UNDISCLOSED, The State v. Dennis Perry
Episode 18 - The Prosecutor's Immunity
November 29, 2018

[00:13] Mike Ellerson:
The part that makes me really believe that Barrentine did it was: if you had nothing to do with the case, why was he given immunity? You've been asking yourself the same questions.

[00:30] Susan Simpson: Mike Ellerson, the former investigator for the Camden County Sheriff's Office, was right. I had been asking myself that same question. A lot. Why had Donnie Barrentine, an alternate suspect in the case, been given immunity by prosecutor John Johnson to testify at Dennis Perry's trial?

Mike Ellerson:
Why? What was so that you gave him immunity. Why? That right there was my red flag saying I believe Butch and them, you know, Dennis didn't do it. Why would you give that - why does he -- why was he given immunity? For what? If he had nothing to do with it, why?

Mike Ellerson didn't have answers, and I didn't either. Although, it's not the fact of Donnie Barrentine receiving immunity that bothered me so much. That I could understand, that wasn't so weird. But what I couldn't get over, and couldn't understand, is the *reason* John Johnson had given that immunity.

"Finding that said DONNIE BARRENTINE was a witness to the death of Harold and Thelma Swain, was present at the scene and has given statements to other persons about his involvement, [ ] his testimony to such is necessary to the public interest,"

Why would John Johnson have written that Barrentine was being given immunity because he was a witness to Harold and Thelma Swain being murdered?

The only person who can answer that question is John Johnson, and he doesn't have any answers that he's willing to share. He's been asked before. In 2007, in an article about this case in the Denver Post, John Johnson said he can't remember why the

immunity agreement says Barrentine was a witness. “At this point," John Johnson is quoted as saying, "I can’t answer that question. We wrote it that way and we went forward with it. That’s all I can tell you at this point.”

I don't believe John Johnson. Writing that Donnie Barrentine was an eyewitness to the murders wasn't some kind of typo. He wrote that for a reason.

John Johnson might not be willing to give us an answer, but there’s somewhere else we can look. Over the years, Johnson has prosecuted lot of cases, and sent a lot of people to death row. And looking at some of those other cases may give us a few clues about what happened when Donnie Barrentine was given immunity in Dennis Perry’s case.

[2:50] Rabia Chaudry: Hi and welcome to Episode 18 of *Undisclosed - The Stave v. Dennis Perry*. Now you’ll notice that this is not an addendum -- due to scheduling changes, we actually have a full episode this Thursday instead. My name is Rabia Chaudry, I’m an attorney and author, and I’m here as always with my colleagues, Susan Simpson, and Colin Miller.

Colin Miller: Hi, this is Colin Miller, I’m an Associate Dean and Professor at the University of South Carolina School of Law, and I blog @EvidenceProfBlog.

Susan Simpson: Hi, this is Susan Simpson. I’m at attorney in Washington, D.C., and I blog @TheViewFromLL2.

JOHN JOHNSON'S HISTORY

[3:36] Rabia Chaudry: John Johnson was appointed as an Assistant District Attorney for the Brunswick Judicial Circuit in 1977, and he's been there ever since. He's prosecuted a lot of murders, and he's prosecuted a lot of them as capital cases. Now that's not unique to Johnson. Overall, as one study by the Atlanta Journal Constitution found, prosecutors in Brunswick were, overall, 14 times more likely to seek the death penalty than were prosecutors in Fulton County.

And John Johnson is good at his job, or at least, he's pretty good at sending people to death row. In 2007, John Johnson was even named Georgia Assistant District Attorney of the year. When then-District Attorney Stephen Kelley nominated Johnson for the award, he cited Johnson's work on the Swain case as a reason he deserved the honor. DA Kelley wrote:

> *"John has always looked for ways to prosecute when others would have given up. He has tried hundreds of cases. Twenty years ago, a preacher and his wife were murdered in Camden County. The murder went unsolved for years and was even aired on Unsolved Mysteries. Eighteen years after the commission of that crime, John successfully prosecuted the case. He literally spent months organizing and evaluating boxes and boxes of evidence."*

Since John Johnson has prosecuted a lot of murder cases in the Brunswick Judicial Circuit, it's no surprise that some of the potential jurors at Dennis Perry's trial had previously been on juries before him. One of those jurors had been the foreman of a jury in a previous capital case prosecuted by Johnson, and he also became the foreman for Dennis Perry's jury.

JIMMY FLETCHER MEDERS

[5:08] Susan Simpson: When I went to speak to the foreman, he didn't seem that surprised to see me. Turns out, he has a lot of experience with random people showing up on his doorstep wanting to talk to him about his experience in serving on a jury for a murder trial. I was just the first person to show up who wanted to talk about Dennis Perry's case. Over the past few years, the other people who've showed up on his doorstep have wanted to talk to him about the *other* case he was the foreman on.

The other case turned out to be the case of Jimmy Fletcher Meders. In the Meders case, the foreman informed me, the prosecution hadn't done the right thing. There'd been this evidence that the jury should've seen, but that they'd never gotten it. And as the foreman was telling me about all this, he seemed pretty upset about it -- or rather, I think disgusted might be a better word. People should do their jobs right, he said, and the prosecution had not done its job right here.

[6:02] Colin Miller: In 1987, a convenience store clerk working the night shift at a Brunswick Jiffy Mart was shot and killed during a robbery. There is no dispute that Jimmy Meders was present at the Jiffy Mart when the crime took place; he acknowledged at his trial that he'd been at the store at the time, along with two friends. The dispute is over who it was that had the gun, and who it was fired the shots that killed the victim. Was it Meders, or was it one of the two friends?

Greg Creel and William Arnold, the two friends that were with Meders that night, were never charged with any crimes related to the murder. Both Creel and Arnold were given immunity. They testified at Meders' trial that the three of them had been hanging out that

whole evening, but that they'd had no idea that Meders had a gun on him. They'd only learned about the gun when they stopped by the convenience store to get a snack, and Meders had suddenly pulled the gun out and killed the clerk.

But Meders also testified. He told the jury that it was *Arnold* who'd killed the clerk. And that it was Arnold who'd been in possession of the gun that entire night leading up to the murder. In fact, Meders said, the shooting at the Jiffy Mart had been the *third* shooting Arnold had done that evening. Before they got to the convenience store, the three of them, he, Creel, and Arnold, had all been riding together on Highway 303. They'd driven by these two houses where people that Arnold and Creel had been fighting with lived, and Arnold had pulled out the gun and fired a shot at both houses. He was aiming for the trucks in the driveway, Meders thought, And Arnold still had the gun on him when they went into the Jiffy Mart. It was Arnold who had shot and killed the clerk, Meders said.

Now obviously, the question of which of the three men had possession of the gun on the night the murders occurred was a critical factual issue to be resolved at trial. But the only evidence that Arnold had ever been in possession of the gun came from Meders himself, in his testimony. Prosecutor John Johnson argued to the jury that there was no evidence whatsoever that anyone other than Meders had possession of the gun that night, and that the two cooperating witnesses, Creel and Arnold, had always given the same consistent statement: that they hadn't even known that Meders had a gun until he'd pulled it out at the Jiffy Mart. At trial, John Johnson asked the lead investigator whether he'd found any evidence whatsoever that might indicate Arnold had ever been in possession of the gun that night. The lead investigator said no, there was no evidence to corroborate Meders' story. And Creel and Arnold both denied that Arnold had shot at any trucks.

The jury had obviously understood the significance of Meders' testimony about the truck shootings. During deliberations, the foreman, on behalf of the jury, had sent a note to the judge about it. The note read:

> "*Was there any reports [sic.] filed on the incident of the truck, on Ga Hwy 303, reported between the day, after or between then and now, being shot at??"*

The jurors were instructed to rely simply on whatever evidence had been produced at trial, and were sent back to continue deliberations. They would return a guilty verdict, and sentenced Meders to death.

[10:06] Susan Simpson: When I saw the note from the jurors in the Meders case, I suddenly understood why the foreman had been so bothered, almost offended really, by what had happened. Because the evidence that had been withheld from the jury, and the defense, the evidence that he'd been telling me about, it was the same evidence that he'd been asking about in his note. The jury had been so concerned about whether there were police reports that could corroborate Meders' story that they'd felt the need to reach out to the judge and ask about it. They'd gotten no answers though.

And then, years later, when Meders' attorneys had come to the foreman's door, the foreman had found out that those police reports had existed all along. And those police reports showed that about an hour before the murder at the Jiffy Mart, two drive-by shootings were reported on Hwy 303. At two different houses, someone had driven by and shot at a truck in the driveway, using the same kind of weapon that was used in the Jiffy Mart murder. And both houses had been connected to the men that Arnold and Creel had been feuding with. In fact, in one of the police reports, Creel was actually named as a suspect.

In other words, there were police reports that exactly corroborated Meders' story about what had happened on the night of the murder. And those police reports also directly contradicted the testimony of Creel and Arnold when they said that they'd never known about the gun until Meders pulled it out at the convenience store.

[11:28] Rabia Chaudry: These police reports were a surprise to Meders' post-conviction counsel, but they were not a surprise to Prosecutor John Johnson. He actually had them the whole time, he'd just decided he was better off at trial if he acted like they didn't exist. As a habeas court would later note in a ruling overturning Meders' conviction:

> *"When the jury submitted [its] question, Johnson realized that the jury was concerned about a report of a truck shooting on Highway 303, but did not believe he had any duty to advise the court of the existence of the police incident reports in his file and, therefore, stood mute."*

It wasn't just the police reports from the night of the shooting that supported Meders' story. John Johnson had also known that, just two months after the murder, one of those houses off of Hwy 303 had been attacked again. And this time, there was a witness, who identified Creel as the attacker. And the lead investigator would eventually admit, in his testimony at a habeas hearing, that he'd known all about the dispute that Creel and Arnold had with the people at the houses that had been shot at.

In 1994, Meders filed a habeas petition alleging ineffective assistance of counsel. 11 years later, in 2005, the habeas court that heard the petition granted it, finding that Meders had established that his counsel had indeed been deficient. The State appealed, and in 2006, the Supreme Court of Georgia reversed the decision, concluding that Meders' claim had been procedurally barred.

Meders appealed again, first to a federal district court, and then to the appellate court. Three months ago, in August, the 11th Circuit issued its order, denying Meders any relief, finding that under the Antiterrorism and Effective Death Penalty Act, the Georgia court's decision had not been unreasonable enough to warrant reversal. Which means, barring an unlikely appeal to the Supreme Court, Meders will remain on death row until he is executed.

[13:24] Susan Simpson: This case, the Meders case, is not a case in which a defendant is alleging complete innocence of the charges against him, and the evidence, from what I've seen, probably wouldn't support the claim that Meders didn't have some degree of culpability in the crime - the robbery, if nothing else. Meders had testified at trial to his involvement in that. Even under Meders' own version of the story, a jury could've found him guilty of murder under some theory of accomplice liability. He was there, he participated in the robbery, and he could be guilty of felony murder even if he never intended for the clerk to be killed.

But if John Johnson hadn't chosen to put witnesses on the stand who lied about the existence of those Highway 303 police reports, and if Meders had been given access to the evidence that corroborated his version of events, that would've given him strong evidence to present that Creel and Arnold were lying. And if so, rather than believing the state's version of the case, the jury may very well have believed some version of Meders' story -- that Meders was there, but that he hadn't been the one who fired the shots. That might not have changed the jury's verdict in this case, but there is good reason to think that it might've changed the jury's sentence. That evidence that John Johnson withheld, and that the jury never saw, may have been, quite literally, the difference between the life and death of Jimmy Meders.

LARRY JENKINS

[14:51] Colin Miller: The foreman wasn't the only potential juror at Dennis Perry's trial who'd been a juror in a capital case before. There was at least one other potential juror who had as well, though he didn't make it on to the Dennis Perry jury. During jury

selection, he informed the court that he now believed he'd sentenced an innocent man -- or, well, an innocent boy -- to death, due to how John Johnson had prosecuted the case he'd been on, and so he did not think he could be an unbiased juror in another trial prosecuted by Johnson.

That case had been the case of Larry Jenkins, a 17 year old special education student with serious cognitive and intellectual limitations, who was convicted and sentenced to death.

[15:32] Rabia Chaudry: The crime took place in January 1993, in Wayne County, one of the five counties in the Brunswick Judicial Circuit. One evening, in the little town of Jesup, a woman and her 15 year old son drove their van over to the laundromat they owned, to collect quarters from the machines there. They never returned home. Their bodies were found the next day; they had been shot and left by the train tracks.

Larry Jenkins had been connected to the murders in some way, that part isn't in doubt. The day after the murders, Jenkins and three of his friends were pulled over that evening while driving around in the victim's van, and they'd had rolls of quarters they'd tried to trade in for cash. All three friends were given immunity to testify against Jenkins. Only Jenkins was charged. And when Jenkins was interrogated, a police officer wrote out a statement for him, which implicated Jenkins as the sole perpetrator of the murders. Jenkins signed it. However, at trial, his attorneys had successfully gotten the statement suppressed. The trial court ruled that the statement was unreliable due to Jenkins' intellectual limitations, and the fact that it had been written for him by someone else. There was also no recording of the supposed confession to show how Jenkins had been persuaded to sign the statement.

An attorney named Kenneth Carswell was appointed as Jenkins' defense attorney. This appointment was made over Carswell's objections -- he did not want to represent Jenkins. He was pretty vocal about this too. During trial, he kept writing notes to himself about how much he didn't want to be representing Jenkins, how much he hoped Jenkins got convicted. And as the habeas court wrote in its 2005 decision overturning Jenkins' conviction,

> ***"****Prior to closing arguments, Carswell wrote down, "I could not go back to Jesup if Larry walks." Similarly, Carswell noted his discomfort with the representation: "When [defend]ing a criminal case the court personnel make you feel like a stranger in a strange land," he wrote. Later, he wrote, "If he is acquitted because*

> *the statement was excluded, how can I continue to live in Jesup? How can I live with myself."*

[17:36] Colin Miller: It wasn't just that Carswell was worried about what people would think of him if his client were to be acquitted. Carswell also had a busy caseload. One of his clients was a man named Woods. Woods was a regular client of Carswell -- a really regular one. During the time between Jenkins arrest and his appeal, Carswell represented Woods on 8 different occasions.

Woods was well known and widely feared in Wayne County. And Woods was also the man that Larry Jenkins told his attorneys was the actual killer in his case. It was Woods, he said, who'd planned the murders and shot the victims. When Carswell became aware of this fact, that his client in the capital case was alleging that his regular client was the actual murderer, Carswell did not seek to withdraw from either case. He just continued to represent both.

But in Jenkins case, he didn't represent him very well. Take the matter of Jenkins' cognitive limitations. He was a special education student who had never passed a grade of school in his entire life. His test scores, quote, "demonstrate[d] that [Jenkins] is operating at the lowest one or two percent of the population." And a footnote in a 2005 trial court opinion noted that:

> *On the Developmental Test of Visual Motor Integration (VMI), which Dr. Deming administered on November 9, 1999, [Jenkins] standard score was 66, and his age equivalent level was 8 years, 7 months.*

Prosecutor John Johnson argued that Jenkins' low IQ scores were due to testing methods that were culturally biased against African Americans, and not due to any cognitive limitations Jenkins may have had. And under Georgia law, it was Jenkins that had the burden of proving beyond a reasonable doubt that he was, quote, "guilty but mentally retarded." Due to his counsel's ineffectual defense, the jury did not find Jenkins had proven his cognitive limitations beyond any reasonable doubt.

[19:20] Susan Simpson: I gotta say, we could stop right there, right now, and I would already be deeply disturbed by what happened in Larry Jenkins' case. This was a horrible crime, and the community had a *strong* belief that someone needed to pay for it, but I struggle to see how seeking the execution Larry Jenkins was an act in the furtherance of justice.

And that's not where the story ends. Because John Johnson had known something the defense hadn't. Actually, he'd known quite a few things the defense hadn’t.

[19:50] Rabia Chaudry: First, John Johnson had known that a key eyewitness for the State, a woman who identified Jenkins as the man she saw with a gun after the killing, well, she’d initially told police that she had seen a man that night. But she hadn't known him and couldn't identify him. As the 2005 trial court held:

> *"[ ] Assistant District Attorney Johnson elicited testimony at trial from [the eyewitness] that she knew the Petitioner and it was he she saw with the murder weapon after the crimes, when Mr. Johnson knew she had made a prior inconsistent statement on the day the Petitioner was arrested. Her prior statement to the police immediately after the event -- that she had seen the man with the gun clearly and did not recognize him -- would have been powerful exculpatory evidence and could have changed the outcome of the trial."*

Second, John Johnson had known that the jailhouse informant, the one who testified that Jenkins had confessed to the murders with him while in jail, he had a history of severe psychiatric issues. In fact, Johnson’s own office had a psychiatric evaluation of the informant, and it said that if this informant was, quote, "found guilty of the pending charges against him, there was sufficient evidence to substantiate the consideration of a Guilty But Mentally Ill Plea."

Third, John Johnson had known about a police statement that had been given by the the girlfriend of the alternate suspect, Mr. Woods. She had told police that on the night of the murders, Woods had shown up at her place with bloodstains on his clothing, and with a gun and some jewelry he’d wanted to pawn. And the girlfriend believed Woods had been involved in the murder.

Fourth, John Johnson had known that, after police had received this tip from Woods' girlfriend, they went and interviewed Woods himself. Woods had provided the police with an alibi, but that alibi, as it would turn out, was false. The people that Woods claimed he had been with later testified that they'd never seen him that night.

And fifth, John Johnson had known that the gun used in the Jesup murders had been stolen. It had been taken from a home break-in. And Johnson knew that Woods was a suspect in the burglary.

Nevertheless, at Jenkins' trial, John Johnson had objected strenuously to all of the defense's attempts to introduce evidence that pointed towards Woods, and not Jenkins, as the triggerman who'd committed the murders.

[21:51] Colin Miller: In 2005, the United States Supreme Court ruled, in Roper vs. Simmons, that juveniles under the age of 18 are ineligible for the death penalty. Jenkins' death sentence was vacated. A trial court in Georgia, in a separate ruling, also vacated the verdict, finding that Jenkins had had ineffective assistance of counsel. Not only had Jenkins' attorney been hopelessly conflicted, as he represented Woods, the alternate suspect, but the defense had repeatedly failed to take even the most basic steps necessary for an effective defense. Moreover, there were at least 9 people who'd had information linking Woods to the laundromat murders, and defense counsel had never interviewed any them.

In 2014, Larry Jenkins went to trial again. This time, at his second trial, the confession that had been suppressed at the first trial for being unreliable, the one that a detective had written out for him, and that he'd signed, claiming to be the sole perpetrator -- well it wasn't suppressed. It came into evidence. He was convicted of both murders once again, and given two life sentences.

[24:57] Susan Simpson: The Jenkins case is also not a case that raises a question of actual innocence on all charges. Larry Jenkins was involved in the robbery, and he has said he was present when the murders happened. Same goes for Jimmy Meders.

But that doesn’t make what happened here any less wrong. There is no amendment in the Constitution that says, "It's okay for the prosecution to withhold evidence just as long as someone who’s guilty of something ends up in prison, in which case we'll just call it all even." Justice has to require, at least to some degree, the search for the truth, not just the search for a conviction. That didn't happen here, in either case.

And in both of these cases, John Johnson chose a trial strategy that maximized his chances of ensuring that some defendant, any defendant, would be convicted of murder and sentenced to death. It’s this Darwinian version of criminal justice, where you choose who to prosecute based not on who was most culpable, but based on who is least able to defend themselves.

It’s a strategy of: pick one to prosecute, and let the rest walk free. Even when the ones you're letting walk free may have had a bigger role in the case than the, say, cognitively limited juvenile you decided to go after.

And then of course there are the cases of actual innocence. Cases where you end up prosecuting the one who didn't do it, and letting the ones who may have done it walk free. Cases like the Larry Lee case.

LARRY LEE

[26:22] Rabia Chaudry: The Larry Lee case was also a case out of Wayne County. In 1986, Larry Lee and his brother Bruce broke into a house, intending on burglary. But they were still there when the homeowner, Charles Moore, returned. There was a shootout, and both Larry Lee's brother and the homeowner were killed. Larry Lee himself hadn't fired a weapon, but he was guilty of murder under the felony murder rule, and sentenced to life in prison. Larry Lee does not dispute this felony murder conviction -- his role in that case is not contested. But after Larry Lee's arrest in that case, he found himself charged with *another* murder, this time a triple homicide. It had happened months earlier. One morning, at around 6:00 am, someone had broken into the home of Clifford Jones. He, his wife, and his son had all been murdered. They were brutally beaten, shot, and stabbed to death, and a banker's bag of money, the proceeds from the restaurant the family owned, had been stolen.

The investigators decided to charge Larry Lee with the crime. He was convicted, and sentenced to death. The case was prosecuted by District Attorney Glenn Thomas. That's the same DA, you might remember, who refused to prosecute Donnie Barrentine because he, quote, "wouldn't have whores and crackheads in his courtroom." Anyway, DA Glenn Thomas only had two pieces of evidence against Larry Lee, and the first was Lee's sister-in-law, Sherry Lee. Sherry Lee had been the getaway driver in the burglary, the one where the homeowner and Lee's brother had been killed, and initially, she'd maintained that she had no knowledge of the Jones family triple homicide. But by the time of Larry Lee's trial, she was testifying that Lee and his brother had killed the Jones family. As the habeas court would write in a 2008 decision overturning Larry Lee's conviction,

> *"[Sherry] Lee, who had on three separate occasions denied any knowledge of the Jones murders, made the first of three statements incriminating Petitioner only after the prosecution team (1) falsely told her the state had evidence implicating her in the Jones murders; (2) suggested that she might be eligible for the $25,000 reward; and (3) told her that she failed the polygraph examination, and then only after she was granted immunity from prosecution. As [the investigating GBI agent] acknowledged in the evidentiary hearing, the statements are*

> *themselves conflicting and clash with the trial testimony of Ms. Lee. Moreover, when placed in historical context, the statements reveal a pattern in which Ms. Lee's accounts varied according to the evidence the State sought to incorporate in, or to excise from, her story.*

Rabia Chaudry: In other words, Sherry Lee got the Jay Wilds treatment. Initially she denied knowing anything, but when promised money and that she wouldn't be prosecuted, she began to implicate Larry Lee. Only, she couldn't keep her story straight. Every time investigators learned something new, Sherry Lee's story would change, to include whatever the new information was the cops had, even when the new info the cops had turned out to be wrong. Of course, the DA of the Brunswick Judicial Circuit never told the defense about all of Sherry Lee's inconsistent claims, making it impossible for Lee to defend himself against her testimony.

[29:25] Susan Simpson: The second piece of evidence the State had against Larry Lee was a jailhouse informant. And seriously, this informant, and everything having to do with him, well, it's just a full-on shitshow. If you want to know more, you can go to our site and read the record for yourself, ‘cause I'm not even going to try to explain it all here. This informant was lying, that’s very clear, but his story also kept changing, and the prosecution was just scrambling to explain each new lie the informant came up with, and… anyway, rather than get into the painfully ridiculous details of it, I'll just leave it to you with how the habeas court ruled in 2008. The court held:

> *“The prosecution's attempt to “clean up” their key witnesses’ lie was itself a lie and a fraud committed upon the Court in this case.”*

At the habeas hearing, the prosecution tried to blame all this on the jailhouse informant. They claimed that the informant had somehow bamboozled investigators with some tricky bit of deception. The habeas court wasn't having any of it, though: "Given that [the informant's] prison records place his IQ in the range of mental retardation, the Court is dubious of the suggestion that [the informant] would have been clever enough to have pulled off the trick.”

Colin Miller: It gets worse though. DA Glenn Thomas repeatedly told the jury that this informant had no motive to lie. When in reality, as the habeas court found, quote, "Indeed, [the informant] received virtually every benefit that could accrue to someone in his position." The judge wasn't kidding about that -- the informant got virtually everything an informant could hope for. Trustee status, promises of leniency for future charges

against him, the DA instantly and personally dismissing new assault charges filed against him, etc., etc.

There were other Brady violations in the case too. For instance, the DA neglected to tell the defense that there was an eyewitness who, right after the murders, saw a car speeding away from the crime scene, and that car was inconsistent with the Larry Lee's guilt. The state also didn't reveal that a second eyewitness, who claimed at trial to have seen a car like Larry Lee's speeding away from the crime scene, had initially told police she'd seen an entirely different kind of car. Actually, there's like half a dozen more Brady violations going on in this case, but we're going to skip ahead for now, and go to two specific issues brought up in the 2008 opinion, because of how familiar they seem after looking into Dennis Perry's case.

Rabia Chaudry: First, the State withheld evidence that a key eyewitness had "serious emotional and personality problems." To the extent that the witness's psychiatrist actually wrote to the DA, begging him not to call her at trial, saying she was too mentally unstable and volatile to testify. DA Glenn Thomas responded by writing to the psychiatrist with a list of facts that he, quote, "needed" the witness to testify to, and specifying the exact details he would need her to say at trial. The DA wrote in his letter:

> *"These little things are very material for the State, and I only hope you can help [the witness] to be able to help us to be able to convict those responsible for this triple homicide."*

Those little things, of course, were things that contradicted the physical evidence, and supported the story the State wanted to tell about Larry Lee. The habeas court, in its 2008 opinion, had harsh words for DA Glenn Thomas' efforts to coach this witness, but it also had harsh words for the trial court itself. Because the judge at Larry Lee's case had also received letters about how mentally unstable the witness was -- and that judge had had undisclosed, ex parte contact with the DA about it. The habeas court held:

> *“The fact that the trial court would have such a contact with the State outside the presence of the defendant and his counsel is appalling to this Court but is, unfortunately, consistent with the trial court's willingness to let the State "run the show" with respect to the trial of the case, compliance with discovery requirements, and duty to see that justice was done in the case.”*

The second thing from the Larry Lee case that feels so similar to the Dennis Perry case is how the State recorded witness interviews. Or rather, how it didn't. Instead of

recording interviews with the State's key witnesses, the investigators took notes during the interviews, then wrote summaries of those notes, and then destroyed any original notes or recordings from the interviews that they had. And then the State claimed that since there was no longer any original records from those interviews, the defense wasn't entitled to copies of these summaries, because, as summaries, they couldn't be used to impeach the witnesses anyway.

The habeas court wasn't having any of this. In its decision, it wrote:

> *"The State cannot have its investigators choose not to record a statement by a witness, make notes of the witness' statements, later "summarize" the notes, throw away the original notes, and then say that the "summaries" are not witness statements. Such flies in the face of all fundamental fairness and is more akin to the Nazi Secret Service investigations than those required by the laws of this State and Nation."*

[33:58] In the Larry Lee case, the problem with the prosecution's case wasn't just that its evidence was thin. There was also substantial evidence that *someone else* was guilty of the murders. Not Larry Lee and his brother, but another set of brothers. In fact, one of the initial investigators in the case, Det. David Dowdy, had come to the conclusion that Larry Lee was not involved, it was the Yarbrough brothers who'd killed the Jones family. In fact, the Yarbrough brothers later were caught committing another murder, similar to the Jones murder, and they went to prison for that. But if it was the Yarbrough brothers that actually killed the Jones family, we'll never know. Because the State ensured that all forensic evidence was destroyed, and unavailable for testing.

Colin Miller: And there was forensic evidence in this case. A lot of it. 47 fingerprints and palm prints were found at the crime scene, as well as unidentified hairs. None of them belonged to Larry Lee or his alleged accomplices. The jury never heard about any of that, though -- Larry Lee's defense counsel failed to introduce any of it as evidence at trial. Moreover, he failed to request a court order directing the State to preserve such evidence. As held in the 2008 court opinion overturning Larry Lee's conviction:

> *"Counsel's omissions in this regard have had profound consequences for Petitioner's continuing efforts to establish his innocence, as the State has lost or destroyed the exculpatory fingerprints and hairs and has destroyed the family room rug from which additional trace evidence could have been obtained."*

It's not clear what happened to those 47 fingerprints. Like much of the evidence in Dennis Perry's case, they're just gone, and no one can explain how or why that happened. Just gone. But as for the family room rug, there's no mystery. We know exactly what happened to that.

[35:34] Susan Simpson: On July 12, 1999, Larry Lee's habeas attorneys sent an Open Records Act request to the District Attorney's office, seeking access to the evidence in the Lee case. Prosecutor John Johnson wrote back to Lee's attorneys, and like many of John Johnson's letters to defense attorneys, it's pretty much just snark. Snarky letters to opposing counsel is kind of John Johnson's go to move. Anyway, in the middle of another sarcastic diatribe, in this letter to Larry Lee's attorneys, John Johnson included the following line, noting that he, "assumed [Lee's attorneys] will be trying to present this supposed evidence in some sort of hearing regarding Larry Lee." In other words, John Johnson knew exactly why Larry Lee's attorneys were trying to find the evidence in the Lee case.

Three days later, Prosecutor John Johnson wrote another letter. This letter was to the GBI. It said:

> *"This is to authorize you to destroy the large piece of rug you all still have in storage in this case. As you know, this case was tried some time ago and the defendant was convicted. We are now in State/Federal habeas corpus proceedings. Even if the case were to have to be retried, I would not expect this item to be introduced into evidence or needed.*
> *Sincerely yours,*
> *John B Johnson"*

And that's why the rug in the Larry Lee's case is gone. Once John Johnson found out that Larry Lee had attorneys who were looking into filing a habeas action for him, John Johnson destroyed it. Larry Lee's attorneys eventually got this letter from the GBI, but before that happened, before they actually knew what happened to the evidence in the case, and why it was missing. Here's the section of the transcript where Larry Lee's attorneys asked John Johnson about why it was all gone.

> *"Have you ever requested or instructed anybody at the GBI to destroy or dispose of any of the physical evidence in this case?"*
>
> *"No."*

> *“Is there ever a situation or instance in the district attorney's office where you requested that the GBI go ahead and dispose or destroy evidence, or is that up to them?”*
>
> *“You use the term 'ever,' and the answer to that question would be yes, [...] But not in this case.”*

That was a lie. Told under oath. Because John Johnson had personally written to the GBI and ordered the destruction of evidence as soon as he learned a habeas petition might be filed.

Rabia Chaudry: As a result of all the Brady violations, and as a result of the profound ineffectiveness of Larry Lee's defense attorney, his conviction was overturned in 2008. In 2015, the State dismissed all charges. He was taken off death row, and is now eligible for parole.

> *Had the jurors been presented with evidence concerning the key State witnesses' biases and motives for testifying and had the jury been made aware of the false testimony presented to it, there is a compelling likelihood that the jury would not reached a unanimous verdict recommending that the Petitioner be put to death.*

[38:27] Susan Simpson: Looking at Prosecutor John Johnson's prior cases, there's definitely a pattern. And I think that pattern carried over to Dennis Perry’s case, too.

When I first talked to juror Donna Turner, I had been so confused about some of the things she’d told me about the case. Much of what she remembered had been detailed, and accurate, but those details were sometimes combined in ways that made me feel like I was looking at a funhouse version of the case.

But the way Donna Turner combined those facts explains why she, more than the other juror we spoke to, had found Dennis Perry's case to be so emotionally and morally challenging.

> **Donna Turner:**
> Valentine's Day is when it was over, and we could go home. And I called my husband, and I said, “come get me, and when you do, don’t bring the kids.” I had him take me to- I’m gonna cry… sorry. I had him take me to Overlook Park oh Highway 17, and I squalled. I told him that I was so frustrated because I truly felt like the wrong man had went to prison.That we had to base it on whatever

> evidence they would allow to be presented, and I really, really felt like a guy who was granted immunity and sat on that stand was the guy who did it. Period.

At first, I couldn't understand where Donna Turner could have gotten all of this. The idea that Donnie Barrentine and Dennis Perry could've committed this murder together made about as much sense to me as believing that Daffy Duck and Lex Luthor had teamed up to commit a crime. Those two things don't go together, and they're not even from the same universe. But then, as we kept talking, I slowly began to realize that the way Donne Turner had interpreted the evidence made *perfect* sense. Because the prosecutor himself, through his immunity agreement, had told the jurors that's what happened here.

And Donnie Barrentine's immunity agreement *says* he was a witness to the Swain murders. Of course Donna Turner believed that's what happened -- why would a prosecutor have said that, if it wasn't true? The only thing Donna Turner didn't understand was *why* he'd gotten that immunity.

> **Donna Turner:**
> ... I remember coming home and telling him, I don't know what his involvement is in some other things, but evidently either he's either big time druggin' and he's got some good info for the state, or somethin' for him to be granted immunity. I don't agree with that.

There is no evidence that Donnie Barrentine provided any information to the state, good or otherwise. There is also no evidence whatsoever that Dennis Perry and Donnie Barrentine had ever laid eyes on one another before the day that Donnie Barrentine had testified at Dennis Perry's trial. There just isn't any. No one I've spoken to, in Camden County, Georgia, or in Marianna, Florida, or anywhere else, has ever suggested to me that Donnie Barrentine and Dennis Perry could have known one another.

But this theory is why Donna Turner voted to convict Dennis Perry, even though it wasn't Dennis Perry that she thought the evidence pointed at.

> **Donna Turner:**
> We saw the composite before he ever came into the courtroom. And golly, when he walked through the door, I was like, holy cow, that's your guy. Right there.

For Donna Turner, like for many of the other jurors in the case, that color composite image had been a significant piece of evidence in the case. It's just that, to Donna

Turner, it wasn't Dennis Perry it depicted. She just hadn't known *who* it depicted until Donnie Barrentine walked into the courtroom.

> **Donna Turner:**
> And I wish I could remember the guy's name, but for the life of me I cannot. But the guy that was granted immunity. If that sketch was not his twin, I'll kiss your grits.

In most cases, convincing even one juror that someone else, other than the defendant, committed the crime would be great news for the defense. It only takes one juror to hang a jury, after all. But in *this* case, convincing Donna Turner that Barrentine was the real killer didn't actually do anything to help the defense. If anything, it hurt it. Badly.

> **Donna Turner:**
> And I'm gonna go back to Barrentine, 'cause still I'm just convinced he pulled the trigger, he shot those people, and he had motive. I just believe that with everything I've got.

Because Donna Turner came away from the trial thinking that the evidence against Donnie Barrentine didn't mean Dennis Perry was innocent. It just meant that Donnie Barrentine and Dennis Perry were guilty together.

> **Susan Simpson:**
> What was your understanding of what he did do?
>
> **Donna Turner:**
> Um, that there was a church service going on, in Spring Bluff, and that he and Barrentine both went into the church, during the service, and that they, together, murdered this couple. Shot the deacon and shot the deacon's wife. Now, do I really believe that, in my heart, um … that the guy we sent to prison was inside the church? He may have been in the car, but I never believed he went in the church.

My guess is that, once we finally get transcripts of the closing arguments in Dennis Perry's case, we're going to realize that this theory about what happened is not Donna Turner's theory at all. My guess is that this is all Prosecutor John Johnson's theory, as explained in his closing arguments. Because the evidence Donna Turner recalls definitely didn't come up from any of the parts of the trial we do have.

For instance, remember how Donna Turner recalled there being evidence of Dennis Perry's DNA being found at Rising Daughter? Well, it wasn't just Dennis Perry's DNA that she recalled them finding there.

Susan Simpson:
So you feel confident he was there at the scene?

Donna Turner:
This is what I'm confident of, and I'm gonna tell you this. What I'm confident of is that him and Barrentine were together at some time, because there's two bottles with both's DNAs in the church yard.

Again, this isn't what happened. Two Pepsi bottles were found at the scene, but the State of Georgia lost them before they could ever be tested for DNA. There were two Pepsis, though, and maybe that could mean there were two people.

Donna Turner:
I know that the attorney had to have said, and this would have been the prosecuting one, not the defense, that the bottled put them together.

To be clear, I don't think John Johnson literally said this at closing arguments, not in the strong sense that Donna Turner recalls. But Donna Turner got this idea from somewhere, and if John Johnson didn't suggest in his closing arguments that Donnie Barrentine and Dennis Perry had done this crime together, well, then you can kiss my grits.

The real mystery to me is why Donna Turner is the only juror we've talked to who was convinced Barrentine had been at the scene. Given the immunity agreement, it's the only explanation that really makes sense. But one reason he was so forgettable may have been because of what happened during deliberations. It all goes back to the foreman of the jury, and his interpretation of what Donna Turner called, the box.

Donna Turner:
But this wasn't his first murder trial, and for a lot of us it was.

Susan Simpson:
It usually is.

Donna Turner:

> Yes. And he really kind of orchestrated stuff. And we would bring in a lot of things that we weren't allowed to bring in, you know, "But you got to think about this …" "Well we can't use that! We have to deal with exactly what this fact is now. I think he's guilty."

As Donna Turner remembers it, the foreman's interpretation of evidentiary rules meant that you could only consider exactly what was before you, nothing else. If it's out of the box, you can't look at it.

> **Susan Simpson:**
> Did you ever discuss Barrentine with him?
>
> **Donna Turner:**
> We did discuss Barrentine some.
>
> **Susan Simpson:**
> What did he say?
>
> **Donna Turner:**
> We can't consider him at all. He was granted immunity and he's not on trial
>
> **Susan Simpson:**
> He told you you can't consider him as a suspect?
>
> **Donna Turner:**
> Um, that we couldn't consider him in this trial.

Hearing Donna Turner, all I can think of now is the foreman's experiences in the other trial he'd been on, the Jimmy Meders trial. In that trial, the foreman had actually tried looking outside the box. He'd tried asking about police reports for the Highway 303 shooting, and he'd been slapped down. The court had said, "No, just consider what is directly before you and nothing else." Because Prosecutor John Johnson had buried the evidence of the Highway 303 police reports, and the jury foreman had learned his lesson: that he wasn't supposed to take into consideration any evidence that might exist, but wasn't there in court.

And after learning this lesson in the Meders trial, the foreman had brought it with him to Dennis Perry's trial.

Donna Turner:
You've got to focus on what was presented, what we can use, and you gotta forget the rest.

Susan Simpson:
And you can't use Barrentine?

Donna Turner:
Right. You can't use Barrentine.

Susan Simpson:
Did anyone question him on this or push back, or ask him why-

Donna Turner:
No, no everybody felt like, "Oh, well you've been on a murder trial before, so hey."

There's something else too in the file, that shows that this theory that Barrentine and Dennis Perry did it together was what John Johnson believed had happened. It's in one of those snarky letters from John Johnson to the defense attorneys, and there's a line that I keep going back to. Johnson is responding to a letter from Defense Counsel Dale Westling, where Dale Westling complained about how Johnson hadn't handed over some critical info on Donnie Barrentine and Jeff Kittrell. And in Johnson's letter, it has this throw-away line. It says:

> *"Actually, there is an explanation of the facts of this case that would make all of the witnesses and you and I to tell the truth. Maybe that will come out in the trial. Who knows."*

An explanation of the facts that would make all the witnesses and the prosecution and the defense attorneys to be telling the truth. That doesn't exist. It's not possible. But if John Johnson thought it was possible, it must be because he believed that both Donnie Barrentine and Dennis Perry were guilty of this murder. And despite this, John Johnson was fine with Donnie Barrentine walking free, just so long as it meant that John Johnson got Dennis Perry.

I would like to take a moment here to point out just how insane this theory is. Donnie Barrentine's connection to Georgia is through his cousin, Greg Barrentine, who had once lived in Waverly before moving a few miles north to Waynesville. Donnie worked

for Greg, who was fairly high ranking in this organization, such as it was. They called themselves the Dixie Mafia, and they were drug traffickers.

The organization that Greg Barrentine mostly worked with was based out of Wilkes County, North Carolina, but they had contacts all over the south, including all up and down the Georgia coast. And the alleged motive for why Barrentine's group would've been targeting Harold and Thelma Swain, at least according to some of the witnesses that investigators have spoken to over the years, has to do with one of the Swains' relatives, a guy named Lawrence Brown. He was also a drug trafficker. Three weeks after the Swains were killed, he was arrested when customs found that he was trafficking a lot of marijuana into the ports of Savannah. And it was this relative who, allegedly, turned informant. And the story goes that, since the Dixie Mafia couldn’t find Lawrence Brown, they'd decided to deliver a message to the Swains instead.

But Dennis Perry is not Dixie Mafia. Dennis Perry wouldn't last a day in Dixie Mafia. Dennis Perry wouldn't last an hour. Donnie Barrentine was part of an organized and sophisticated operation working with Colombian cartels to move tens of thousands of pounds of marijuana and basically plane loads of cocaine across international borders. Plus a few million Quaaludes here and there, and maybe some light arms trafficking, just for good measure. Meanwhile, Dennis Perry's record is for things like having an open container on the beach. If you think Donnie Barrentine's group would ever use Dennis Perry to carry out a hit, well, I've got a bunch of Southeast Georgia swampland to sell you.

[50:30] Rabia Chaudry: All of this would've been news to the jury, by the way. There was nothing about Donnie Barrentine's Dixie Mafia ties that came out at Dennis Perry's trial. The name Lawrence Brown was never even mentioned. The jury would've had no clue whatsoever about any motivation that the Barrentines' group could've had to kill the Swains.

But even if the jury didn't get to hear about it, there is a little bit we do know about this drug trafficking ring. That’s because, from 1980 onwards, it was under investigations. Plural. There were a lot of investigations going on, by a lot of agencies. The DEA, FBI, Customs, GBI, NCSI, The FDLE, pretty much any law enforcement acronym you can think of was keeping an eye on these guys, one way or another, and all of them were trying to build cases against the traffickers. They were having some success, too. The summer of 1982 was a particularly bad time for Barrentine’s gang, and many involved in the operation were either arrested or got indicted and went on the run.

And that's why, in June of 1982, Greg Barrentine tried to turn informant. I say "tried" because, ultimately, the investigators would turn him down on the offer. The government had tons of informants within the Wilkes County group already, and they didn't need Greg Barrentine to make their case. “Thanks, but no thanks”, they told him. But before investigators had turned him down for good, Greg had tried to convince them of his value as an informant. He’d handed over materials that he thought would be helpful to them, things that might help put together a case. Things like his personal phone directory, with the names and contact information of people the investigators might be interested in knowing about.

[52:09] Susan Simpson: It's a fascinating list of people, sort of a glimpse into the social networks of a cocaine smuggler from the 1980. In general though, there are not a lot of great reasons for your name to be on this list. If your name is on there, there's a real good chance you were involved in the drug conspiracy, at least on a part-time basis. Maybe you were a shrimp boat captain who didn’t always haul shrimp. Or if you weren't involved on the drug side, you were probably someone who knows Greg Barrentine for other not so great reasons. Like, someone from the dog fighting rings, or say a veterinarian that treats dogs from the fighting rings. Names and contact information that Greg Barrentine thought he could use to try and buy himself a lighter prison sentence.

Which is why, when I read through it, there was one name on it that list that made me stop in my tracks. Because I recognized it. It was the name of a juror from Dennis Perry's trial. And the phone number listed beside the name was the same as the home phone number that linked back to that juror.

Now, fast forward several months, and I was able to figure out that this name, the one on Greg Barrentine's phone list, it was ***not*** referring to the juror himself. But it was that juror's father. Which meant I really, really needed to talk to the juror to find out if there anything more going on here. Especially since I knew, from talking to other jurors, that this juror had been one who was particularly gung-ho about Dennis Perry's guilt.

So I did talk to the juror, and he told me he hadn’t known about any business that his father may have had with the Barrentines. He also told me that he'd never once discussed Dennis Perry's trial with his father either. In fact, he told me that he didn't even recall that there'd *been* an alternate suspect in the Dennis Perry case.

I have no reason not to believe the juror. As far as I know, I was the first one to ever break the news to him that his father might not have always been the completely upstanding businessman that he’d always believed him to be.

But still, it is *hugely* disconcerting to me to know that this man had gotten on to the jury in the first place. Dennis Perry's defense was that Greg Barrentine's drug trafficking ring was responsible for the murder of Harold and Thelma Swain -- *no one* who had close family members that were connected to this drug trafficking ring should've ever made it onto that jury. Or, at the very least, there should've been some token effort made to stop anyone like that from getting on the jury.

Again, we don't have the voir dire transcripts, but as far as I've been able to tell, there was no attempt made during jury selection to identify whether any jurors were connected to people that the defense attorneys were planning to blame for the murders.

This, clearly in light of the one juror, was not some hypothetical concern. Greg Barrentine had many contacts in the Brunswick area, and the defense attorneys should've known this. They had, or should have had, documents that showed just how active Greg Barrentine's drug trafficking ring was in Brunswick. Heck, the defense should’ve had documents that showed how Greg Barrentine's drug ring had a major stash location just four miles down US-17 from Rising Daughter. And not only did the defense attorneys make no effort to explain to the jury anything about this drug ring or its potential relevance to the Swain case, the defense attorneys didn’t even make the most basic of efforts to make sure people connected to the drug ring didn't end up on Dennis Perry’s jury.

[55:19] Susan Simpson: That’s all for episode 18 of Undisclosed: The State V. Dennis Perry. We’ll be back on Monday with Episode 19, and we’ll resume our regular schedule after that.

Mital Telhan, is our executive producer. Our logo was designed by Ballookey, and our theme music is by Ramiro Marquez and Patrick Cortez. Audio production for this episode is done by Hannah McCarthy.

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And if any of our listeners out there have information on Dennis Perry's case, we would love to hear from you. Please reach out. You can contact us by email at undisclosedpodcast@gmail.com, or by phone and leave us a message at 410-205-5563.

That's all for this week, and thanks so much for listening.