

UNDISCLOSED, the State v. Adnan Syed

Addendum 4: Mr. S's Polygraphs

June 1, 2015

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[0:33] Rabia Chaudry Hi, and welcome to the fourth *Undisclosed: Addendum*. My name is Rabia Chaudry, and I’m joined with my colleagues and co-hosts Susan Simpson and Colin Miller.

A quick announcement: a few days ago on Friday, Justin Brown, Adnan’s post-conviction attorney, released a statement. Barry Scheck, a very, very well-known name, a very prominent person in the field of wrongful convictions, has joined the legal team to help Justin, uh, in this case and bring to bear all of the resources of the, uh, Innocence Network. In case you don’t know, Barry Scheck is, um, a giant in the legal field and especially in, um, wrongful convictions. He’s also one of the co-founders of the Innocence Project and Network, so this is very exciting news and we’re also very grateful to, um, all of the folks who work, uh, at Innocence Projects ar--across the country.

Now, you might remember in last week’s episode, we went through the 28-day missing persons investigation between January 13th, 1999, and February 9th, 1999, the day Hae Min Lee’s body was found in Leakin Park.

Hae Min Lee’s body was found by somebody we are going to refer to as Mr. S, and according to his story, he happened to come across her body when he had pulled over quickly to take a leak, gone back into the woods, and found it behind a log. Initially, Mr. S went to the authorities himself, uh, but apparently he became a suspect, and we know that because the police decided to administer a polygraph test to him

The first test they gave to Mr. S was on February 18th, 1999, and Mr. S actually failed it. What they decided to do was then give him a second test not too long later on February 24th, 1999, and he passed it.

What’s always bothered me about the two tests is that they were totally different tests. Um, the very first test actually ask [sic] question like, are attempting to withhold any information about the death of the female you found in the park? Did you do anything to that girl to cause her death?

Had you ever been to the spot where the girl was found before the day you found her? And had you ever been in the company of that girl you found before the day you found her?

So, he failed this test, and the second test was very different. The second test, uh, was basically a series of questions--seven questions--that asked only one thing, and that was: did Mr. S know the way in which Hae Min Lee died? So, for example, the questions read like this: do you know if that girl you found died because she was stabbed with a knife? Do you know if that girl you found died because she was poisoned? And on and on and on. Seven questions with different types of scenarios in which Hae Min Lee could have been killed. Mr. S answered "no" and he passed.

I never quite understood the utility of giving two tests that have such different questions. Um, I didn't, eh... understand why the police would not repeat this first set of questions because it seemed like those were kind of important questions. [A] theory that I always, uh, had was that it almost seemed like they wanted to be able to give him a test in which, um, he passed. But it could be that all these years, uh, I was wrong about my theory.

Um, this week we are bringing to you an interview that Colin has done with a polygraph expert whose name is Brian Morris, and Brian read these polygraph tests in a very different way.

[4:32] Colin Miller I've always been interested in this aspect of the case, and so I decided to follow up by contacting Brian Morris. He's a certified primary instructor of polygraph, and he has conducted polygraphs since 2006 for police departments, departments of corrections, and private clients in Utah, Idaho, Wyoming, California, and Washington.

Now, before I get to the interview, I want to apologise. The sound quality in the interview isn't great, but hopefully, through the conversation you can get an understanding of some of the nuances of polygraph testing.

[5:06] Colin Miller

Brian, thanks and welcome to the podcast.

Brian Morris

Thank you, glad to be here.

Colin Miller

Let's go ahead and start by doing a general question about how polygraph testing is done and exactly what a polygraph tests.

Brian Morris

Well, first, polygraph testing is a method that, um, police departments, departments of corrections, or attorneys can use for helping determine the truthfulness of the individual that they are taking and interviewing. The polygraph itself is an instrument that helps

monitor and look for changes in respiration, changes in perspiration, and changes in pulse rate and blood volume.

Colin Miller

Okay, now, if we turn to the facts and circumstances of this particular case. In this case we have Hae Min Lee's body; it's found in Leakin Park in Baltimore by Mr. S on February 9th, 1999. Mr. S denies any knowledge about anything having to do with her death. And ten days later on February 19th, he is given a first polygraph test. In that test, in addition to baseline questions like "What's your last name?" and "What's your middle name?" he's asked four questions that are marked as relevant questions.

One, are you withholding any information about the death of the female you found in the park? Two, did you do anything to that girl to cause her death? Three, had you ever been in the company of that girl you found before the day you found her? And, four, had you ever been to the spot where the girl was found before the day you found her?

So, from your perspective in conducting some of these polygraphs, what questions do you think the police had when posing these questions to Mr. S?

Brian Morris

Well, I think, first, looking at the timeline of this case being in 1999, polygraph at that time did not have a great deal of set standards or validated testing techniques. And so from the report that I've seen, the testing technique that they used for this polygraph exam did not meet any of the validated testing techniques that we currently have today. Usually, when we're doing a polygraph exam, we simply want to have a very specific question of "Did you do something?" You know, "Did you hit that person? Did you shoot that person? Did you stab that person?" Some physical act. Questions that I see from the report were very far afield from each other. And then every time we take [it], we add an additional relevant question; the accuracy of our polygraph examination goes down because we're trying to hit multiple targets. If we keep it to a single target, that's how we get our most highly accurate examination.

Colin Miller

Okay, and looking at the results in this case, according to the polygraph examiner, Mr. S answered no to each of the four relevant questions I listed before. Polygraph examiner indicated his responses would normally indicate deception, but that said, the polygraph examiner noted that Mr. S appeared to be nervous and preoccupied because he had a meeting with a realtor later that day and had to pick up his wife from work. The polygraph examiner does follow up. We have a second polygraph five days later on February 24th. In this second polygraph, though, the questions change. So, I noted the four relevant questions before. In this second polygraph, we now have seven questions and all of those questions have to do with whether Mr. S knew the cause of death of the victim. So, they ask, "Do you know if the girl you found died because she was stabbed with a

knife?" Whether she was shot, poisoned, choked, hit with a baseball bat, hit with a tire iron, or run over by a car. And so, your--in your opinion here, what do you think about *these* questions, and then also why do you think the questions change from the first polygraph to the second polygraph?

Brian Morris

Well, I think, again, when we look at this report, what they did is focus in on a specific physical act that the person who perpetrated this crime would have intimate knowledge about that the general public would not. And so by the police focusing in on simply the method that this person was killed--and the person who perpetrated that act would know that information--uh, this would allow them to determine whether Mr. S had actually perpetrated this crime or not.

Colin Miller

The other question a lot of people have is, did Mr. S randomly stumble upon the body, or might he have had information about maybe not the cause of death but the fact that there was this body in Leakin Park? And what do you think about the first test followed by the second test and the police at that point basically ruling out Mr. S having any knowledge of the burial in this case?

Brian Morris

Well, I think that they did do a good job of ruling out Mr. S as the actual perpetrator of the crime. However, without additional follow-up testing whether they had observed what happened or saw somebody burying this body, if they've been by this place previously, if they had any previous associations with this individual... uh, there was no testing to be able to back that up. But there may also have been interviews and other things that would have corroborated his particular story that really aren't included in this particular report. But just strictly polygraph-wise, without additional follow-up testing, uh, whether or not he had any other involvement would be really hard to say.

Colin Miller Okay, great. Brian, thanks so much for your time today. We really appreciate your time looking over the materials and talking to you today.

Brian Morris Absolutely. I appreciate it, thank you.

[10:56] Rabia Chaudry So, as you heard, uh, Brian has a very different reading and theory about why the police changed the questions completely in the second test, eh... According to him, it seems like they just were wanting to be able to eliminate Mr. S as a suspect in the actual murder. Uh, I would say that th--they could've perhaps done a more robust investigation, uh, by including questions in which they asked Mr. S about whether he had gone to the park 'cause he had heard something or if he had any other kind of information that wasn't related to, you know, directly to the murder.

[11:34] Colin Miller Right, and that's... sort of--we have a couple of people in there, right? We have Neighbor Boy, we have Laura, we have Mr. S, and we've been given indications throughout *Serial* and the transcripts and everything that these are people who might've learned about this murder before the body was found, and yet, as you say, clearly the focus of that second polygraph has nothing to do with Mr. S's pre-existing knowledge. It has to do with whether he killed Hae Min Lee, but, yeah, I think that this is something that immediately struck Sarah and it struck us, which is, it seems like--and you went to the scene itself and looked at actually how weird it was for him to go there--it's this question of not so much did he kill her but what led him to that spot in Leakin Park and finding the body?

[12:17] Susan Simpson And there's other reasons to think he might've known more, like his behavior and testimony at trial. As skeptical as I am of polygraph testing in general, I think it's useful here to try and figure out what the investigators were thinking and what *they* were trying to establish. So, again, like Brian says, they made sure they could show that Mr. S was not a suspect, but they also make sure to have nothing on the record that would indicate that Mr. S did know more or was holding something back.

[12:47] Colin Miller Yeah, it's one of those things where they had the whole discussion on *Serial* about bad evidence, and it seems exactly as you said: at first, on February 19th, it seemed to me with the questions they're trying to assess both was this person involved in the murder, but also what possibly led him to uncover the body? Whereas it seems then by the time the second polygraph, they'd honed in on Adnan, and they didn't want to ask any questions that might lead to, well, maybe Mr.S learned from Jay or maybe from someone else we haven't even heard from in this case. And so, yeah, again, that second polygraph it seems to me they're really trying to limit the exposure where it was very limited in terms of the scope of that polygraph.

[13:33] Rabia Chaudry Now, we're going to move on, and, uh, we have a, a series of Twitter questions that Colin and Susan are going to address. And so, let's get right into it.

[13:43] Colin Miller This question comes from Andrea Torre; her Twitter handle is [@gadrega](#). She asks: "in addition to Asia, could Adnan's track coach testify? He also had an alibi for Adnan."

Well, the interesting thing here is the track coach in 2000 testified that practice started at 4 o'clock p.m. We have reason to believe that while that might have been the case in 2000, that track practice started actually at 3:30 p.m. in 1999. What I found this week was that the investigator working for defense counsel actually talked to the coach right after indoor track season ended in 1999 on March 3rd, and at the bottom of those notes it indicates "3:30 [dash] 4:30 [dash]" and then either "5:00" or "5:30".

✓ Mubac E. Sye H
W. [REDACTED]

Wed
2:00

Track — early Nov thru Late Feb ..

regularly time at practice ✓
Ranadan care has didn't
always practice ✓
no sign in
needed ✓
could have gotten variety letter ✓

330-430-500.

[EvidenceProf Blog. "On March 3, 1999, Coach Sye Said That Track Practice Started at 3:30 P.M. at Woodlawn"](#)

That seems like pretty clear evidence to me that track practice started at 3:30 in 1999. Beyond that, we also have a few witnesses, both Becky and Debbie, who said that Hae used to drop Adnan off after giving him a ride when she was leaving school. Now, we know that Hae left school at about 3 o'clock to pick up her cousin at about 3:15. If track practice starts at 3:30, that makes sense. He's arriving early but not that early. If track practice doesn't start until 4 o'clock p.m., it makes little sense that he's being dropped off, really, an hour before track practice starts. Now, the relevance of this is, if in fact track practice started at 3:30 and if, as the coach says, Adnan was on time on January 13th, there's no way that Adnan could've made the Nisha call, which took place at 3:32 p.m.

[15:29] Susan Simpson ...question comes from Brittany Deskins, whose Twitter handle is [@the_lady_lawyer](#). She writes: "Can't help but think this case may hinge on the brandy bottle. Can it be tested now?"

In 2008, Adnan's attorney attempted to find the evidence in this case. He wrote to the Baltimore Police Department, and they responded that there was no sign of the evidence in their files. The police officer who wrote back to Justin Brown said that he'd thought it had been destroyed and it was no longer there, although he could not be 100% certain of that because there was no record of its destruction. As far as I'm aware, it has still not been located, and it's still possible that it, that it was destroyed and it can't be found now. On the other hand, like Deirdre mentioned in *Serial*, oftentimes the evidence *is* still there if you keep looking. So, if it does turn up, the DNA should still be viable and it could be tested now.

[16:33] Colin Miller This question comes from Kyra; her Twitter handle is [@KyraPoulos](#). She asks: "Any idea on the date of the potential hearing on whether Asia's testimony will allow the case to be reheard?"

Current status of the case is, on May 18th, the Court of Special Appeals issued a stay and remanded the case back down to the Circuit Court. Adnan's attorney now has 45 days to move to reopen the hearing in Circuit Court so that Asia can testify. The remand order, though, allows for potentially other evidence to come in as well. And so, probably during the next 45 days or so, Adnan's attorney is going to seek to gather other evidence he can present and probably that motion will come toward the end of the 45 days. At that point, the Circuit Court has to deliberate as to whether to reopen the hearing or not. So we're probably a few months out from before the point at which Asia would eventually testify in support of Adnan's motion for a new trial.

[17:37] Susan Simpson A lot of listeners have written in to ask about Adnan's car and phone and why Jay was borrowing it that day. For instance, Twitter user @julie248 writes: "If [Adnan and Jay] weren't friends, why did A[dnan] loan J[ay] his car [and] phone? I know J[ay] needed to get S[tephanie] a gift, but that was a big loan to J[ay]."

There are actually two separate questions here: the first is "Why did Jay have Adnan's car?" The second is "Why did Jay have Adnan's phone?"

The answer is not the same for both because, although Adnan let Jay borrow his car that day, Adnan did not specifically let Jay borrow the phone. The phone was in the glove box. That's where Adnan would leave it because he couldn't take it into school with him. So when Jay borrowed Adnan's car that day, the phone came with it.

[18:21] Rabia Chaudry Um, on cross-examination, Gutierrez asks Jay: "You, sir wanted the car that day, did you not?"

Answer: "Yes, ma'am."

Question: "You wanted a car because it was your girlfriend's birthday, correct?"

Answer: "Yes, ma'am."

At another time in the cross-examination, Gutierrez says, "Now, sir, the first story you told them," them meaning the police, "is that you needed his car and you asked to borrow his car to go to the mall to buy a gift for Stephanie, right?"

Answer: "Yes, ma'am."

It's also worth noting that Gutierrez, um, asked about the cell phone and, uh, in, in the cross-examination at one point she says: "The cell phone, the cell phone that you've said Adnan Syed gave to you on the 13th--"

And she's interrupted by Jay, and he says: "He did not give it to me."

Back to Gutierrez, "--of January? He didn't give it to you. He just left it in the car, isn't that correct?"

Answer: "Correct."

[Cross-examination of Jay at first trial, December 15, 1999, pp.194-195]

So, it seems that either Jay had explicitly asked for the car that day or Adnan had offered it, but either way, the understanding was that, um, he was going to keep the car so he could buy Steph a gift and that Adnan left the cell phone in the car, um, because he couldn't take into school. And, uh, Jay seems pretty clear that Adnan did not actually give it to him. He just left it there. And it wasn't too necessarily unusual for Jay to borrow cars or get rides 'cause he didn't have his own transportation.

Um, when Aisha testified at trial, uh, she was asked the question, um: "Did you ever become aware that he", meaning Jay, "borrowed not only the car of his girlfriend but of other students up at Woodlawn on a regular and repeated basis?"

Answer: "Yes."

Question: "Okay and that's because you could observe that, could you not?"

Answer: "Yes."

"And other students talked about it did they not?"

Answer: "Yes."

[Cross-examination of Aisha at second trial, January 28, 2000, p.280]

Um, and Jay himself, uh, testified under cross that, you know, he was asked: "And who else's car would you borrow?"

[Cross-examination of Jay at first trial, December 15, 1999, p.66]

And Jay answered Laura, Jenn, and a friend, Chris. And before that, leading up to that question, he also responds to Gutierrez about the numerous times that he borrowed Stephanie's car. So this was not something particularly unusual, and it seemed like there were, um, other students at the school who also let him borrow the[ir] car as well as his circle of friends outside of school.

[20:55] Susan Simpson This question comes from Sonia Abraham, whose Twitter handle is [@Vanilla182](#). She writes: "With all the insane stuff that's been unearthed, Should [sic] we stop assuming that Jan[uary] 13th is the day that Hae was killed?"

At trial, the medical examiner testified that Hae's body was consistent with a burial that had happened approximately the time she went missing. So she could have died on the 13th, the 14th, the 15th, or thereabouts. The medical science can't tell us more than that. There are other aspects of the autopsy, however, which do tell us more about the timing of Hae's death and burial, and we'll discuss that next week on episode five.

[21:43] Rabia Chaudry A big thank you to our listeners for all of your questions and comments. Um, Susan, Colin, and I, uh, pay attention on Twitter. We, uh, do keep track of the questions that are coming, and, uh, we love to continue to hear from you, so, uh, you can find us on Twitter. Our handle is [@Undisclosedpod](#), and definitely use the hashtag #Undisclosed when you send us your comments or questions.

Now, looking forward to the next episode, we are now at the point in the investigation where the police have secured and gathered evidence from the first crime scene, which is Leakin Park, where Hae's body was found. But that wasn't the only crime scene. The second crime scene they have yet to discover: Hae's car. According to the State's case, Hae was killed in her car and then buried on January 13th around 7 p.m. Close examination of the reports about the car and the autopsy reports tell us a very different story. Next time on *Undisclosed*.

[22:58] Special thanks to Amar Nagi, our sound editor; Ramiro Marquez, who created our theme music; and Ballookey, who provided our logo. Dennis Robinson is our executive producer. You can find us on Facebook and Twitter. Our Twitter handle is [@Undisclosedpod](#). Tweet us your questions and comments using the hashtag #Undisclosed.

[23:34] The *Undisclosed* podcast is brought to you in part by the Adnan Syed Trust, a legal defense fund that helps to pay Adnan's legal fees and associated investigative efforts. All proceeds raised through advertising on today's episode of *Undisclosed* were given to the trust. To learn more about the trust and to donate to our efforts to free Adnan, please visit www.launchgood.com/freadnan.

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