OPEN AND SHUT - EPISODE 3 - THE HIT PLOT

Two prosecutors accused a man of plotting to murder one of them. Years later, a different story emerged.

*The Wisconsin case was tainted by secret tapes, unreliable witnesses and a supposed ‘hit’ plot against Winnebago County District Attorney Joe Paulus*

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*This is the third installment of Open and Shut, a seven-part podcast and online series investigating the virtually unchecked power of prosecutors. See the entire project at* [*wpr.org*](https://www.wpr.org/openandshut)

Back in the ’80s and early ‘90s, Sheila Berry was the director of victim assistance in Outagamie and later Winnebago counties. Berry said she originated the use of victim impact statements in Wisconsin in which survivors and loved ones describe the toll of a crime for a judge to consider in sentencing.

In 1991, Berry was in the Winnebago County District Attorney’s Office, working on a case against Mark Price, who was convicted of murder. “I thought he really did it,” she said.

But some years later, Price told Berry his side of the story. And she started to have doubts.

“He’s one of the most painfully honest people I’ve ever encountered,” Berry recalled. “Kind of crude around the edges, but he doesn’t make stuff up. And when he tells a story, he tells it the same way every time because he tells the truth.”

By this time, Berry had lost her job after accusing her boss, Joe Paulus, of misconduct in the infamous 1991 “Multiple Personality Rape Case.” As previously reported in [Open and Shut](http://wpr.org/openandshut), Paulus is the former Winnebago County district attorney who spent six years in prison after he was convicted in 2004 for taking nearly $50,000 in bribes.

But when she blew the whistle on Paulus, Berry said, “Nobody believed me. For years, everyone thought he was wonderful.”

Berry left Wisconsin and became a true crime author. And she started a nonprofit called Truth in Justice, which highlighted wrongful convictions and the factors that contribute to them.

One day, Berry said she received a letter from Price, “going on page after page about how his rights had been violated, and I wrote back and I said, ‘I don’t want to hear about your rights being violated. I just want to know what really happened.’ ”

Price claimed Paulus had prosecuted him for a murder he did not do. “And,” said Berry, “I’d had enough experiences by then with Joe Paulus to recognize what he had pulled off.”

She thought, “ ‘Oh my God, what have I done?’ ”

**A probe begins**

Mike Balskus was a prosecutor for 38 years. These days, Balskus works part-time on behalf of defendants as a private attorney in DePere, Wisconsin, near Green Bay. He says his most important job is playing Santa for his grandchildren. When he grows his beard out, he’s the spitting image.

Back in 2003, Balskus joined the Winnebago County DA’s office just after Paulus lost his re-election bid for district attorney. The FBI had been investigating Paulus for taking bribes. And Balskus started to look into other cases Paulus had prosecuted.

“If a guy’s taking bribes,” Balskus says, “you gotta wonder about what’s he going to do to get convictions?”

So Balskus started talking to Fox Valley defense attorneys, asking about any “strange” cases.

And eventually, he heard about a big one. Against Mark Price.

When Balskus looked into Price’s convictions, he found problems in one of them — a drug case. But to really understand what happened, it’s important to know about the earlier murder Price was convicted of committing.

**A body under the ice**

It was one of Wisconsin’s first no-body homicide convictions — the type of case Balskus says Paulus loved because it generated grabby headlines.

“No-body homicide” implies police couldn’t find the body. But that’s not actually what happened.

The murder occurred in December 1989. It involved men who killed a person over a drug debt and put him under the ice of Lake Butte des Morts, a large, shallow lake near Oshkosh.

“A couple of months later,” Balskus says, “a body shows up” — but no one flagged it as a homicide.

“They think it’s somebody who had jumped into the Fox River a couple weeks before,” Balskus says.

A local funeral home received the body. And this is where things really went wrong. The coroner at the time, Mike Stelter, says in an interview that he meant to request an autopsy. But the body was cremated before that could happen. Stelter says it was a horrible mistake — one that cost him his job.

At the same time, Balskus says police were picking up rumors about a guy who “ ‘got killed because of a drug debt.’ So now you’ve got a murder case without a body.”

The man who was murdered was Michael Fitzgibbon. Three men were involved: Price, Todd Crawford and Richard Pease.

The night of Fitzgibbon’s murder, Price says he was at an apartment with the other men when he and Fitzgibbon got into a “scuffle.”

“I had pulled the gun out that I had on me, and I shot it into the wall about two, two and a half feet off to the left of him,” Price recalls in an interview from Stanley Correctional Institution. “Wasn’t at his head, wasn’t above his head, wasn’t even near him.”

Price claims they went back to hanging out and getting high. Later that night, the four men — Crawford, Price, Pease and Fitzgibbon — left the apartment. They drove out on the ice of Lake Butte des Morts. That is where the stories of Price and one of his co-defendants diverge.

**Dueling stories of death**

Price says the other men got out of the car, and he stayed behind to drink his beer. When he got out, “That’s when I just seen — heard the shot. Richie (Pease) shot twice. And then he cut a hole in the ice, and I helped them put the body in it.”

Crawford told police a different story: That Price and Pease forced him to participate. He cooperated with Paulus’ investigation. Price did not.

“And Paulus, we’re in this little room, and he’s sitting across from me, and my attorney sitting next to me, and I’m explaining stuff to them. I said, ‘You know, I’m willing to plead out that I did help hide the body and stuff like that but … I didn’t do this.’ And he goes, ‘Oh, I know you didn’t do it, but if you don’t want to play ball with us, I’m going to put you away right along with Richie,’ ” Price says.

At Price’s trial, Price says jurors were told, “Basically, I tortured the guy. I beat him up. I punched him in the face over 200 times.”

Price and Pease were sentenced to life in prison. Crawford, after cooperating with the prosecution, was never charged for the murder.

**‘Hit’ plot alleged**

Balskus says after Price went to prison for Fitzgibbon’s murder, he and Paulus had a long-running feud, trading insults — even threats.

“Mark Price would send letters saying, ‘I’m going to kill you when I get out,’ ” Balskus says. “You know, ‘I'm going to have sex with you…’ Just rantings and ravings.”

In August 1994, Paulus was running for re-election as district attorney. At the time, Vince Biskupic was Paulus’ deputy. And he was running for DA in neighboring Outagamie County.

Biskupic charged Price with selling drugs from prison to raise money to hire a hitman to kill Paulus.

“The victim is his boss. Is there a conflict of interest? Yes,” Balskus says. “Is there an appearance of impropriety? Oh yeah.”

Biskupic alleged Price [was selling marijuana in prison to pay for a hitman](https://s3.documentcloud.org/documents/21491656/price-criminal-complaint-drugs.pdf) to murder Paulus. The case was built on a jailhouse informant.

One thing in the criminal complaint was definitely true — Price was selling pot.

“I understand that it, it sounds bad,” Price says in an interview. “You know, I'm in prison, I'm selling drugs to get money for an attorney. And they twist it and … now I'm selling drugs to raise money to kill him.”

Price adds of Paulus, “I hate the guy, you know, for what he did to me. And I told everybody I’d like to kill him. There’s a difference between making a statement and having an actual plan.”

Biskupic ultimately [levied three felony charges](https://s3.documentcloud.org/documents/21491617/price-amended-complaint.pdf) against Price. Worried he couldn’t prove the jailhouse informant was lying, Price — like more than 90% of defendants in the United States — [took a plea deal](https://s3.documentcloud.org/documents/21491434/mark-price-plea-agreement.pdf). Biskupic agreed to dismiss one charge and reduce another.

The conviction added 14 years to Price’s sentence. That might seem negligible, because he had already been given a life sentence. But it pushed back the date at which Price would be eligible for parole.

But looking over the file, Balskus found several problems in Price’s case — problems revolving around discovery.

**Rules favor the prosecution**

Discovery governs the [exchange of information between the prosecution and the defense](https://drive.google.com/file/d/1bHrLNIqfhZRYULtdgy2o9Rwj8iFK04U9/view). Ion Meyn, an assistant law professor at the University of Wisconsin, calls it one of the most important aspects of criminal procedure.

Before the 1940s, there weren’t a lot of guidelines for what information opposing attorneys needed to share. So there would often be surprise witnesses and documents, what Meyn describes as “going to trial blind.”

Reformers created a new federal standard for civil trials, Meyn says, one requiring parties to exchange “all relevant facts and documents and (the ability to) talk to everyone who has information about this dispute before trial.”

Meyn’s [research has revealed](https://drive.google.com/file/d/1fr3ggTGa1Au89lVnpYXdRw455xeEuIEb/view) that, initially, similar rules were applied to the draft of criminal procedure. But some members of the rules committee — comprised of judges, prosecutors and law professors, but not a single criminal defense attorney — pushed back. These Jim Crow-era officials objected to the idea that criminal defendants — many of them Black — would get more access to prosecutors’ files. Meyn believes the move to water down the discovery rules for criminal cases was [rooted in white supremacy](https://drive.google.com/file/d/1mwygsNOR9ZXZ8FiLXqeSt3_4RKVBtKb0/view).

“There are comments that were published by the (rules) committee,” Meyn says. “From federal judges, from bar associations, talking about how almost all defendants were Black — that it would be absolutely inappropriate to give Black defendants a voice.”

The new federal criminal rules put one person in charge of the flow of information: the prosecutor.

Says Meyn:*“*If you only have the person who has a vested interest in winning and convicting the case, and you leave the discretion to that individual to credit the evidence, you’re going to get a very, very poor assessment of what this case is about.”

**‘Brady rule’ emerges**

In 1963, the rules changed because of John Brady, who was convicted in Maryland, along with another man, of first-degree murder. Both were sentenced to death.

After the trial, Brady discovered his co-defendant had confessed to being the sole murderer. The prosecutors knew that fact— and had withheld it. The U.S. Supreme Court decided this concealment violated Brady’s right to due process, and it created the “Brady rule.”

The court found that “prosecutors have a constitutional duty to turn over all exculpatory information to the defense … any information that would tend to show that the defendant is not guilty,” says Angela J. Davis, a law professor at American University.

But prosecutors only have to turn over exculpatory evidence that they believe is “material,” or would likely change the outcome of the trial. And in Wisconsin, unlike some other states, it’s up to the prosecutor to decide when exactly to turn exculpatory evidence over to the defense.

“And so you have a lot of people pleading guilty when potentially, and in fact, we know, there’s oftentimes exculpatory information that is discovered later after the person’s convicted and serving time,” Davis says.

**Missing tapes**

In Price’s drug case, Balskus found tape recordings that had never been shared with the defense of the jailhouse informant, Darin Beverly, who was serving time for armed robbery.

In one of the recordings, Beverly offers to find Price a hitman.

“Mark Price’s response is ‘Nah, that’s okay,’ ” Balskus recounts. “ ‘I know that there’s another guy out there. And I think that guy’s going to do something when he gets out… so I’m not going to do anything.’ ”

In fact, several tapes were withheld from the defense — involving Beverly, another informant and an undercover police officer. All of these “completely fail to confirm that this plot even exists,” says Price’s attorney Byron Lichstein, who at the time worked for Wisconsin Innocence Project.

“It’s a case that was sort of almost made up from the beginning.”

In 2006, the Innocence Project filed a motion to withdraw Price’s plea. The special prosecutor assigned to the case [sided with Price](https://s3.documentcloud.org/documents/21464644/price_motion_hearing.pdf), agreeing Biskupic had not told the defense about those tapes.

Not only that, Biskupic had offered one of the informants — Terry Mangum, the woman who helped Price move drugs — a plea bargain. Biskupic told the defense Mangum would plead no contest to a marijuana delivery charge if she continued to cooperate against Price. But what he didn’t share: Mangum was never charged.

Susan Karaskiewicz, the special prosecutor, found that “giving Mangum so much consideration is exculpatory and her credibility could easily have been challenged.”

And there was more. Records show Beverly — the jailhouse informant — had asked for time off of his sentence in exchange for helping the prosecution. But Biskupic, in a secret court hearing, elicited testimony from Beverly that said the opposite — that he never asked for a deal. Records show Biskupic helped Beverly get five years off his sentence by making the [same claim to a Milwaukee County prosecutor.](https://s3.documentcloud.org/documents/21491519/fernsiegel_affidavit.pdf)

Karaskiewicz argued Price should be allowed to withdraw his plea to avoid a “manifest injustice,” and the judge agreed. He vacated Price’s conviction for making threats against Paulus but kept the drug charge, sentencing him to the maximum nine years on top of the 33 years Price was already serving before he’d be eligible for parole.

Even though the special prosecutor agreed Biskupic had withheld crucial evidence pointing to Price’s innocence, there’s no evidence he was ever disciplined.

Wisconsin Watch and WPR sent registered letters with lists of questions and left phone messages and emails for Biskupic, who is now an Outagamie County Circuit judge, and his attorney. They did not respond. Paulus did not respond to efforts to reach him through phone, email and certified letter with lists of questions.

**Price gets a break — and two big losses**

In 2014, Price and Lichstein [filed a motion for a new murder trial](https://s3.documentcloud.org/documents/21458772/price-post-conviction-motion.pdf), citing numerous pieces of new evidence and alleged acts of prosecutorial misconduct by Paulus. The appeal included an expert evaluation of a photo of the victim after his death — contradicting testimony from Crawford that Price had savagely beaten him. Fitzgibbon’s face did not appear to have any “cuts or abrasions other than what appears to be a small cut near his right eye,” the expert said.

A Winnebago County judge refused to order a new trial, and in 2016, the state Court of Appeals [agreed](https://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=173362).

For years, Price also had been trying to get his drug sentence to run concurrent with his murder sentence. Finally, at a hearing in late January 2022, a judge went a step further — and knocked it down to one year concurrent. That means he’ll be eligible for parole even sooner.

Price appeared at the hearing by video. He had a white goatee and wireframe glasses.

The judge read some boilerplate about how if Price wasn’t happy with her decision, he could appeal. Price interrupted: “I’m fine with the decision!”

In a phone interview after the hearing, Price said he was “very happy” he got a judge “who actually knows what the heck took place — and is willing to do the right thing.”

But one person important to Price’s story wasn’t there to see it. For over 25 years, Sheila Berry had been Price’s most consistent advocate — and a friend. She died in August 2021 after a long illness.

Next on Open and Shut: We explore a case prosecuted by Biskupic in Outagamie County that probes fairness in the criminal legal system — and who deserves it.

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