, we decided that was the best way to go. So we put together this team, and the show. And we partnered with Critical Content – a great production company – who, by the way, has a tremendous amount of experience building houses in a really short period of time on *Extreme Home Makeovers*, so we partnered with them, we rebuilt the house, we sold the show to CBS – they’ve been great partners with us – and they’re going to put it out to the world, so they’ll see what the truth is.

Jon Cryer: And when is that on the air?

Jim Clemente: It’ll be Sunday, September 18th at 8:30 to 10:30, and then Monday, September 19th at 9:00 to 11:00.

Jon Cryer: Well, I’m very much looking forward to seeing that. But I want to take a moment right now, actually, we will get into the Joey Watkins case, but I do want to take a moment now to thank our sponsors, and to send you over to them for this little message.

[9:52]

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Jon Cryer: So, Jim. It seems that your skill as a profiler is one of the most interesting aspects of your background. Looking at the crime, we have basically a man driving a truck who’s *shot*, and then veers off the road. Looking at it as a profiler, how would you see that same set of evidence?

Jim Clemente: Well, this is an interesting case, because it’s a unique type of case. In other words, there are many cases across the country where people get shot while they’re driving. There are certainly cases where people shoot from a car in a drive-by, random shooting, or intentional murder. But to have *both* of them happen at the same time is quite rare. It’s not something that happens every day, the logistics of it are very complicated, and I think even one of the defendants had said that it probably took a lot of skill, and a lot of luck. And I agree with that, completely. It’s a very difficult crime to pull off as a, sort of, premediated homicide. There would have been many other, much easier, ways to commit that crime, if that were the actual intent.

Jon Cryer: Yeah. You’ve often spoken of how you go into the victimology, and in this particular situation it seems like that’s what, in many respects, what the Rome PD *did*. Was, they investigated Isaac’s life, and who might have a grudge against him. Would that be a big component of what you were doing?

Jim Clemente: Sure. When you start with victimology, it’s sort of like holding up a mirror to the offender, because the offender typically picks a particular victim, at a particular time, in a particular place, in a particular manner, for a particular purpose. And all those choices reflect back on the offender, and what their skills, abilities, motives are. So, those are the kinds of things that can lead to, by looking at *who* was killed, and how they lived, it will typically lead you back – reverse-engineer back – to who killed them. So, those questions are critically important. *However*, you have to actually keep an open mind. You don’t just go and say, “Well, somebody has a grudge so they killed them.” You have to actually drill down and find the evidence to corroborate or refute that.

Jon Cryer: So, I also find it interesting that you’ve been also a prosecutor. And in this last episode of *Undisclosed*, it was revealed that they relied *extensively* on jailhouse informants during the

trial of both Mark Free *and* Joey Watkins. As a prosecutor, was that something that you found yourself involved in a lot?

[12:16]

Jim Clemente:

Well, I think, minimally, as a prosecutor, we have definitely used jailhouse informants over the course of my FBI career. But in the FBI we use informants mainly as intelligence bases. To use an informant as the *only* connecting witness in a trial, I think, is an extremely dangerous and weak thing to do, generally based on the entire prison culture. There's a lot of things you really have to take into account. If you don't understand, you know, the amount of lying and false bravado, and even false bragging that goes on in prison, because you're literally locked in with a bunch of really dangerous people, people sometimes try to pump up their hype, so that they don't feel vulnerable in prison. You have to really be sensitive to that fact when you talk to jailhouse informants.

Rabia Chaudry:

This is something that I've been thinking about a lot, in terms of the way evidence is presented, and used to secure a conviction against somebody. I mean, to me, the way you framed it, Jim, makes total sense. Using jailhouse snitches as really your primary evidence is just kind of unconscionable. But I also wonder, with Colin, like, do you know if there's any differences? Whether on the federal level, or even state-by-state on this? I mean, are there any states in which you're just not allowed to use jailhouse snitches in this way? To me it just seems... So *obviously* so flawed, and so fraught with risk, to do that. I just don't understand, like, why it's even permissible, or even admissible.

Colin Miller:

Yeah. There's no state that outright bans it, but certain states have taken efforts to ensure that there is reliability and corroboration. So, California, for instance, in 2011 they passed a law that said there has to be corroboration to allow for the admission of jailhouse informant testimony. In Illinois, where I used to live, they actually have a law there where there's a hearing. If you want to present informant testimony at trial, there's a hearing pre-trial where the judge assesses the reliability, and if the judge finds they're not reliable enough, the prosecutor is precluded from presenting that informant. So, actually, that's something that's a big push that states are making, I know in Virginia recently, there was a case where this was something that came up. So that is, the more the trend is to ensure reliability, as opposed to having an outright ban.

Rabia Chaudry:

What kind of corroboration would *work*, though? I mean, let's say you have, like, three jailhouse snitches. I mean, in this case, with Mark Free, there were, I think, almost 20? Or, I don't know how many *dozens* of them that eventually popped up over time – would they be considered corroborating each other?

Colin Miller:

Yeah. There's no hard and fast rule. It's very fact-censored, the way the judge does it. But if you have multiple jailhouse informants, does their testimony match up? Are the extrinsic factors about when it took place making it more or less reliable?

So, in the Joey Watkins case, where you can have, basically, this timeline where no one's saying anything, the reward posters are put up, and then right after that you have a number of informants coming forward. That would certainly be something, in Illinois, for instance, where the judge would look at that and say, "This is pretty lacking in reliability", and likely exclude that testimony.

Jim Clemente:

The California law kind of mirrors what our practice was in federal court. Because we went beyond, I think, any of the actual statutes, in terms of making sure that there was actual corroboration. Just like Colin said, I mean, if you have multiple informants, that *can* be considered corroboration, but they could all be motivated for the same exact reason. And it could all be based on, like I was saying earlier, just the prison culture of this false bravado.

When people go into prison, if they go into prison for rape, they can be really, taken advantage of. They could be brutalized in prison, or for child sex crimes. So a lot of people will come up with *other* stories about what they did, and particularly in situations where they feel like they are being threatened, they *may* overstate what they've done, and how tough they are, because they're living in a culture that only respects *that*. And nothing else.

So, it's something you really have to take into account. But I really believe that there should be additional – either physical evidence, or scientific evidence, or documentary – evidence that confirms this jailhouse confession. And many times, what *we* would do, in the FBI, is to make sure that those kinds of confessions were only admitted if they were actually recorded in some fashion. And so we would take measures to do that, in an effort to make sure that person who's coming in to testify isn't just making it up.

Jon Cryer:

Well also, my understanding is that when people are incarcerated, you know, obviously prosecutors would have to divulge if they've made some formal deal with somebody who's turning State's evidence, but my understanding is that there's so many ways that you can incentivize informants that aren't formal – that it's almost impossible to be certain that even if they're making assurances in court, that they haven't been given any special consideration for their testimony; that they can be compensated in some other way.

Jim Clemente:

Yeah, absolutely. Because, just living in prison, there are so many ways that prisoners can be either set upon by the people that are holding them there, or actually put in a position of comfort. And those are very important details to somebody who's planning on staying in prison for quite a while. Even the short term, actually. But, because of that, there are benefits that would never be on paper, that could be bestowed upon somebody for cooperating. And I would particularly look very carefully at anybody who's done that multiple times. To have one person, you know, spontaneously confess to you, while you're in prison, that's one thing. But to have multiple prisoners, over a period of time... The chances of that being completely honest is probably very, *very* small.

Rabia Chaudry:

Well I have a question: If you have somebody who becomes a jailhouse informant, or 'snitch', I'm assuming word gets around inside the prison. I mean, doesn't that put *that* person also at risk with the other inmates?

Jim Clemente:

Absolutely. And I think that they do it *only* if they can, sort of, derive a benefit from it. And it can also be – listen, there's a *lot* of culture that goes on in prison – it's not a fun place to be. They're constantly attacking each other in different ways. It's a very stressful situation to be in. And they can set somebody up by deciding that, "Okay, we're going to tell that this guy did something that he didn't do, or confessed to something that he didn't do." And *that* can actually be used as a way of attacking somebody, and really hurting somebody in the system.

And so that would not really be seen as being a 'rat' – it would be seen as effectively neutralizing somebody they wanted to get to. They didn't have to commit a crime to do it – you know, a physical crime to do it – all they had to do was open their mouth and tell the cops.

So, the system can be manipulated! It's a very complicated society – inside a prison. And you have to be completely aware of that. And another point, just parallel to that, is that a prison society is very different than a jail society. The people that are in jail are *pending* trial, basically, or are under really short sentences – under a year. So, the chances of somebody who's actually in the midst of trial, or waiting to be tried, actually bragging to somebody else in there about what he did or didn't do, I think, is minimal.

The people that have already been convicted of those crimes, well, they've already been convicted. So, when they're in prison, I think they're more likely to talk to their cellmates about what they did or didn't do. So I think that's a whole other level that we have to look at: Where did this supposed disclosure happen?

Jon Cryer:

Well, in listening to the last episode of *Undisclosed*, this brings up the testimony of Joey Samples. Because the entire scenario that he described, in terms of what Mark said to him when the reward poster went up was just all *completely* implausible to me. You know? When I actually went through the beats of it. When you go, "Wait a minute, this makes no sense".

First he sees the bulletin go up, then he's upset and sad about it, so he needs a shoulder to cry on, but then he gets all cagey – "Well I don't know! Maybe I did it... Maybe I didn't!" None of it makes any *rational* sense, but I think, to a layman – who doesn't know anything about being in jail, or prison culture, or anything like that – our impressions are from the *movies*! We don't have any accurate context to draw from.

[20:38]

Jim Clemente:

Right. And I think this is a perfect example of where an education expert would be appropriate for a jury. Just like in the drug trade, or child sex crimes, we can put forth experts who actually educate the jury so that when they hear the evidence and see the evidence, it's done with an educated eye and ear. And you can *then* rely more on their interpretation of what went on. But when you just sort of throw this information out to people who have no idea what's going on behind bars, I think it's irresponsible.

I think Joey Samples, the contradictory statements that he makes on the motivation of this sort of voluntary self-incriminating statement, which I can't say *ever* amounted to a confession, it sounds very much like it was equivocal, at best. And certainly to me it would match more if it was some boastful bragging, than some kind of actual confession. Because there were not specific details in that supposed confession, and he didn't actually say that he did it!

He might have been preventing himself from looking bad by saying, "No, actually, I'm completely innocent, and I'm not a criminal at all, and I'm actually very vulnerable here." He wanted to at least give the impression, perhaps, that, "I'm a tough guy – I *could* have done it, so watch out for me." And that happens!

Jon Cryer:

But I think one of the things that *bolstered* Joey Samples on the stand... My understanding was he was released pretty soon after that, and wasn't in prison anymore. Was that correct, Colin?

Colin Miller:

Yeah, right. That's my recollection. Yeah, he was released soon after. And so in terms of a benefit... Right. It would be tough for anyone to argue he got anything in the way of an overt benefit for his testimony.

Jon Cryer:

But of course, he could have gotten it while he was still incarcerated, you know, if he came forward while he was still there. I don't know, did he come forward while he was still in prison?

Colin Miller:

He did. Yeah, and so, I mean, you can certainly say, regardless of whether he actually *got* the benefit, he certainly could have been motivated by that benefit to come forward regardless of whether he actually received that benefit in the end.

Rabia Chaudry:

Well, yeah. And the flipside of that is, you know what? Although he is very unreliable, he does say that he was, kind of bullied by the police. And the benefit could be just protecting himself from further harm from the police, right? I mean, so if he's, for example, threatened in some way, he might be like, "Okay, just to protect myself, I'm going to go ahead and go along with this story."

And so, it might not be the kind of benefit we're thinking about. It could just be making sure he doesn't get hurt in any further way.

Jim Clemente: One of the most critical times of doing time is right before your release. And *everybody* is on edge. The inmate who's about to leave, the guards, who know that person is about to leave... Because this person knows what's going on, the inside scoop on who's following the law and who isn't. And also, the inmates that are left there could be very jealous.

So it's a *very* tense time for somebody who's about to leave. Just doing this and cooperating with the authorities could have made that transition very smooth for Joey. And so the fact that he was being released shortly after, to me, doesn't mitigate it at all. It could increase the chances that he would want cooperation with the guys who make the decision as to whether he gets out or not. Because, if he has a fight the day before he's supposed to get out, or the morning he's supposed to get out, then he has to stay in, so it could be something that they instigate, you know? You always have to worry about that – the culture is very, very difficult there.

Jon Cryer: Also, Joey gets to rationalize it by saying, "I didn't *actually* say that he admitted it to me." Of course, his testimony was very damning, in the context of it, but he can walk away saying, "I didn't say that he did it."

[24:15]

Jim Clemente: Yeah. And it looks like there's a number of indicators that he was literally trying to, sort of, be in the limelight, do what the cops wanted him to do, but not actually commit to an actual confession. And I think that *that's* something that should have been minimized in terms of its credibility, rather than used as a major lynchpin in this case against him.

Rabia Chaudry: I mean, isn't it safe to say that the jury probably didn't find him credible? I mean, Mark was acquitted.

Jim Clemente: It's most likely that they made some kind of determination like that, but the fact is, that it is a very tenuous type of testimony, and it should never be given critical weight in a trial.

And I think that in any case where jailhouse informants are the key piece of evidence tying somebody to a crime, that there should be mandatory, solid evidence, that actually links them and corroborates it. Rather than just the word of a number of people who are basically parroting the same story. If the details of everyone's story is exactly the same. If, you know, they were at different prisons, and they never talked to each other, and three witnesses all said *exactly* the same thing, then that would probably increase the credibility.

But if there was any opportunity for them to sort of talk to each other, *or* get information from the same officers, then I think that really reduces the credibility of it.

Jon Cryer: Well, also, you mentioned that there could be expert testimony talking about, say, the culture of prisons and jailhouse informants in general, but, just out of curiosity, when they *do* bring in, say, sex crime experts to these trials, are these experts introduced by the *State*? Or by the court? The idea being that they could be impartial.

Jim Clemente: Well, they're typically introduced by the State, because the State has the burden of proof, but the court has to approve them. They have to be *voir dire*d to determine whether or not they are qualified to give that testimony and that that testimony would enhance the ability of the trier of fact to make a determination in the case.

So, it's a pretty high standard – you definitely have to have the creds, and the experience in doing it before you can testify before a court of law as an expert. Because you're giving your opinion about, not specifics about the case, what you're doing is your giving your opinion about the general area and how things are done, and the terms of art that are going to be used, so that when the jury hears it, they understand, as opposed to being totally confused

and maybe not ever really understanding what the meaning is, until perhaps, the closing arguments, and at that point they could have completely dismissed the evidence in the first place.

Jon Cryer:

One of the things that the episode brokered up was the fact that, when confronted by police, with the idea of implicating a co-conspirator, Mark Free decided not to. Whereas, in the Adnan Syed case, Jay Wilds obviously took that opportunity.

But one thing I was curious about, Rabia, was Mark Free actually charged with something at the time that they approached him about making this deal? Because my understanding is that he was in on a parole violation, or something like that?

Rabia Chaudry:

I'm actually not sure. He was charged the same day that Joey was charged, so I'm assuming that came later. But I think it was fairly clear to him that the potential existed for him to be charged when they approached him with that. But, I mean, Colin, do you know a little more about that?

Colin Miller:

Yeah. Timing-wise, he was in jail for an unrelated probation or parole violation and this was before either Joey or Mark would have been arrested or charged with the murder.

Jon Cryer:

Well, the reason I ask is because obviously it feels like Jay Wilds was incentivized to cooperate because of the outstanding charge against him. But if there wasn't really anything hanging over Mark Free it might have been a little easier for him to make that stand against incriminating Joey.

Rabia Chaudry:

Yeah, I mean, I think with Jay it's unclear whether or not his other, whatever, charges, which we don't know too much about, had a lot to do with this. But I think Jay certainly understood the power of the Baltimore City Police to charge him with something very serious – which was First Degree Murder – on his own. And with or without prior charges I think that might have been enough to pressure anybody into becoming a State's witness.

[28:30]

Jim Clemente:

I think in any situation where you have the police trying to get one codefendant to testify against another, there are a number of factors that sort of increase the risk of a false allegation. And the younger the defendants are, the less sophisticated they are, the poorer they are, and the less litigious they are – in other words, if they have their own lawyers standing in the background – I think that *reduces* the risk.

But when you have people with no access to high-powered law firms, and money, and they're young and inexperienced and not so sophisticated... The fact is that we've seen a number of very notorious cases, and I think that the Adnan case, and I think the Dawkins case here, both have situations in which the people that they were trying to get to 'rat out' the other people were in a position where they could be squeezed, they weren't very sophisticated criminally.

And, I mean, if you've heard my analysis and Laura Richards' analysis on the *Truth and Justice* podcast of Jay's interviews, that you will see that there are a number of indicators that he was *not* truthfully disclosing. That there were a number of indicators of deception, and there were few, *if any*, indicators of veracity, throughout those recorded interviews.

And, so I think that it's a very dangerous thing for police to put sort of the pressure on young, inexperienced, not criminally-sophisticated people, because the chances are that they will succumb to the pressure despite the fact that they may not be involved or have any information, just to try to save their own necks.

Jon Cryer: How do you apply that as an investigator, though? Do you just simply not interrogate people to any depth?

Jim Clemente: No. What we did in the FBI was, we have a behavioral analysis questionnaire, which a defendant can fill out, but also we can get an indirect assessment from other people that know that particular person, and actually it's tied to the NEO Personality Inventory and you can actually get an assessment as to the suggestibility of someone – how easily they can be pushed around and manipulated – and if they rate high in that area, you do not rely on something they say under duress.

A perfect example of that is Brendan Dassey. It's clear when you see, and look at all of the interrogations that were done with him, and even in his own words. The best proof of that was probably when he was on the phone with his own mother and she asked him: "Well, how did you come up with all that information?" and he said, "I just guessed, just like I do on my homework." And *that's* really what happens when you have a very suggestible person.

So there *are* legitimate ways to try to weed out the people that are very suggestible, and susceptible to this kind of pressure, and will likely give a false confession under these circumstances, and you have to be diligent in law enforcement to avoid those things. It's your responsibility as a law enforcement officer – an agent, an agency – to make sure you're not putting somebody in that kind of a position. You have to give it its appropriate weight and not just put all of your eggs in that one basket – especially if there's somebody very suggestible.

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Jon Cryer: Colin, you mentioned in the podcast the 'Hand of One' concept – being that all the co-conspirators are guilty of the main crime that is committed. But I was just curious, *how* did that idea arise in the law? Because it seems like a very complicated idea to actually implement.

Colin Miller: Yeah. It's an old Common Law concept. Where essentially it was a problem of proof where – exactly as this situation – you have a theory that you believe multiple people joined together to commit a crime, and the thinking is: "Well, even if we can't prove that this specific person struck the fatal blow, that everyone involved should be responsible".

And also, in terms of assigning *blame*, you could look at it and say: "Why should a person who was involved in a burglary, who agreed to take part, they weren't the ones who shot the homeowner, but they were involved in the scheme."

'Hand of One' is what I use, the 'joint venture-ship'. It's something where you undertook something together, and in essence the theory is it's *agency*. Just as an employee is an agent of an employer, if we have this plan to commit this burglary, we are, in effect, agents of one another and the acts of one are attributed to the other.

Jon Cryer: But I imagine it makes prosecutions very complicated, because, you know, crimes are, very often, chaotic events, and figuring out exactly who has agency in that situation is sometimes difficult.

Jim Clemente: I was going to say, the 'Hand of One' law is basically our law to the conspiracy laws, and I think you have to have an agreement between two or more people, and one of those people has to commit an overt act in furtherance of that conspiracy.

So, there would have to have been a meeting of the minds, that this was the plan. And it is not something that can happen on the spur of the moment, it *has* to be something that was planned out, and then one of those people that was in that group – whether it was two people

or 50 people – one of those people would have to commit an act in furtherance of that, then all 50 are guilty of that crime.

So, it *is* a way to prevent people from enlisting the aid of somebody else in a crime and then having the other person *do* it and not actually be held accountable. That's why the conspiracy laws were made, and there are certainly a lot of applicable use – it's an important way to get people to pay for the crimes they commit, or engage other people to commit for them.

But it can also be used, obviously to the extreme, where you can't actually prove. And I remember the prosecutors statements being, "Well, they must have met up *somewhere* or done *something*, and then this happened". As opposed to, how do you *know*? There's no actual proof. And actually no testimony that there was ever any kind of communication that preceded this, that would have indicated to the *other* member of the conspiracy that this was the *intention* – that this was going to happen.

And, particularly with the outcome, of the acquittal of Mark Free, I don't know how the other charge still stands. Because, if Mark didn't pull the trigger, then who *did*? I mean, the whole reason for the conviction of Joey Watkins was he had an accomplice, otherwise he couldn't have done it by himself. And when 'accomplice' side of it falls out, it really seems to me that the entire prosecution falls apart.

[36:35]

Rabia Chaudry:

So, you know, what they did was, they tried Joey first. And they got his conviction. And they tried his accomplice later, many months later, and he got acquitted. Which I think just setting that up was really smart and strategic on the part of the prosecution. But also, I think, really unfair.

But, Colin, in a case like this, the accomplice – without whom, apparently, according to the State, the crime can't be committed – is acquitted, is that grounds for like, reopening, or like some kind of motion to reopen, or revisiting Joey's case in court?

Colin Miller:

Unfortunately, no. Part of it is the State never really committed at Joey's trial to Mark being the shooter. They hinted at it, but it wasn't dependent on it. But even with that, you don't necessarily need both of them to be convicted. You can have cases where you have the theory that these two people were accomplices and it's okay – you can have inconsistent verdicts where one is convicted and one is acquitted. And that's why in this case there weren't grounds for Joey to have his conviction thrown out.

Jon Cryer:

But it leads to very complex situations. There's currently a case of a guy called Robert Montes, where he and a friend were involved in some kind of driving shooting. He took a plea deal, but his friend was acquitted. And actually, the jury came to believe it was an act of self-defense. And he is now trying to get the court nullify his plea, because, if it was in fact an act of self-defense, then he shouldn't be in jail just because he took a plea, but so far the courts are refusing to re-examine it.

Colin Miller:

Yeah. It's the same type of thinking as that I just mentioned, is that, it's okay to have inconsistent verdicts in the American justice system, they don't have an issue with one jury reaching one conclusion in one case with one of the defendants. And well, in this case it's not a jury, it's his plea deal, but as long as when he entered his plea it was 'knowing, voluntary, intelligent' and there was an adequate factual basis for that plea, that's fine, notwithstanding the fact that a jury in another case might have found that this was self-defense.

Jim Clemente:

Colin, don't you think that's a flaw in our system?

Colin Miller: I can certainly imagine scenarios like the Joey Watkins case, where I think it's a pretty terrible rule in the sense that basically what the prosecution had to convince the jury of was that this sharp shooter was able to pull off this shot while two vehicles were speeding down the highway. And I think that's a pretty bad application of the law.

But there are other cases where, you know, you can imagine – there are multiple defendants, and a jury in *one* case might think defense counsel did a better job and yet evidence was weaker, and were still convinced that another defendant who was found guilty is, in fact, guilty.

So, I guess the difficulty I would have is, I think there should be some modification to the test. I'm just not entirely sure what would be the appropriate way to cut that up with a scalpel as opposed to using a hammer.

Rabia Chaudry: Well, would a remedy be trying co-defendants together?

[39:24]

Colin Miller: You can, but that creates its own set of issues. I mean, among other things there's this doctrine known as 'The Bruton Doctrine', which makes it tough to admit a confession of one codefendant when there is another codefendant in the case, unless the confessor is testifying. And then character evidence – which we'll get into more – is something where it can be very prejudicial to a codefendant if you're introducing character evidence as to one, so... There *are* many cases where we do have a joint trial of defendants, and that can make sense, but there are other cases where for a number of reasons – both to help the prosecution and the defense – it makes sense to sever the trials and have them be separate.

Jon Cryer: Actually there's an interesting Twitter question that I wanted to get to about this: This is from Mike – 'M Trainer 79' – who says, "You should talk about what a sharpshooter *is* in the military. The episode made him sound like a sniper."

Which I think is actually an important distinction. Mark Free was in the National Guard, and so he became familiar with the 9mm, but that is very different than a *sharp*-shooter, which is a very different skillset. When did the idea that he was a sharp-shooter get introduced into the trial?

Colin Miller: I believe that when Mark applied to be a police officer, he listed that he was a sharp-shooter in the military. Which I'm not entirely sure – maybe Susan or Clare would know more on that. There's a test that you take in the military, and sharp-shooter isn't the highest, there's something above it called 'expert' – which would be what the sniper is – and I'm not sure whether Mark, in filling out the application, was talking about the specific tests and the number of targets he hit, or if he was just saying, "I'm a sharpshooter because I've trained with a firearm". So I'm not 100% sure on that.

Jim Clemente: I can help answer that, because 'sharpshooter' is not the highest, and even the 'expert marksman' category is not necessarily sniper-trained, it's just, you know, a score, basically. You have to hit a certain average when you're doing these tactical courses, in the military or in the FBI, or anywhere else. And the fact is that a sniper is actually a totally different set of skills and it is trained with long gun, and they have to do a number of things. My brother, Tim, was actually a sniper in the FBI, and it's a whole, much higher level of training, and they do, actually, moving targets from a moving vehicle, from a helicopter, from a speeding truck, and so forth...

Rabia Chaudry: Wow.

Jim Clemente: That would not be the kind of training that anybody that was just down at the sharpshooter level would ever have.

Jon Cryer: It's a very loaded term. I would have to say, as somebody observing the trial, that would be something that held some weight for me. To hear that he was a sharpshooter in the military.

Jim Clemente: Yeah. It just doesn't mean what people think it means. Actually, if you only get 'sharpshooter', that's sort of the base. You're not going to actually pass if you don't at least get 'sharpshooter'. It's unfortunate, but that seems like it is somebody who is extremely skilled, and it's really a basic qualification.

[42:16]

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Jon Cryer: So, I had another Twitter question, actually. This is about Joey Watkins' legal situation, in particular. It says: "If the courts are such a difficult challenge at this point, what about governor commutation? What is the history in Georgia?"

Because we've had a lot of questions of people saying, "What are his legal possibilities at this time?"

Colin Miller: Yeah. Georgia is one of the states. They have a board – it's called the State Board of Pardons and Paroles. So, actually the Governor of Georgia, my understanding, *doesn't* have the direct authority. Instead it goes direct to the board – it's called the State Board of Pardons and Paroles. And *they're* the ones who would consider the application and the history is *not* good.

There have been a few recent cases, I think they were actually Death Row cases, and Bill Rankin, who does the *Breakdown* podcast, I know has reported on some of those. And there have been a few other cases I've looked into where the evidence was pretty weak, and there ^ a good record in Georgia of people being granted pardons.

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Jon Cryer: We also got – and this is a little off-topic – but we also got a Twitter question from David Wanger who said: "I'd still like to know how many rounds were in Heath's gun, and if ballistics tests were ever done."

Colin Miller: We'll get to that, yeah. There's a-- We're going to have an episode on ballistics and forensics and can't say anything right now, but we'll go through all the different testing that was done, and what conclusions are reached based upon that testing.

Jon Cryer: Here's another Twitter question, from Thomas Ahern, who asks: "Did David Brown corroborate Mark Free's alibi?"

Colin Miller: That's another good question, and we'll get into the whole Mark Free trial – and actually I think we're recording... We had a little bit but we cut it out from this episode, but, yeah, the situation with regard to Mark's alibi is a bit complicated. So when we get to his trial we'll delve into that in more detail.

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[43:56]

Jon Cryer: Okay. Now I actually wanted to bring up a little bit of a current event, and to get your reactions to it. My understanding is that Thiru Vignarajah has left the Office of the Attorney General in Maryland. He was, of course, the lead prosecutor on Adnan's PCR hearing. Obviously we don't know exactly why he's left the office, and there's been some speculation on social media. What are the reasons people might leave the office, you know, in such an abrupt manner.

Rabia Chaudry: Well, you know, he's actually leaving at the end of this month. It wasn't an announcement that came from the Attorney General's office, it was information that-- There are networks of lawyers who hear things and pass on the information and then a journalist was able to get it confirmed, so I don't even know if it was news that they were necessarily ready to divulge.

You know, from the attorneys that I've spoken to in Baltimore -- I've spoken to five or six different people on this, because I'm also curious. They all said it was highly unusual, but it was probably a situation where he was asked -- for lots of different reasons, not just for Adnan's case but for other reasons, maybe even political reasons, but other reasons too -- that he was probably asked to step down; step out.

Jon Cryer: But it is a highly unusual thing. And my understanding is, there's already a successor been named, but that it's not for sure that she will be handling Adnan's case?

Rabia Chaudry: Yeah, I mean as far as we know, the case, it's been at the attorney general's office, Vignarajah's been handling it, it *should* actually be at the City Attorney's office. So, we have no idea if they're going to continue to handle it, with a different prosecutor... And it wasn't just, obviously, Vignarajah alone. He had other attorneys working with him, maybe one of them will take over at the AG's office, or maybe it will be passed down to the City, finally.

Jon Cryer: Well, I've said this on social media, and I'm truly hoping that the office will use this as a chance to reassess the situation of their evidence, because it appears that the vast majority of their evidence has completely fallen *apart*, and you know, obviously, for Adnan's sake and for his family's sake, I think the whole case needs to be reassessed.

Colin Miller: I'll just follow up on that, Jon, is that, we'll see. I mean, right now the Court of Special Appeals might very well not grant the State leave to appeal. And that would mean the order granting Adnan a new trial becomes final, and then the question becomes, what happens from there. So it'll be very interesting to see. I mean, Justin will have his newest filing this week, and we'll see how it goes from there.

Rabia Chaudry: I mean, do you think that there is very little incentive for the State right now, at this juncture, to be like, "Okay, we're just, kind of, walking away from all this"? They have every reason to continue to try to push it through the appellate process and keep fighting, but if COSA just says, "We're denying this application for leave to appeal" or, hears it, then denies it, and we're back with Judge Welch's decision. That's the point at which the State really has the opportunity to decide if they want to go forward with the trial, or how they want to handle it. But as long as it's in this kind of appellate think I don't think they will ever-- I mean, they're going to see this part through, at least.

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[46:38]

Jon Cryer:

So Jim, I was curious – having heard some of the Isaac Dawkins case, do you have any questions that you wanted to pose to Colin and Rabia?

Jim Clemente:

I would really be interested in having-- What I would love to do, is get a really deep dive into the victimology. I mean, if you really want to solve this murder, that's where we have to start. And obviously there is *some* information that I was able to glean in the last couple of days, but I have not seen the details of what was really going on in his life. And it seems to me that the police sort of took an easy way out – tried to find somebody that they could get to rat on somebody else, instead of actually doing a comprehensive investigation. I mean, they must have been frustrated, having not been able to solve this right away. And we all know that in the first two or three days, if you don't solve a homicide, the chances of solving it go down dramatically. So, it must have been very frustrating for them, and you know, this is the outcome.

But I still hope that if they did not do it, I hope there's some legal remedy for Joey Watkins, you know, he's actually innocent. And given the... You know I just hate the fact that prosecutors can still have, sort of, inconsistent theories in cases, and I think we saw that in the Avery-Dassey case. And I think that's falling apart, obviously – at least against Dassey – it's falling apart. And once that happens, I do believe that in the interests of justice, not in the interest of time, or efficiency, but in the interest of justice, they should reopen a new investigation. Especially if the theory of that investigation – and the conviction – is based on information that now is found to be unreliable.

Rabia Chaudry:

Jim I have a question for you, as someone who is a former prosecutor. Given the nature of this particular crime that resulted in Isaac's death, how difficult it would be for somebody even with really high proficiency in gun skills to shoot from one moving vehicle into another? And at night, and then make a fatal shot? I'm kind of surprised the police and prosecutors didn't look at this as kind of a crime of, like, a random shooting that happened to hit a target, versus a deliberate, premeditated type of crime.

I mean, would *you* as a prosecutor assess it like that? And even you knowing all these things about ballistics, and sharpshooting, and all these things... Doesn't it seem much more likely that it was maybe just somebody just shooting for the sake of *whatever*? Maybe there's some road rage or something involved, and they just happened to hit somebody.

Jim Clemente:

It's possible. I think that, as I said earlier, if you're going to try to intentionally kill somebody while they're driving at, you know, a high rate of speed, it's not the easiest thing to pull off. So, it is *possible* that that *could* happen, but it's also not *probable*.

And I would certainly have to look at the ballistics, and look at the angles of entry, and how, you know, across that motion whether-- I mean, you should be able to tell, I would think, whether or not the shooter was stationary, or actually in a moving vehicle going the same speed. If there were multiple shots, then you're going to see changes in angles of entry. If they are stationary versus in a moving vehicle.

Also, I don't know what they did in terms of, you know, going out and doing metal detector searches and so forth, and finding where bullets that went through the vehicle ended up, because that can also tell you something about what was going on and exactly *when* the shots were fired.

So, I'd be really interested, Colin, when you guys do cover that, to hear about all the ballistics. It's an important part of this case, and I think it could rule in or rule out specific theories. And you know what? All those facts are what the prosecution should be based on, not just speculation.

Jon Cryer: But you were saying that the *probability* was low, of it being a random shooting. Would your assessment of that probability change, knowing that there were recent shootings on highways very close by?

Jim Clemente: Oh no, I mean, the exact opposite: I said the probability of doing a high speed chase one vehicle to another, and committing an intentional killing is low.

Jon Cryer: Got it. So it actually argues *for* the random shooting theory?

Jim Clemente: Right. And that either being a drive-by type shooting, or somebody from a stationary point who is trying to pick-off a car going past. You know, those are two different types of events that could result in this conclusion.

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Rabia Chaudry: I actually have a quick question: I'm actually going to be traveling overseas when the show premiere comes on next week and I'm really upset about that. Can it be seen online, do you know? Like, would it be on CBS.com?

Jim Clemente: It will be. And we're actually currently in negotiations of selling it to other cable providers – maybe an Amazon or a Netflix – and we may have an enhanced, six-hour version of the show on those venues. So there actually may be-- Obviously we had *hundreds* of hours of footage to boil down to a four-hour show, so we will be doing a *Real Crime Profile* series of podcasts, where we get behind the scenes, and also we'll be doing a more extensive release of the investigation, down the road.

Rabia Chaudry: Fantastic, thank you so much.

Jon Cryer: Yes, thank you so much for coming, Jim.

Jim Clemente: Alright, thank you so much for having me, I really appreciate it, and I really appreciate everything you're doing.

Jon Cryer: So, I just wanted to say thank you Rabia, thank you, Colin.

Also thank you, Rabia, for writing *Adnan's Story*. I am about seven chapters into the audio book, which I highly recommend, if anybody wants to check it out, even for somebody who knows most of this stuff already, it is just absolutely riveting, so thank you once again for writing it, and thanks for being here again.

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