

EXCLUSIVE: PROSECUTOR IN 'SERIAL' CASE GOES ON THE RECORD

BY NATASHA VARGAS-COOPER AND KEN SILVERSTEIN [@natashavc](#) [@KenSilverstein1](#)

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It was “pretty much a run-of-the-mill domestic violence murder,” prosecutor Kevin Urick said in an exclusive interview with *The Intercept*.

By this, he means, Adnan Syed murdered Hae Min Lee in 1999. Reddit may have its doubts. Sarah Koenig, creator of the wildly popular “Serial” podcast, may have her doubts. Those who rightly question the fairness of the notoriously biased American justice system may have their doubts.

But Urick, who prosecuted the case in 2000, remains certain that Adnan Syed is a murderer—and 15 years later, no new facts have emerged to change this conclusion.

Last year, radio host and producer Sarah Koenig revisited the case in the hopes of finding a miscarriage of justice. The result was “Serial,” the 12-part podcast.

The unprecedented popularity of the show can be explained, in part, by the appeal of its narrative to a progressively-minded public radio audience. “Serial” presented an archetype of the wrongful conviction story: the accused is railroaded, the lawyers are corrupt, and the jurors are manipulated by racially-charged rhetoric. All these problems, sadly, occur often in the criminal justice system but there’s no indication they impacted this case.

The basic facts of the case are simple. Hae Min Lee, a high school student in Baltimore County, disappeared on Jan. 13, 1999. Police found her body in the city's Leakin Park about a month later; she'd been strangled, the subsequent autopsy showed. An anonymous tip led police to 17-year-old Syed, Lee's ex-boyfriend.

Syed was arrested for Lee's murder. He was charged and tried, a jury of 12 people convicted him in 2000, and a judge sentenced him to life in prison.

"Serial" portrayed the case as a combination of overzealous prosecution and incompetent defense counsel. This viewpoint infused the entire podcast. While Koenig never proclaimed Syed to be innocent, she insisted the evidence didn't support his conviction. "It's not enough, to me, to send anyone to prison for life," she said in the closing of the last episode.

When a jury of 12 people comes back with a guilty verdict in two hours, you'd think that rejecting their decision would require fresh evidence. Yet the show did not produce new evidence, and mostly repeated prior claims, such as an unconfirmed alibi, charges of incompetence against Adnan's deceased lawyer, and allegations that information derived from cellphone records is unreliable.

None of these charges has survived scrutiny. That was the conclusion of a circuit court judge, who dismissed a defense motion that claimed such issues compromised the fairness of the trial. Nevertheless, the "Serial" series largely mirrored the defense petition.

The reality is that "Serial" only worked if it could demonstrate that there were serious doubts about the fairness of Syed's trial and conviction. If he were guilty, there was no story. The storytelling device was to amplify claims that favored Syed's defense and contrast that with a watered-down version of the state's case. There is supposed to be a presumption of innocence for people accused of a crime. But for those convicted, like Syed, there is already a determination of guilt.

In Episode 12, Koenig allowed Dana Chivvis, a "Serial" producer, to express serious reservations about Syed's innocence. "[Y]ou just have to think 'God, that is—you had so many terrible coincidences that day,' Chivvis says. "There were so many, 'You had such bad luck that day, Adnan.'"

Had "Serial" accepted the jury's conclusion—that Adnan strangled a teenage girl—there would be no storyline, no general interest in the case, and hence no audience. So, Koenig dismissed the decision of the 12 jurors who heard the case, and even though she found nothing that would exonerate Syed, she shifted the burden of proof back onto the state.

The most troubling part of "Serial" is Koenig's underwhelming efforts to speak with Urick, the state's lead prosecutor. He told us that she only emailed him on Dec. 12, less than a week before the podcast concluded, to ask about an allegation that he had badgered a witness against Syed for not

making the defendant look “creepy” enough. That charge was aired on the show. (Urick vociferously denies it.)

We ran his account by Julie Snyder, “Serial’s” executive producer. “We reached out to Kevin Urick multiple times, at multiple locations, during the winter of 2014, about nine months before the podcast began airing,” she said. “Urick did not respond to any of those interview requests.”

Urick disputed this account, saying the first time he heard from Koenig was in that mid-December email, which was sent through the contact form on his personal website. “They did not make multiple attempts to reach me,” he said. “They never showed up at my office. They may have left a voicemail that I didn’t return but I am not sure of that.” [Ed. note: In the editing process, Urick’s quote was shortened. When provided originally with Urick’s full statement, “Serial” producer Julie Snyder declined to respond beyond her original comments. “Serial” now, via Twitter, says, “Koenig left numerous messages for Urick, starting last winter and into the spring, many months before the podcast started airing.”] (Koenig did interview the second prosecutor, Kathleen Murphy. “Serial” was not allowed to air the interview, but Murphy made a few cameo appearances in audio clips from the original trial.)

We met Urick last Saturday at his law office in Elkton, Maryland, about an hour north of Baltimore. He was not hard to find. Urick’s personal website — with his work address — shows up first in a Google search of his name. There’s a large sign advertising his legal services outside of his office.

Urick told us he did not and would not have agreed to be interviewed by Koenig because he didn’t trust her to report fairly based on accounts from people who had met with her. He was also concerned about the effect on Hae’s family. “This was a young girl killed at about age eighteen,” he said. “When you deal with victims as a prosecutor, sometimes you have to put [their families through a lot]. But this was fourteen years after the fact. I did not want to be responsible for causing any further anguish for the family.”

Urick didn’t have new facts to tell us—just as “Serial” didn’t uncover any new evidence. But his concise recounting of the main points in the case, without the podcast’s diversions and distractions, explains why the jury convicted Adnan after such brief deliberations.

The key evidence in the case were cellphone records that showed Syed’s movements on the night that Lee disappeared, and the testimony of Jay Wilds, a former classmate who confessed to police that he helped Syed dispose of Lee’s body. Wilds cooperated with police and prosecutors and after pleading guilty to being an accessory to murder after the fact, received two years probation.

Urick acknowledged that Jay had told conflicting versions of events. But he pointed out that even after five days on the stand, the defense was only able to challenge “collateral facts,” and not “material facts” directly related to the question of Syed’s guilt or innocence.

The focus on Jay's changing story misses a larger point, Urick says, which is that criminal accomplices, by their nature, change their stories, and it is the job of the state to peel back the layers—and use corroborating evidence—to get to the truth. “We did not pick Jay to be Adnan's accomplice,” Urick said. “Adnan picked Jay.”

Early on in the case, Urick said, the defense sent a disclosure to the state saying it had more than 80 witnesses who would testify about Adnan's whereabouts on the day he allegedly killed Hae and buried her body. But when the defense found out that the cellphone records showed that Adnan was nowhere near the mosque, it killed that alibi and those witnesses were never called to testify at the trial, according to Urick.

Those same cellphone records also corroborated Jay's testimony about Adnan's movements on the night of the crime.

“Jay's testimony by itself, would that have been proof beyond a reasonable doubt?” Urick asked rhetorically. “Probably not. Cellphone evidence by itself? Probably not.”

But, he said, when you put together cellphone records and Jay's testimony, “they corroborate and feed off each other—it's a very strong evidentiary case.”

Syed did not testify at the trial, but had he done so, Urick said, he would have run through his cellphone records: “And my very last question would be, what is your explanation for why you either received or made a call from Leakin Park the evening that Hae Min Lee disappeared, the very park that her body was found in five weeks later?”

The justice system in America frequently doesn't work. This is not one of those cases.

The first part of our interview with Urick is published below. It has been edited for length and clarity.

The Intercept: The podcast “Serial” has focused enormous attention on the murder trial of Adnan Syed. Before all this, was there anything that stood out to you about the case?

Kevin Urick: The case itself I would say was pretty much a run-of-the-mill domestic violence murder. Fortunately a lot of relationships do not end in domestic violence, do not end in murder. But it happens often enough that you can identify it as a domestic violence case resulting in murder. That was the whole problem the defense had with the trial. They could not come up with a defense to that evidence. At the time the case was going on, there was no local press coverage. When

the appeal was argued, there was no press coverage of that either. And the court of special appeals felt there was nothing new or novel about the arguments that were made in the appellate brief. It was not even a published opinion.

TI: Do you have any doubts about the outcome of the trial?

KU: No. The reason is: once you understood the cellphone records—that killed any alibi defense that Syed had. I think when you take that in conjunction with Jay's testimony, it became a very strong case.

TI: There were plenty of inconsistencies in Jay's confession, his testimony, and his statements to The Intercept after trial. Don't all those inconsistencies discredit him?

KU: People have to realize, we try cases in the real world. We take our witnesses as we find them. We did not pick Jay to be Adnan's accomplice. Adnan picked Jay. Remember, Jay committed a crime here. He was an accomplice after the fact in a murder. A very serious crime.

And there is almost always during a trial when you're dealing with people out of a criminal milieu, that they have a lot of things they don't want to talk about. They had some involvement with crime. There are always prior existing statements, even when you're dealing with non-criminals.

People can very seldom tell the same story the same way twice. If they did, I'd be very suspicious of it because that would look like it was rehearsed. So all the time, you take your witnesses as they are, you try it in the real world, we put it on, we let the jury judge credibility. Jay was on the stand for five days.

TI: In our Interview with Jay, he said he saw Hae's body for the first time at his grandmother's house not in the Best Buy parking lot. He said the time of the burial took place several hours after the time he gave under oath. Again, do these inconsistencies alarm you?

KU: Like I said, people who are engaged in criminal activity, it's like peeling an onion. The initial thing they say is, 'I don't know a thing about this.' And then 'Well, I sort of saw this.' You get different stories as you go along. This is the real world. We don't pick our witnesses, we have to put them on as they are. There were a lot of inconsistencies throughout Jay's prior statements. Almost all of them involve what we would call collateral facts.

A material fact is something directly related to the question of guilt or innocence. A material fact would have been, 'I was with Adnan,' and then you've got the cellphone corroborating that material fact. A collateral fact would be, 'We were at Joe's Sub Shop,' but then you find out actually they were

at the auto repair store. That's a collateral fact. It's not necessarily material to the question of guilt or innocence. So, many of the material facts were corroborated through the cellphone records including being in Leakin Park.

TI: Was there ever a moment where you felt like there was an alternative suspect? Is there any scenario by which Adnan Syed is not the guilty party?

KU: No. The reason is that once you understood the cellphone records, in conjunction with Jay's testimony, it became a very strong case. Even with Jay on the stand for five days, with the defense presenting Jay's prior inconsistent statements—they presented all that. The problem was that the cellphone records corroborated so much of Jay's testimony. He said, 'We were in this place,' and it checked out with the cellphone records. And he said that in the police interviews prior to obtaining the cellphone evidence. A lot of what he said was corroborated by the cellphone evidence, including that the two of them were at Leakin Park.

TI: In "Serial," Koenig raises the question of whether the state used the cellphone records accurately and if they really corroborated Jay's story. [Ed. note: *The Intercept* provided a copy of the transcript of the "Serial" podcast episodes discussing cellphone records for Urick to review.]

KU: Koenig's presentation of the cellphone evidence is designed to try to implant doubts by sleight of hand rather than to accurately portray what we had and how we presented it.

She starts off noting that there are recent attacks on the use of cellphone evidence but does not inform the listener that the technology used today is different from that in use at the time of the trial, and most of the attacks today are due to that difference.

Today's towers have switching technology such that if all the cells on a tower are in use it can switch the call to a different tower, sometimes one quite a distance away. Thus, today, it may not be accurate to state that because a call goes through a particular tower it has to be in physical proximity to that tower, thus fixing the phone user in a geographical location. A highly trained expert is needed to sort through all the technical data to be able to state the evidence accurately as to what it does and does not reveal.

The second most common type of attack today is when the state calls a police officer to testify from cellphone records as to a person's physical location, asking to have him qualified as an expert so he can so testify, and the court accepts the officer as an expert. Courts are starting to state that police officers lack the necessary expertise to testify that way. They are saying a greater degree of expertise is required before a person can testify to physical location from cellphone records. That is, they are not saying that it is not possible to use the records that way, but rather that a true "expert" is required for the testimony to be reliable.

Neither of those two criticisms are relevant to what we did. It was an earlier technology that only operated when a cellphone was in physical proximity to the tower. And we had a true 'expert,' an engineer from AT&T whose area of expertise was cellphone technology and cell towers and who was fully conversant with the technology, the capabilities of that technology, its operation, and what the records revealed.

As I said, it is disingenuous of Koenig to cite those criticisms of current cellphone technology and its use as courtroom evidence to try and imply that what we did was doubtful.

Only after she plants that seed of doubt does she acknowledge that the experts she consulted state the science—as we presented it and used it—was accurate.

She then tries to discredit our presentation by focusing on areas we did not [focus on]; areas we did not consider relevant, and never spent any real time analyzing and preparing for presentation.

The only time period we considered relevant was from the time Adnan called Jay [*Ed. note: calling his own cellphone from a pay phone*] to join him until later that evening/night after they left Leakin park.

For the period during the day, before that call, we only checked to be sure that for every call that we could identify the caller or recipient, and could contact him or her, that that person verified that in fact it was Jay who had Adnan's phone and was the one using it.

We did not spend any real time trying to verify any of the statements Jay made about where he was during the day with the cellphone records because we never considered that time period relevant. Remember, there were numerous calls made over the course of that day. We had to be selective about which ones we presented to the jury or the case would have gone on forever. We only focused on the information or the period we determined to be relevant, i.e. the fact Jay was in possession of Adnan's phone during the day, and then the evidence of their locations from the time they joined up until after leaving Leakin Park, along with the evidence that during that time period they both either received or made calls, thus confirming their being together.

Most of Koenig's line of attack is to concentrate on areas we did not consider relevant and never really developed.

I do not remember that at any time we had any dissatisfaction with the evidence of the cellphone records and how it meshed with Jay's story. No one is capable of perfectly remembering exactly what time they were at a particular place, or even where they were every time a call is made or received. Some discrepancies would be expected.

You will notice that for what is perhaps the most crucial period, from the time of [Detective] Adcock's call to after the body is buried, Koenig's own expert states we were completely accurate. Koenig cannot dispute that so she uses sleight of hand to try to call into question our presentation by turning the listener's attention elsewhere, dwelling on irrelevant arguments and evidence while quickly skimming over the proof we presented of the material facts of the case.

I also question Koenig putting in there that [Syed's defense attorney Cristina] Gutierrez said she did not have all the cellphone evidence. If she actually said that in court she was being less than truthful to try and support an argument. We provided open file discovery in the case, that is, anything we had we provided to the defense. And we told the defense what our exhibits were going to be and gave them as much time as they desired in our office to examine them. And remember, we presented all this evidence in the first trial, the one that ended in a mistrial, so by the time we got to the second trial the defense was fully aware of all of our evidence. There was nothing she was not aware of and nothing that was a surprise.

For the relevant time period and the relevant events Koenig is unable to discredit us.

TI: Syed never testified. What would you have asked him if he had?

KU: I would've gone through the cellphone records. You called this person at this time. Jay talked to this person at this time. And my very last question would be: What is your explanation for why you either received or made a call from Leakin Park the evening that Hae Min Lee disappeared, the very park that her body was found in five weeks later? I think that was the stumbling block for the defense. They have no explanation for that. They went to extreme lengths to try to discredit Jay's testimony. This was not an ill prepared defense. This was a well-funded defense. They had a private detective. Cristina Gutierrez had at least two paralegals, who I think were law students waiting for their bar results, working for her. They subpoenaed Jay's school [records], criminal [records], all sorts of records about Jay. And they had a test run because this was really two trials. The first trial ended in mistrial right at the end of the state's case. So they got a chance to view the state's case as we were going to present it. They had everything. There were no surprises going into the second trial. They knew everything. And they tried for five days to do everything [to discredit Jay's testimony]. Jay's prior inconsistent statements, they presented all that. The problem was that the cellphone records corroborated so much of Jay's testimony. He said we were at this place, and [they] were. And he said that in the police interviews prior to obtaining the cellphone evidence. A lot of what he said was corroborated by the cellphone evidence, including that the two of them were at Leakin Park.

TI: A central piece of the post-conviction petition for Adnan Syed and "Serial" is evidence of a possible new alibi for Adnan's whereabouts the day of Hae's disappearance. According to the petition, Asia McClain says she was with Adnan in the library during the time of the murder.

KU: I think the judge in the post-conviction trial does a very good job of pointing out that in the letters to Syed, she is very vague and indifferent about what she's doing. The difficulty comes from Syed. In all his statements about his whereabouts the day of the case he says that he was at the school from 2:15pm to 3:30pm. He never once, in any statement, at any time, made any reference about being in the public library. His defense was that he was at the school from 2:30 to 3:30. So [Asia McClain's] reporting seeing him at the public library contradicts what he says he was doing. The letters were also sent in March of 2000, two months after Syed was charged. [Ed. note: the letters were actually dated March 1999, in the days after Adnan's arrest.]

Asia contacted me before the post-conviction hearing, she got my number and called me and expressed to me a great deal of concern about whether or not she would have to testify at the post-conviction hearing. She told me she was under a lot of pressure from Adnan's family and to get them off her back she wrote him a couple letters. The implication was she was trying to appease them and she didn't want to have to stick by it at that time. And I testified to that when I appeared in the post-conviction hearing.

Now the thing about the cellphone records [is that they] corroborate Jay, his statements that he got a call around 2:45 p.m. or around that time from Adnan to come pick him up. And the cellphone records show that there was an incoming call around that time. So there's corroboration of Jay's statements to the police and the cell records. Like I said, Syed never made mention of the library before those letters.

TI: In terms of potential alibis, according to the state's response to Syed's post conviction petition, there were dozens potential alibi witnesses that Syed's defense counsel did not call.

Dear Mr. Urick:

These witnesses will be used to support the defendant's alibi as follows: On January 13, 1999, Adnan Masud Syed attended Woodlawn High School for the duration of the school day. At the conclusion of the school day, the defendant remained at the high school until the beginning of his track practice. After track practice, Adnan Syed went home and remained there until attending services at his mosque that evening. These witnesses will testify to as to the defendant's regular attendance at school, track practice, and the Mosque; and that his absence on January 13, 1999 would have been noticed.

Abbas [REDACTED]
Anisha [REDACTED]
Abdul [REDACTED]
Meraj [REDACTED]
Adila [REDACTED]
Adnan [REDACTED]
Mohammad [REDACTED]
Ahmed [REDACTED]
Aiyesha [REDACTED]
Mohammed [REDACTED]
Ammar [REDACTED]
Summer [REDACTED]

KU: Yes. Early on in the Syed case, the defense sent us a disclosure of about eighty names stating that these were witnesses that were going to testify that Syed was at the mosque because it was Ramadan. He was praying all evening and that's where he was [*Ed. note: We have corrected this in the introduction*]. If they called those eighty witnesses, they would've obviously been testifying falsely, because the cellphone records in conjunction with all the evidence we gathered about the cellphone towers, who made the calls, who received them, place him everywhere but at the mosque. The best defense an attorney can put on is the defense the client is telling them. But attorneys still are not supposed to put on fabricated evidence. And that would've been fabricated evidence. And I think once Gutierrez recognized that fact, she did not put it on. Which I think was the right call for her. As a practical attorney, I think she also would've realized that it was so easily disprovable that the jury would've just been sort of disgusted at the attempt to put it on. But she clearly made the decision not to put it on. She made the right call. And I think on big issues of ethics, I think Cristina acted the right way. She would argue anything she could. But defense attorneys aren't allowed to [use fabricated evidence].

TI: Can you tell us little bit more about the fingerprint evidence?

KU: There was an atlas found in Adnan's car. Like an AAA road map. They used to put them together in spiral binders. And it had one page, which was the page that contained the map for Leakin Park, that was dogeared, folded down, and Adnan's fingerprint was on it. [*Ed. note: According to a government brief, the palm print was found on the back cover of a map, not a fingerprint. It was found in Hae's car, not Adnan's.*]

TI: Do you consider that an important piece of evidence? What was the defense's reply?

KU: You don't want to overdo your argument. Is it an unfair piece of circumstantial evidence? It's his atlas. There are a hundred reasons why that page could've been dogeared. Is it suggestive? I think it's suggestive.

TI: Just out of curiosity, you don't recall if that was the only dogeared page in that atlas, do you?

KU: It was a fairly extensive atlas. There were a lot of pages. I would be guessing.

TI: What about Syed's motive? He's a teenager, he was already dating other girls apparently. There was no prior record of violence on his part. Doesn't that raise doubts?

KU: Motive is not an element of the crime and the state does not have to prove motive. We can put it out there as an explanation but it's not essential to prove guilt. It may be supporting evidence that makes the jury understand it. But motive does not need to be proved. That is a standard instruction to the jury.

TI: And that's read to the jurors before they deliberate?

KU: Yes.

TI: Can we discuss the DNA submitted into evidence?

KU: There was no DNA submitted into evidence. Not by me or Cristina.

Next up: *The DNA evidence, jury polling, Jay's attorney, Urick's reaction to "Serial," and more.*

Will Federman contributed research and analysis to this article. Illustration by Eli Valley for The Intercept.

[*Ed. note: The Intercept* has made three corrections and clarifications to the introduction. Hae Min Lee was a student in Baltimore County. A defense disclosure referenced more than 80 witnesses, and the witnesses were in regard to his whereabouts throughout the day, not just at the mosque. *The Intercept* is also including an additional line from Urick about his contacts with "Serial," as well as an additional statement from "Serial" producers. We have also made editor's notes in the Q&A. We regret the errors.]

✉ Email the authors: natashavc@theintercept.org, kensilverstein@firstlook.org

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