

Welcome to the Craig's Lawyers Lounge

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Craig Silverman: Oh, what a day! What a life! What a world. A world in which I've known Mitch Morrissey for the majority of my life. We got to know each other at the Denver DAs office. We were both courtroom prosecutors, and we played a lot of sports together. Mitch, welcome back to Craig's Lawyers Lounge.

Mitch Morrissey: Well, thanks for having me, Craig. It's been a while.

Craig Silverman: I know it. Mitch went on to be the three term DA in Denver. Did I get that right?

Mitch Morrissey: Yes. I was elected in 2004, started in 2005 and was term limited then in 2017.

Craig Silverman: And I know that's darn shame. You like those term limits. What? Didn't you like to still be the Denver DA. If you could?

Mitch Morrissey: Well, it'd be a tough time to be, but, you know, I was the DA during a lot of tough times, so I think we would have been up to the challenge, and yeah, I mean, had I not been term limited, I'm sure I would have run for reelection.

Craig Silverman: I looked up the I looked up the phrase career prosecutor and there was a picture of Mitch Morrissey. Do you accept that kind of title?

Mitch Morrissey: Well, I did up until 2017 before I started a startup, and now I'm the CFO of a small startup. So, yeah, I was a career prosecutor, and I'm still kind of in the business, but I don't go to court anymore. Craig. You get to do that.

Craig Silverman: I do. But you're keeping your law license active. You never know Mitch.

Mitch Morrissey: Oh, I do have my law license. Sure, and there's nobody knocking down my door to hire me as a prosecutor. I mean, I work with prosecutors currently. I had a very good experience with the guy who's running for DA out in Douglas and Arapahoe, who did the cold case that we solved. You know, I still interact with them, but you know it's not my job anymore.

Craig Silverman: What about criminal defense? Could you ever do that?

Mitch Morrissey: I could. I could do criminal defense. My father did. For years, my grandfather was the US Attorney for Colorado, and then he did some criminal defense with his partner, who was a famous criminal defense attorney in Colorado, Fred Dickerson. They were partners for almost their entire lives, starting at DU, World War one. And then, you know, they were partners throughout their careers. And Dickerson really taught my father how to be a defense attorney. My brother does a little defense work, although he would rather do personal injury cases. But yeah, I could do it, Craig. In the right situation, you know, kind of like you. You know, you could do it. I've seen you do it.

Craig Silverman: Yes, I can do both, but I still think of myself as a former prosecutor. And when I'm described that way, I don't shrug that off because that was a major part of my life. 16 years.

Mitch Morrissey: You were good at it.

Craig Silverman: Thank you.

Mitch Morrissey: Very good at it, Craig. I watched you many times.

Craig Silverman: I appreciate that. And you were great at your job too. And we both had a certain level of intensity. And the other thing that we have in common, your old man was a lawyer. Your grandpa was a lawyer of course. Your grandpa very prominent U. S attorney, my grandpa working man in the Sims building. And I think about those times, you know, the Ku Klux Klan era has been talked about in the context of Stapleton. But our grandpas lived through that era. Did your grandpa ever pass down those stories?

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Mitch Morrissey: Yeah, you know, a little bit. My grandpa died when I was about eight, so I never really got a chance to, and he was sick most of the time, you know, he was a chain smoker, and, you know, he was one of those guys that never had an unlit cigarette, never had an unlit cigarette. He'd like one out to the other. And emphysema got him. And, you know, he's kind of, he was kind of grumpy, so I never really got to sit down and talk to him about it. But, you know, obviously my dad knew a lot about it, and we got to work with Judge Moore. Who? Justice Moore, who lived through it.

Craig Silverman: The great Justice O Otto Moore, who was part of the Colorado Supreme Court.

Mitch Morrissey: You know, he did some wild things as a prosecutor. He did some wild things against the Klan. And then, of course, you know the Klan really went after the Denver DA, Phil Van Cise, tried to end his career. So, he fought them the whole time he was the DA. And it may have been why. He was only a one term DA. But yeah, he is a very popular guy until the Klan went after him.

Craig Silverman: You know, my grandpa was a little grumpy himself, and he smoked cigars back-to-back. And I only knew him till I was about fourth grade. Just like you lost your grandpa I lost mine. But I heard about it through my father similarly.

My grandpa Harry, who was very smart, had to send a non-Jewish lawyer to court in Denver because otherwise they wouldn't get a fair break. And he wanted that for his clients. In speaking of O Otto Moore, once when I was an intern, in my God with the great Justice O Otto Moore in our presence, he yelled from across the room, Silverman get over here. And I'm like, wow, what did I do? You know, did I put a terrible paragraph in a brief? And I said, yes, sir, what's up? And he said, I've got a bone to pick with you. I said, what is that? He said, but for your grandfather, I would have been number one at the Westminster School of Law.

Mitch Morrissey: That's a great story.

Craig Silverman: And I took that as great compliment that he knew my Grandpa Harry and respected him as a scholar of the law, and you and I, we go way back. Are there going to be any more Morrissey lawyers in the change?

Mitch Morrissey: Yeah, well, I have a nephew who's a lawyer up in Fort Collins. He's not a Morrissey, but he's my nephew and he actually has a very good practice. And I think he's taking a position in the Colorado Trial Lawyers Association. And you know, he's doing a great job his named Sam Cannon. But right now, you know, none of my kids are interested in the law, and they have professions.

But just one quick Otto Moore story. We were getting ready for the bar exam as interns and Judge Moore came in, and Dave Danske asked him one of the questions. And he got it wrong. It was on self-defense. And about a day later, Judge Moore came walking into the library where we all were. And he said, read that case, Danske. I wasn't wrong and it was a decision that he'd written in Colorado about self-defense. And it was right. He was right. In Colorado, you can find self-defense as a matter of law, and the multi state was wrong on it, or at least a practice question. And without missing a beat. Dave Danske looks at me and goes, isn't Mike Morrissey your father? And I said, Yeah, he's my dad and he said he defended this case. And so, Moore wrote it. My dad defended it and, you know, successfully argued that this man up on West Colfax had killed this guy in self-defense as a matter of law. So it was. Judge Moore was just great to have around. He was always doing things like that. But that's a great story you tell about your grandpa, Craig.

Craig Silverman: No, that's a great story. You just told him my old man grew up just in the 1400 block of Quitman talking about West Colfax. It's amazing how far we go back in the connections we have.

3:04:54

You've got a great company called United Data Connect, which is about your expertise in DNA. Mitch Morrissey has been featured on 60 Minutes. He goes around the country around the world lecturing how DNA fits into criminal prosecution. But here, on my podcast Mitch, will you acknowledge that yes Craig, your humble host, you did the first DNA case in Colorado. and I did. And I learned how to say deoxyribonucleic acid. And the jury thought I understood it as well as Mitch Morrissey.

Mitch Morrissey: Well, you also had a very good co-counsel who studied up. And he went on to be your partner who, who you know, David, did a lot of hard work on that. You had the first case. I'm not sure when that Lindsey case comes in, but I've never taken, I've never tried to claim I had the first case in Denver. You had the first case. You know, Groves was pretty early on.

Craig Silverman: The Capitol Hill rapists, and, uh, it was a Denver case, but it got moved to Pitkin County, Aspen, for the most enjoyable month of my life. Wow. What a lot of fun we had up there and We got to convict the Capitol Hill rapist of his seventh rape up in Aspen, that that was really a great experience. But you've gone on to be the king of DNA. How did that happen?

Mitch Morrissey: Well, it was that Fishback case which ended up in front of the Colorado Supreme Court. And it's where they decided that DNA was admissible in court for purposes of identification. Of course, the technology changed and we spent a decade litigating the admissibility of the new systems. Then really the good thing is, as systems have become commonplace and haven't changed a lot, and so once we won those battles, that kind of stopped.

But you know as well as I do, Craig, when you're going to cross examine an expert in their field, you need to study. You need to understand what they're saying, especially if they're talking in a language you're not used to. And I was really not a scientific kind of student, so I mean, I learned the biology of DNA. I learned the genetics of DNA, and I learned the statistics that you have to present in court and I did it. I really cut my teeth doing it, cross examining experts that were brought in saying that it wasn't any good.

And usually, the problem was they were using it in their regular day to day jobs and were making a lot of money coming in and saying it was no good. So, they were national guys. They would come in and you had to really be ready to cross them with papers. You know, peer reviewed papers that were making the point you needed. And you have to read all that stuff. I had to learn from it. I had great help from Dr Laberge from the crime lab and a doctor who helped me early on the Fishback case up at the medical school. Spent a lot of time in the library at the medical school reading up on it.

And, you know, then different people helped me from across the United States. A great friend of mine from the Oakland D. A s office Rock Harmon. He would send you a transcript of one of these experts and was back before faxes and all that. I got one on a Greyhound bus that he shipped me so he could get it here in a couple of days from California. So, you know, I just had all those cases.

Craig Silverman: Right. That Rock Harmon was part of the O. J case.

Mitch Morrissey: He was brought in to do the DNA with Woody Clark from San Diego. So, you had a guy from Oakland and a guy from San Diego that were brought in, and they were only supposed to do the pretrial hearings, and then the LA DA got nervous because his staff was not up to speed and they had to stay and present the evidence in the case. But you need to talk to Rock about that. I mean, it was It's something that, you know, it was not the greatest experience. I don't think for him.

Craig Silverman: No, it had to be terrible. And Barry Scheck, who used DNA to exonerate people through the Innocence Project, found a way by saying, what about that, Mr. Fung? to poke holes in the prosecution case even though he knew better. I mean, the blood evidence, the forensic evidence, the hair O J. Left behind a lot of evidence.

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Mitch Morrissey: He left behind mixtures. They found mixtures of all three that people's blood remember O. J cut himself. So, his wife's blood mixed with Goldman's blood mixed with O. J s blood on the inside hand of the handle of the corridor on the driver's side of the Bronco. Evidence like that that was never even presented in the trial. But how does Goldman's blood get inside OJ's Bronco? Maybe O. J beat his wife in the Bronco, and you could explain a mixture of his blood in her blood. But how does Goldman's blood get in his Bronco? And it was on the inside of a door handle where you had to reach in and pull the handle open.

That's the kind of evidence they had in that case, and a lot of it they weren't able to present because mixtures at the time were something that were complicated and hadn't been ruled to be admissible. And the OJ team, the defense team, was smart. They ran that trial. They ran that as the trial as fast as they could. And they also got a change of venue, which I think both parties agreed to it.

Craig Silverman: Yeah, he did,

Mitch Morrissey: Garcetti, He agreed he thought the case was right.

Craig Silverman: He was trying to avoid urban upset, and you just can't take a chance like that on a case of that kind. In fact, it's the current mayor's father who did that, right?

Mitch Morrissey: Who did what? I think so, yeah, he was the DA Garcetti.

Craig Silverman: He was Garcetti. His son is now the mayor. He's the Mayor of LA. But he was the DA who made the fateful, terrible decision to change venue, and it became a racial issue. And really, that case should have been resolved on science.

But there is justice, Friday, August 21, 2020 Joseph James DeAngelo just got sentenced for 53 separate crimes, something like 87 victims, 11 California counties. He acknowledged in court. He committed 13 rapes and 13 murders. He's also known as the Golden State Killer. And wasn't that function of DNA and science? Mitch Morrissey.

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Mitch Morrissey: It was the first genetic genealogy case, which is based on DNA and using the public databases that we use to solve the cases that we're solving. Currently, we're in Colorado using the same technology, so you know, you think it was two years ago and it's the latest, and it's extremely good, if you have the right amount of DNA, and if it's not a mixture, it has its limitations.

But that was the first case, and it really kind of spring boarded the whole idea that you could do genetic genealogy and you could solve these cases. You know, you could eliminate a whole lot of people and you could get down to the suspect, which, you know, in the Golden State Killer case, that guy was doing some stuff Craig that, you know, breaking in and killing couples? Tying them up, making the husband watch while he sexually assaulted the victim.

You know, I met the brother years ago of one of the one of his last victims down in Southern California, and you know, he foots the bill for the entire campaign to get the arrestee statute, the arrestee law in California. Their legislature wouldn't pass DNA upon arrest on a felony, so he said, fine, I want my brother's killer caught. I will pay for this and he wrote the check and funded the campaign. His name was Harrington. He was he was a great guy, and I was able to meet with him a couple of times when we were pushing for that in Colorado.

Craig Silverman: You did great work on that. And now you continue with your company, United Data Connect, to tell people when they should connect with your company under what circumstances.

Mitch Morrissey: Well, we primarily work with law enforcement and, unfortunately, just on cold cases. Obviously, this is a methodology that could be used on current cases, but we've solved cold cases in Colorado. We've got a number of successes. Last week, actually, the Douglas County sheriff announced the identification of a Jane Doe that we identified.

She had been found in a forest 27 years ago. The Pike and Isabel National Forest down you know, in Woodland Park and Deckers in Colorado. She was She was dead. She was unidentifiable. We identified her. We found her biological father and then went through some further investigation. The detectives were able to find her biological mother. She had been removed from the mother when she was three. The father had never laid eyes on her. It was a one-night stand type thing, and then we found, unfortunately, the family that really cared about her and raised her was her adopted family. And we're able to do that.

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We've solved rapes. We had an arrest in Arvada, and of course, the man is innocent until proven guilty. But Mr. Blomquist got arrested on a 2002 sexual assault of a 60-year-old woman. And then we solved a number of murders. You know, probably the one that your audience would know the best was again down in Douglas County. But, you know, we solved the murder of Helen Paczynski, the young woman that came here from the Massachusetts area in 1980. She was 21 years old.

And Craig, this is one of those rising star victims. And I know you tried a lot of horrendous murders and assaults, and this young woman was here for a couple of weeks, staying with her aunt and uncle. She took the RTD bus out to Englewood for the last time. She was saying she was working downtown and radio station. This rapist got ahold of her. He was on parole for rape out of Arkansas. He was here on a parole transfer. He grabbed her at knifepoint, raped or took her out in the field out in Highlands Ranch, which is now all developed. And mm, he just butchered her. He stabbed her numerous times in the back and killed her. We were able to solve that one.

We solved another one about that same time. A young woman. Her name was Jeanie Moore, and she had been hitchhiking again. Another rapist got ahold of her. The guy was on bond for rape out of Westminster, but he was dead. Unlike Mr. Clanton. Who? You know, we, the Douglas County, we pointed him out to the Douglas County investigators. They went down, followed him around in Florida. Got some beer mug, you know, he was drinking beer at a bar. They got his mug. And, you know, they got his sample.

The other ones where they've been dead. We've had to recreate their DNA profile through their Children. Jeannie Moore. We were able to talk to the daughter of the person that killed her. He was dead. But we also solve the oldest criminal case. 1963 Murder of Peggy back up in a Girl Scout camp again up near Decker in Jefferson County. And I told the Sheriff. I said, you know, Sheriff, we just solved one where the guy was dead from 1980. You're chasing ghosts here, but we're more than happy to try to solve it. And we did. And they have not been able to find Mr. Taylor. His name is James Taylor. He'd be in his eighties, but his own kids haven't seen him since the seventies. But we're able to recreate his profile through them, so we know it's him and there's a warrant out for him.

Craig Silverman: If I were looking for James Taylor, I tried the Berkshires up in Massachusetts and maybe down in North Carolina.

Mitch Morrissey: Common name.

Craig Silverman: That's just what I would do.

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Mitch Morrissey: But no with so, you know, we saw baby abandonment cases, rape cases, Jane Doe cases. But I got to tell you this new business some of the most interesting things that ever came across my desk has just recently happened, and that is an individual contacted us. His name's Bill Lynn down in Colorado Springs. He runs a military kind of, uh, he has clients, war museums, and so he helps them build their collections and things. His great-great uncle was a missionary in India. from 1910 to 1948. He practiced medicine there and was a missionary. And so, when World War two broke out, there were some remains that washed ashore on the Indian coast, and there weren't a lot of American ships that were sunk there. But one of the remains that unidentified had an American flag tattooed on the skin. And so, he thought, Well, you know, at some point this tattoo, maybe something that somebody is going to be able to identify this lost soldier obvious or sailor, obviously an American sailor. So, he removed the skin, and it's about a four inch by two-inch slab of skin. It kind of looks like a piece of beef jerky, actually have a picture of it with a tattoo on it, and they're asking us to see if we can get DNA out of it. And that's going to be the difficult part. And then do genetic genealogy and try to save that. You know, try to identify who that sailor was and tell his family what happened to him. You know, could be a Gold star family.

Craig Silverman: And by accessing public files of DNA, relatives will lead to more relatives by accessing the data bases that people voluntarily put their DNA into.

Mitch Morrissey: And I think for this kind of purpose, actually, you know they want to find if there an adopted person, if they, you know they want to find their real parents or they want to connect with people that they are related to. That's what GED Match, that's what family tree DNA. Those are the two that let law enforcement use it.

But this really isn't going to be a law enforcement case. So, my hope is we'll be able to use ancestry and 23 me in much larger databases. And, you know, if you think about it, you look at the number of American ships that went down. There were only about six during World War Two, and probably of all those six, there was very few casualties except the USS Pecos, where 130 sailors lost their lives. So, we're talking about maybe a list of 100 and 50 people, and I think that that narrows it down. I think there's a really good chance we're taking donations to do this and I got one for \$500 today. We've already raised \$1500. So, if any of your listeners are interested in helping us identify this poor lost sailor, you know, we'd be more than happy to do it. You know, Mr. Lin whose family has passed this down since Dr Hew lin to get off of that? Those remains. You know, he doesn't have the money to do it, so we're just trying to do it.

Craig Silverman: And can people connect with you through United Data connect dot com?

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Mitch Morrissey: Absolutely. Absolutely correct. That would be great. Alright, what about solving another big DNA case that you worked on? People may not remember, but I sure do. When Alex Hunter had all sorts of conflicts, Roy Romer stepped in and appointed three special prosecutors to go in. And one of them was Mitch Morrissey. Is DNA ever possibly going to solve the JonBenet case?

Mitch Morrissey: It could. You know, obviously the DNA that I was most concerned about when I was working that case was found in the panties mixed with her blood was an unidentified male profile. They hadn't really even tested one of the stains when I got involved until almost 18 months after the murder. Bill Ritter asked me to do it.

I initially told him No. I had just come off of a death penalty case. John Morris, where another little girl had been murdered and sexually assaulted. And I had really kind of missed out on about two years of my kids growing up. You know, they were little kids about the same age, and I didn't really even see them awake for about two years. And I don't know if your audience understands the kind of time, but I know you do. That you dedicate to a case like that? A death penalty case? You know, Frank Rodriguez? I remember how hard you worked on that because I was covering you in courtroom 13 a lot. But those are just life changing cases.

Craig Silverman: The blessing was I didn't have a wife or Children and so I could be a workaholic at that point in my life.

Mitch Morrissey: You were always a workaholic. I bet you still are. But that aside, But I do my kids when they're awake. So, I've got that corn over you. Mr. Workaholic. Mine were little, so I didn't get to see them much when they were awake, because they were usually asleep when I left and they were asleep when I came home. They would see me occasionally on television when I started working the JonBenet Ramsey case. But those two cases were really very similar. DNA played a huge role in us convicting John Morris and getting him charged almost immediately.

A real difference was the race of the two girls. And, you know, a poor Denver family. The only picture of where we could find was her ID to get into the Curtis Park swimming pool. There was no video of her, and she wasn't in any pageants or anything. But, you know, we worked on both those cases incredibly hard, tried to get the right answers and, you know, tried to make sure that there wasn't any injustice. Nobody got charged that you couldn't prove the case, and the DNA played a significant role in the grand jury's decision and I think Alex's decision not to indict, not to sign the true bill, but you know.

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Craig Silverman: The grand jury decision, Charlie Brennan wrote, saying that the grand jury wanted to indict do you buy that? They voted to indict.

Mitch Morrissey: Well, they wanted to indict for Child Abuse Resulting in Death which is a unique statute. You know it well, where you don't have to be the killer, you just need to know that your child is at risk. And you can be held accountable for them for the murder. And, you know, it's one of those things where you see so many times where a baby gets killed and you know, the two parents are there and they're pointing the finger at each other. And, you know, it allows prosecutors to prove that you were aware that baby was at risk and that baby was crying and that baby was being beaten. You did nothing. And that allows you then to hold both people accountable. And that was what the grand jury thought.

Craig Silverman: Right then, but doesn't that mean the Boulder grand jury, after hearing all the evidence that you guys presented, concluded that the Ramseys were both in on it? They could not say which parent did specifically what, but doesn't their vote indicate that they thought both Ramsey's were culpable?

Mitch Morrissey: At a probable cause level, Craig. And you know as well as I do, the difference between a probable cause level and proof beyond a reasonable doubt. They're completely different standards. And in fact, the interview of the Grand Juror, the one that I remember the most once Charlie broke this story was, he didn't believe it could be proven beyond a reasonable doubt. And I think a big part of that was this mystery DNA.

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I spent 18 months and long after that, trying to figure out where this DNA came from. Craig, we ran the profiles of the last, I think, eight men that were autopsied on the same table she was autopsied on to try to see if there was some contamination from the procedures that were taking place at the coroner's office. Because there was some contamination of the fingernail clippers. It was clear. They were using the same fingernail clippers on everybody and they weren't cleaning them. So, you know, that was one of the things we looked at.

We looked at, I don't even know how many people, well over 200 people, to try to see if we could run down and figure out, you know, where this DNA came from. There was a purchase of the same types of panties that were made and they were tested and they came back with DNA in them and they've never been worn they were out straight out of the package. So, it can drive you nuts if you're trying to chase Mystery DNA. It's very hard. And to a degree, genetic genealogy has a part of that in there where, you know, you are kind of waiting for that match to come through.

We have a very serious rape case now that we're working with the local department and you know there is just nothing, nothing, nothing, and then boom, two days ago, I get a call, we've got a pretty significant match to somebody, probably a second cousin. So, you know, it's kind of a waiting game and that case is in the waiting game mode.

Craig Silverman: JonBenet?

Mitch Morrissey: Yeah, until you can answer that DNA question, I don't think you can prosecute anybody you know you can't have.

Craig Silverman: Right, it is fascinating. Let me just flesh this out for the audience because you're triggering all sorts of memories for me. Because I was a former prosecutor. I ran for Denver DA. Unlike Mitch Morrissey, I wasn't a Democrat. It's going to be a Democrat and an incumbent in Denver. But I ran as an independent against a very formidable guy, Bill Ritter, who I went to law school with, and I'm good friends with him again, Mitch and Bill are tight. How accomplished is Bill Ritter? But I lost in November of 96 in that DA race.

And in December of 96 this little girl, JonBenet Ramsey, was killed, and people came to me for my analysis because I was so fresh out of prosecution, and I wasn't constricted in what I could say. And during the grand jury proceedings, I was on a lot of national shows, local shows, and I was saying, there is probable cause and if that's the standard for the grand jury, I bet they're going to vote to indict and darned if they didn't do it. We didn't know it at the time, But Mike Kane, who was working with Mitch Morrissey, I think he got irritated at me, maybe you did too, Mitch, because I got some correspondence telling me to stop talking about this, or I was violating my role as an attorney. Do you remember all that? And what comes to mind when I bring that up?

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Mitch Morrissey: You know, Craig, I went up there on the agreement that I never had to do anything with the media, with, I didn't have any role in any of that. And, you know, I wasn't going to. Mike Kane talked me into it, Bill Ritter I told no. I said, I just got off this case. I can't do this to my family again. I told him no. And then Kane came to my front door and asked me, and he was, you know, my first chief deputy. And he's just one of the great guys and I've always respected Michael and he asked me, but the one thing I was told to do was the DNA. I did a little bit more than that, but I was told to go sort out the DNA. And really, at the time it was in a mess. I mean because they hadn't tested the bloodstain that ended up having the profile in it. There was one that had a small profile, but there also was enough profile to put into CODIS. And so, it is in CODIS the national DNA database.

We got that profile developed by the Denver Police Crime Lab because that's who I trusted. And they did a great job. Dr. Greg LaBerge did the work, and he got a profile that was enough markers to put it into CODIS, and it was running in CODIS, it has been running in CODIS for almost 20 years. And it has never matched anybody in that database.

The problem with using genetic genealogy on that is it is a mixture. So, when you go to sequence it, you're going to get both persons types in the sequence. And it's a very, very small amount of DNA. And for genetic genealogy to do sequencing, you need a lot more DNA than what you're used to in the criminal system. So, where you could test maybe eight skin cells and get a profile and, you know, solve your murder, or exonerate an innocent person, you can't do that with sequencing. You've got to have a pretty good amount of DNA.

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We are working a double homicide right now where we have highly degraded DNA. We had to get the entire genome of that person done. We got a profile. We're working the case. I think we're going to solve it. It's a big case. I can't really say much more about that, but...

Craig Silverman: That's all right. Let's stay on JonBenet because a lot of this is crystallizing in my head and I've had a chance to visit with Mike Kane. I got invited to be with him at an event and he was very friendly and we talked about it and it was Mike Kane who left for Pennsylvania, who allowed me to be on that Denver death penalty case against Frank Rodriguez. So, we all go way back and there really aren't any hard feelings. Things work out the way they do. But would it be fair to say that the Ramseys were well on their way to being indicted and Alex Hunter or Mike Kane and you would have signed the indictment but for the DNA? They would have been indicted.

3:32:03

Mitch Morrissey: The grand jury wanted to indict them under the statute that we've talked about. Alex Hunter, and I advised Alex Hunter, Mike Kane advised him, Bruce Levin who's gone on and died had cancer. We sat there. We were brought in to run this grand jury. We were brought in to advise them. And, you know, it was in that that area between, proof beyond a reasonable doubt, and probable cause.

And, you know, I was brought up and I know you were under you know, if you don't have a reasonable likelihood of conviction, beyond a reasonable doubt, you don't bring the charges. And you know, that's where Alex had to make his decision. He was stuck there, and even grand jurors who have been interviewed said, I don't believe you could have proved it to a jury beyond a reasonable doubt. We just understood our role. We understood probable cause, and that's what we found.

But there's a big difference there, and you're absolutely right. There was one of the advisers on it, all these elected DAs that said, well, you know, you've got all these arrows pointing one way, and there's this arrow pointing the other way. I would go ahead and indict them. And I looked at him and said, you know, you're calling DNA an arrow? I mean, this is a javelin through the heart of anybody that tries to prosecute this case at this stage. It ends it.

And I, for one, was brought up under Normal Early and Bill Ritter and I don't bring charges or prosecute cases that I don't believe there is a reasonable likelihood of conviction. And there's not one here. And that was the end of my discussion on it. And, you know, I think Alex made the right decision based on the state of the evidence at the time.

3:33:58

Craig Silverman: This is valuable information about JonBenet and Mitch Morrissey is nobody's shrinking violet, and I expect the sentiments you just discussed on this broadcast, it is almost verbatim what you told Alex Hunter, am I right?

Mitch Morrissey: Well, like I say, I was there to be open and honest with the people that wanted me giving him advice. I, you know, I met with the Governor, Bill Owens, later. I mean, we sat down for two solid days and briefed him on what we had and what we did and what we saw. We couldn't talk to him about any specific testimony obviously because that would have violated grand jury rules, and he got it. He understood where we were. He didn't appoint Ken Salazar and Don Quick to continue the investigation. He felt we did a good, thorough job, but he understood where we were.

You know, the one thing I like about Governor Owens is he's kind of a, he was kind of a forensic science. He definitely was one of those guys that like those shows, CSI all of that.

Craig Silverman: He was?

Mitch Morrissey: Yeah, I hit it off with him. I didn't know him at all, but we started talking about the DNA. And, you know, he just he got it. He understood it. He eventually interviewed Carlos Seymour, who's now on our Supreme Court. He was my DNA guy after I got elected. And, you know, Owens says, you do Morrissey's DNA projects. Why do you want this District court job? You got the coolest job in the state of Colorado, and you know, I agreed with him. He did. Carlos did to. That was the best assignment a prosecutor could have.

But that's the way, that's the nature of DNA. But you've got to go with what it says. And if it says you've got the wrong guy, you get the wrong guy out. And if it says you don't have enough to charge, you don't have enough to charge. I mean, I believe in it. I've trusted it for 30 years, and I've trusted it to catch guys that have murdered people from 1963 and you have to go with what it says. And if it says you've got the wrong guy in prison, you got to get him out, Craig, you know that.

I mean, it is great evidence, Sure. And you know, I mean, so you know you live or die with it and you give advice to people that don't really understand it at least back then, and you try to do the best you can with it, and that's what we did. If that case will ever be solved, I can't tell you, Craig.

3:36:36

Craig Silverman: I didn't even know we were going to talk about this, but it's perfect, and I really appreciate it because Marty Coniglio is my other guest, and he's a scientist, and he got upset with Donald Trump over Covid, and it was just driven by the science because science does not lie. You know, political science we can debate issues, but DNA, it's a hard science. You better trust the results. Am I right?

Mitch Morrissey: Yeah. And that's why when you see it in court, it's hardly ever challenged. What does happen is that the defense concedes the DNA does show like identification, and then the defense becomes consent. So, you know, if you weave around the science to try to defend somebody on this type of thing, they've given up going into the, you know, trying to take this science on. That's been, you know, it's been decades since they've given that up.

So yeah, and it cuts both ways. I mean, man, as a prosecutor, you know, if it comes back and says, you don't have a case that's the best part of being a prosecutor, as you just get to sign that dismissal and say, we can't prove it. In fact, we've got the wrong guy, you know, and you continue to look for the real guy, the bad guy and DNA helps you do that.

CS: And if it comes back positive doesn't make things too easy. It's not even a challenge being a prosecutor on a case like that anymore.

Mitch Morrissey: Well, if it's ID, if the defense is ID it's not a challenge. You know, that was the thing about testing all rape kits. Well, there's a lot of rape kits where both people are saying you're going to find, you know, the product, what you're going to find there is the product of consensual sex. And so, you test that rape kit or do you not test it? And, you know, I think a lot of departments back when that was politically, Oh, you know they have 1000 rape kits that are untested. Well, they were all consent cases, and it didn't matter what the DNA showed because the guy was admitting he, because you're going to find his fluids there. And so was it.

Is it something that you know? Then DNA was basically just supported what both people were claiming that there was a sex act, so you know that was things that the police were criticized for not doing. But now Colorado tests all rape kits. It doesn't matter if it's consent or not. And you know, when I was advising the Denver Crime Lab I said, take all those cases and send them to CBI. Have them tested. They got the budget from the Legislature. You don't have the budget. We were under budget crisis at the time. Package it up and send it to them. And that's what they did. And I think out of, and I don't remember how many thousands of cases, we filed two.

So, you know, I don't know if that was a good use of resources or not, but we filed two. And then I said, if we start to see that pattern again, where the woman is having consensual sex passes out, somebody else came in, had sex with her. You know, let's, if that's the fact scenario, you guys tested here in Denver. But the bottom line is you had to fall back CBI tested it. So, it was really a dual thing. It was good.

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