

UNDISCLOSED, the State v. Adnan Syed

Episode 11 - The Deals with Jay

Rabia Chaudry: [00:02:37] Hi and welcome to the 11th episode of Undisclosed the State vs. Adnan Syed. This episode is the deals with Jay. My name is Rabia Chaudry. I'm an attorney and national security fellow at the New America Foundation, and I'm joined with my colleagues Colin Miller and Susan Simpson. Colin is an Associate Dean and Professor at the University of South Carolina School of Law, and he's also the blog editor at the Evidence Prof blog. And Susan is an associate attorney at the Volkov Law Group in Washington, D.C. and she blogs at The View from LL2.

Now, the first time my younger brother Saad and I met Sarah Koenig, it was in Baltimore almost two years ago, and we met at this little temporary office that I rented out where I kept my files. I had recently moved back to the D.C. area from Connecticut and I was transitioning in my work from legal practice to national security policy. But I still needed to wrap up some existing cases. I had to store my files. So when Sarah showed up, you know, we were surrounded by lots and lots of documents and most of them were my own case files. But I did have one single box of Adnan's documents and that was the box that I had kept for the last 13, 14 years with me, sometimes in the trunk of my car, sometimes at my home. And it contained copies of the documents that I thought needed a closer look. I couldn't run around with all 20 or 25 boxes of his case files. So I had just pulled and copied the most important documents, I thought at least.

So I showed her those documents and I also talked to her about the things that I thought were really shady in the case. And one of the shadiest things I pointed out was the plea deal made with Jay by the prosecutor, a deal that came about when Kevin Urick hands elected an attorney for Jay, a fact that made Gutierrez totally lose it in the courtroom. But that deal didn't happen exactly the way we all assumed. There's a story behind it that we've never heard before. So today we take a closer look at the plea deal, the timeline leading up to it, and how Urick made it all happen.

Colin Miller: [00:04:51] This quote comes from the 5th Circuit's opinion in *United States vs. Herman*: "*The legal battlefield has thus shifted from the propriety of plea bargaining to how best to implement and oversee the process. Plea bargaining is a tool of conciliation. It must not be a chisel of deceit or a hammer purchase in sale. The end result must come as an open covenant openly arrived at with judicial oversight. A legal plea bargain is made in the sunshine before the penal bars darken. Accordingly, you must examine plea bargains under the doctrine of caveat prosecutor.*" [beware the prosecutor]

In this quote the Fifth Circuit is talking about the progression of criminal adjudication in this country. Before the 1920s, the vast majority of criminal cases were resolved by the jury trial. Then we had prohibition. There was an exponential growth in number of cases in the system based upon people bootlegging, and that led to a corresponding increase in the number of plea bargains. Now, for centuries,

lawyers and jurists had debated the merits of these bargains, which are often hashed out behind closed doors and with little transparency. By the time the Fifth Circuit decided Herman in 1977, courts had fully accepted the validity of the concept of plea bargains, and the focus had then turned to creating safeguards in the process, so we had transparency in a process that now occurs in about 95% of cases.

In this sense, Adnan's case is a bit of an anomaly. It involved what's now an increasingly endangered species: the jury trial. In this case that we had two alleged criminal actors, the other being Jay Wilds, and his case did end with a plea bargain, which is where we'll turn our focus today. But before going there, let's start out by fleshing out the events that led up to Jay's plea agreement on September 7th, 1999.

Rabia Chaudry: [00:06:39] We've discussed before how Jay was arrested on January 26, 1999, 13 days after Hae disappeared. So let's go into the details of that arrest. Here's what the police report says. "On January 6, 1999, at approximately 10:25 p.m., this officer observed a 1991 Subaru station wagon turning into the 200 block of Collins Avenue, from a parking lot, with no lights on. This officer stopped the vehicle and approached the passenger side where the suspect was seated. Suspect began making several abrupt movements with his right hand by the center console. This officer, believing suspect may be possibly armed with a weapon, and was asked to exit the vehicle along with the driver, Jennifer Pusateri, for officer safety. During this officer investigation, suspect became extremely loud and hostile. Due to suspect actions, a crowd started to form and citizens began to come out of their homes to investigate the disturbance. Suspect refused to calm himself as this officer attempted to place suspect under arrest. He began tightening his arms and wrapped his leg around the officer's leg, causing this officer and a backup officer to fall to the ground. After a two minute struggle, suspect was successfully handcuffed and transported to central booking to be formally charged." And Jay is then later charged with disorderly conduct and resisting arrest the next day, on January 27, 1999.

Colin Miller: [00:07:59] Yes. I mean, it's it's good to have the detail about this arrest. It's obviously interesting that he was, again, with Jennifer Pusateri. Location of the arrest: 200 block of Collins Avenue. Do either of you know where that sort of is in relation to other key locations in this case?

Susan Simpson: [00:08:15] Well, the biggest one is that it's close to where Hae's car was ultimately found by the cops. It's the same part of town, same sort of neighborhood, about a mile, or a little bit less, to the south. But it's an area of town that Adnan has no connection to, but one that Jay's clearly familiar with and goes to on at least this occasion and likely others.

Colin Miller: [00:08:35] I find it kind of interesting. It has sort of parallels to a lot of the cases we're hearing about in 2014 and 2015. We're sort of relying upon the officer's narrative that he believes the suspect might have been armed. It doesn't appear that in fact he was armed. So you might think this is trumped up a bit. But obviously based upon the report, these are not insignificant charges that Jay was facing here, which might inform our analysis of what happened thereafter.

Rabia Chaudry: [00:09:00] This is not the first time Jay's ever arrested, right?

Susan Simpson: [00:09:01] First time as an adult. We don't have the juvenile record, obviously. There are indications he did have one. And it's possible he was on probation at the time due to those charges, so it's possible he is facing more time for probation violation, if he had one. But again, juvenile records. So we don't know.

Colin Miller: [00:09:18] And the big question mark we have here is when Jay was arrested, did they have any idea about his possible connection with this case? We know Adnan was arrested they slipped the Crimestoppers poster with Hae's picture. Is it possible in this case that Jay, at the station, whether accidentally or by the police, was aware of this CrimeStoppers tip? Because we know this is just a few days before, on February 1st, that tip is made to Crimestoppers. That leads to eventually the \$3,075 being paid out.

Susan Simpson: [00:09:48] So I would tend to think not, because this is the city police that pick him up for this charge and the county is the one handling the missing persons investigation. But there is something in Jen's statement that makes me wonder, and that's how when she describes how a police officer from the city, that she knew, had asked her if she knew about the case based simply on the fact that he knew she was a former Woodlawn student. So it's clear that at some point, anyway, the cops were asking people who were Woodlawn students if they had information about this case.

Rabia Chaudry: [00:10:21] And also, I mean, it's important to remember that whether or not the police themselves gave the information, the information was kind of out in the community. We saw over the weeks after Hae disappeared, it was on television, in fact, that there was a reward being offered for information. So it was kind of public information that there is a reward. Somebody is giving it. It wasn't clear how much. And they could have had some idea that it already existed anyways without the police telling them.

Susan Simpson: [00:10:45] We know that posters were made for Hae when she was missing asking for information about her disappearance. But, although we don't have them, it's also possible that there were Crimestoppers reward posters made for her disappearance. But either way, the news of the reward was going around at that time.

Rabia Chaudry: [00:11:05] So on January 27, 1999, Jay is charged with these resisting arrest and disorderly conduct charges. A few days later, the CrimeStoppers tip about Hae's disappearance comes in. Fast forwarding a couple of weeks, what we know from interview notes with Sis who was Jay's boss at the video store that he worked at, that she says either on February 20th, 21st or 22nd, he took off of work to interview with police. Now, we know that's not what's part of the official documentation, but according to Sis, her records show that he had taken at least one day off to talk to the police before his first official recorded interview. Then, on February 26th, Jenn makes first contact with the police, or rather, they make contact with her. She makes a short trip down to the station, tells them she doesn't know anything. The

following day, Jenn gives an official recorded interview at her lawyer's home with her mother present. And then the next day, the police officially take a statement from Jay for the first time.

Susan Simpson: [00:12:17] And we do know that Jay's statements were based in part on what Jenn had already told the cops because he testified at trial that during his statement on the 28th, the detectives did tell them what Jenn had said and when his story differed from hers.

Rabia Chaudry: [00:12:31] Now, here's where it seems that Baltimore City prosecutors first get involved, and that is on March 4th of 1999. And Jenn meets with Detective Ritz and the prosecutor in the case. Notes say on March 4th, 1999, your investigator, along with Detective William F. Ritz, had the occasion to respond to the state's attorney's office violent crimes unit and interview Jennifer Pusateri along with her attorney.

Susan Simpson: [00:12:54] So we don't know what happened during this March 4th meeting between Jenn and her attorney and the prosecutor. We don't know why it was scheduled or what happened during it. There's no testimony about what happened there. No one seems to acknowledge that occurred. And if Gutierrez knew what happened, she never talks about it. And this goes back to to what we discussed a few episodes ago about how weird it is that Jenn, with her attorney, goes to talk to the cops and confesses to them that she's guilty of accessory after the fact to murder. And we talked about then how this suggests there was some kind of deal in place because any attorney worth their salt is not going to have a client waltz in and confessed to a crime absent some strategic reason. Perhaps in this case, some kind of gentlemen's agreement that if Jenn talked and give a story, she wouldn't be prosecuted for it. And she wasn't. So it seems like that deal paid off.

Colin Miller: [00:13:46] And we also know the very next day, March 5th, that is when the stet was entered on Jay's January 27th charges. Again, as we mentioned before, a stet means that those charges are placed on an inactive docket. And, after a year, the decision was made not to pursue those charges.

Susan Simpson: [00:14:03] And stets can also be made with conditions in that if those conditions are violated, the prosecution goes ahead. Again, it's not uncommon for a stet to be entered. But here we have a stet being entered on fairly serious charges that seem to have evidence supporting them. There's no explanation of why the stet is going to enter at this particular time, other than possibly a connection between Jenn's March 4th meeting with the prosecutor and the fact that Jay's charges get kicked to the curb the next day.

Rabia Chaudry: [00:14:29] Well, considering they were in the car together when he was arrested and then she's giving the statement connected to Hae's murder, I think it seems pretty clear about why a stet was immediately entered. But maybe that's just me.

Colin Miller: [00:14:46] Ten days later on March 15th, Jay gives his second official recorded interview. You might recall this portion of the interview from Serial. This is where Jay asks the detectives to turn off the recording device.

Susan Simpson: [00:15:02] Yeah. And just before Jay asked that, what are they talking about? Well, they're questioning him about whether he'd ever made an anonymous call.

Colin Miller: [00:15:10] Yeah. And then when Jay testifies at trial, he is asked by Gutierrez why he asked the cops to turn off the recorder. And according to him, the discussion related to the possibility of him acquiring a lawyer. And so here is Jay testifying to the nature of that conversation at trial.

Christina Gutierrez: [00:15:27] And when you asked the police to turn off the recorder, sir, what was the subject of the conversation?

Jay Wilds: [00:15:38] Acquiring a lawyer.

Christina Gutierrez: [00:15:39] Pardon?

Jay Wilds: [00:15:39] Acquiring a lawyer.

Christina Gutierrez: [00:15:42] Acquiring a lawyer. So you asked them to provide you a lawyer in the middle of your tape recorded statement?

Jay Wilds: [00:15:52] No, ma'am.

Christina Gutierrez: [00:15:53] You asked them, how do you go about getting that?

Jay Wilds: [00:15:56] Yes, ma'am.

Christina Gutierrez: [00:15:57] And they answered you, did they not?

Jay Wilds: [00:16:00] Um. No, ma'am. They did not.

Christina Gutierrez: [00:16:00] They didn't give you any information about how you went about acquiring a lawyer?

Jay Wilds: [00:16:08] No, ma'am.

Christina Gutierrez: [00:16:09] They assured you, sir, that you had not been charged with any crime? Did they not?

Jay Wilds: [00:16:16] No, ma'am.

Christina Gutierrez: [00:16:18] They assured you that you had not *yet* been charged with any crime?

Jay Wilds: [00:16:25] No, ma'am.

Colin Miller: [00:16:26] At this point, Jay had not been charged with any crime and therefore was not eligible for a lawyer. And he was certainly inquiring about it. But he was shut down and told you have no right to an attorney at this point.

Rabia Chaudry: [00:16:37] This is a really difficult situation for somebody to be in. I mean, if you think about it, right? If you are faced with, you have prosecutors, you have police they are all coming at you but they're not charging you yet, although you could retain a private attorney, if you have the funds, you know, and people who do would be able to mitigate whatever pressure the state is putting on them. But if you don't and the only thing you can rely on as a public defender, you're kind of screwed.

Susan Simpson: [00:17:03] And Jay thought that he had it in control, which is exactly what the cops want him to think. Here's what Jay testified to at trial. *Gutierrez:* "And, sir, the more that you told them about that person that they had made clear was important...bless your...the more your anxiety went down. Did it not?" *Jay:* "Yes, ma'am." So the more he talked about how Adnan did it, the more he felt like he wouldn't need an attorney because he could get out of this without any charges against him.

Colin Miller: [00:17:30] So then a couple of days later, on March 17th, Jenn testifies before the grand jury. Now we've looked everywhere in the files. This apparently was never turned over. I mentioned before, under the discovery rules, there is the Jencks Act and in Maryland, what's known as Jencks/Carr. Again, Adnan's attorney, Gutierrez, should have gotten this, but was not. And that's interesting because we discussed last episode in the addendum, on March 18th Jay does the ride along. And at least my interpretation of that ride along is when he goes to the Pusateri residence, he only hangs out with Mark. And there's two notations saying Jenn first is not home. And and second, Jenn still isn't at home. I'm wondering, if we ever got that grand jury testimony by Jenn, whether she testified on March 17th that she wasn't at home on the afternoon of January 13th. And that's why Jay's story changes from March 15th to the March 18th ride along. Not sure. Again, it's missing information that could be helpful or might be irrelevant.

Susan Simpson: [00:18:28] What's interesting, too, though, is that in that March 18th statement, Jay is once again clear that he did not get picked up by Jenn at Westview Mall. Instead, Jenn picked him up from his house after Adnan dropped him off there. So, I'd be curious to see what Jenn said in her grand jury testimony. Did she back away from her initial statement in which she told the police that she picked Jay up at Westview?

[00:18:49] It seems like we don't have Jenn's grand jury testimony. We do have grand jury testimony from my brother, Saad, and from another member of the community, Bilal, that we're going to discuss in a future episode, though.

Colin Miller: [00:18:59] What we ultimately know is April 13th Adnan was indicted by that grand jury. At that point, Jay was interviewed by the detectives one last time about inconsistencies in his story. We also don't have any notes or transcription from that interview. That is the last time, officially, that the detectives speak to Jay until September, which we'll get to in a minute.

Susan Simpson: [00:19:20] You know, what's interesting? They never get Jay to testify at the grand jury.

Colin Miller: [00:19:23] Yeah. I mean, that's, again, not creating a record to further contradict him. He doesn't testify, and yet the detectives interview him the day he is indicted. There's no record of what is said during that interview.

Susan Simpson: [00:19:34] [He's] their star witness, and they do not want the grand jury to hear him.

Colin Miller: [00:19:44] So if we're looking then basically late spring into summer of 1999, we know from Jay's testimony at trial, at some point during the summer, he calls the public defender's office. He wants representation in the case, but he is told he doesn't qualify to have counsel appointed because he hasn't yet been charged with a crime. That's his status, basically, summer of 1999. Detectives aren't talking to him. Prosecutors aren't talking. He can't get an attorney. He's just out there dangling on a rope wondering what's going to happen next in the case.

Susan Simpson: [00:20:15] So Jay has no contact with the prosecution or the detectives. Doesn't know what's going to happen to him. The next thing that we hear on the record about Jay comes from "neighbor boy" or as he's now being called E. So "neighbor boy"/E had a police interview on August 2nd, 1999. The police did not take any notes. We don't know what they talked about in this interview, other than what E has recently told Bob on *Serial Dynasty*.

Personally, I'm skeptical of what his story was there. But taking him at his word, apparently the cops just wanted to ask him about various people and parties he'd been at, and who knew what. Although, at this point, understandably, he is a bit vague on the details. However, even if we don't have a record of what E told the cops, we do have a record of what he told the defense private investigator, one month later, on September 3rd, 1999. E actually hand wrote a statement in which he described what he knew about the case, and denied ever seeing a body in the car.

But one thing he said is particularly interesting, and that's that: "Jay spoke to the police about what he knew, but he never told me how he was involved. Jay told me the police wanted him to go to court, but he said he wasn't going." What I wonder is if he is the one who triggered Jay's plea deal, because if he told the cops the same thing he told the P.I., then the prosecution knew, after that interview, that they had a

big problem on their hands. And that's that Jay no longer intended to testify against Adnan. And if he didn't testify, they no longer had a case. So as of August/early September, the prosecution would have realized that their witness might do a runner.

Whatever happened, whatever triggered the cops into taking action, on September 6th they go back to Jay again. They haven't talked to him in, what, five months at that point? But they go to his house and say, tomorrow we're picking you up, taking you downtown. You're getting charged. And we're going to show you some attorneys for you to hire.

Christina Gutierrez: [00:22:24] You had asked Mr. Urick for assistance in getting this lawyer, right?

Jay Wilds: [00:22:28] No, ma'am.

Christina Gutierrez: [00:22:30] He just provided the lawyer?

Jay Wilds: [00:22:30] I was told, the day before, that I was going to be charged with criminal papers...

Christina Gutierrez: [00:22:39] The day before this day?

Jay Wilds: [00:22:42] Yes.

Christina Gutierrez: [00:22:42] So that would have been the 6th of September?

Jay Wilds: [00:22:44] Yes.

Christina Gutierrez: [00:22:45] And where where you when you were told that?

Jay Wilds: [00:22:46] The detectives were at my house. [cross talk] They were telling me, that I was going to have to be brought down. And that there was like two or three lawyers I was supposed to meet. There were people that do work for free, pro bono.

Christina Gutierrez: [00:23:08] To pick a lawyer?

Jay Wilds: [00:23:09] Yeah.

Christina Gutierrez: [00:23:10] Okay. So before you came down that day, you were told by the detectives that you were going to get a chance to pick your own lawyer?

Jay Wilds: [00:23:18] From...from...from...a couple lawyers...not...

Christina Gutierrez: [00:23:20] Okay, out of a couple? Pick a lawyer out of a couple, right?

Jay Wilds: [00:23:20] Yes.

Christina Gutierrez: [00:23:25] So that you would be able to select your lawyer?

Jay Wilds: [00:23:27] Yes.

Rabia Chaudry: [00:23:28] Is this not a really weird thing?

Susan Simpson: [00:23:30] That's weird.

Rabia Chaudry: [00:23:31] Yeah: 'we're gonna show you some attorneys you can hire...'

Susan Simpson: [00:23:24] I mean, even just the heads up that they're going to charge him. I mean, you know, the whole situation is bizarre. And I also wonder when exactly Jay called the public defender and ask them about acquiring an attorney for himself, and if that had something to do with the prosecutors finally taking action.

Rabia Chaudry: [00:23:50] Either way, it seems like a bit of an intimidation tactic to say we're going to charge you.

Susan Simpson: [00:23:56] Here's what Jay testified to at trial, describing how it was all presented to him.

Christina Gutierrez: [00:24:01] And on September when Detectives MacGillivray and Ritz visited you and told you you were going to be charged, that was a surprise. Was it not?

Jay Wilds: [00:24:11] Yes, ma'am.

Christina Gutierrez: [00:24:12] You hadn't heard from any source that you might be charged, right?

Jay Wilds: [00:24:16] No, ma'am.

Christina Gutierrez: [00:24:18] Much less with what you would be charged?

Jay Wilds: [00:24:22] No, ma'am.

Christina Gutierrez: [00:24:22] And nobody had spoken to you in any detail about the charge of an accessory after the fact, had they?

Kevin Urick: [00:24:34] Objection.

Judge Wanda K. Heard: [00:24:34] Overruled.

Jay Wilds: [00:24:34] No, ma'am.

Christina Gutierrez: [00:24:36] No one at all?

Susan Simpson: [00:24:37] So, yeah, the next day, early in the morning on September 7th, the detectives picked Jay up at his house and drive him to the prosecutor's office, where he meets prosecutor Kevin Urick for the first time. And then Urick immediately introduces him to [Ann] Benaroya, a defense attorney from Baltimore. Within a few hours of this meeting, Jay has agreed to be represented by Benaroya. He has agreed to a plea deal under which he pleads guilty to accessory after the fact to murder.

Colin Miller: [00:25:02] Urick then files the accessory charges against Jay by criminal information, which is a type of charging document. Then he, Jay, and Benaroya go across the street to the courthouse at 11:00 in the morning. Jay appears before Judge McCurdy. He announces that he's willing to accept the guilty plea. At this point, though, there is no factual proffer that's made. In other words, Jay doesn't have to go on the record and recite the facts of the case. The guilty plea is left, therefore, unfinished, to be resumed at a later date after we have Adnan's scheduled trial.

Susan Simpson: [00:25:35] So, yeah, just to put this in context. On the morning of September 7th, he's picked up by the cops. And then before noon that same day, he's already been charged, obtained an attorney, negotiated a plea deal, and gone before a judge to enter the plea, to a felony. Calling that lightning speed doesn't adequately express how insanely fast this is, especially compared to the normal glacial pace of the legal system.

Rabia Chaudry: [00:25:58] I have a question, and I, as somebody who hasn't practiced from a law ever, in cases like this, does the judge, himself or herself, do any kind of investigation into how the plea came about? What are the merits of it? I mean, is this legit? Is this person being leaned on? I mean, like is there any kind of light that the judge would shine on, like the lightning speed of this or like would trigger, some kind of concern?

Susan Simpson: [00:26:22] They do question the defendant about whether this plea is entered into voluntarily, whether they feel like they've had adequate explanations for what's going on, what rights they are giving up. So the whole question and answer thing does happen. And that's supposed to be the check in this scenario. But beyond that, no, they don't. Again, this was stressed and Serial because it's such a

big deal. In what universe does a prosecutor obtain an attorney for a witness in a criminal trial? I have never, ever heard of any case besides this one where that happened. No attorney I've spoken to has heard of the case that's happened. And if any attorney out there has ever seen this happen before, please get in touch and let us know, because as far as I'm aware, this is just something that does not happen.

Rabia Chaudry: [00:27:03] And Gutierrez was clearly incensed when she found this out, too. She blew her lid.

Susan Simpson: [00:27:07] Anyone would, because it's just so bizarre and it's just not something that's part of the criminal justice system. So, yeah, if someone else has seen this happen up there, I'd love to hear about it. But as of now, I've never heard of anything remotely like this occurring.

Colin Miller: [00:27:21] Looking at the details of the plea deal, it was basically that Jay would plead guilty to accessory after the fact. In other words, he helped in the aftermath of the murder, but not before. And the recommendation is a sentencing recommendation agreement, meaning the prosecution is going to recommend it to the judge who has discretion to either give a more lenient or a more harsh sentence. In this case, the recommendation is five years incarceration with all but two years suspended, with three years supervised probation.

So basically, in this case, sentenced to five years, he'd only serve two years in prison. Thereafter, three years probation. As I mentioned before, though, it's not a completed plea deal. It was incomplete. And Jay didn't have to go on the record. This is what's known in Maryland as the plea being held "sub curia." Basically, the way to describe it is it's the prosecution having the cake and eating it, too, in the sense that they can have this plea on the record. It sort of locks the defendant in and yet they can not get him on the record such that his statements factually could be used against him to contradict what he says as a trial.

Susan Simpson: [00:28:29] In fact, at Adnan's trial, Judge Heard commented on the fact that this deal look very unusual to her. And that, in all her years at the court, she'd never seen one like it. She also stated that, to her, it appeared that the deal had, in fact been done in a way to disguise its existence from the defense.

Judge Wanda K. Heard: [00:28:46] It would appear to the court that every effort was made to hide the existence of Mr. Wild's plea or attempted plea, because this says guilty verdict held sub curia. Which means what you did was you did everything except for have the court find the defendant guilty. Well, he held he held the issue of whether the defendant was guilty sub curia pending the state providing a statement of facts.

Kevin Urick: [00:29:24] Yes.

Judge Wanda K. Heard: [00:29:26] It appears. And the only reason why one would do that, in my mind is so that there would be no record of a guilty plea, because if there is no guilty finding then he hasn't been found guilty. He didn't hold sub curia the sentencing. He held sub curia the finding of guilt. The other thing that I find interesting is that, as counsel has pointed out, I have never seen a file like this before. Now I've work in the district and I have been around the court house from many a time, and I was a law clerk. But every indication, every printed page, every item is not computer generated except for this, for the case number for one witness to plead guilty, no witnesses. Which is so unusual. It appears very, very odd and unusual. And I can see where Miss Gutierrez would start to wonder.

Colin Miller: [00:30:18] I haven't found many reported cases on sub curia pleas in Maryland. There is a case from 1983. It's called Banks vs. State. In that case, Carl Banks was charged with first degree murder. He entered into a plea agreement to second degree murder that was held sub curia. The state later tried to back out of the plea deal. But the court of appeals of Maryland said no. The guilty plea had been accepted. It was only the sentence that was held sub curia. I'm not sure how the court would have treated it in this case. In Adnan's appeal, part of the claim was that under this plea deal, Jay couldn't have backed out. And that was sort of something not discussed the defense. There's not much precedent, though, so it's tough to say exactly what legal status Jay's plea had. As of September 7th, under Maryland law or really any jurisdiction's law before sentencing, a person can withdraw a guilty plea. The Banks case is more about benefiting the defendant than this state. But yeah, I mean, there should be no reason before the sentence is entered that Jay or any defendant couldn't withdraw that plea.

Susan Simpson: [00:31:15] At trial this question of whether or not there was actually a plea became a big subject of contention. Urick argued that it was. Gutierrez argued that, no, it wasn't. And the judge agreed with Gutierrez. Here's what Judge Heard said to Urick after he tried to tell her that this was a valid plea deal that could not be withdrawn.

Judge Wanda K. Heard: [00:31:32] Mr. Urick, we are splitting hairs here. There's no way that that is under 242. A guilty plea that would stand up before the court of special appeals or court of appeals. There's no statement of facts. So there's no guilty plea. Whether it was under oath or not, there's no guilty plea. It was a beginning of a guilty plea. There was the beginnings of something you might call a guilty plea hearing, but it was never finished. So it was not a guilty plea. There's a plea bargain. There's a plea agreement, but there's no guilty plea, not under the rule.

Susan Simpson: [00:32:01] So as of the time of Adnan's trial, Jay had not pled guilty at all and his plea would not be completed until the sentencing date in July. All right. But let's back up for a second. Why did Urick do things this way? Why did he do this sub curia plea? And why did he have Jay's attorney basically provided for him on a platter?

When he was being questioned by the court about why the deal had been done this way, in response to Gutierrez's challenges to it. Here's what [Urick] said: *"All of these cases detail that assistance of counsel is a fundamental right under our Constitution. Hence, it is not a benefit. It is a right. All attorneys have an obligation to respect that right and to seek to effectuate it. State's attorneys have a special position in regards to that, because we have no client for whom it would be a conflict for us in dealing with others. So we have to try to safeguard the protection of everybody that we deal with. Again, I point out that the case law, you know that quite clear, you're dealing with a fundamental right, not a benefit."*

I mean, this is nonsensical. There is no obligation for a prosecutor to find an attorney for a witness in a criminal case. In fact, there are reasons, very good reasons why they should not be doing so. But it's also clear that Urick was aware that there were some problems with how he was approaching this case and that there may have been troubling implications of what he was doing.

Rabia Chaudry: [00:33:40] Now, you know, Kevin Urick, when he gave an interview in December of last year to the Intercept, also talked about the plea deal and how it came about and why he arranged an attorney for Jay. And I think this is a really interesting exchange. So the reporter at the Intercept asked, you know, "Let's talk about Ann Benaroya's Jay Wild's attorney for a moment. Can you walk us to the situation? There was an implication of misconduct because you recommended her to Jay to represent him in the plea deal."

And this is what Urick had to say: "Jay had committed a crime which he had not yet been charged for. Second, he was a very important witness in the case and would be necessary to work on some sort of plea agreement. I don't know if the police suggested it or if we suggested that he talk to a public defender, but he talked to some public defenders and they wouldn't represent him because he wasn't charged with a crime yet. He went to several attorneys. They wouldn't represent him unless he paid a fee. Jay did not have the money for a private attorney. At the time, I had a case with Ann Benaroya. I knew from talking with her throughout the course of the case that she had been a public defender and she had a keen interest in constitutional rights. I told her about Jay. I said, 'Can you think of any place I can tell this guy to go because he wants representation. He's not comfortable talking to the state without someone advising him about what's best for him.' Prosecutors can't advise a criminal defendant what's in their best interests. They need independent counsel. She volunteered to talk to Jay to tell him his options the where he could go for representation. So I told Jay there is this attorney who is willing to talk with him about that. And I asked what he'd like to meet her. He said yes and [she] met with him."

Susan Simpson: [00:35:08] And we know that whatever Urick describing didn't actually happen because Jay met Urick and Benaroya at the same day, at the same time when he was taken down to the prosecutor's office. There's no way that Urick could have known that Jay was not comfortable talking to the state without someone advising him, because he didn't know what Jay thought until Jay was there, in the room with him, and Ann Benaroya, at the same time.

Colin Miller: [00:35:31] And I wanted to get some additional insight into these events on September 7th. And so I thought it made the most sense to talk to the person most involved, Ann Benaroya, Jay's attorney. She had initially reached out to me last fall about the case, and I wanted to definitely get her take on the case. And I'll say before going into the comments, I found her to be very straightforward and believed everything she had to say from her perspective. Basically, what she said was that she was working with Urick on a nightclub shooting case at the time. She was likely over at the courthouse on either September 7th or the preceding days. That is right there where the state's attorney's office is located. Her assumption is that Urick asked her if she would talk to Jay about the case. It's also possible it had been a few days earlier at the end of the nightclub shooting case that Urick had asked if she would talk to Jay.

By way of background to contextualize this, Benaroya came to law later in life. She eventually went to the George Washington School of Law. After graduating, she clerked on the Court of Special Appeals of Maryland, worked briefly at a D.C. law firm, decided she hated it, and then worked for the office of the public defender in Maryland from 1991 through 1998. At the time this case rolled around better, Benaroya had recently left the public defender's office because it had extremely long hours, she had a young child just starting first grade, and she wanted to see her child more. She was now working as a criminal defense lawyer at a small firm.

You might recall before that Susan did an interview with Chris Floor. As he related back then, the office of the public defender in Maryland had this so-called "10 day rule." Even though there's a right to an attorney, if an indigent defendant in Maryland failed to request representation within 10 days of trial, the public defender had no obligation to represent that defendant. According to Benaroya, she had a reputation in the community as being a, "true believer," someone who would step up, someone who would defend the rights of those accused. And that's why she believes that Urick approached her to represent Jay.

Here's her take specifically about September 7th. Sort of consistent with what we've been saying before. Her belief is that this state had delayed in charging Jay so the detectives could continue talking to [him]. They knew this and they charged him, he would ask to speak to the public defender and all questioning by the police would cease. She also figured that if she declined to represent Jay, he would have immediately been arrested. He would have been booked. He would have been denied bonds based upon the backlog at the public defender. It would have taken two to three weeks before he got an attorney. During that time, he would just be in prison.

Her impression was also, and this is, for me, groundbreaking, it really helps you understand what's going on here and the pressures that Jay was under. Her understanding was if Jay didn't play ball, prosecutors would have kicked the case from Baltimore City to Baltimore County. That's where Hae disappeared from. If Jay didn't cooperate, he had already incriminated himself with his various police statements. According to Benaroya, it would've been kicked from Baltimore City to Baltimore County. He would've been charged with murder one based upon saying he helped in the planning and a crime. The Baltimore County state's attorney at the time, Sandy O'Connor, she always sought the death penalty, basically in every case. In

Baltimore City, that was death eligible. Baltimore City, by way of contrast, basically never saw the death penalty. Demographics. Baltimore County, it's more suburban, more of a Caucasian jury. They wouldn't have treated Jay as well as Baltimore City. More African-American. Basically, he would've been seen more favorably. So that's Benaroya's position. She's brought in. She is asked by Urick to step up because she strongly believes in constitutional rights. She's a true believer. She steps up. And, you know, it's sort of between a rock and a hard place. Does [Jay] play ball? Does he accept this plea deal on September 7th or does he risk murder one, death penalty in Baltimore County where the odds are stacked against him?

Now, in terms of what she thinks about the case, we're sort of describing why, in this case, Benaroya would agree to the plea deal on September 7th. She said that, she at the time believed Jay. And she still, in fact, believes Jay. She believes that it was a traumatic experience, that he saw Hae's body in the trunk of a car and that that was etched into his head forever. She found him to be very credible.

That said, Susan, you and I both talked to Benaroya and brought it to her attention that Jay has five, six, maybe even more versions of the trunk pop and location, including changing this most recently in the Intercept interview and Benaryoa, you know, she was surprised. She was unaware that Jay had changed story so many times. In fact, she didn't realize that in the Intercept interview, he drastically changed the version of events. Now, I will say that Benaroya said it's completely unsurprising, and it's certainly common for people involved in crimes to change their story. The question is, and the question that everyone has in this case is, you know, obviously some changes are understandable, they happen, but the gravity and the number of the changes here, is it's such that it completely undermines his credibility? Again, she found him credible. She still believes his story, but she wasn't aware of the gravity and number of the changes in this story.

Susan Simpson: [00:41:09] So here was a deal that Jay was offered by Urick: agree to testify how I want you to testify, or face the death penalty. At that point, Jay didn't really have many options. He'd told so many stories and so many ways that the prosecution could pick and choose what they wanted to do with him. In a very literal sense, he was being told that if he did not keep Urick happy, he could end up being executed. We don't know exactly what happened during the September 7th meeting, but we do know that Benaroya was encouraging Jay to sign the deal. Jay testified that as a result of this and other things, he became concerned that Benaroya had only been brought in in order to make him take the plea.

Christina Gutierrez: [00:41:47] Mr. Wilds, when there came a time that you had questions about [Benaroya], you answered questions about the plea that had gone down that day, did you not?

Jay Wilds: [00:41:59] Yes, ma'am.

Christina Gutierrez: [00:42:00] You thought, in your words, that things "smelled fishy." Did you not?

Jay Wilds: [00:42:05] Yes, ma'am.

Christina Gutierrez: [00:42:06] And by the use of that term, you meant that it didn't smell quite right, did you not?

Jay Wilds: [00:42:12] No, ma'am.

Christina Gutierrez: [00:42:16] I want to make sure.

Jay Wilds: [00:42:16] I'm agreeing with you...

Christina Gutierrez: [00:42:18] That they didn't smell right?

Jay Wilds: [00:42:19] Yes, ma'am.

Christina Gutierrez: [00:42:20] Right? And by not smelling right, they didn't make you feel too good, did they?

Jay Wilds: [00:42:24] No, ma'am.

Christina Gutierrez: [00:42:25] You came to have questions about how it was that Mr. Urick provided you a lawyer, did you not?

Kevin Urick: [00:42:33] Objection.

Judge Wanda K. Heard: [00:42:34] Overruled.

Christina Gutierrez: [00:42:35] Did you not?

Judge Wanda K. Heard: [00:42:35] Was that the reason you thought it smelled fishy?

Jay Wilds: [00:42:38] No, ma'am.

Christina Gutierrez: [00:42:38] Well, sir, you had thoughts like, it sure felt like a conflict, did you not?

Jay Wilds: [00:42:45] Yes, ma'am.

Christina Gutierrez: [00:42:45] That was the word you used, was it not?

Jay Wilds: [00:42:47] Yes, ma'am.

Christina Gutierrez: [00:42:47] That the conflict was that it didn't appear to you that the lawyer was working for your interest. Isn't that right?

Jay Wilds: [00:42:57] Yes, ma'am.

Christina Gutierrez: [00:42:58] And you had suspicions that because of the appearance of things, that the lawyer might be working for his interests. Did you not?

Kevin Urick: [00:43:03] Objection.

Judge Wanda K. Heard: [00:43:04] Overruled. Is that what you were thinking, Mr. Wilds?

Jay Wilds: [00:43:12]Somewhat.

Christina Gutierrez: [00:43:12] Somewhat. And you knew that it wasn't quite right that the lawyer is working for his interests, but acting as your lawyer. Isn't that correct?

Jay Wilds: [00:43:23] Yes, ma'am.

Christina Gutierrez: [00:43:23] That's what you meant by "it smelled fishy," is it not?

Jay Wilds: [00:43:27] Yes, ma'am.

Susan Simpson: [00:43:30] We also know from the court records that Benaroya thought she was representing Jay for a murder charge, because on her notice of appearance sheet, that's what she wrote. The charge Jay was facing and that she was brought in to represent him for was murder, not accessory. So she was aware and Jay was aware that the options he was facing were very stark in their possible outcomes.

On the one hand, you had a potential death penalty situation. On the other hand, you had what amounted to a slap on the wrist, essentially, with accessory after the fact and a possible two year charge. I mean, it's not a hard decision to make. And from that point onwards, I completely understand why Jay said everything he said, because his only goal was to keep himself alive.

And this goes back to the question I asked earlier, why would Urick do things this way? Why set it up so Benaroya represented Jay?

We've discussed what Urick said motivated him to take such an unusual course of action. But it's bunk. The conflict of interest, the ethical concerns, all weigh against the prosecutor ever selecting an attorney for a defendant he has threatened to prosecute for murder. Defendants don't need prosecutors to do that.

That's what public defenders are for. Besides, Urick's motivation was not some sudden noble concern for Jay's Sixth Amendment rights. To Urick, Jay was a murderer that he was willing to boot the county to face capital punishment.

So what was it? Why did Urick arrange things like this? He wanted Jay to be locked in, right there, right then to a deal he could not refuse, one that would leave Jay with no realistic choice but to testify as Urick wanted. And I'll be honest, I think Ann Benaroya got played by Urick. Like Jay, when she walked into the SA's (state's attorney's) office that day, she was faced with a choice: Step up and represent Jay, give him the legal counsel he needed to escape a horrible fate relatively unscathed, or else walk away knowing that Jay would be arrested, jailed, charged in the county, and if things didn't go well, wind up facing a sentence worse than life. Urick knew she couldn't say no. And Benaroya did step up. Jay needed help and she could offer it. It's almost certainly thanks to her that he ended up with the outcome that he did, one much better than he should have ever expected to receive, and as a result, Jay was charged and locked into a guilty plea he couldn't back out of, within the space of a few hours. There would be no second guessing. Jay would show up to testify because his now or never deal was too good to give up.

We've mentioned before that Jay mentioned being dissatisfied at some point with Benaroya's representation. The next event that occurs, and we don't know the date in which it happened, was that there was a meeting between Benaroya, Jay and Judge McCurdy in chambers. It's unclear what happened to lead to this meeting because we have Urick talking to the court at trial, and he describes how his office became concerned with the plea arrangement. And as a result, they decided to put this before Judge McCurdy, for him to talk to Jay and give it a stamp of approval? It's not clear. What I find significant, though, is what Urick tells the court about why they decided to arrange this meeting. It starts off with Gutierrez telling the court about the meeting in chambers before Judge McCurdy and saying, well, there has to be a reason for this. What caused it to happen?

Christina Gutierrez: [00:47:34] Having taken the beginnings of a plea, or if you accept Mr. Urick's version 'ah, well he thought that was a guilty plea,' then what reason would exist to ask the judge to review the voluntariness or the adequacy of his satisfaction with the lawyer?

Judge Wanda K. Heard: [00:47:51] Good question.

Christina Gutierrez: [00:47:52] Something had to happen.

Judge Wanda K. Heard: [00:47:54] Did something happen post plea?

Kevin Urick: [00:47:56] We were just discussing all possibilities. We thought in an abundance of caution, we should.

Judge Wanda K. Heard: [00:48:04] What does that mean? Did something happen post plea?

Kevin Urick: [00:48:09] No. It was debating around our office how we were proceeding.

Judge Wanda K. Heard: [00:48:13] Post plea?

Kevin Urick: [00:48:15] Yeah.

Judge Wanda K. Heard: [00:48:16] On what? If he's pled guilty, the only thing is disposition. You need to have a conversation with the witnesses as to whether or not he's going to withdraw his plea? Is that what happened?

Kevin Urick: [00:48:28] No. We wanted Judge McCurdy to, so that we had to make sure that there was an independent judicial advisement of his right to counsel, that he understood it and that he was exercising it.

Susan Simpson: [00:48:40] That goes on for a bit. But what's clear here is that Urick's office was having some doubts about what they were doing. They were having some kind of water cooler conversations in which they second guessed this decision to have your Urick handpick Jay's attorney. And, as a result, according to Urick, that's how this meeting before Judge McCurdy came about. Of course, Jay gives a different version of events.

Colin Miller: [00:49:01] Yeah. Jay says that he was trying to get in touch with Benaroya over the phone. She hadn't responded to a couple phone calls, so he called up actually McCurdy's chambers and set up the meeting.

Susan Simpson: [00:49:14] Actually, he called up Urick first. He called the prosecutor's office and tried to set a meeting with his attorney through them because, apparently, Jay believed that they would have a better chance of reaching his attorney than he would.

Colin Miller: [00:49:26] So he calls Urick, then he calls McCurdy's chamber and eventually Benaroya comes in and has this hearing before McCurdy. Benaroya's recollection is just that, you know, she's handling a lot of cases, she simply hadn't responded to a couple of phone calls by Jay, that he kind of view to her as the "public pretender," that that's not uncommon at all. It's interesting.

I was just meeting with a public defender here in South Carolina today. It's actually a cell tower ping case out of Greenville where the prosecution is trying to claim they can determine location within 500 feet based on a ping. And he said he, 'Yeah, absolutely, I got questions all the time: Are you an actual lawyer or are you getting credit to law school,' that the defendants don't view public defenders or in this case, a quasi public defender as real lawyers. And that, according to Benaroya is her recollection. She said, well, I remember that the hearing was videotaped, so I'm not entirely sure, but you can look at the videotape. Unfortunately, we don't have the videotape. It doesn't seem to exist, or at least it hasn't been produced.

And Susan, if I'm remembering correctly, Judge McCurdy himself apparently doesn't remember the hearing at all?

Susan Simpson: [00:50:35] Yeah. One of the weird exchanges that happened is when Gutierrez is telling the court how she and Murphy were both talking to Judge McCurdy and she asked him about this hearing and he didn't recall it. There's a lot of weirdness here that makes me wonder what the heck is going on. Because you have a hearing that's not on any documents. It's not showing up in the dockets. It's not showing up on any court records. There's no documentary proof that it ever occurred. There was a video recording taken of this ex parte hearing. But again, the video can't be located and can't be found. And then you have the judge telling both the prosecutor and the defense attorney that he doesn't really recall what they're talking about when they try to ask him about what happened at this hearing. Just another one of those things about this case where you're like, really? That happened? So, yeah. We have no idea other than what Jay says happened about what happened at this meeting. Other than that, at some point the judge asked him to leave the room so he could talk to Benaroya alone, which I found interesting.

Colin Miller: [00:51:39] Then January 4th, 2000, Jay had his scheduled sentencing hearing based upon his plea. But that was canceled by Urick because he said that he wanted to make Jay's sentence in the case dependent upon how he performed at Adnan's trial.

Rabia Chaudry: [00:51:53] Now this is after the first trial had ended in a mistrial, and the second trial was about to begin.

Susan Simpson: [00:51:58] Yeah. They had originally scheduled his sentencing date for after Adnan's trial. But of course, in January, due to the mistrial, Adnan's case was not yet completed.

Rabia Chaudry: [00:52:15] Jay was then scheduled to be sentenced on July 7th of 2000. At his sentencing hearing, Urick speaks to Jay's remorse and his satisfaction with Jay's performance at Adnan's trials. Jay is given a suspended sentence with two years probation, which means he is released without serving any time in prison.

Susan Simpson: [00:52:32] At the hearing, Jay doesn't speak much, but he is given an opportunity to address the judge. And here's what he says.

Judge McCurdy: [00:52:40] Mr. Wilds, is there anything you want to say before impose the sentence?

Jay Wilds: [00:52:45] Just that whatever you do decide you know...I have a real hard time, even sitting here. Because I feel like people look at me, they think I'm a horrible person...and that I'm really sorry for my part in what happened.

Colin Miller: [00:53:07] Yes, the long and short of it is that Jay initially was supposed to be given two years incarceration with three years probation, at least [that was the] recommendation. Ultimately, he's only given two years probation and no prison term.

That feeds into the only other Maryland case I found, a reported case where a plea deal was held, sub curia that is Harris v. State. It also involved Judge McCurdy. In that case, Robert Harris was in a car with his fiancée, Teresa McLeod. It was January 26, 1996. A masked gunman, who was later identified as Russell Brill, approached the two of them. End result, Harris is shot in the leg. McLeod is fatally shot. Brill had a record of drug dealing. He eventually testified against McLeod pursuant to a plea agreement. According to Brill, Harris hired him to kill McLeod so he could collect on a life insurance policy. And indeed, according to the state, McLeod led Detective Darrell Massey, the lead detective on the case to the Glock that was used in this shooting, which had been buried in a cemetery.

On the other hand, Harris, he had no criminal record. His claim was McLeod was a mere acquaintance, that he had sold him the Glock. And as further support for his case, Harris, in fact, had McLeod's mother testify that she was the sole beneficiary on the life insurance policy that was taken out by her daughter, which kind of destroyed the state's three of motive. Despite that, though, just as in Adnan's case, the trial came down to the relative credibility of the suspect and his alleged accomplice. In fact, according to the Court of Appeals of Maryland, although more than 30 witnesses testified at trial and there was a good bit of conflicting evidence, the issue of Harris's role and what occurred and in particular who shot McLeod, hinged largely on the relative credibility of Harris and Brill, who told very different stories. In the end, again, like Adnan, Harris was convicted.

It was only at that point that we had issues that arose regarding Brill's plea agreement in the case. Again, the judge in the case was McCurdy. He accepted the plea sub curia. According to the deal, Brill was supposed to plead guilty to first degree murder in exchange for a sentence of 50 years. At trial, the prosecutor did acknowledge the plea was being held sub curia to see how real did at Harris's trial, and he said he might not oppose a modification in sentence at the ultimate sentencing hearing. After trial, in fact, the prosecutor didn't oppose the modification in sentence, and Brill was given 30 years as opposed to 50 years. After conviction, Harris appealed. He claimed a Brady violation.

And, in fact, the prosecutor was quite candid that he wasn't completely forthcoming. While he said at trial that he might not oppose the sentence modification, he eventually admitted that in fact, based upon Brill's participation, he wouldn't oppose it. And in fact, might even support a sentence modification. And so based upon that, the court found, even though the prosecutor was somewhat forthcoming, because he wasn't completely forthcoming about the modification and sentence, that was exculpatory information. It was material and it necessitated a new trial because, again, as we mentioned before, Brill was the key witness in the case. And evidence that his plea deal was a little bit sweeter than the jurors were led to believe was enough for the court to find we need to have a new trial.

Susan Simpson: [00:56:27] And I'd just like take a moment to discuss how problematic it is in these cases to have a witness who is involved heavily in the crime, being told that they can drastically reduce their sentence if they point their finger at a third person. It happened in this [the Harris] case, it happened in Adnan's case. It happened in Richard Glossip's case. He was scheduled to be executed, in, by the time this airs less than a week. The economics of it just lead towards injustice, because you have someone who themselves is facing the death penalty if they don't agree to tell a story that involves someone else as well. Whether the other person is guilty or innocent, the person being offered the deal has the same motivation to lie to save their own skin.

Rabia Chaudry: [00:57:10] No, I think it's important to point out how tainted this system is because of the incentives built in for these kinds of witnesses.

Susan Simpson: [00:57:21] And it actually does remind me a great deal of one thing that Ann Benaroya and I talked about, and that was how at this time, and probably still now, the Baltimore prosecutions office was treating so many cases under this RICO framework, under this drug conspiracy deals gone bad kind of mentality. And rather than take a case and have it as a straightforward murder case, or a straightforward drug case, they would turn it into a conspiracy involving great deals offered to some participants who then turned on others. And you can see that happened here, too. For some reason, they decided to approach this as a conspiracy to murder when the evidence for that is less than lacking. And outside of Baltimore, it happens as well. Like with the Glossip case where you have the murderer being given a deal that saves his life if he agreed to testify, that Glossip had paid him to do it.

Colin Miller: [00:58:16] Yeah. I mean, it's in this case at best, this plea deal and the sentence was contingent on how Jay performed a trial. Obviously, that is odd in terms of the incentives that Jay has while testifying. If, as in Harris, it was a bit more formalized than the jurors were led to believe, you know, obviously in this case, the plea deal changed in terms of what was recommended at the time of the September 7th deal versus what was given at the sentencing hearing. If there is a bit more there that we don't know about yet, but that exists, there's smoke. Is there fire? Very well the court could find a Brady violation like in Harris. We'll have to sort of see whether there's anything else to Jay's plea deal in this case.

Susan Simpson: [00:58:59] And there's a reason why there's so serious in terms of Brady material, in terms of due process, and that's because these witnesses are given such a huge incentive to tell a story that's going to keep them alive, or give them a sweet deal, and anything that could further tip that balance away from them telling the truth and closer towards telling whatever they need to tell in order to get out alive or get out without a jail sentence, is crucial impeachment evidence that the jury should have been aware of.

Rabia Chaudry: [00:59:39] Here's what the Court of Appeals of Maryland actually said in this case, and I quote, "The central predominating fact here is that the state's case against Harris depends largely on the jury's assessment of his credibility as opposed to that of Russell Brill. Directly or indirectly, Brill provided

most of the incriminating evidence against Harris. Brill was the one who presented the direct personal knowledge evidence of the conspiracy, the solicitation, and of Harris's criminal conduct at the scene. There was no other direct evidence of what actually occurred at the scene of the crime of who shot Miss McLeod. The corroboration of Brill's version of the solicitation and conspiracy from Jantz, from Joseph Brill, from Jennifer Petty and from Lisa Petty was derived in large part from what Russell Brill had told them. Wow.

Susan Simpson: [01:00:25] And keep in mind, none of those corroborating witnesses ever served any time, ever got charged. Like Jenn, they verified that the witness had talked to them about the murder, and told them about his plans. Like Jenn, they did nothing to come forward, nothing to stop the murder. And for me, based on the stories they were telling, there's a real question that never got answered as to whether Brill had been working with Jantz and the others to plan this murder and that they were his accessories rather than him being an accessory to the defendant who was ultimately convicted.

Colin Miller: [01:00:57] The parallels to this case are just so striking where you have this defendant with no record. The alleged accomplice with a history of drug dealing. All the information comes from this accomplice, the people he told about it. He has this plea deal. It's sub curia before McCurdy. It's just the parallels are all there. And we're not quite sure whether there was anything in terms of the prosecution not being completely forthcoming. But you can imagine that if they weren't, Jay was basically equally as important as Brill in securing this conviction.

Susan Simpson: [01:01:32] Oh, yeah. And Brill, of course, first told the police that he had shot McLeod. He later changes that story to claim that when the time came, he couldn't carry through with the killing, so the defendant grabbed the gun from him and shot McLeod himself before giving the gun back to Brill so that Brill could shoot him in the legs. You know, I have no idea if this guy's guilty or not, but there are a lot of holes in this story as well, including the fact that motive makes no sense. The police, so the prosecutors claim, that the defendant killed his girlfriend for the insurance money, but he was not actually a beneficiary to her insurance. So if this was a plot to kill for money, he missed a very vital step.

Rabia Chaudry: [01:02:38] So that is much of the story behind the plea deal with Jay. Although it's probably not the entire story, and it's also probably not the only deal that he got. But while all of this was happening, as police and prosecutors handled Jay in a way that he delivered exactly what they wanted, Adnan had already been arrested and legal proceedings against him had begun. A grand jury was convened. And while Jay was never called to testify at that grand jury and Jenn's testimony was never made available to us, we do have the testimony of two defense witnesses, my brother Saad and a mysterious community member named Bilal. But the weird thing about Bilal who led the charge to organize for Adnan's defense when he was first arrested, was that when it came to the trial, he was nowhere to be found. So why would a defense witness suddenly, poof, disappear? Next time on *Undisclosed*...[end credits]