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Fairness, Criminal Justice, and “Serial” (with transcript)

John Hollway

University of Pennsylvania Carey Law School, jhollway@law.upenn.edu

Rabia Choudry

Safe Nation Collaborative

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University of Pennsylvania Law School

Case in Point: *Fairness, criminal justice, and “Serial”*

April 28, 2015

John Hollway and Rabia Chaudry explore the conviction of Adnan Syed of *Serial* fame, and what it means for the fairness of our justice system.

Experts:

Rabia Chaudry

President, Safe Nation Collaborative, National Security Fellow, New America Foundation

John Hollway

Executive Director, The Quattrone Center for the Fair Administration of Justice, University of Pennsylvania Law School

Host:

Randi Garnick

Host, Case in Point

Randi Garnick: Welcome to Case in Point, produced by the University of Pennsylvania Law School. I am your host, Randi Garnick. In this episode, we will examine the high-profile case and conviction of Adnan Syed; brought to the world’s attention through the popular Serial podcast. We will explore how his case and conviction informs us about and reflects the fair administration of our criminal justice system.

We are joined today by one of the featured participants in Syed’s case and on the Serial podcast, Rabia Chaudry. Rabia is an attorney as well as a National Security Fellow at New America, and the President of the Safe Nation Collaborative.

Also with us is John Hollway, Executive Director of The Quattrone Center for the Fair Administration of Justice here at Penn Law. He is also the author of the book, “Killing Time: An 18-Year Odyssey from Death Row to Freedom”.

Thank you both for joining us. Rabia, first, please give us some brief background on Syed's case, and then please tell how and why you became involved with the Serial podcast.

Rabia Chaudry: Okay, so, Adnan Syed was arrested in 1999 for the murder of his class fellow, Hae Min Lee, and his ex-girlfriend. He was 17 at the time; she was 18 at the time. She had left school on January 13, 1999, and she was never seen again. About six weeks later, her body was found, and shortly thereafter he was – I think, was it, three or four weeks later he was arrested for the murder. He has always maintained his innocence. And I know Adnan because he is like a little brother to me; he was my younger brother's best friend; he still is, and I have known him since he was about 13. And we also lived in kind of the same tight-knit Muslim community in the Baltimore area. Our parents still live in the same neighborhood, in fact, as his.

So, I was in law school at the time, and I wasn't directly involved in his case during the trial. He was tried a year later, and he was convicted, and he was sentenced to life plus 30 years. You know, he was a juvenile, he had no criminal record. Even at sentencing, he maintained his innocence. And, you know, through the direct appeals, and the post-conviction appeals, I have been kind of there with the family as an advocate and supporter. And he has essentially lost all the appeals so far.

In terms of Serial, shortly after the post-conviction hearing, which was in the fall of 2013, I got the sense that we were going to lose the post-conviction. And I thought at the time to go to the media because journalists, investigative reporters can do things that lawyers can't do. They can do things that people close to the parties can't do. I certainly wasn't going to be knocking on doors and talking to witnesses because you know that can really taint things. So, I contacted just very – not quite randomly, but Sarah Koenig from "This American Life" because she had written a story about Adnan's attorney back in 1999. And this is an attorney who was kind of notorious in the Baltimore legal community. She had done a lot of unethical things with a lot of different client cases. She had broken the record for attorney complaints. And then she was disbarred, and then she passed away.

So, Sarah had written about Gutierrez a long time ago. I reached out to her. Within a week we met. And within a few weeks, she kind of committed herself to the story. She was interested. Because she felt like things were not quite right in his case.

Randi Garnick: Thank you for that. John, can you talk a bit about what The Quattrone Center does? What its mission is, and through that framework, what is your take on this case?

John Hollway: Sure. The Quattrone Center was founded about 18 months ago, and our mission is to work with the criminal justice system practitioners throughout that system and try to reduce errors that occur in the criminal justice system. And the way we do that is we take what we call a systems approach. So, if you think about litigation and the appeals process as a case-by-case or individual-by-individual approach, what we try to do is take a step back and look at criminal justice as a system, and as an aggregated set of interactions throughout individual courts that involve prosecutors, police, defense attorneys, judges, and juries, and to identify areas that where those interactions are leading to unintended consequences of one sort or another. Because you could view an error in the criminal justice system as a wrongful conviction, which is really what we are talking about in the Syed case – do we have a wrongful conviction? You could also think about it as the failure to get the right person. And, so, each of those is an unintended consequence of the system because there is no question that a young woman was killed here, and we want to make sure that we handle that appropriately and that we get the right guy in the right way. And so, we take principles from other complex systems like healthcare and aviation and try to bring them over to criminal justice to help all parts of the system do their roles better.

Randi Garnick: And, your take on the case, John?

John Hollway: Well, I think in the first place, it was a fascinating podcast and story and really riveting. And, in my mind, I think that what the podcast did really well is it made clear how difficult it is to know the truth. I think, you know, Adnan clearly, as Rabia said, maintained his innocence throughout, and that is a very compelling feature, particularly when you realize that the evidence, as portrayed in the podcast, is really very far from cut and dried. And in a situation where we really want to be beyond a reasonable doubt, I think it is very hard to look at all of the

information that was put out in that podcast and feel comfortable that we have done that in this case.

The other thing that I think comes through in this is how difficult it is to reverse a decision once we have made a decision that is final. The jury is the trier in fact. And when, you know, when a jury has made a decision it is very, very difficult for appeals courts to evaluate those facts. And, it's just a very complex legal challenge that Adnan has in a case where I think no matter what your view is, it's – I didn't see anybody who thinks this is absolutely rock solid. And, so, it's a real concern when you see a case like this that where guilt is far from assured, and yet we have put a young man in prison for life plus thirty years.

Randi Garnick: Rabia, of course you believe Syed is innocent. But what are some of your key concerns about the case? Particularly including his representation?

Rabia Chaudry: I mean, I think, you know just to, I will address that, but let me just also pick up where John left off, which is he talked about what Serial presented in terms of the case against Adnan. And for people who stopped, you know, following the case after Serial, a lot happened after Serial. A lot more evidence came forward that made the case even more shaky. I mean Serial was a great narrative, but it wasn't on terms of like a deep investigation; it really wasn't a deep investigation. I think Sarah did a tremendous job, and I am always going to be grateful to her because nobody could ever – I mean, this level of global attention and media attention and publicity, like nobody could ever imagine that. And I think it's been very helpful for our case.

Having said that, though, there are many, many things that the Serial team missed, and his lawyers have missed over the years, you know. And we have a lawyer, Susan Simpson, who has been investigating and blogging the case independently, completely, since the show started, and she how is kind of directing our private investigator. We have asked to do that because she really is incredibly sharp, and she's just discovered all kinds of things in the existing documents that nobody really realized before.

So, you know, and all of these things, again, point to major issues with the case. I mean, shortly after *Serial* ended, Jay Wilds, who was the main witness, gave an interview at *The Intercept* in which he completely undermined his testimony in court. He said I lied under oath. The timeline that I portrayed, and the timeline was extremely important to the case because that timeline was matched up to these phone records very, you know, like carefully by the prosecutor. He completely undermined that timeline. In addition, you know, 1999, this was the first time such cell phone evidence as ever used in Maryland, ever. Dozens of cell phone experts in the last six months have come forward to us saying that that was completely – it was used completely wrong. The conclusions that State drew from that and used to convict Adnan saying here was here, he was here, he was here, was completely off base.

Her medical reports were not – you know, Gutierrez, Christina Gutierrez, who was his attorney, she dropped so many balls I don't even know where to start. You know she didn't hire a single expert in this case, you know, she was paid to hire experts, you know, hire a forensic expert, a medical expert, a cell phone technology expert. She didn't account for is time at all. She was given letters written by a potential alibi witness. Now, you know, whether or not that witness would have stood up under scrutiny remained to be seen. But, at a minimum, her duty was to contact that witness, and she never contacted that witness.

And that witness, in fact, potentially could have led to a couple of other witnesses because she said I was with him, and my boyfriend and his friend also saw him there at the library. And there were many other people there. People in the community who said we saw Adnan that night in the mosque. And this is around the time that apparently, you know, the witness is alleging that this young girl was buried after she had been killed. One of those witnesses testified in the grand jury trial; he testified to this fact. And Christina Gutierrez never called him, you know, to testify. The State's case lasted about six weeks, and her defense lasted from Thursday to Friday, and they rested. And he was convicted in two hours.

So, you know, and also I think the police did not investigate fully. There were a lot of things they didn't look into. The young man who was the State's witness – I mean, first of all, you have to remember there was absolutely no physical evidence tying Adnan to the case – or the

murder. They took – they tore up Adnan’s house, they took his clothing, they took his shoes, they took his car – nothing. Not soil samples, nothing matched. They found a couple of fibers and a hair on the body that did not match Adnan. All they had was the young man’s testimony which was given in exchange for a really great plea deal. And this is a young man who himself ties himself to the crime saying that I got rid of my shoes, I got rid of my clothes, you know, the instruments to bury her came from my home. The police never even pulled his phone records or his pager records or searched his home, you know. And throughout the day, he had Adnan’s car and cell phone because Adnan was in class. And there were people that he called around the time that Hae Min disappeared, that Jay Wilds called using Adnan’s phone. There is no information that the police ever contacted those people. Like why wouldn’t you like have – you know, in the records, why wouldn’t you have any, you know, interviews with those potential witnesses who would have been talking to Jay Wilds around the time that this girl disappeared?

So, and then you have the prosecutor. I mean like every party botched this in many ways. And that’s my, like my real issue is that if any single one of these parties had done their job right, we would not have seen the same result. That’s – I really feel that way.

Randi Garnick: And what is the status of the case right now, Rabia?

Rabia Chaudry: He, so we had lost the post-conviction in January 2014, a little over a year ago. And when you do that, you have the right to petition to get another chance at post-conviction, essentially. And it’s very rarely granted. So, that petition was filed almost immediately last January. And since that time, Serial, you know, happened. Serial happened, and a lot of other things happened. And the Baltimore legal community is paying attention. You know, what we understand is the Attorney General’s office is paying attention, the judges are listening, they are reading these things. The prosecutor from that time, Kevin Urick, has come out and made a few odd statements, and I think that’s brought even more attention.

So, essentially, in February it was granted, that petition for a new post-conviction was granted. It was granted within three days of our last filing, which is like unheard of. You know, it takes over a year, usually, to get some kind of response from the court. I think, I feel strongly it’s just

the public scrutiny and it's like also there's allegations that the prosecutor lied under oath during the post-conviction hearing that really is compelling the court to do this quickly, and they are taking a serious interest in it. So, we recently, this week just filed his brief in support of the post-conviction, and the hearing is in early June, so it is a very fast docket.

Randi Garnick: So, that's the next step, the hearing in June?

Rabia Chaudry: Yes, the hearing in June.

Randi Garnick: And, I am going to turn to you, John. You champion something called root cause analysis in criminal justice. Could you please explain what this is and how this may be applied in Syed's case?

John Hollway: Sure. Root cause analysis is a process that's been used in places like healthcare and aviation and other industries to make sure that event reviews are happening. It's a cycle of when an error in a system is identified, looking back to figure out not just the close contributing factors, but maybe deeper issues that might be embedded in a system to ensure that when you implement changes to eliminate an error, you are actually implementing useful changes that get right down to the core factors within your system that have caused that error.

And it is a process that involved the collaborative review with everybody who was involved in a case. If you think about it, the National Transportation Safety Board uses root cause analysis to do investigations of train derailments or plane crashes. And what they will do is they will get a multi-disciplinary group of experts to come in, do detailed interviews of all of the participants in the flight – not to identify who is to blame, but to understand, really, what happened and what the sequence of events was that led to it and why in each instance the person involved did what they and kind of what they saw at the time. So, it is a way of evaluating the real-time decision-making so that we can really identify areas where those decision-making trees took us off in a direction we didn't want to end up in.

And, so, The Quattrone Center has used root cause analysis with a number of different stakeholders in the criminal justice system to evaluate errors and try to track back to the implementation of policies that would prevent those errors from happening in the future. I think Rabia has identified in Adnan's case a number of things that we see coming up again and again and again in exonerations. So, over the course of the past 25 years or so ago – or 25 years or so, we have now identified close to 1600 cases where we know we convicted somebody who is innocent. And they are now actually increasing, we are discovering more and more of them as we go to the point where we are now, in 2014, we discovered roughly one every three days over the course of the year. So, we are finding a lot of these cases. And there are some themes that you see in those that The Quattrone Center would then use in a root cause analysis to help to make recommendations for reform.

One of the things that you see commonly is in high-profile cases where there is no physical evidence linking a defendant to the crime or the crime scene, those are much more often cases where we are seeing exonerations. And it makes sense because, number one, when you don't have physical evidence linking somebody there, then you are doing things based on circumstance and subjective assessments. And, so, obviously, there is more risk of error there.

Number two, when you have high-profile cases, particularly something that is going to be as jarring and tragic to a community of a murder of a successful and well-liked, you know, high school senior, that puts a burden on the police. And a lot of that is a very professional burden. The police in that case really want to keep those communities safe, and they really want to find the right person, and they want to do it quickly. And that pressure that is somewhat self-imposed, somewhat community-imposed, somewhat media-imposed, can often, we find, lead people to have a hypothesis for the case, seize on that hypothesis, and drive forward with that hypothesis. And we know psychologically that there is a phenomenon called cognitive bias where you can – you tend to accept the facts that fit your hypothesis. A good police officer doing a good investigation is going to have a hypothesis of the investigation that begins to take hold as they look at the evidence, and, so, it is not uncommon in that instance for facts that meet that hypothesis to be gathered in and facts that don't agree with that hypothesis to be somewhat disregarded—

Rabia Chaudry: Bad evidence, right? That's what, in the podcast, like that's one of the detectives said that we consider that – we wouldn't look at certain things because we considered it bad evidence—

John Hollway: Yeah, and I think, you know, there was nothing to suggest, at least from the podcast, that those investigators were doing anything in bad faith or that they weren't doing their jobs to the best of their ability. But, we know that as human beings, everybody, and particularly in these high-profile cases, you need somebody who is going to be a devil's advocate for you as the police investigator who is blinded from the case and doesn't otherwise, you know, participate in it and so that you can test these conclusions and give them added weight.

And then the other thing that we see a lot, and it's funny, I listened to the podcast while driving my kids to school in the mornings, and we would talk about a lot of these issues. And, the one thing that I focused on in, you know, episode two, or something, was I said oh, they are using the cell phone tower data wrong. And it made me look like a real hero with my kids because by episode six or seven, when we got to that, that way that the cell phone towers work is the packets go to the closest tower, but if that tower is in use, the packets can go up to five towers away. So, it's one of the things that we have seen is that there is a tendency to want to use cell phone towers as GPS, and they are not at all the same. GPS can put your phone, you know, within 20 feet. Cell phone towers put you within a 19-square-mile radius, and that is a very, very difficult thing when you are talking about a 20-minute window as we were in the Syed case.

So, we are looking at all those things in a root cause analysis to try and figure out what we really need to change to make effective improvements in the system.

Randi Garnick: Rabia, how do those concepts resonate with you and how would you apply them to Syed's case?

Rabia Chaudry: I mean they resonate very deeply with me, and I think that these, you know, as, I mean, I have never practiced criminal defense law because I saw it up close and personal as

a law student during his case it – I realized the potential – there are so many things that are out of your control, right? Like you can't – whether it's from the jury to the judge to the prosecutors, investigators, I mean, as a criminal defense attorney, you are up against a lot, I realize systematically. And, then, the client themselves also is at the mercy of their attorney to see, you know, how good of a job they do.

I have thought a lot about this a lot in terms of, you know, I feel very hopeful that Adnan is inching closer to an exoneration. We also have other things that our investigator has, you know, found that are not publically – has not been publically disclosed yet. But, you know, we're – we have to obviously be a little more conclusive and be confident in some of the evidence before we move forward with it.

But, you know, I think about like how – what about the impact to like, you know, the twenty-thousand other people who are – they say it's about twenty-thousand other people are wrongfully convicted in this country and what that means for them when people don't have the kind of resources that Adnan has. I mean, in many ways, he is lucky. He's got a family; he's got people who didn't forget him. He has people who still write to him and visit him, and then Serial, the whole world is watching in a way. But, you know, I have been very interested in – I mean, I think the root causes have to be addressed. I think there has to be accountability measures in place, which I think helps address some of the root cause issues. Because I feel like when you do have misconduct on the part of people who are part of the system, there's almost no accountability then.

And, then, I think of remedial things like North Carolina has an Innocence Commission. And I feel like that might be a way to kind of circumvent some of the systematic – like at least it doesn't help the systematic flaws, but it is a way to kind of bypass like the system, basically, you know, by giving people who say they are factually innocent another option to raise their innocence. And that is something I am looking into in Maryland in terms of trying to establish, through the legislative process, an innocence commission.

So, you know, for me it is about Adnan's case because it is deeply personal. But, it is – it, certainly, there are a lot of other things that I am thinking about now, and people who support him are thinking about. And even people who are not so sure about guilt or innocence are like, you know, things didn't work right. Still, the trial wasn't fair, so—

John Hollway: And I think that's a big takeaway from anybody who has listened to the podcast all the way through is you may not know whether – you know, whether Adnan is guilty or innocent – and I think Sarah's sort of conclusion really kind of amounted to, in my mind, a god, I really – I really don't know if he's – if he's innocent, but I really don't believe that he is guilty. And there is a dissatisfaction with that from the perspective of who is looking at the criminal justice system that if you are going to punish somebody the way Adnan is being punished, you'd really – you'd really want to be a little bit more certain than—

Rabia Chaudry: A little more sure.

John Hollway: -- than that. And, so, I think, you know, I think it's interesting, Rabia, to hear you talk about the North Carolina Innocence Commission. You know, one of the things that we are doing is actually surveying that group and all of the convictions integrity units that have come up across the United States in about 20 different DA's offices to – because they have all sort of sprouted up ad hoc. And North Carolina's model is unique because it's actually legislatively created and a committee that reviews these cases statewide. But Baltimore recently announced a convictions integrity unit, and I am sure the Serial podcast, you know, had a role in that. And it's really interesting to see the district attorneys' offices now realizing that – that these mistakes happen. And, I think, realize that there are benefits to their offices, and to the communities if the offices are willing to embrace this as, look, we are not saying anybody deliberately acted wrongly here. If they did, we will deal that. But, what we are saying is these things happen a lot more often than we want to admit. And the convictions integrity units, or the innocence commissions, are kind of institutional responses to that that I think have a lot of promise.

Randi Garnick: Rabia, are you able to provide any insights into what Adnan's perspective is regarding the widespread attention to the case and the debate about the case?

Rabia Chaudry: Sure, I mean I think, you know, I just spoke to him to a couple days ago. I am going to see him this weekend. I have been so busy being kind of the public face for his case, because he has asked me to, and his family is really not equipped to do it, that I have had much less time to actually engage – to talk to him. And that has been one of the – things have died down a little bit, so the next few months I will be a lot more actively talking to him.

But, you know, he – I don't think there is any way for him to understand. He is in a super-max facility. He has no access to internet. He can't just make phone calls randomly. He has a very limited phone list, a very limited visitation list. They get on lockdown all the time. So, it's really hard for him to understand kind of the phenomena. He's never seen – he doesn't – he's never experienced social media. He knows what it is theoretically, because he hears about it on TV, but he has never tweeted before and he doesn't know what blogs are and he doesn't – so, or reddit – he's like I know what reddit is. But he's never been on reddit. He's never been on these sites, so there is no way for him to know it. He- and I don't personally also try to drive that home. Because I – you know, you want a balance between you know, this is really good. There is a lot of scrutiny on your case now versus it's turned into a media circus, and people think this is Game of Thrones, right. Like, so I don't want him to ever feel that it's become entertainment for people. Although I think it has, I mean, for some folks it has. But even that's kind of self-serving for us, I think.

He gets a lot of letters. I think he's probably gotten five or six hundred letters in the last – you know, since Serial started. People try to send him all kinds of interesting things like cash in the mail and photographs and stuff like that. So, he does understand that the response is phenomenal. What's interesting is the guards and administration where he is being held are listening – have listened to Serial, and they are following. So, they have told him – they tell him that you know, this is what's going on, or it was on the news, or you know. A number of guards told him, man, we always wondered why you were in here. And, like you don't belong here. We heard your story. And other inmates also, you know, they'll keep coming across newspaper

articles and magazine – so he kind of gets it. His perspective really is that – he’s just very measured. I think he has been disappointed so many times. Like the post-conviction was supposed to be the big – like our big shot. You know, we were going to have an alibi witness presented who was never contacted. And then that alibi witness didn’t show, and the prosecutor undermined the documents we had by saying that she had been coerced into writing them.

And, so he is just, he is hopeful, and I think he – there’s like a fear, too because this is kind of our last big shot. Like we are not going to get this again. This is it – it has to happen kind of like now. But, at the same time, he has been disappointed a lot. So, he kind of keeps me and his family in check. He says I know everybody is excited, and he’s like, but, you know, we have to remember there are other cases that have gotten a lot of publicity, and nothing happened, you know.

Randi Garnick: So, this short turns a lot on the competency of his counsel. John, do you have any thoughts on that issue? On the competency of Adnan’s defense counsel.

John Hollway: You know, ineffectiveness of counsel is a very difficult thing to prove. It is a sort of standard staple of the appellate practice. So, it is something that you throw into every case. And courts have, as a result, I think, made it a fairly difficult standard. So, ineffective assistance is actually, you have to show a lot of ineffectiveness.

What we do see, certainly, is that there is a big disparity in the resources that the state has to investigate a case versus the resources that a typical defender – whether public defender or private counsel – that any defense counsel really has to do an investigation on the other side. Certainly, from what Sarah and the Serial team were able to put together, it seemed like his counsel as overwhelmed, was going through a lot of things in her personal life, that things were slipping through the cracks. You know, from the recordings, she seemed like a relatively capable advocate. The question is whether she was able to assemble the facts such that they jury could see them and really make a reasonable decision based on that or whether she wasn’t able to do that for a variety of factors. But, it’s a tough argument to make on appeal, especially when the lawyer is as experienced and has had such a long career as Adnan’s attorney did.

Randi Garnick: And, I am sure you have a lot of thoughts on that, Rabia.

John Hollway: Yeah, and again, I mean I am not expressing an opinion on the actual – you know, having not seen the whole trial, having not known all the facts as well as you do, it is very difficult to really express that opinion, but it can be an uphill battle in the appellate courts.

Rabia Chaudry: You know what I find fascinating is that Gutierrez was very well known in that legal community. And her colleagues and peers saw the decline, they saw the deterioration of her performance and even her cognitive abilities, and even her ability just to communicate and have a conversation in the last few years because she was suffering from a number of illnesses that had direct impact on her ability even to communicate.

And during the trial, I remember, I was sitting there thinking, like what is the point she is trying to make? She would ask the same question repetitively, and there were times when the witness would be like I don't even know what you are asking. So, she – you could see that she was struggling, but she was just going on – and the reason the State's case lasted that long because on cross she would take forever and ever and ever, and there were many times the judge said, listen, how much longer do you need? So, she wasn't what an attorney should be, which is tight, precise, you know, on – and this, I think, was directly related to her illness.

At the same time, I can't attribute everything to her illness because there were things she did that were clearly unethical. Like, for example, say I need you to write me a check specifically for a purpose and then not fulfill that purpose. I mean, we heard in the podcast you know, what she did with the Whitmans where there were times that she clearly just lied. We know towards the end of the career – the end of her career, she was just not competent anymore. I mean, 28 different cases and clients complained against her. It emptied out the attorney grievance commission's fund, should show us that something – that that was not the Gutierrez who was in her heyday.

So, but you know, the community is tight. I have had some people reach to me who worked with her at the time, not attorneys, but paralegals and law clerks, and they are willing to go on the record and say yeah, we saw this happen. We knew things were really bad. She had financial issues, medical issues, she was really struggling, and she was just really being, you know; she was not doing what she needed to do as an attorney for her clients.

But, for the lawyers who worked with her, they have kind of been quiet about it, you know. And I think it's out of deference or respect for her. But, at the same time, if you have 28 different cases, I mean like they have to be looked at, you know, like did these people get competent counsel or not? So, you can't give a pass to that. You can even say, you know, you don't have to say it was on purpose if people are uncomfortable saying that she acted unethically on purpose. But even if she was medically incompetent, right, like I mean if she just didn't have the kind of ability, that should be a reason to say that you know, she was ineffective and...

But, you know, we are – we have the ineffectiveness issues. There are other issues that our attorney did not raise at post-conviction. And if we were to go to another post-conviction, we would raise. And that, for example, we haven't even touched on it here is how bigoted the trial was, you know. We had this entire framing of he's a young Muslim man who committed an honor killing. The word Islam, Muslim, Pakistan was brought up 270 times during the trial. Instead of moving to strike every time that came up, and you know because it is unconstitutional to do this, Gutierrez would, in fact, she would exacerbate the problem by talking about Islam for like 40 minutes at a time – at a stretch.

I remember her examining a witness and talking to him about how do you pray – do you pray with your hands folded? And I'm like why is this a component in this trial? This is our community was horrified. We couldn't believe that this was happening. Adnan, who is like a very American boy, you know, on one hand you're like okay, he's drinking and smoking pot and dating. And then you are going to leap to the conclusion he doesn't have any violent history, no criminal record, because he is a Muslim male, that kind of stands in for that, that he is already predisposed as a Muslim male. And that's an issue that has never been addressed in court that this was you know, this was incredibly bigoted and unconstitutional to do that.

The South Asian Bar Association, the National South Asian Bar Association, was so disturbed by this when they heard the podcast, and I turned over the transcript to them, they wanted to file an amicus, you know, in support and point out other cases where references to a person's ethnicity or, you know, they have been overturned, you know. But it, procedurally, it just didn't work, so you know we are right now limited to the ISE issues in effective assistance, but there are other issues that certainly could be raised if we had to.

Randi Garnick: And to follow up on that with you, John. What are your thoughts on the prosecutor's evidence and the defense's disputes with that?

John Hollway: Well, you know, I think that in any case there is evidence that both sides will have that they don't choose to bring to trial for one reason or another. It may be because they don't think the evidence is accurate. It may be because they make strategic decisions about what is going to advance their case. Obviously, prosecutors have an obligation to turn over evidence that might tend to prove the innocence of the person that they have charged. And it is the burden of the prosecutors then to – they have the burden of proof. They are the people who have to show guilt beyond a reasonable doubt even after providing that information to the defense.

So, I think if you were going to review the case, you'd want to make sure that that had happened. That all of the evidence that was – and the prosecutor's obligation is to turn over any evidence anywhere in the state. So, it is not just what the prosecutor has, but it's any police or investigational body as well. And their obligation is to collect all that and provide anything that might show evidence that Adnan, in this case, might be innocent.

So, the first thing you would want to do is evaluate whether all had been done. But typically courts give a lot of leeway to attorneys in making those strategic decisions based on the facts of each case. And that's part of a challenge with an effective assistance claim is that when you look at some of the decisions that either the prosecutors or the defense made, the question is are they within the rules of evidence and were they made for strategic purposes? Because in general an appeals court doesn't want to get in the lawyers' head control those decisions.

So, I think those are the things that you would want to look at in understanding that. Hopefully, you'd like to think that some of the ethnic issues that Rabia raises are not in the jury's minds. We do have, in theory, some techniques for handling that. That should be something that we try to pick up in voir dire while we are choosing the jury, and then jury polling can also, I think maybe get at that question in some sense after the fact. And I haven't reviewed either of those or know if jury polling was done in this case. But, you would certainly hate to think that that was a factor.

Rabia Chaudry: Well, Sarah did speak to a couple of the jurors during the podcast, and they said well, yeah, that kind of – I mean, you know, they kind of treat their women like that. So, you know, in a case like this voir dire might have – would not have worked because you would have had – you had selected a jury that on the face of it, you know, it seems to have no bias. But then, in the entire case, they are like pounded with this – these you know, stereotypes of Muslims in general, you know, and it's all based on this ridiculous memo that was in the police files that it was some kind of cultural memo on Islam, like Islam is a culture to begin with. And the whole memo was inaccurate. The whole memo as inflammatory. The memo is on my blog. And this – we didn't have a copy of that – no one – you know, defense didn't have a copy of that. I don't know why the police had that. We don't know why the prosecution had that – who provided it, who solicited it; we have none of that information. It just exists there. And that was like the basis of their – like the theory of the case.

You know, they focused on Adnan before Jay Wilds came to them. They focused on Adnan over Hae's current boyfriend, who she had been dating shortly, who had been with her the night before, had spoken to her until 3 a.m., who likewise, like Adnan said I never called her again after that. He never – he had been with her the night before, and he never reached out to check with her, whose alibi for that day was his mother. There was no reason to focus on Adnan versus him other than the fact that Adnan was a young Muslim man. And I stand by that. I believe that because this memo to me shows that this is what they built their case on, you know, and the jury heard it for six weeks, you know. So, they might not have come in thinking they have any bias, but after six weeks of hearing it, you don't know that community.

And our community, the optics of the community are you have Adnan, who just looks like an average teenager, but then you have rows of people who looked very foreign. You have women in their scarves and you had men with beards – and this is before 9-11, but it doesn't mean that there wasn't any bias, there was still bias against Muslims, and not knowing who this community is. And the prosecution, you know, it was all about that. He was denied bail for this reason. That you know, he – that this community that has come out in droves, that have put up their houses, you know, as – to guarantee that he will appear in court, that are giving all kinds of – you know have doctors and all kinds of people in that room. You know, the prosecutor turns around and said see all this community? These are the people who are going to help him escape. Because in their culture it is okay to hurt a young woman if she besmirches your honor. You know?

So, I am sorry. I get a little bit carried away on this issue. And I feel like you know, so far, none of Adnan's attorneys – maybe because they don't understand like you know, how – what this really means for somebody who is South Asian or an immigrant or this idea that he is living this double life, which is so ridiculous. If it hasn't ever impacted you, you don't understand what it really means, so...

John Hollway: Well, in a sense what you would hope is that the system kind of puts Adnan's race, or Hae's race, or anybody's race aside and is looking at the facts of what happened in trying to establish the guilt. Because the fact of the matter is whether you are white, black, Muslim, Asian, whatever you are, your race has no bearing on whether or not you actually murdered somebody or didn't. And so, I think it's wholly appropriate that we hold our system up to that light. That we hold it accountable for acting in a race-free manner.

I am not sure that you can say from the fact that somebody who as accused of a brutal murder was held without bail that you can necessarily draw a line directly from that to the person's race. You would certainly want to look at that person's background and a whole host of other factors. But at the end of the day, if you have enough to charge somebody with a brutal murder, you'd want to keep that person off the streets while you are figuring out what really happened. And so

that's a certainly a very common way to go. But, I do think it is important that we look at the facts of this case and try to make sure that we weren't using a racial filter to do that.

Rabia Chaudry: I wish the prosecution had looked at the – I wish the prosecution looked at the facts, you know. I mean the judge in the bail hearing, I understand that in most cases like this they deny bail. But, it's not about why the judge made that decision, it's about how the state framed the case. And that is how the state framed is motive. It was all tied to his religion and his ethnic background.

Randi Garnick: Rabia, what are your thoughts on advocating through the media and Serial? And do you feel that it's helped Syed?

Rabia Chaudry: Oh, absolutely. I mean, look, we, a year ago, we had this application pending. We knew that there was almost no chance at all that it was going to be granted. We didn't think we would get another shot at post-conviction. So, you know, my role in this has been, and I told Sarah when the podcast started because I didn't even know that it was going to be like a series. I had never heard a podcast before. But as, like within the first couple weeks, when I realized like the popularity and the immediate public response, I realized that Sarah is telling part of the story, but it is not the whole story. And I have documents, and I have other things that could fill in the gaps. And I just decided that I have to do that. I started blogging and speaking and doing videos online and all this stuff because I knew we had one chance. Because when Serial is over, people are going to look forward to the next season of Serial. They're going to forget Adnan Syed. That's how people work, and I couldn't let that happen.

So, it has been tremendously successful for us. In terms of fundraising, we have raised close to a hundred thousand dollars for his defense, to hire a private investigator, to do things right this time. We have a petition with over 30,000 signatures. We have, you know, people independently doing fundraisers and selling T-shirts for him, like no connection to us at all. And we have everybody kind of keeping an eye on the case and seeing what happens. You know, when Adnan's – this appeal was granted, you know, it appeared on the front page of BBC. And it's like you know, it's like a Baltimore case. It's just ridiculous that a state-level case, a

homicide case, that it would have that much of attention. So, it's worked for us. I'd have to say it's worked for us.

But also because you know, we are in a situation where all disclosure can just help, you know, more and more information can only help us. That's how I feel because I feel he is innocent. So, there is no necessary fear that something will emerge that could hurt us, you know. So, it's been good for us.

Randi Garnick: You just mentioned, and as a final question for both of you, the enormous interest that Serial podcast has generated for this particular case, and cases like it. What advice do you have for law students who seek to work in this field? And members of the general public as well?

Rabia Chaudry: Again, I have absolutely no experience practicing criminal defense law. So, but my work as an attorney has always been directly impacted by witnessing like you know what happened in this case up close and personal. I mean, my advice – I am sure that John has better advice – I mean, he understand the systematic issues much better than I do and he probably could offer better advice. But my advice is that you – to me you know, when you have a duty, whether you are on any side of these issues, whether you're an investigator or prosecutor, a judge – a jury – I mean like that you have to understand that this is a person's entire life in, you know, in your hands.

And often times like somebody like Adnan who is sitting there at 17, he has absolutely no voice. He's entrusted his entire life to this attorney and to all these adults who are going to produce some result and make a decision of how the rest of his life is going to be led. And this is a major, major – it's a major – it's – you know, I consider it like a trust, you know, like you have been entrusted with something really important and to take it that seriously and not, you know, meeting a duty like should not be your bar. Your bar should not be just getting by. Your bar should be what's the most I can do to make sure that we are getting this right?

And, so, you know, that's I guess the only advice I could offer students is that – that don't take more than you could handle. Quality over quantity. And do the best that you can for your clients or whatever institutions you are working for. Take it very seriously because the repercussions are not, you know, it's to the families, it's to the communities, and it goes on for years and years.

Randi Garnick: Great. Any advice from you, John?

John Hollway: Well, I mean I – that's fantastic advice and something that I think very lawyer at any level should be keeping front of mind all the time. You know, the obligation that we have as citizens, whether – whatever our role is in our interaction with the criminal justice systems is that we have to make sure we've set up a system that is designed to only incarcerate people if we are certain that they have committed a crime, right, beyond a reasonable doubt that this person has committed a crime.

I wrote a book about a man who was tried and convicted of murder and 18 years later, retried and exonerated of that murder. And it struck me as really interesting that two different juries had heard his case, and one of them was certain that he was guilty, and the other was certain that he was innocent. And it shows you the power that the attorneys and the judges and the juries have to impact somebody's life. And that the presentation of facts, the selective presentation of facts that we manage in the criminal justice system can have an impact on the results, but it doesn't change what happened. What happened is what happened. What changes now is how we perceive what happened because of how that system's worked. And that puts a burden on all of us. But one of the people that it puts a burden on is you know, when I hear somebody on the radio say that somebody's now been arrested of a crime, I think of that very differently. You know, before I thought, oh, they wouldn't have arrested him if he hadn't done it. And now I think well, anybody can get arrested, right? That doesn't mean that he committed the crime. That means that now we really have to test those theories.

So, I think as citizens what we have to do is be very serious about making sure that we are testing that and not simply agreeing with the state. It doesn't mean the state is wrong, but we have to hold them to that burden of proof.

The other thing that I think as lawyers is it is very important – I call it the check your – the show your work rule, right, when you were in seventh grade, and you were in math class and you would only get half credit if you got the answer right but you didn't show your work. It's really important to have somebody look at your work and check your math. And you need to, as a lawyer, whether you are on the defense side, whether you are on the prosecution side, whether you are working with law enforcement, there needs to be somebody independent from your case that you take it to and say I think this is what we've got. What are the holes here? What are the weaknesses? What do you see? Do you agree? And that person needs to be an independent reviewer who can check your work because that's the single biggest thing that we see at any point in the system that will eliminate errors leading to wrongful convictions.

Randi Garnick: Well, thanks very much to both of you and thanks for joining us in Case in Point.

Rabia Chaudry: Thank you.

John Hollway: Thanks. And thank you, Rabia for the work you are doing.

Rabia Chaudry: Thank you, John.

[00:45:07]