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IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs. Indictment No. 199103042-46

ADNAN SYED,

Defendant.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Trial on the merits)

Baltimore, Maryland

February 11, 2000

BEFORE:

HONORABLE WANDA KEYES HEARD, Associate Judge

APPEARANCES:

For the State:

KEVIN URICK, ESQ.,
KATHLEEN MURPHY, ESQ.

For the Defendant:

CRISTINA GUTIERREZ, ESQ.

RECORDED BY: VIDEOTAPE

TRANSCRIBED BY:

Christopher W. Metcalf
Official Court Reporter
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Baltimore, Maryland 21202

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PROCEEDINGS

(10:29 a.m.)

THE COURT: Good morning, Counsel. Before we bring the jury out there are a number of matters that I would like to take up, one at a time.

First, with regard to the Defendant's motion to call Mr. Urick as a witness, Ms. Gutierrez I have reviewed your motion and I have reviewed the law that you cited. In addition, the Mahoney case which I received. Interesting enough the State had also provided me with a copy of the Mahoney case. Although no brief was attached they also provided me with a case of Graduisky, I'm not sure how to pronounce that.

MS. GUTIERREZ: Graduisky, I think.

THE COURT: All right. That's at 321 F second, 263, 1963 case. I'm assuming --

MS. GUTIERREZ: Are you talking about Maloney, Judge?

THE COURT: Yes, Maloney.

MS. GUTIERREZ: Okay.

THE COURT: M-A-L-O-N-E-Y, which is at 241 F sup., 49. I received Venable versus State which is a Maryland case at 108 Maryland App. 395 as well as Johnson versus State which is a Court of Appeal, Court of Special Appeals case at 326. I'm sorry, 23 Maryland

App. 131 and Murphy versus State which is an old case I believe. It's been around for a while at 120, 129.

And with regard to the Defense motion after considering everything, first I'd like to know whether Ms. Gutierrez, would you like to be heard before I conclude? In light of the fact I have the cases in front of me now which yesterday I did not and I will hear from the State as well in response.

MS. GUTIERREZ: Just briefly, Your Honor. I appreciate that the Court has read the case law. I cited Venable and provided the Court Venable because it is the most recent pronouncement on at least the related issue. Although Venable of course, was the prosecutor calling the Defense attorney in response during the trial.

THE COURT: That's right. Just the reverse of what we have.

MS. GUTIERREZ: And Judge, for those purposes, you know it's not quite the same issue. The Defendant, you know has certain constitutional rights that -- the State may have certain rights to fairness and due process. Its rights can not be equated with the Defendant's rights against which it must be weighed, but I think that the reasoning Venable was the same and in reversing Venable on this very issue the

Court cited that reasoning and that in intimating, of course there might be other circumstances where it would be appropriate for a prosecutor to be able to call a Defense lawyer even though the general view is that's not a good thing. It's not a good thing under the rules, it's not a good thing under laws that govern the conduct of lawyers, it's not a good thing any time for an advocate to be removed.

Judge, what is instructed is in this case and I believe it's connected to this issue, is that when lawyers are, whenever it is you think someone who is your opposing counsel might be called to the witness stand and you are duty bound to do something about it, to not let that occur because all law recognizes that is not a good thing. It is difficult if not sometimes impossible for an advocate to be an advocate, to remain an advocate while on as a witness because any witnesses' credibility is an issue and that does harm.

In this very case, you know the State filed a motion which cost me and my client a lot of money on an issue because they sought to disqualify me because I might be a witness because of a prior representation of a witness in this case.

THE COURT: Ms. Gutierrez, but that's not

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before me. I mean, I don't know anything about it.
MS. GUTIERREZ: The reason being is that they did that based on their perception that is rightful, that it is never appropriate for an advocate to be a witness.
THE COURT: But that was not filed in this matter in front of me.
MS. GUTIERREZ: No Judge, and I'm not suggesting --
THE COURT: Oh, very well.
MS. GUTIERREZ: It is and I'm not trying to, but it is instructive here. Part of the reasons for notice requirement are to be consistent with due process are consistent with the law, but there are others, a myriad of others reason for notice. It's to avoid surprise in a trial, it's to avoid these kinds of situations. If it is perceivable that a rational advocate thinks such a thing that is unusual is -- the general rule is to avoid the situation like here, then an advocate is duty bound to do something to prevent that from occurring.
If, in fact we had been given notice that in addition to the bargain we've been told about which was required which is required under any theory, under all case law, under our rules, under Federal Rules, under

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Federal practice, under State practice to reveal to a Defendant a bargain that may have been given to a witness in his case. Particularly when that bargain is the basis of the argument for the credibility of the witness who is the knowledge of the State prior to the day was that he admitted lying and their entire credibility argument for the jury to believe this witness is premised on to accept him and incidentally he's now fessed up and acknowledged his participation in the crime he's pled guilty and his guilty plea, you know which we don't acknowledge as a guilty plea, but whatever it is that it's called, the litany and the plea bargain indicate his trustworthiness and part of its trustworthiness is that this was an arrangement reduced to writing and he was independently represented by a lawyer.
If we had been told that the prosecutor had provided the lawyer and in addition provided that the lawyer be free it would be as if we were told that Mr. Urick arranged to pay Mr. Wilds a thousand dollars for his testimony. If we had been given that notice, assuming that's lawful which we maintain it is not, if there's anything that constitutes what is a crime in Maryland interfering with a witness it is the payment of money.

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Lawyers are worth money. If we had been told of that Judge, then I would have been duty bound and I certainly would have done so to file a motion then when we were told, in ample enough time to predict this moment. That of course, Mr. Urick was a vital witness. that of course his testimony was not cumulative to Jay Wilds, to testify as to the circumstances of a prosecutor hand picking a lawyer that he's then going to argue to the jury the existence of which is independent proof of why this witness should be believed and we would have so moved ahead of time and we wouldn't be here. We wouldn't have this juncture.
In light of recognition that we were not given notice I feel that we're asking for the best that we can ask for. If the Court read the motion it should note that we have not asked for the sequestration of Mr. Urick and that is out of fear, Judge. We're in this place not of our own doing. We do not wish to bring the house of cards on us, we're not asking for a mistrial, we don't want to be forced to so ask or to add to a circumstance that might well lead us there. We will have certain relief that we will ask for, I believe based on our view and on the case law following Mr. Urick's testimony which we would offer is only limited to that single issue which relates to the

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benefit of the bargain that this witness has testified he received which is as if he paid him money.
For the record Judge, I would direct the Court's attention to recall last Friday Mr. Wild's lawyer was present and made an attempt to approach the Court. We believed it was inappropriate, we never had to reject it because I believe the Court ruled it was inappropriate in that Ms. Benaroya wasn't a party and shouldn't approach, but there was a moment when she came up and what she was insistent on the Court knowing was that she was pro bono. There's no other definition for pro bono other then that she's doing this free. We believe that's an additional bargain. What the Court may not have noticed but she brought up with her a pad on which she was insistent at the top she continued to write pro bono in very large letters, but what she was writing was a time sheet keeping track of her hours. There certainly exists in this case and I will tell you Judge, I didn't think to make a record then because she certainly wasn't a party and she should have not approached and it never occurred to me that I would arrive at a juncture of learning that a prosecutor's supplied a lawyer to its chief witness. She's not a Public Defender and she is in private practice in a separate jurisdiction, she has no basis for having been

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appointed. There are no separate proceedings here involving her being appointed by a Court which certainly --

THE COURT: Ms. Gutierrez, and do you not have her under subpoena still? You haven't released her?

MS. GUTIERREZ: Well Judge, I haven't released her but if you recall although she's aware of the subpoena and the extent much money trying to get her personally served and although she acknowledged it on the record that she's aware of the subpoena she has not been personally served because basically, we believe she's avoided service. I haven't asked for any relief of that because we're a long way away of needing her.

THE COURT: But couldn't you actually get the information you're requiring from her directly? How were you retained, under what circumstances -- why don't I wait to you stop talking and then --

MS. GUTIERREZ: I'm sorry. He was reminding me of the fact I forgot and that is, we've had with Ms. Benaroya.

THE COURT: And I'm saying --

MS. GUTIERREZ: She wants to ask us questions. She will not answer a single question.

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THE COURT: But my point is couldn't you then not get that same information from her? How were you retained?

MS. GUTIERREZ: Maybe, Judge.

THE COURT: How much are you being paid? Who contacted you? Did your client, Mr. Wilds understand that the State, if that's the fact.

MS. GUTIERREZ: Maybe, Judge.

THE COURT: I mean all the information that you are seeking could be obtained either if the State chooses to call her or either in your own case in chief to show that this witness, Mr. Wilds is in some way in receipt of a bargain that he has not disclosed to you or to the jury and therefore it effects his credibility.

MS. GUTIERREZ: Well Judge, number one, we're going to attempt to seek that.

THE COURT: Then I'd like -- and I'd let you know if you're not able to serve her that I'd ask you let me know immediately.

MS. GUTIERREZ: I'm going to ask the Court -- I'm going to ask the Court now particularly in light of this relationship with Ms. Benaroya who talks to Mr. Urick but won't talk to us, that she be immediately notified as an officer of the Court whether or not

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she's accepted service. Judge, I've gone to great lengths to serve her. I've had an investigator locate where she lives, when she appears. She's indicated to us she will not accept service which is an appalling fact to me given that she's a lawyer and frankly, Judge I expected her to be here yesterday.

THE COURT: I did too. And in fact, I was surprised that she was not.

MS. GUTIERREZ: So when she showed up on Friday I didn't think to rush and get her served because none of this had come up. I had sought to serve her because I thought it might be important and there might be issues that related to come up but I wasn't sure it was going to be relevant and I hadn't asked for the Court's help and then didn't seek it. After she came I expected her to be here and would have caused her to be served and that would be one of the reliefs.

In answer to the Court's question I have to say a very, very hesitant maybe. Maybe I can get the same information, but maybe I can't and even if we could get it from her Judge -- now, one of the reasons that I went to the effort to bring to the Court the case law is that it all stands for the proposition that an accused right to present its case as it sees fit. As

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long as it's not, you know irrelevant, as long as there's not any other way to do it, you know as long as it's not a ploy, but when it's compelling even if it alters the norm of what we expect, even if goes against the grain, like oh, no we don't want advocates to be witnesses and Judge, if ever there's a situation when there is surprise -- and I brought up the prior action of moving to accuse Ms. -- they were on notice they clearly think these things. That if there's an issue out there that they're duty bound to bring it up in sufficient time to avoid this very problem. How a prosecutor could not know that getting someone a lawyer and then providing for that lawyer to be pro bono was not a benefit conferred on the witness who's credibility it is dependent on.

And so Judge, the answer I think even if it's a maybe, can we get the same things, I state unequivocally there is no way to get the impact. The only person hanging over this witnesses' head is this man, not Ms. Benaroya. The only person who has the determination to make a decision about what happens to him is that man. It's only if it pleases that man. The fact that this witness maybe beholden to the man who holds all of the strings is vital. Could we get the sum of the same things, yes we could, but it's not

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the same and this Court should not exercise its discretion on the hope that maybe we can do it. It's our right to determine what's our best evidence, what's our best defense and we determine Judge, and I think the facts support us. It is a far different matter for the jury to hear Mr. Urick acknowledge that he got the lawyer for the man who's credibility is at the base of his case without which Judge, he has no case. Without Jay Wilds they can not get over a motion for judgment of acquittal either at the end of his case or at the end of ours. This is critical. It's a far different matter for the Defense to be able to put Mr. Urick on then it is to try to get those things from Ms. Benaroya and so Judge, that is our motion.

I believe that the case law supports that this Court should. He's a competent witness under our rules. The law says the fact that he's a prosecutor doesn't render him incompetent and although the law puts it in the discretion of the Court, all of the law does suggest to this Court that when it is compelling, when it is vital, when it's not a subterfuge that the Court should exercise its discretion and allow it.

THE COURT: Thank you, Ms. Gutierrez. Either Mr. Urick or Ms. Murphy.

MR. URICK: Thank you, Your Honor. I'd like

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to address briefly the motion. The State of course opposes the motion.

MS. GUTIERREZ: Judge, we would object to Mr. Urick responding to the motion that is the issue of which is whether or not he testifies for the record.

THE COURT: I understand. For the record, he's still Counsel for the State and at this time I'd like to hear from Mr. Urick.

MR. URICK: First point I'd like to make is as

the -- assuming that the evidence would be admissible and I'm assuming that arguendo. The case law is quite clear that this is a discretionary matter and courts are very reluctant. As the courts seem to indicate one of the compelling reasons for calling the witness would be that that is a unique source of information. Ms. Gutierrez has not and can not show that I would be the only source of this sort of information since that I would be a necessary witness that it could not be obtained by some other means.

The second thing I would like to address is the actual admissibility. Ms. Gutierrez seems to have a somewhat -- she has a wrong, an incorrect idea of what a benefit is. What you're dealing here with is assistance of counsel and this morning I provided the

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Court's law clerk and Ms. Gutierrez a sheet with a bunch of cases on it. I should have titled it so it would be clear what I was doing. All of these cases detail that assistance of counsel is a fundamental right under our constitution, hence it is not a benefit it is a right. All attorneys have a obligation to respect that right and to seek to effectuate it. State's attorneys have a special position in regards to that because we have no client for whom it would be a conflict for us in dealing with others so we have to try to safeguard the protection of everybody that we deal with. Again I point out the case law, you know that quite clear you're dealing with a fundamental right, not a benefit.

The second thing that I would like to point out in this area is that the particular assistance of counsel is effectuated through judicial review. Judge McCurdy held an in camera review with Jay Wilds, with his attorney and Benaroya. At that review where I was not present, the Judge advised Mr. Wilds of his right to a counsel of his choice, to his right of independent counsel, assistance of counsel. He reviewed the facts of the representation of Mr. Wilds. Judge McCurdy offered Mr. Wilds the opportunity to withdraw from the plea, to continue with the plea, to have the Court

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appoint an attorney if he wanted, to accept Ms. Benaroya's representation. Based on the election that day Judge McCurdy found that Ms. Benaroya's representation was Jay Wilds exercising his constitutional right to an attorney of his choice.

Secondly, found that in fact Jay Wilds was receiving independent assistance of counsel and that there was nothing improper. For all of those reasons the State would oppose this motion.

THE COURT: By the way I'll accept that as a proffer that if there were a hearing and there were sworn witnesses that that's what the State would present. As a counter to the motion that the Defense has filed.

MR. URICK: The State would make the same proffer.

THE COURT: Very well. Ms. Gutierrez.

MS. GUTIERREZ: Yes Judge, I'd like to respond to a couple of things. First of all, what benefit it is? What benefit it is, is a broad definition to provide someone with a lawyer is worth money. There is a procedure to provide persons accused of, suspected of, charged with criminal matters with lawyers. That is a judicial process. Mr. Wilds fundamental right to counsel is not what's at issue.

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Would he have been entitled to have a lawyer appointed to him once he was charged with a crime, well of course that answer is evident, that's not at issue here. We certainly don't have standing to raise nor are we concerned with Mr. Wilds right counsel.

All we are raising is that clearly the propriety os something Judge, that I have no difficulty stating unequivocally, there is no jurisdiction in America that affords a prosecutor the right to pick counsel for its witnesses, nowhere. Not in any state, not in any federal jurisdiction. That is a judicial function. Yes a prosecutor is charged under the ethic rules with respecting that and obviously if Mr. Wilds asked for a lawyer Mr. Urick was duty bound to provide for one. But the subject of Mr. Wilds in his plea agreement have been litigated before. I will tell you this is the first I've heard of the proceeding and if such a proceeding occurred then it occurred Judge, I believe between the last trial and this trial, but there is no proceeding on the record prior to September 8th, 1999 and this witness has testified and Mr. Urick hasn't attempted to rebut any of that to say it's not true. That he first met his lawyer on the first day a criminal information was filed and that day was September 7th, the day before. Mr. Urick and Benaroya

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and this witness appeared before Judge McCurdy and in that proceeding Mr. Urick did appear and Ms. Benaroya appeared but barely opened her mouth, one time. She asked no questions, there is not a single time except to answer a question put to her by Judge McCurdy is that your understanding of the plea, the written plea agreement and she said, yes. Judge McCurdy didn't know then that his lawyer had ben provided by the State as an additional benefit, made no inquiry. There were no facts whatsoever and so it stands that at the time he signed the plea agreement, even though he now may have said and I use may loudly. That he now may have said to Judge McCurdy and I believe that that occurred, it occurred within the last month, that oh, yes I'm happy with the lawyer. That the issue of what Mr. Urick did by providing the lawyer, by selecting who that lawyer would be, by arranging that that would be at no charge to this witness.

If this witness were entitled to a lawyer then he was duty bound to either go to a Judge or call up Elizabeth Julian, a Public Defender for Baltimore City and say, I have an indigent person, I'm trying to work at a deal, he's requested counsel, a point one.

In this jurisdiction as in every other jurisdiction in Maryland 365 days a year there is a

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duty Public Defendant always available to the judiciary, to the police for any purpose in which the presence of a lawyer to represent an indigent defender is required. It's not hard to do. So whatever -- a made up procedure to protect in retrospect to have a witness who has this benefit and they feel indebted in a way that may effect what he testifies to the man who provided him the lawyer, to the man who selected the lawyer, to the man who caused the lawyer to not charge him may impact even if there was such a proceeding. Whatever its scope does doesn't impact on what happened on the 7th. That didn't happen, there was no inquiry and if the Court wants, I believe the videotape, whether it's with the file or in the record of that is readily available. Back at my office I have a printed up transcript of the proceeding on the 7th that will show that lawyer came up. Lawyer selected and arranged by Mr. Urick never muttered a word at all and if the Court needs to see that you give me time, I'll run up, have somebody run up and get that. The videotape is available, I don't know where it was, we filed a motion, it was made available but kept in the Court record since we had to file a motion since I wasn't party and had to go through this procedure because the court reporter wouldn't produce the

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videotape without a court order allowing me, a non party --

THE COURT: To view the tape.

MS. GUTIERREZ: And not representing a party to that videotape to view it and that order was signed and the videotape was produced. We were asked to get that videotape and take it right to Judge Quarles. we never made a copy of it, we viewed it, we did that and so I believe that videotape would be readily available. I just don't know physically where it is.

THE COURT: I'm satisfied with your representation of what the videotape entails.

MS. GUTIERREZ: And Judge I viewed that, Mr. Urick appeared there. Mr. Urick is the one that caused that no statement of facts be read. Mr. Urick's decision to impact on that procedure is critical to us attacking the credibility of a witness that be feel beholden to him and this jury may believe that that witness it beholden to the man that still holds the keys.

So whatever proceeding there may have been in retrospect fearing the disclosure that we sought for months suspecting -- if they took him later to any Judge, to all Judges and he says, oh, no I'm perfectly happy with the lawyer that he got. She's already my

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lawyer. Judge, it's a fraud. Perpetrating that fraud and trying to clean it up doesn't take it back to the beginning.

THE COURT: I don't want you to have to compete with what's going on outside.

MS. GUTIERREZ: Judge, it may well be since this is the first week of that proceeding and if that proceeding before Judge McCurdy then it would be readily available on video and I'll ask the Judge to go back because I will bet that there may not be anything on that record that Judge McCurdy was made aware enough to trigger that he even understood that that witness may not have retained his own lawyer. That the arrangements for the lawyer came through a prosecutor for his witness. You can look at that, but whatever it shows it doesn't alter the fundamental issue that the lawyer was gotten by this lawyer. Whether he satisfied or not whatever he says, that goes to his credibility, that's part of the argument.

Of course he's satisfied now, he got all the benefit, he's out to please the man who beholden him with an actual benefit. Lawyers aren't potted plants, they cost money. If one is indigent and entitled to a lawyer there's a way to do it. Prosecutors never get pick lawyers. It is critical to this case.

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THE COURT: Thank you, Ms. Gutierrez. I would agree with you that normally prosecutors don't pick lawyers for Defense Counsel and I would also agree with you that the Court rarely picks attorneys for Defense Counsel, for Defendants. In fact, the Defendants absolutely have a right to pick counsel. They have a right to pick substitute counsel, they have the right to excuse their counsel and say they'll represent themselves, but that right remains with them.

I find that there must be a compelling reason to call Mr. Urick as a witness in this case in order that you may be afforded the opportunity to challenge the credibility of Mr. Wilds with regard to any deal or benefit derived from the State through the presentation I'll call it, of an attorney for Mr. Wilds. I also find that first you made an argument, a rather compelling presentation of facts. When I say compelling I mean that you have available to you through your very argument to this Court those items in evidence to challenge the credibility of Mr. Wild's testimony with regard to anything Mr. Urick may have done to assist. The witness himself, Mr. Wilds provided you with that evidence and you readily used it in your argument to this Court. So I find that you

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have that availability.

Secondly, you have the availability of calling Ms. Benaroya who I feel would offer you an additional opportunity to present evidence to attack the credibility of Mr. Wilds. For that reason I do not find a compelling reason to call or allow you to call Mr. Urick as a witness in this case and with that, with regard to that motion your motion is denied. I do appreciate your argument however, and I will note your objection and make sure that your motion appears in the record and I'm sure that at the time you may want to reiterate or reargue this issue at another time, but I will also preserve the materials you've provided to me in the record so the record reflects that, but your motion is denied.

MS. GUTIERREZ: Thank you, Judge. I do have a couple other motions in light of that. First of all --

THE COURT: Well, before you go into any other motions let me deal with the motions in front of me and then you can add to that because I would like -- I think you need to know that there are a number of other things that you've asked for already and I would like to deal with those first before I take up something new. Second, I've been provided this mornin

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with notes from both detectives. Detective Ruiz.

MR. URICK: Ritz.

THE COURT: Ritz.

MS. GUTIERREZ: These are the notes of the two hours --

THE COURT: Yes, oh yes.

MS. GUTIERREZ: We expected an affidavit.

THE COURT: Yes.

MS. GUTIERREZ: That did not exist.

THE COURT: No affidavit, Ms. Gutierrez because I have notes and I have a second set of notes from, I assume they're Detective McGilvary.

MR. URICK: That's correct, Your Honor.

THE COURT: I don't know who is whose, all I know is that there is two sets of notes that appear to be in different handwriting. Perhaps Mr. --

MS. GUTIERREZ: Are they identified as to which?

THE COURT: No, they're not. I'm asking perhaps Counsel --

MR. URICK: I believe the yellow is Detective McGilvary's.

THE COURT: McGilvary's is in the yellow.

MS. GUTIERREZ: And are they identified as to

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which conversation? Is that --
THE COURT: Well Ms. Gutierrez, it's --
MS. GUTIERREZ: Okay.
THE COURT: I'm granting your motion to have them. In fact, the Court has made copies for you. So I'm giving them to you and I'm granting your motion that you should have these to assist you in any way that you believe necessary in your cross examination of Mr. Wilds. I'm giving an additional set of these notes to the State and I'm keeping -- there's one for actually Ms. Murphy as well and I'm going to ask the court clerk to put the originals in the Court file. I have another copy for myself.
So, with regard to your motion to have the notes I find that you get the notes, you have the notes, that they may be used in any way you deem necessary. Now, I must add, those notes are notes of the detectives, not of this witness.
MS. GUTIERREZ: I understand.
THE COURT: They are not signed by this witness or adopted nor are they signed by the author of the notes, but you now know who the notes are and you may use those notes to assist you in anyway you deem appropriate in cross examining the witness on the statement he may have made that was not taped.

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MS. GUTIERREZ: I would make a request just to have a little bit of time.
THE COURT: You'll have time to review those.
MS. GUTIERREZ: If I can do that.
THE COURT: Because I have another issue before you raise your next motion. I have a note from the jury. I will read it slowly and then I will allow each of you to have a chance to look it if you need to. Yesterday when leaving the courthouse, Mr. Wilds approached me and another juror and asked if he could have a light. Today Mr. Wilds approached me and another juror again and asked for a light. We would appreciate it if you would ask him not to approach us again from jurors, it appears 12, one and three and I'm going to pass the note to the court clerk so that he can show the note to Counsel. I take it Mr. Wilds is here, is he not?
MR. URICK: Yes.
THE COURT: Okay. Anybody want to offer a suggested response to the jury?
MR. URICK: We have admonished him several times not to speak to anyone. This is no excuse. I suspect that when he goes out front to smoke a cigarette he sees someone with a match, he goes over and asks if he can have a light. Perhaps the Court

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would want to admonish him that he's not to speak to anyone around the courthouse, period.
THE COURT: Well, my question was, did you want to offer a response to the jury?
MR. URICK: I would asked that they be voir dired to see if it has effected their ability to --
THE COURT: I frankly -- I'll hear from Ms. Gutierrez and if you have a suggestion for the jury because I have one and it's very easy, it's thank you very much for notifying the Court, it will be handled no one will approach you, period and that's my suggestion.
MS. GUTIERREZ: I would agree with that and that's pretty straight forward.
THE COURT: It's very straight forward.
MS. GUTIERREZ: The jurors clearly went out of their way knowing that they should report this and that this was improper. In response to the responding to the jurors I think, I agree with the Court's suggestion that we should reassure the jurors. I would object questioning the jurors any more because again, the fear is, you know, that opens it up to making it something more then it is and given the straight forwardness of the note and the detail of the information I think it's trustworthy that if something

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else occurred they would have told us and they're asking for the Court's relief and yes I suggest we give it.
I do have a further request even going to Jay Wilds and I will note that in this courtroom Mr. Wilds is sitting as close as you can get to juror number twelve. You know, that he had to of known they were jurors. He's been in front of these jurors for two full days at a most serious occasion he could hardly forget what they look like and then go approach them. He knows better and clearly it's not enough to tell Mr. Wilds. I would ask that Mr. Wilds if he continues to testify be restrained by the Sheriff. When he's out of here then he be put in a specific place, that he be held when the jurors leave, make sure they're gone to ensure -- he clearly can't follow instructions, he had to of known it was wrong and so in regard to that issue. I do have other motions regarding Mr. Wilds, but that's what I would ask the Court. Not just to ream him out, but to take precautions that he's not allowed to roam about and possibly ask other jurors for lights or for anything at all.
THE COURT: I actually like your suggestion, Ms. Gutierrez and I am going to take that suggestion. In addition to admonishing Mr. Wilds again I'm going to

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ask the clerk and my staff to make sure that he is escorted and placed in certain places until we are satisfied that all the jurors have left and we'll do that until he concludes his testimony to ensure that he has no further contact. In addition to admonishing him of what his responsibilities are in the event he is at lunch or at any other time in the building.

MS. GUTIERREZ: In addition Judge, I'm a smoker and I have an extra pair of matches and those can be issued to ensure that he has no reason to approach anybody for anything.

THE COURT: Ms. Gutierrez, I'm not going to encourage anyone --

MS. GUTIERREZ: I know that.

THE COURT: To smoke including you. So, to that end --

MS. GUTIERREZ: ___

THE COURT: I understand. Now that I've concluded those two matters I would just let you know the note says, thank you, the Court will direct all witnesses not to have any contact with you and I will direct Ms. Connelly to take this.

MS. GUTIERREZ: Judge, in that I would ask that the note specifically direct Jay Wilds to have no

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contact with you because that's really what they asked for assurance of. You're not just blanket laying --

THE COURT: I understand.

MS. GUTIERREZ: Notifying that you tell them that. Specifically, I'll direct Mr. Wilds to have no contact.

MR. URICK: The State feels the Court's initial phrasing would be appropriate.

THE COURT: I changed it but underlined all. All right.

MS. GUTIERREZ: Thank you.

THE COURT: And that's the only thing -- I think that will be sufficient because I think it's important that they know that and I also as I've done each day will continue to advise them that they should let me know if anyone should contact them or have any further contact. Yeah, just give that to them and then you may leave and come back. The reason I'm having that done at this time is because they have been sitting there since 9:30 so I want them to at least know we are doing something here.

MS. GUTIERREZ: Right. And that they'll all get a chance.

THE COURT: And that they'll all get a chance. Now Ms. Gutierrez, you indicated you had some

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other matters that you would like to raise.

MS. GUTIERREZ: I do, Judge. They also involve Mr. Wilds. I'm making a motion to strike Mr. Wild's testimony and Judge, now I know, I suspect it existed and maybe it might change my mind later. I don't know yet, but I'm making it on the basis of the failure to give us notice, to advise what the bargain was and I'd ask the Court incorporate the arguments I've already made on the other motion because I think a lot of them are the same as to who Jay Wilds is.

Now the basis for notice, notice to the Court surprise and to allow a Defendant to fairly pick his best defense. Jay Wilds is it in this case. The issue that the prosecutor selected his lawyer and arranged for that lawyer not to cost him any money was critical evidence. That clearly would have gone into opening.

Notwithstanding the fact that there's all these other things that attack his credibility, we're entitled to them too and the absence of the information was so fundamental and there was no way -- yes, can we capitalize on it now they we have it, yes but that's at the end. All studies of juror show that most jurors made up their mind in opening. What they're looking for, that why we as advocates spend so much energy. No it may not be evidence but there's a reason we're

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allowed to be there and putting it out and have jurors on alert for the feared. We were deprived of that because we were given no notice.

I would maintain Judge, that in addition to due process and the right to have notice that it was required disclosure under any theory. It is a benefit, it is part of what Mr. Wilds get, got and it is what they are arguing as the only basis for his trustworthiness and the failure to give to us ahead of time.

Judge, it is important, this is the second trial. This didn't come out in the first trial I would say because of the detailment, so they never volunteered it or asked a question that might suggest it, it was their intent to hide it. It was their intent that it not come out and Judge, I remind you that yesterday this Court sustained a number of objections to any of my questions about -- near that and I understood that until Mr. Wilds in an effort to explain why he asked to turn off the tape recorder during the middle of the tape recorded statement on the 28th offered the information that he asked for assistance getting a lawyer and that of course, is what led to a series of questions that got me no information until I asked him about it on the 7th and this Court allowed me and they

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didn't dare object to that question, they didn't object and it was only in response to that that he answered. It was pure for fortuity. And in light of having chosen to hide it and not reveal it to the defense, Judge that's the things that can be corrected and many of those things can even be corrected all the way up to the end of the trial.

There may be other relief that we ask Judge, but there is no correction for this unless this Court is prepared to allow us to go back and reopen to the jury armed with all the knowledge we should have had about the only witness that can make or break a case against Adnan Syed. That's the only remedy that can possibly make us whole. So, we would move to strike all of his testimony.

THE COURT: Very well. I'll hear from the State.

MR. URICK: Without going into the same detail I will elaborate my previous response. Ms. Gutierrez is arguing benefit in a situation that's not appropriate. Assistance of counsel is a fundamental right, it is not a benefit. The case law established that quite clearly.

Secondly, the assistance of counsel is effectuated through judicial review. I was not present for that

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but it was my belief that that was on the record. I don't know, I wasn't there, I can't state that for certain. Judge McCurdy might be able to clarify that, I can't but it was my impression that that was on the record. Hence, there is no benefit here, this is a fundamental right and it was effectuated through judicial review that found as I previously mentioned we would oppose Ms. Gutierrez's motion.

THE COURT: Very well. Motion to strike the testimony of Mr. Wilds is denied. However, I'm going to allow Counsel in closing argument to argue the credibility of Mr. Wilds being effected by anything that Mr. Urick may have done in assisting him in getting counsel and that is anything that came out through Mr. Wilds's testimony of what he believed, not what may in fact have occurred, but what he believed happened. Because it's his belief that controls his credibility, what he testified to, why he testifies in the way he testifies, why he signed the agreement and why he testified in this case.

So, to the extent that he believes that there was some benefit and that anything Ms. Gutierrez has indicated so far effects his credibility then you may argue that in closing. Also to the extent you may choose to call another witness like Ms. Benaroya which

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establishes even more, so any role that Mr. Urick had in obtaining that attorney, that particular attorney and again, I don't know what Ms. Benaroya is going to say but if you find there's even more evidence that will add to that -- the issue to the credibility of Mr. Wilds being related in that way you may argue that.

But I do find that is a minor issue to the total weight of his credibility, that it is something to be raised, but it goes along with the aspects of the plea agreement which you went through in detail. Which also may be argued obviously to bring forth to the jury's attention the manner in which they should weigh heavily or not weigh heavily the testimony o Mr. Wilds, so for that reason your motion to strike his testimony is denied, but you will be given latitude to argue that in closing and also to the extent it may come up through any other witnesses.

MS. GUTIERREZ: Well Judge, in light of what the Court said, if the Court recalls the cross examination on the plea agreement actually took place on Friday and I would ask and I appreciate the Court's indication that it's going to give me wide latitude. But because this was a surprise, a new knowledge in order to effectively take advantage of that I think we would have to go back to the plea agreement that I

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pretty much had fully covered on Friday. That's what I covered, but of course, I had none of the information that I have now in regard to the lawyer issue and how that came about and so I would certainly be requesting that that wide latitude include my ability to go back to areas that clear have already covered but without this knowledge.

THE COURT: Ms. Gutierrez, I'm going to deny that request. My notes reflect that yesterday you spent just over an hour on the plea agreement in addition to -- in addition to the questions on Friday.

MS. GUTIERREZ: But that was before I got the information.

THE COURT: Well, actually I think --

MS. GUTIERREZ: The magic information came at ten after four.

THE COURT: The magic information actually came from the witness earlier on.

MS. GUTIERREZ: No, Judge.

THE COURT: He, himself said --

MS. GUTIERREZ: Its ten after four --

THE COURT: All right.

MS. GUTIERREZ: In which he says he got Mr. Uricks' assistance in obtaining counsel.

THE COURT: Ms. Gutierrez, I hear what you're

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saying, I will indicate to you that to the extent there are particular questions that you would like to revisit, that part of the motion of revisiting the same questions is denied. If there is some new area that you do not believe has been thoroughly covered by Mr. Wild's response that still remains open and the Court would never restrict you into an area that you have yet questioned the witness on.

So, I will allow you to do that, what I'm asking and directing is that you not revisit any area that you have already covered and if you have additional, more specific questions for Mr. Wilds that have not been covered you're welcome to do that and I also would point out and through any other witness that you have yet to call or has yet to take the stand.

MS. GUTIERREZ: Judge, I would make a further motion and note for the record that in response Mr. Urick continues to try to utilize the so called judicial review that he says he wasn't at and has never once revealed the date of it. To note, for the record he could not have occurred before the 7th since Mr. Urick didn't charge Mr. Wilds before the 7th. It does not appear on the 7th in that it hadn't happened afterwards.

In light of his remarks I would move and ask for

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this Court to order the release of that tape that occurred before Judge McCurdy and it occurred in a videotape proceeding, I would be in the same position of where we could pay a great deal of more money because if it happened it's a public record and I can get the hard transcript of it. That takes a great deal more time and money and I would ask the Court to order the release to us. Preparing a copy of the videotape is a pretty simple matter and generally can be done, you know over night. You just make a copy of that, they locate that tape and make a copy of it.

So, I would ask for an order allowing us and since we've prepared an order I guess we could prepare another one and talk to Ms. Sheldon and I think a verbal order would cause that to be prepared because I think that we are entitled to that.

THE COURT: Can I deal with just that one issue? Mr. Urick, do you have a problem with or do you know what the status of this hearing before Judge McCurdy involving the -- at that time the Defendant, Jay Wilds? Is it sealed? Is it -- I mean, is that --

MR. URICK: It's my impression and that's just my belief that it was on the record, an open --

THE COURT: It was on the record?

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MR. URICK: Yeah, it was an on the record although in camera in chambers it was on the record. That was my impression.

THE COURT: So you're saying it's available for Counsel, Ms. Gutierrez to obtain a copy of it?

MR. URICK: I believe it should be.

THE COURT: Without any difficulty?

MS. GUTIERREZ: Do you know as to when it occurred?

THE COURT: Do you know the date of the proceeding

MR. URICK: I think it was within a week or two of the plea.

THE COURT: Okay. And so the date would be?

MR. URICK: Sometime in September, I believe.

THE COURT: Sometime in September. That's not a date, that's a month.

MR. URICK: I was not present.

THE COURT: Can you obtain the date?

MR. URICK: I will see if I --

THE COURT: Is there any record anywhere? The clerk's office or case number?

MR. URICK: I would have to try to search that down.

THE COURT: You don't have a case number of

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the proceeding? In other words, the charge that Mr. Wilds was facing?

MR. URICK: It's on the plea agreement itself.

THE COURT: Ms. Connelly, if you would look at the case number on Exhibit Number, which is what? Ms. Gutierrez, do you know the exhibit?

MS. GUTIERREZ: I think it's 35.

THE COURT: Exhibit 35 and I'd ask that you go to the clerk's office and find out when the plea -- call the clerk's office and find out the date.

MS. GUTIERREZ: Well Judge, I will note there's a long and tortured history here.

THE COURT: Well, this is not going to be long and tortured.

MS. GUTIERREZ: The existence -- well, the file number on the --

THE COURT: This is going to be very simple.

MS. GUTIERREZ: Plea agreement, I believe is not a correct number.

THE COURT: Ms. Gutierrez, let me find that out since Mr. Urick tells me that that's the case number.

MR. URICK: I'm sorry.

THE COURT: Mr. Urick tells me that that's

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the number I should use to contact the clerk's office let me do that and if it turns out that it's not the correct number and I've been misled then I'll deal with that.

MR. URICK: I misspoke, that was the tracking number. The case number is 299 --

THE COURT: One moment. 299 --

MR. URICK: 250.

THE COURT: 250.

MR. URICK: 001.

THE COURT: 001 and his name is not an alias, it is Jay, J-A-Y.

MR. URICK: Yes.

THE COURT: W-I-L-D-S?

MR. URICK: Yes.

THE COURT: Very well. Ms. Connelly, if you could kindly locate this guilty plea, get me a date, find out from Ms. Sheldon if the tape is available. Ms. Gutierrez, your next issue.

MS. GUTIERREZ: Yes Judge, at this time we would make a motion before full disclosure pursuant to the Rules, pursuant to Maryland case law, pursuant to Federal case law, pursuant to Brady, pursuant to due process for full disclosure covering any and all circumstances of exactly what help Mr. Urick provided

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in getting a lawyer, how the lawyer was selected or was any other circumstances surrounding the selection of that lawyer or the setting that up. What was communicated from Mr. Urick to Mr. Wilds? Was there any correspondence between that lawyer and Mr. Urick or anyone acting as Mr. Urick's agent or from anyone assisting or acting as Ms. Benaroya's agent?

That correspondence request would include any phone records, any notes of conversations, whether or not the information was reduced to a formal piece of correspondence. The substance of any conversations and now that we're on notice that subsequent to the plea that there was a further proceeding, what if any -- what if anything occurred that led to that second proceeding where this client was asked if he was happy with the lawyer and satisfied with the lawyer that was selected by Mr. Urick.

We'd also request information on all the same grounds, any information as from Mr. Urick as to whether or not he's ever picked a lawyer for the main suspect in a murder case outside the formal procedures available in this jurisdiction to do so whether or not in this case or any other case. He's made a referral to the Public Defender's office if he ever approached any judicial entity, what if any arrangements were made

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to pay the lawyer or not pay the lawyer through any means. Direct money, other billing, any means whatsoever. By any that would be including the State's Attorney's Office hasn't received any billing from Ms. Benaroya or correspondence or the submission of documents indicating her time and when it was.

Any information regarding how he specifically picked this lawyer, with his relationship with this lawyer is and what is the substance of any of their conversations prior to the 7th, on the 7th, regarding the plea, regarding their specifically not just the terms of the plea, but who made the decision regarding 1A in the plea. Regarding an attestation by Mr. Wilds that he's always told the truth in all of his dealings with the police or with the prosecutor up and until that time and the substance of any conversation regarding how that lawyer got to be there on the 7th and what if any conversations took place that included Mr. Urick in the presence of Ms. Benaroya on the 7th that also included the presence of Mr. Wilds regarding the introduction of the lawyer.

He's testified he had never met the lawyer before that day and what was said about the lawyer or communicated about the lawyer in any manner. A telephone message, a telephone call through one of the

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detectives through any other person or communication to anyone else meant to get to Mr. Wilds about the lawyer that Mr. Wilds was about to meet on the 7th as to why she was chosen, what her experience was, what she now knew in through what terms and we would request immediate disclosure of all of those circumstances. Clearly believing we would have been entitled to have that disclosed, that it was a benefit and that we need that disclosure now to effectively cross examine continually this witness about those terms because they clearly will relate to his credibility is dependant on that dependance of that lawyer, his dependance on Mr. Urick and would also impact, for instance on our ability to effectively question Ms. Benaroya.

THE COURT: The State does not wish to be heard, do you?

MR. URICK: No. Thank you.

THE COURT: The motion is denied. The information that you are seeking to contain would be information that Mr. Wilds would have a privilege, that is how he chose a lawyer, the circumstances under which he chose a lawyer. I do not believe the State has information of that magnitude that would warrant me asking the State to provide that information. In fact, the fact that the witness has already testified that

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the tape was stopped when he asked for counsel, I'm not going to require the State to go into anything that the Defendant, Wilds at that time being a Defendant or at least an individual with an absolute Sixth Amendment right to ask for and receive counsel. I'm not going to go into his privilege communications that he may have had either in the presence of the State or outside of the presence of the State to you, Defendant for Mr. Syed and I am therefore not going to grant that motion, but rather I'm going to say that if there's information that you believe relevant to the decision by Mr. Wilds to select Ms. Benaroya I will allow you, if you would like to have a hearing where as Mr. -- Ms. Benaroya could come in outside the presence of the jury and provide the Defense with information if she does not believe there's a privilege communication involved and then we could get to the bottom of it in that fashion, but I'm not going to require the State to provide that information because I don't think that's appropriate.

MS. GUTIERREZ: I'm not requesting information --

THE COURT: Source that would be reliable in order to get to the credibility issues that you are seeking to obtain. Not through the State but rather through this witness and through his lawyer.

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MS. GUTIERREZ: Well, obviously Judge, I'm going to take advantage of that, but to correct the record I'm not requesting information from this witness because he's already said what essentially amounts to the fact that he didn't choose his own lawyer, Mr. Urick did. So he couldn't possibly have information as to how Mr. Urick selected his lawyer and what I'm asking for is not privilege. There is no privilege between Mr. Urick and Mr. Wilds. I'm not asking pierce the relationship or to ask for any privileged information as between Ms. Benaroya and Mr. Wilds. I'm seeking information that Judge, would not be in, it may, but would not likely be in Mr. Wild's personal knowledge or hearsay knowledge if he didn't pick his own lawyer. I'm asking information peculiarly within the sphere of Mr. Urick. In no way based on Mr. Wild's testimony within Mr. Wilds basis of personal knowledge or hearsay knowledge from that. In light of that, in response to the Court I certainly would take advantage and ask the Court to have Ms. Benaroya here and request a hearing outside the presence of the jury. I believe it's not privileged, but in the event any part of it that is privileged Judge, well then you have competing interest.

THE COURT: That's right.

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MS. GUTIERREZ: And in that set of competing interest the only person with those rights that this Court should be concerned about, if it's one persons right to counsel who's not on trial versus one who's in, in any contest if it gets to that, Adnan Syed wins and this Court must be primarily concerned with his right to counsel and his right to counsel includes this Court ensuring that his counsel in order to effectively represent him is provided by vital information that she is required to have had.

THE COURT: I understand your point, but as I stated before, I believe the information you wish to obtain can be obtained from another source, is readily available to you and the sum of substance of which has already been provided to you to allow you to adequately challenge the credibility of Mr. Wilds. To the extent that you would like more of information of that sort, the Court is not going to grant the remedy that you seek --

MS. GUTIERREZ: I understand that.

THE COURT: And with regard to that motion it is denied.

MS. GUTIERREZ: For the record since the Court has making a finding that I have been provided some of that information I would like to know what tha

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information is. That the Court believes that I have been provided by the State who has the obligation to so provide it.

THE COURT: No, it wasn't that I am saying that you were provided by the State. Merely -- merely --

MS. GUTIERREZ: Well, merely isn't a finding.

THE COURT: Well -- well, merely that you've been provided by the State. One, I have found and you are aware of it because you made use of it, you have a copy of the plea agreement which was provided in discovery by the State.

MS. GUTIERREZ: Which has a number that does not relate to a charge.

THE COURT: But the sum of substance of the plea agreement is contained therein. You also have the testimony of Mr. Wilds. Although the information that you have received by way of his testimony is one that has come through a course of a number of days. You've gotten it six or seven days ago on Friday, you got additional information yesterday and I find that you have an adequate amount of information in order so that you can one, prepare your defense and utilize the information.

Two, challenge the credibility of the witness and

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utilize the information and three, fashion questions during your cross and in an attempt to get more information and four, if necessary, call an additional witness and have that additional witness provide you with additional information. So, I believe that all of those items are readily available to the Defense, I do not find that in any way it interferes with your client's due process rights or in any way interferes with his ability to have an effective and adequate representation by his attorney on this issue or that you have been in any way harmed by the delay in receiving some bits and parts of that information. That you still have the witness on the stand, that he still can be questioned, that the Court has given you latitude in that regard as well as latitude at some later point to view the tape which I have just directed Ms. Connelly to get because I understand it is available, that there's only one copy. I've also directed Ms. Connelly to get a video machine for your use and during the lunch and recess if you would like to view that tape it will be available for you to do that and after reviewing the tape if you feel that there are some additional questions that the tape triggers you are welcome to ask those questions.

But to the extent that I believe I have provided

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you with an opportunity to address these issues and adequately defend your client I don't believe his rights in any way have been abridged, interfered with or that his due process rights have been abridged or interfered with. That any notice requirements that arguably the benefit that appears to have developed through the testimony can be addressed adequately by your questions and the information that you've received at this time. Is there another motion or issue that you have at this time?

MS. GUTIERREZ: Well, I thought I made a motion, but I wasn't sure I was clear that -- to something I thought I heard the Court say suggesting that we might be entitled to a hearing outside of the presence of the jury.

THE COURT: That will be granted.

MS. GUTIERREZ: Ms. Benaroya.

THE COURT: The Court -- the Court is gone to seek to obtain Ms. Benaroya's appearance. I will advise you when she will be available. The Court will make an attempt to contact her. If you may recall I did mention to her that she should -

MS. GUTIERREZ: Yes.

THE COURT: Keep in contact with the Court.

MS. GUTIERREZ: Yes.

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THE COURT: So, I'm gong to utilize that as her acquiescence that in the event the Court needed her she would make --

MS. GUTIERREZ: She's an officer of the Court, I can't imagine that she --

THE COURT: That's correct.

MS. GUTIERREZ: Would not. Judge, in light of all that's happened I would ask for an order forbidding either of the State's attorneys, any State's attorney from Baltimore City, any member of the police department, any agent, anyone of their behalf from speaking to Ms. Benaroya about anything involved in this case.

In fact, I guess my request would be for an order that she shouldn't speak to her at all. That she convey no information about what's occurred since she is now to be a witness, you know all those sticky issues she is still a potential sequestered witness and I believe that they should inform that if there is a legitimate reason that would require them to speak to her then I would ask the Court to require them to bring that to the Court's attention with notice to us and then the Court can rule on sticky mess if it occurs. But that absent that that no one speak to her about anything that they don't cause anyone else to speak to

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her and that she include them and all other members of the State's Attorney's Office, whether or not they're involved in this case, all members of the police department and any other human being.

THE COURT: Well, I'm not going to order that no one speak to her or any other human being, but I can tell you Mr. Urick and Ms. Murphy, you are directed to not to speak to Ms. Benaroya about this case. That in the event she should call your office that you direct her to contact me immediately and that you not direct anyone on your behalf to have any conversations with Ms. Benaroya about this case or to anyway alert her that the Court is seeking an inquiry with regard to anything that she may have to say that would be relevant to this proceeding.

I can not and I will not direct the police department as such, but the Court will be very, very concerned if I find that she has been addressed, talk to or interviewed with regard to any potential testimony that she may provide. I know that she still is continuing to be counsel for Mr. Wilds and so to that regard and in that regard I can not and will not direct her. She is also an officer of the Court and therefore, I will not, can not direct her not to have contact with any police department, any other State's

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attorneys because for all I know she has other appropriate business with them. But I think that will suffice in addressing the concerns of Ms. Gutierrez. Any other matters before we bring the jury out?

MS. GUTIERREZ: Well Judge, --

THE COURT: Mr. Urick.

MS. GUTIERREZ: No, not on my list. I have others. Although I would ask before continuing the cross examination of Mr. Wilds an ability to review those notes.

THE COURT: Absolutely. Why don't we do that. In fact, if we can have Mr. Wilds come in because --

MR. URICK: I have a couple of motions if Defense Counsel is finished with hers.

THE COURT: Very well. Before Mr. Wilds comes in.

MS. GUTIERREZ: Finished them until I think there's some new ones.

THE COURT: I will hear from Mr. Urick.

MR. URICK: Your Honor, the first, well they're both motions in limine. It struck me after the fact that Ms. Gutierrez was asking questions of Mr. Wilds about discussions he had with his attorney, that's privileged information as the Court notes one

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time, several times this morning.

I would ask that the Court direct Ms. Gutierrez not to ask any questions of the witness as to any discussions he had with his attorney because that is privileged information and it would be not -- he would have an absolute privilege to keep that from being revealed. The second motion in limine is that I would move that she not be allowed to inquire any further into his assistance of counsel and in support of that motion in limine and I provided the Court today with Jeffrey Ebb versus State of Maryland. This is a discretionary motion and it goes to admissibility of evidence. Ms. Gutierrez is trying to inject an issue before the jury that is not a jury question.

THE COURT: Which issue is that?

MR. URICK: His assistance of counsel. She's trying to claim it as a benefit, it's not, it's a fundamental right. Because it's a fundamental right --

THE COURT: Do you understand her argument?

MR. URICK: Yes I do, Your Honor.

THE COURT: And her argument as you see it that his right to counsel?

MR. URICK: She is trying to make that a quantifiable asset like it's a good, it's not. It's a fundamental right. Because it's a fundamental right it

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is not a benefit.

THE COURT: He has a right to counsel, correct?

MR. URICK: Yes.

THE COURT: If someone paid for him to have an attorney, would that be a benefit?

MR. URICK: I believe that probably would be.

THE COURT: If someone arranged for him to have an attorney that he might not ordinarily be able to have, higher obtained. Would that be a benefit?

MR. URICK: The State has a duty to provide him an attorney.

THE COURT: I didn't ask you that. I asked you whether or not it would be a benefit?

MR. URICK: I believe it would be a fundamental right, it would not be a benefit.

THE COURT: You work for an employer and the employer said, oh, by the way if you get in trouble I'll pay for your lawyer, is that a benefit? It's a benefit. You work for a drug dealer and he says, oh, by the way if you get in any trouble I have a lawyer, is that a benefit? It's a benefit, it's a benefit. Now we don't know whether or not he accepted or rejected any lawyer that you offered him or anyone on behalf of the State offered him. He, like anyone has a

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right to object.

If you have an insurance company, you're in a car accident, you can take the lawyer that goes with the insurance company or you can say, that's okay, I'll get my own. If you work for a drug dealer and he says I'll give you a lawyer if you get in trouble, you can always say, that's okay I don't want him and if the State offers you an attorney you can always say, that's okay, I'll get someone else because the right is the Defendant's right. As you said, but the benefit is still one which counsel could argue existed. Whether a jury, a finder of fact believes in fact he benefited, whether the finder of fact believes that if effects his credibility is an argument that Ms. Gutierrez will have and I do find that arguably it could be perceived as a benefit, could be.

I don't find that the State did anything in error in not disclosing it because I think the State honestly and with good faith did not perceive it as a benefit. However, it is now been disclosed to the Defense and the way in which it happened, the circumstances under which it happened is still kind of foggy and unclear, but as it is foggy and unclear the Defense is always able to take facts that are foggy and unclear and argue to a jury and so, as I said before the Defense will

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have latitude. Your motion to limit or remove that opportunity is denied. Any other motion in limine that you have?

MR. URICK: What was the Court's ruling on my first motion?

THE COURT: The motion to allow Ms. Gutierrez or to allow her to say that the providing of an attorney is not a benefit is denied.

MR. URICK: As to asking questions concerning discussions between Mr. Wilds and his attorney.

THE COURT: Mr. Wilds has a right not, a privilege not to discuss or invoke his privilege not to discuss with us what he may have discussed with his attorney. If he chooses to invoke that right that is his right to either invoke or to waive.

So, to the extent that Counsel asks a question that generates that right I will remind the witness that he has that right, but if he chooses to waive it and tell us all about the conversations he had with his attorney, he is well within his right to do so and that certainly would effect whether or not Ms. Benaroya then has a right to claim privilege because if he waives his right and allows her to testify she certainly can do so. But that is his right to invoke and I am not going to in any way interfere with his right to invoke

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that privilege just like I won't interfere with his right to choose his own lawyer.

Whether she's provided by you, by someone down this block, by his mother, by the Public Defender, by the State or anyone else, that is his right to choose that attorney and if he thinks adequate that he had five minutes to talk to her, ten minutes to talk to her, two days, three weeks or a year, that again is his right to make that choice to elect his attorney however it is provided. Anything else?

MR. URICK: No, thank you.

THE COURT: Anything else, Ms. Gutierrez?

MS. GUTIERREZ: In light of that motion Judge, then I would ask for an order precluding any discussion -- I know there's been a standing one, but just in abundance of caution, that there be no attempt by the State's attorneys or by anyone on their behalf or at the direction to speak to Mr. Wilds at all about any of this.

THE COURT: That is a standing order and I will reiterate that order and to the extent that we will be escorting him of sorts and keeping him confined I think that will address your concerns, Ms. Gutierrez. When I say confined I don't mean in custody, but just to make sure that he goes where he's suppose to go and

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does not have contact with people he's not suppose to have contact with.

So, we will do that in abundance of caution at this particular stage as well as reminding him that he is -- and I would note as we departed yesterday he in fact, stated my own rule back to me. That he should not have conversations with anyone. I mean, he basically said that back to me so I know he understands. Anything further from the State

MR. URICK: No, thank you.

THE COURT: Anything further from the Defense?

MS. GUTIERREZ: No, Judge.

THE COURT: All right. Now, may we bring out Mr. Wilds first. I'm going to ask the assistance of the Deputy Sheriff to ask Mr. Wilds -- he's seated, I believe in the hallway there. Rather thin, black young man about six feet or so. Ask him to step in and then I'll have the jurors come in. Mr. Wilds, please have a seat, please have a seat. The Court needs to discuss a matter with you. Its been brought to my attention that you've had contact with my jurors. I've instructed you not to have contact. In fact, I've instructed all witnesses not to have contact with the jurors and I told the jurors not to have contact with

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anyone. The attorneys have been told not to have contact and the scenario I give is if you see the jurors in the elevator or you see them in the hallway, go the other way. If you see them don't speak to them and if necessary look at the ceiling or look at the floor and go in the opposite direction. You remember me saying that, right?

MR. WILDS: Yes, Your Honor. I apologize. I didn't notice. I stepped out, I pulled a cigarette from my pocket, I seen someone smoking, I asked them for a light, as soon as I noticed it was them I turned the other direction.

THE COURT: Well, evidently you've done that twice now.

MR. WILDS: Twice?

THE COURT: Yes. And I'm going to direct you now that you're going to have to get your own cigarettes and your own matches.

MR. WILDS: That's fine.

THE COURT: Because I'm concerned that you're having contact with my jurors.

MR. WILDS: That's fine.

THE COURT: And to ensure that you don't do that you will find that you're going to be escorted in and out of the courtroom, asked to sit in a particular

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place. During the lunch and recess I'd ask that you get your own matches so that we don't have any possibility that you'll be asking for or gaining assistance from our jurors to do anything. Do you understand?

MR. WILDS: Yes, Your Honor. I apologize.

THE COURT: Now if I find that you have contact with my jurors again you will be in direct contempt of this Court. Do you understand?

MR. WILDS: Yes, ma'am.

THE COURT: All right. Now, you do not want to do that.

MR. WILDS: No, ma'am.

THE COURT: Because then I must have to fashion a remedy as to what to do with you.

MR. WILDS: Yes, ma'am.

THE COURT: Do you understand?

MR. WILDS: Yes, ma'am.

THE COURT: All right. Now, I'm going to ask that the jurors come in. If I could have my -- Deputy, if you could go across the hall and ask the jurors to return to Court.

(The jury returned to the courtroom.)

THE COURT: As they're coming in Mr. Wilds, let me also let you know that just in case there's some

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confusion, you are a witness on the stand so you can't discuss your testimony with the State and the Defense, the attorneys until you are off the stand. Do you understand what I'm saying? And I don't mean on a daily basis, I mean until your testimony is completely finished, do you understand?

MR. WILDS: Yes, ma'am.

THE COURT: Very well. Yes.

MR. URICK: May Counsel approach?

THE COURT: Yes.

(Counsel and Defendant approached the bench and following ensued:)

THE COURT: Mr. Clerk, can you put this in the file, put this in the file as well. Yes.

MR. URICK: I just wanted to request that we'd be giving an order that we have access to the tape as well since we're not present at that --

THE COURT: The playing of the tape, you mean?

MR. URICK: No, be able to get our own copy.

THE COURT: First of all, I'm not giving free access. Its not going to be a tape that's floating around. MS. GUTIERREZ: Right.

THE COURT: I'm getting a video machine brought in her at lunch time.

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MS. GUTIERREZ: Oh, brought in here.

THE COURT: Yeah.

MS. GUTIERREZ: Because I'm willing --

THE COURT: If you want to --

MS. GUTIERREZ: On the second floor I'm willing to go if that's easier rather than --

THE COURT: We can do that -- we can do that as well. We can do that as well.

MS. GUTIERREZ: Because that's easy so it remains in the control of Ms. Sheldon. You know it's - -

THE COURT: But the viewing room is not available.

MS. GUTIERREZ: Oh.

THE COURT: That's what I was told. The tape is available but the viewing room is not so that's why I went to get the tape.

MS. GUTIERREZ: Okay.

THE COURT: We have a rolling machine.

MS. GUTIERREZ: Right.

THE COURT: Which we can roll in here --

MS. GUTIERREZ: That's fine.

THE COURT: Plug it in and you can sit and watch it.

MS. GUTIERREZ: That's fine. And in fact I

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was unusually going to ask the Court if you'd leave your courtroom open because I would like to use --

THE COURT: See, but then we've got evidence.

MS. GUTIERREZ: Oh.

THE COURT: In here.

MS. GUTIERREZ: Okay.

THE COURT: And that's the problem because I have to lock away everything because we usually don't - - we got the tape? Do we have the rolling machine, the video? Very well. Okay. All right. Anything else?

MR. URICK: No, thank you.

(Counsel and Defendant returned to the trial tables and the following ensued:)

THE COURT: Ladies and gentlemen, I welcome you back to part nine. We're going to continue with the testimony. As we begin I just want to let you know that again, we're trying very hard to keep to out schedule. As we go off the schedule just know that the Court is trying very hard to stay with it, but sometimes other matters dictate that we deal with them before you can come back to the courtroom. At this time Mr. Wilds, I need you to raise your right hand again. It's a new day, new tape, why don't we swear you in again.

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JAY WILDS,
a witness produced on behalf of the State, having already been duly sworn, testified as follows:
THE CLERK: You may be seated. Please state your name and address for the record.
MR. WILDS: Jay W. Wilds, 4 Rupert Court, Apartment E, Catonsville, Maryland.
THE CLERK: Thank you.
THE COURT: We were continuing with the cross examination of Ms. Gutierrez or by Ms. Gutierrez.
CROSS EXAMINATION
BY MS. GUTIERREZ:
Q Mr. Wilds, so we can clear up some things that we were talking about yesterday, we went through a list, a whole list of things where you told the police on any given occasion changed, did we not?
MR. WILDS:
A Not any given occasion, but yes, some.
Q The answer to the question is yes it changed?
A Then my answer is no.
Q Well, sir you recall that on that list for instance whether you mentioned your good friend, Jen Pusateri, right?
A Yes, ma'am.
Q And at first you lied by omitting her name,

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right?
A Yes, ma'am.
Q That she was even there or that you even spoke to her, correct?
A Yes, ma'am.
Q You lied about that at first, right?
A Yes, ma'am.
Q And later you added her name, did you not?
A Yes, ma'am.
Q Not only about whether or not she was there and whether or not you spoke to her, you lied as to when you spoke to her, did you not?
A No, ma'am.
Q Well Mr. Wilds, when you first spoke to the police you didn't mention her at all, right?
A Correct.
Q And when you first spoke to the police you told them that on the 13th was the very first time that you knew anything about what might happen to Hae Min Lee, right?
A Correct.
Q Okay. And later -- and you didn't mention Jen Pusateri, right?
A Correct.
Q So you never mentioned that you told Jen

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Pusateri about anything, right?
A Correct.
Q So you lied about whether or not she was there, right?
A Yes.
Q And you lied about whether or not somebody else knew ahead of time that Hae Min Lee was going to be killed by Mr. Syed, right?
A I didn't know if anyone knew ahead of time.
Q Well sir, you've told us that on the 13th you knew ahead of time that Adnan was going to kill Hae, did you not?
A I did not tell you anything on the 13th.
Q No, sir. On the 13th, January 13th, you've testified about this, have you not?
A Yes, ma'am.
Q You've given all the statements you've told us about, right?
A Yes, ma'am.
Q And you've testified in a prior proceeding, right?
A Right?
MR. URICK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:

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Q All right. Mr. Wilds, you've told this jury on Friday, six days ago that Adnan told you before he did it that he was going to kill his girlfriend, right?
MR. WILDS:
A Yes, ma'am.
Q Now, on another occasion you said that he told you on the 12th, right?
A Yes, ma'am.
Q All right. Now, so prior to talking to this jury six days ago you lied about that, did you not?
A To whom? I'm sorry.
Q To anyone.
MR. URICK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Sir, would you agree that telling someone that something occurred one day and then later telling them that it occurred another day is not telling them the same thing.
MR. WILDS:
A Yes.
Q Is that correct? The events about which you've testified only occurred one time, right?
A Correct.
Q There's not a whole bunch of times where an

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acquaintance of yours have said to you, oh by the way this afternoon I'm going to kill my girlfriend she really pisses me off?
A No, ma'am.
Q That this is the only occasion, right?
A Yes, ma'am.
Q And you told the jury that you learned about it from Adnan Syed that day, the 13th, right?
A Yes, ma'am.
Q But previously you've told, specifically you told the police that it occurred on the 12th, did you not?
A Yes, ma'am
Q And that was a lie, was it not?
A Yes, ma'am.
Q At least one of the stories is a lie, isn't it?
A Yes, ma'am.
Q And on another occasion you told them, well the conversations I had with Adnan Syed, they occurred four or five days earlier, right?
A Yes, ma'am.
Q And let me make sure because now there are new interviews. Your first, your very first interview occurred at a time when there was no tape recording,

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right?
A Yes, ma'am.
Q On -- in the middle of the night on the 28th, right?
A Yes, ma'am.
Q And during a time when both detectives asked you some of the same questions they asked you later, right?
A Yes, ma'am.
Q And during the time they took notes, right?
A Yes, ma'am.
Q Okay. And on that occasion did you tell them it occurred on the 13th?
A No, ma'am.
Q Then your second interview after the tape recorder got turned on did you tell them it occurred on the 13th?
A No, ma'am.
Q And on the 15th of March did you tell them it occurred on the 13th?
A I believe so.
Q Well sir, do you recall that actually on the 15th of March you told them that Adnan told you that he was going to kill that bitch?
A Yes, I remember.

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Q So on the 15th you actually told them that you knew a whole day ahead of time that Adnan was going to kill girlfriend, right?
A The previous evening, yes.
Q Pardon.
A The previous evening he had spoke to me.
Q I can't hear you, sir.
A No.
Q Now, please repeat what you said.
A The previous evening he had spoke to me.
Q The previous evening meaning the 12th, right?
A Yes.
Q And you would agree sir, that the 12th and the 13th are two entirely different days, right?
A Yes.
Q Now, so on the 15th of March you told Detectives McGilvary and Ritz while the tape was running that Adnan gave you a whole days notice saying he was going to kill that bitch?
A No, ma'am.
Q No. Now sir, do you recall -- you did speak to them, did you not?
A Yes, ma'am.
Q And they asked you these questions, did they not?

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A Yes, ma'am.
Q And you recall telling them that Adnan told you the reason that he was going to kill her was because she had just broken up with him?
A Yes, ma'am.
Q And by just he mean right before then, right?
A Maybe a week prior, yes.
Q Okay. A week or so before the 13th of January, is that right?
A Yes, ma'am.
Q That was the reason that Adnan gave you for why it was he was going to kill her?
A Yes, ma'am.
Q And when he used the words that bitch you knew who he meant, right?
A Yes, ma'am.
Q And when he told you that on the 12th the police -- on the 12th of January the police when you told them that on the 15th of March asked you, Jay, why didn't you do something, didn't they?
A Yes, ma'am.
Q And why didn't you give Hae a heads up, right?
A Yes, ma'am.
Q Why didn't you call the police, right?

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A Yes, ma'am.
Q Or drop an anonymous dime, right?
A Yes, ma'am.
Q And you told them, I didn't take him seriously, right?
A Yes, ma'am.
Q Now, also on the 15th, the first day you mentioned your very, very good friend Jen Pusateri, right?
A Yes, ma'am.
Q You also told them that, oh, by the way I told my very, very good friend who we've already spoken to Jen Pusateri, I told her on the 12th, did you not?
A I do not recall.
Q You described for Detectives McGilvary and Ritz that on the 12th you and your good friend Jen Pusateri went to Gelston Park and you told her, right?
A No, ma'am.
Q You don't recall that?
A No, ma'am. No, I'm sorry, no, that's not what I -- no, I do not recall that.
Q You don't remember telling them then?
A No, ma'am.
Q And so your memory is that the only thing you told Jen occurred on the 13th?

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A Yes, ma'am.
Q Not the day before?
A No, ma'am.
Q And you of course, wouldn't be surprised if the tape says that you said you told her the day before, would you?
A No, ma'am.
Q No. So, that's just jumping the -- you just no longer remember.
A Is that a question?
Q Yes, sir.
A No, ma'am.
Q No. Now Mr. Wilds, in regard to your friend Jen Pusateri Gelston Park is a place that you go to, is it not?
A Yes, ma'am.
Q Its part of a park, is it not?
A Yes, ma'am.
Q There are trees and open space?
A Yes, ma'am.
Q And woods?
A Yes, ma'am.
Q And in fact, you and your friend Jen go there regularly, do you not?
A We use to, yes.

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Q You use to. And its a place when you go sometimes you take Jen's dog?
A Yes, ma'am.
Q And in fact, do you recall that on the 15th of March or you don't now remember doing that, that you mentioned Jen, your very good friends dog being with you?
A No, ma'am.
Q So sir, when you told Jen about what Adnan said that was when?
A The 13th.
Q On the 13th and where?
A In front of my house.
Q In front of your house. And what time of day?
A Late evening, 9:30, tenish.
Q After all this happened?
A Yes, ma'am.
Q So, now your story is you never gave Jen a heads up?
A Yes, ma'am.
Q On anything that might happen to Hae Min Lee?
A Yes, ma'am.
Q Now, lets go to make sure other things that you changed your story about between the 28th and the

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15th, whichever time it was.
MR. URICK: Objection.
BY MS. GUTIERREZ:
Q You also told them --
THE COURT: I'm sorry. Ms. Gutierrez, I didn't hear the end of what you just said.
MS. GUTIERREZ: I don't remember, Judge. I'll just ask another question.
THE COURT: Why don't I sustain. Very well.
BY MS. GUTIERREZ:
Q Let us speak about McDonald's, Mr. Wilds, do you recall?
MR. WILDS:
A Pardon me.
Q Do you recall that you spoke of a McDonald's to the police?
A Yes, ma'am.
Q You told them that at the time the phone calls from what you could hear you thought were from Hae Min Lee's family member and the police that you were at the McDonald's with Adnan, correct?
A Yes, ma'am.
Q And that McDonald's is located where?
A I believe the Rolling Road McDonald's.
Q Pardon.

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A I believe I told them the Rolling Road McDonald's.
Q The Rolling Road McDonald's. The same Rolling Road about which we've spoken?
A Yes, ma'am.
Q Near the intersection of what is there Route 40?
A Yes, ma'am.
Q Near the F & M?
A Yes, ma'am.
Q Near the Super Fresh?
A No.
Q Above Westview Mall?
A To the west of it, yes.
Q To the west of it and again to the west meaning further out into the county then toward the city, right?
A Yes, ma'am.
Q And further out in the county then in the city as to 695?
A Yes, ma'am.
Q That McDonald's?
A Yes, ma'am.
Q Not the McDonald's as we've discussed before that sits slightly to the west of the Best Buy?

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A No, ma'am.
Q No. You gave them, excuse me, the specific location of the McDonald's near Rolling Road?
A I believe so.
Q And that McDonald's is pretty close to the intersection of Route 40 and Rolling Road, is it not?
A Yes, ma'am.
Q It would be on the eastern northern part of the intersection, right?
A Yes, ma'am.
Q Okay. You told them that that's where you were when you heard the calls, is that right?
A Yes, ma'am.
Q Now, the cell phone about -- you don't own your own cell phone, right?
A No, ma'am I do not.
Q Like you don't own your own car?
A Yes, ma'am I do.
Q Well, now you do.
A Yes, ma'am.
Q But back then you didn't, right?
A No, ma'am.
Q And so you borrowed other people's cars, did you not?
A Yes, ma'am.

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Q You borrowed Stephanie's car?
A Yes, ma'am.
Q On a regular basis, right?
A Yes, ma'am.
Q And you would borrow her car for your reasons, would you not?
A Yes, ma'am.
Q And you have a friend by the name of, I think its Christopher [redacted]
A Yes, ma'am.
Q And he's a student at Woodlawn, right?
A He was, yes.
Q And last year in '99?
A No, ma'am.
Q He was a student when you were a student?
A Yes, ma'am.
Q And you borrowed his car, did you not?
A Yes, ma'am.
Q And when you would borrow his car you would borrow it for your purposes?
A Yes, ma'am.
Q And on the 13th you had a reason to need a car, did you not?
A Yes, ma'am.
Q You needed to get to the mall, did you not?

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A Yes, ma'am.
Q You needed to go to the mall to get a present for your girlfriend who's birthday it was, did you not?
A Yes, ma'am.
Q And when you needed a car you asked to borrow one, did you not?
A Sometimes.
Q Sometimes and you've previously borrowed Adnan's car, did you not?
A Yes, ma'am.
Q Your acquaintance?
A Yes, ma'am.
Q The person you knew was friends with Stephanie, your girlfriend, right?
A Yes, ma'am.
Q And you've previously borrowed other people's cars when you've needed them, have you not?
A Yes, ma'am.
Q And when you asked to borrow a car most people you ask tell you yes, do they not?
A Yes, ma'am.
Q And sir, on that day the 13th you were still girlfriend and boyfriend with Stephanie, correct?
A Yes, ma'am.
Q But you couldn't borrow her car to get her

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gift, could you?
A No, ma'am.
Q That wouldn't look right, would it?
A No, ma'am.
Q It wouldn't sound right, would it?
A That's an opinion.
Q Well you didn't want to admit to Stephanie that you waited to the day of her birthday to go get her gift, did you?
A That did not bother me.
MR. URICK: Objection.
THE COURT: Overruled.
BY MS. GUTIERREZ:
Q You didn't want her to know that, did you?
MR. WILDS:
A I had just been paid.
Q Sir, you first told the police the very first time you spoke to then that you borrowed Adnan's car because you had to go to the mall and get Stephanie a gift, didn't you?
A Yes, ma'am.
Q And you told them that the second time, did you not?
A Yes, ma'am.
Q On the first time that you spoke to them they

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asked you about this person, did they not?
A Yes, ma'am.
Q And they kept calling him Adnar, did they not?
A Yes, ma'am.
Q Yes, and you didn't correct them, did you?
A No, ma'am.
Q They could call him Adnar for all you cared, couldn't they?
A Yes, ma'am.
Q It didn't matter to you, did it?
A No, ma'am.
Q And they kept asking about this person, did they not?
A Yes, ma'am.
Q And you first told them that given that your reason for borrowing the car was related to your girlfriend, they asked you about the cell phone, did they not?
A I believe so.
Q And you told them he left the cell phone in the car, did you not?
A Yes, ma'am.
Q But that you were really borrowing the car for your own purposes, isn't that correct?

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A Yes, ma'am.
Q That's what you first told them, correct?
A Yes, ma'am.
Q And you told that the first time before this two hour pre-interview, right?
A Yes, ma'am.
Q And you also told them that after the tape recorder that day was turned on, isn't that right?
A Yes, ma'am.
Q It wasn't until the 15th of March that you told them otherwise.
A Yes, ma'am.
Q Because on the 15th of March you said, oh, I lied to you about why I borrowed the car, I didn't really need to borrow the car, Adnan gave me the car because he needed a favor from me.
A That wasn't my statement, I believe.
Q It was something to that effect, wasn't it?
A In conjunction with me needing the car, yes.
Q But you recall that on the 15th what you told them was that he needed you to have the car, right?
A In conjunction with me needing it, yes.
Q Well while you had it you used it for your own purposes, right?
A Yes, ma'am.

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Q And you told them that the cell phone was just in the glove compartment at first, isn't that correct?
A Yes, ma'am.
Q But later on the 15th you told them that he asked you to hold the cell phone so he could contact you, did he not?
A Yes, ma'am.
Q Now that cell phone sir, you knew was new, did you not?
A No, ma'am I did not.
Q You didn't know it was new?
A No, ma'am I did not.
Q So you didn't know how long he had had it, did you?
A No, ma'am.
Q You didn't know how many people had the number, did you?
A No, ma'am.
Q And sir, the cell phone it's hand held, is it not?
A Yes, ma'am.
Q It wasn't plugged into a speaker, was it?
A No, ma'am.
Q You had to put the phone up to you ear to

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hear any sound emanating from it, did you not?
A Yes, ma'am.
Q You couldn't hold the cell phone, for instance out here and hear the words coming out of it, could you?
A No, ma'am.
Q You had to put it up to your ear, right?
A Excuse me, yes.
Q And there wasn't any speaker mechanism in the phone in the car, was there?
A No, ma'am.
Q There wasn't any place to plug it in a make it a speaker phone, was there?
A No, ma'am.
Q So that you could hear it from afar?
A No, ma'am.
Q Nor any mechanism that made it so that you could speak into such that someone on the other end of the line could you hear you, was it?
A Like mic?
Q Any mechanism?
A No, ma'am.
Q No. And you didn't go get one of those things that day, did you?
A No, ma'am.

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Q Not a speaker, right?
A No, ma'am.
Q Not a plug in mechanism, right?
A No, ma'am.
Q Not a microphone?
A No, ma'am.
Q Not anything to augment the audibility, the hearability of that phone, right?
A Correct.
Q And the phone didn't alter throughout the day, did it? Nobody else came in and changed the phone around, did they?
A Not to my knowledge.
Q Well, you've told us that you had that phone all day, right?
A Not all day, ma'am.
Q Not all day. Most of the day?
A Some of it, yes.
Q Now, and you never saw anybody convert that phone into a speaker phone, right?
A No, ma'am.
Q Now sir, you've testified about you remember Adnan getting a phone call from someone that in your view appeared to be from Hae Min Lee's family, right?
A Yes, ma'am.

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Q And when you first offered that information you told the police that you and Adnan in the car and the phone were at the McDonald's, right?
A Yes, ma'am.
Q But that wasn't the truth?
A No, ma'am.
Q No and later you told them, no we weren't at the McDonald's, I lied, right?
A Yes, ma'am.
Q And that didn't occur until the 15th?
A I believe so.
Q And on the 15th you said, oh no, that occurred while I was at my friends, Christa Vincent's, correct?
A Yes, ma'am.
Q The friend I forgot to mention, right?
A I had omitted, yes.
Q You lied by omitting it, did you not?
A Yes, ma'am.
Q So, you lied about the location it was, right?
A Yes, ma'am.
Q And when you spoke to them on the 15th you had already been asked about the phone numbers, had you not?

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A Some of them, yes.
Q Okay. And you had been asked and told, Mr. Wilds it just doesn't match, had you not?
A Yes, ma'am.
Q But you still had not been arrested, had you?
A No, ma'am.
Q You had not been detained, had you?
A No, ma'am.
Q And you were never with being arrested, were you?
A Yes, ma'am.
Q You were?
A Yes, ma'am.
Q The first time that you came down --
A Yes, ma'am.
Q And you spoke for two hours.
A Yes, ma'am.
Q When they hauled you down at 1:30 at night and took you to police headquarters they threatened you with arresting you, did they not?
A They told me it was a possibility.
Q Yes. And you believed them, did you not?
A Yes, ma'am.
Q That it was possible that you would get arrested, right?

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A Yes, ma'am.
Q And that wasn't the first time that you had worried about getting arrested for this offense, was it?
A Yes, ma'am.
Q Well Mr. Wilds, you've told before that you threw away your clothes because you were concerned what they might show, right?
A Yes, ma'am.
Q The dirt, right?
A Yes, ma'am.
Q Evidence of things?
A Yes, ma'am.
Q And that concerned extended to your pants?
A Pardon me. I couldn't hear you, I'm sorry.
Q That concern extended to your pants?
A Yes, ma'am.
Q And your boots?
A Yes, ma'am.
Q And your shirt?
A I don't believe so.
Q And you didn't wear a shirt?
A It was T-shirt, I believe I kept it.
Q Your T-shirt?
A Yeah.

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Q You threw that away too, did you not?
A I don't believe so.
Q And your outer coat, right?
A Yes, ma'am.
Q The one you wore over your clothes when you went outside, right?
A Yes, ma'am.
Q And you threw all that away, did you not?
A Yes, ma'am.
Q Because you were concerned that it might contain evidence, were you not?
A Yes, ma'am.
Q And you threw it away where ever it was that you threw it, right?
A Yes, ma'am.
Q Whether it was at your own trash at your own house, right?
A Yes, ma'am.
Q Or at the dumpster at F & M, right?
A Yes, ma'am.
Q Or at a dumpster at Westview Mall, right?
A No, ma'am.
Q Or at the dumpster near the Super Fresh?
A No, ma'am.
Q Or at the dumpster near the Pet Smart?

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A No, ma'am.
Q Well, where ever it was that you threw away you did that, did you not?
A Yes, ma'am.
Q And you were concerned about evidence, were you not?
A Yes, ma'am.
Q And you were concerned that evidence might connect you to a crime, were you not?
A Yes, ma'am.
Q You weren't hiding from your mother, were you?
A No, ma'am.
Q You weren't hiding your clothes from your mother or grandmother, were you?
A No, ma'am.
Q Or from your friends?
A No, ma'am.
Q Or from your neighbors?
A No, ma'am.
Q You were hiding them so that the police couldn't get them, were you not?
A Yes, ma'am.
Q And when you went back with your very good friend, Jen Pusateri on whatever might you did and you

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went to a dumpster and you retrieved your very own shovels and you took something and wiped them to remove the fingerprints, again you did it to hide evidence, did you not?
A Yes, ma'am.
Q And you did it because you were afraid of what that evidence might reveal, were you not?
A Yes, ma'am.
Q And you were afraid that it might tie you to a crime, were you not?
A Yes, ma'am.
Q And in light of that fear you were certainly afraid of being arrested, were you not?
A No, ma'am.
Q And when you lied to the police about where you were when you saw the trunk pop and put it in an entirely different location it was because you were afraid, were you not?
A Some of it, yes.
Q Yes. And the things that you were afraid of was something that might connect you to a crime, correct?
A Some of it, yes.
Q You had discussions with your very good friend, Jen Pusateri about what the videos at Best Buy

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might show, right?
A I told her it didn't concern me.
Q And out of that fear you didn't tell the police about a place that had videos that might show what happened on January 13th because you were afraid, right?
A Yes, ma'am.
Q You lied to them, right?
A Yes, ma'am.
Q You took them to a place that you knew, right?
A Where they would feel uncomfortable.
Q Where they would feel?
A Yes, ma'am.
Q They would feel comfortable?
A Uncomfortable.
Q Uncomfortable. The police?
A Yes, ma'am.
Q That you thought they would feel uncomfortable down on Edmondson Avenue?
A Yes, ma'am.
Q Where ever it was located?
A Yes, ma'am.
Q And so your decision to lie about it Mr. Wilds, you would have us believe was unconnected to your fears about the video cameras that you discussed with your good friend, Jen Pusateri?
A Not totally, no.
Q So, it was a little connected, was it not?
A That had something to do with.
Q It was connected to your fear about what those video cameras might show, right?
A No, ma'am.
Q The day that the video cameras might have been running, the only day of concern was January 13th, right?
A Yes, ma'am.
Q And you never spoke of Best Buy until March 15th, right?
A I believe so.
Q You didn't -- when you spoke on March 15th you really were no longer concerned about those video cameras, were you?
A No, ma'am.
Q And you were no longer concerned about what they might show if they had been viewed on the 13th, right?
A Right, correct.
Q Now, another thing that you lied about it whether you had anything to do with the burial of Hae

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Min Lee, right?
A Yes, ma'am.
Q And that when you first spoke to Detective McGilvary before the recorder was ever turned on the 28th you told them, I've got nothing to do with this, right?
A Yes, ma'am.
Q I just borrowed the guy's car, right?
A Yes, ma'am.
Q Because I needed a car, right?
A Excuse me, yes, ma'am.
Q And later when he told me he killed his girlfriend who he just broke up with he asked me to help him bury the body, but I said, no, right?
A Yes, ma'am.
Q And when I said no, all that happened was that he popped his trunk and he showed me the body, right?
A Yes, ma'am.
Q And I looked at the body, but the body was faced down.
A On the side, yes.
Q Yes. But I could tell (inaudible)
A Yes, ma'am.
Q Is that right?

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A Yes, ma'am.
Q Blue was your choice, right?
A Yes, ma'am.
Q And then I just merely followed Adnan over.
A I believe so.
Q Okay. And that although he asked for my help I didn't give it.
A Yes, ma'am.
Q In that he did everything?
A Yes, ma'am.
Q I did nothing.
A Yes, ma'am.
Q I didn't go with him, I didn't assist him.
A Yes, ma'am.
Q I just watched him do it.
A Yes, ma'am.
Q And incidentally, you showed them where the car was, right?
A Yes, ma'am.
Q You showed them where the trunk pop was down on Edmondson Avenue, right?
A The displaying of the body?
Q On Edmondson Avenue, the location we've discussed.
A Yes, ma'am.

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Q Okay. And did they ask you to take them to where the body was buried?
A No, ma'am.
Q No. So, you didn't have to show them that location, right?
A No, ma'am.
Q Not that day?
A No, ma'am.
Q Not any day?
A Yes, ma'am.
Q Much later?
A Yes, ma'am.
Q After the 28th?
A Yes, ma'am.
Q Before the 15th of March or after?
A I believe after.
Q And before the 13th of April or after?
A I believe before.
Q Before. And that was the first and only time you were asked to do that?
A Yes, ma'am.
Q And lets get back to the 28th before the tape recorder is turned on you told them, I had nothing to do with it, he did it all, isn't that right?
A Yes, ma'am.

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Q That you turned down any offer -- turned down any request to assist, right?
A Yes, ma'am.
Q And you didn't tell them about the shovels, right?
A No, ma'am.
Q You didn't tell them that they were your shovels, did you?
A No, ma'am.
Q You didn't tell them that the shovels were from your porch on your house?
A No, ma'am.
Q Or that you all detoured to your house?
A Detoured?
Q From where you were going?
A No, ma'am.
Q You didn't tell them that? And you didn't tell them that you were concerned about fingerprints on those shovels that came from your porch that belonged to you such that you want back and got them out of the dumpster to wipe off the fingerprints, did you?
A No, ma'am.
Q You didn't tell that in the first interview on the 28th, did you?
A No, ma'am.

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Q And you didn't tell them that after the tape recorder got turned on, did you?
A No, ma'am.
Q And you didn't tell them that after you requested the tape recorder be turned off so that you could ask about a lawyer, did you?
A No, ma'am.
Q And you didn't tell them after the tape recorder got turned on still on the 28th, right?
A No, ma'am.
Q You kept that to yourself?
A Yes, ma'am.
Q You lied about it?
A Yes, ma'am.
Q Yes. And on the 15th of March, you were aware sir, then that Adnan Syed had been arrested, were you not?
A Yes, ma'am.
Q You were aware that he was being held in custody based on the accusation, were you not?
A No, ma'am.
Q No. You weren't being held in custody?
A No, ma'am.
Q And you were no longer so afraid, were you?
A Yes, ma'am, I was.

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Q You were afraid of being arrested?
A Yes, ma'am.
Q Yes. And that was still hanging over your head?
A Yes, ma'am.
Q When they threatened you about being arrested on the very first occasion they made it clear that there was a way out of the arrest, did they not?
A No, ma'am.
Q Well, they made it clear, did they not that if you talked to them and you were forthcoming they you had nothing to fear, did they not?
A Yes, they told me that.
Q And you got it, didn't you?
A No, ma'am. I didn't believe them.
Q Well, you then talked to them, did you not?
A Yes, ma'am.
Q After the threat, right?
A Yes, ma'am.
Q After the reassurance, right?
A I didn't take it as reassurance.
Q But you chose to talk to them?
A Yes, ma'am.
Q At a time when there was no tape recorder on, isn't that right?

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A Yes, ma'am.
Q And you chose to lie, did you not?
A Yes, ma'am.
Q About a number of things?
A Yes, ma'am.
Q Okay. The chronology of events?
A Yes, ma'am.
Q Where things occurred such as the trunk pop?
A Yes, ma'am.
Q Where you were at any given time?
A No, ma'am. Not at any given time.
Q Whether or not -- well, you lied about where you were when the trunk pop was, right?
A Yes, ma'am.
Q You lied about that?
A Yes, ma'am.
Q You lied about the McDonald's, right?
A Yes, ma'am.
Q You tell us that's a lie, right?
A Yes, ma'am.
Q They didn't make you lie, did they?
A No, ma'am.
Q You chose to lie, did you not?
A Yes, ma'am.
Q You lied about Christa Vincent, did you not?

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A Yes, ma'am.
Q In fact, about Christa Vincent on the 15th you said, by the way we were at Christa Vincent's when I told you we were at McDonald's, right?
A No, that was not my statement.
Q Pardon.
A That was not my statement.
Q That wasn't your statement?
A No, I did not say oh, by the way we were at McDonald's or --
Q But that was the information you conveyed, was it not?
A Yes, ma'am.
Q You were correcting the earlier lies?
A No, ma'am.
Q At some point sir, you told them that you went to Christa Vincent's place that day, did you not?
A Yes, ma'am.
Q And you did, didn't you?
A Yes, ma'am.
Q You went in the afternoon all by yourself, did you not?
A Yes, ma'am.
Q Adnan wasn't with you, was he?
A No, ma'am.

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Q And it was in the middle of -- late afternoon, right?
A Yes, ma'am.
Q 3:30, four o'clock, something like that?
A Maybe a little bit later, but yes.
Q A little bit later and you went by yourself?
A Yes, ma'am.
Q And you left by yourself?
A Yes, ma'am.
Q You still talk to Christa Vincent now?
A Yes, ma'am.
Q She was there --
A Yes, ma'am.
Q In her own house?
A Yes, ma'am.
Q And that you may have smoked weed?
A Yes, ma'am.
Q Because that would not have been abnormal --
A No, ma'am.
Q For you to do, right?
A No, ma'am.
Q In the middle of the afternoon?
A In the evening, yes.
Q In the evening. Well you said again you went back in the evening?

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A Yes, ma'am.
Q When these calls came from what you could determine appeared to be from Hae Min Lee's family, right?
A Yes, ma'am.
Q And from the police, right?
A Yes, ma'am.
Q The second visit was in the evening, right?
A Yes, ma'am.
Q But the first visit was in the afternoon, was it not?
A Yes, ma'am.
Q And during the visit which you hadn't told them about you smoked weed, right?
A Yes, ma'am.
Q And you told them about the first visit when it actually was the second one in the evening on the 15th of March, did you not?
A Yes, ma'am.
Q You didn't tell them about both visits, did you?
A On the 15th?
Q Yes, sir.
A Yes, I did.
Q Is Christa Vincent still your friend?

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A We're acquaintances, we're not friends anymore.
Q You described as a friend back then, did you not?
A Yes, ma'am.
Q As a person you visited on a regular basis?
A Yes, ma'am.
Q And you considered both her and her boyfriend friends?
A Yes, ma'am.
Q You went over to their house and you smoked weed, did you not?
A Yes, ma'am.
Q Marijuana, is that correct?
A Yes, ma'am.
Q And you did that back then on a regular basis, did you not?
A Yes, ma'am.
Q You always, back then smoked marijuana regularly, did you not?
A Not always.
Q You mean not always regularly?
A Yes, ma'am.
Q Okay. Sometimes you smoked it regularly and sometimes you did not?

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A Yes, ma'am.
Q Marijuana smoking effected you, did it not?
A Some.
Q It would alter your perception?
A A little.
Q It would alter how you felt?
A Some.
Q It would alter your energy level?
A Some.
Q And you could observe it altering someone you smoked with?
A Sometimes.
Q And you liked to do it, did you not?
A Yes.
Q And you did it at least sometimes on a regular basis, did you not?
A Yes, ma'am.
Q And sometimes that regular basis included doing it even more then once a day, is that right?
A Yes, ma'am.
Q And this day, the 13th of January in regard to your smoking weed wasn't much different then other days, was it?
A Then what others?
Q Well, you didn't smoke it just that once with

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Christa Vincent, did you?
A No, ma'am. No, ma'am.
Q You've told us that you then went on a search for more marijuana, did you not?
A Yes, ma'am.
Q That's why the calls to Furlow?
A Yes, ma'am.
Q Your friend?
A Yes, ma'am.
Q A call you made?
A Yes, ma'am.
Q For the specific purpose of locating marijuana?
A Excuse me, yes, ma'am.
Q To smoke?
A Yes, ma'am.
Q Then?
A Yes, ma'am.
Q That day?
A Yes, ma'am.
Q On the 13th?
A Yes, ma'am.
Q And your calls --
THE COURT: Ms. Gutierrez, I think we're going to stop there because this is a good spot, we're

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talking about the 13th and the issue of the smoking of marijuana is a good place pause --
MS. GUTIERREZ: Yes.
THE COURT: Because that way we can pick up with. Ladies and gentlemen we are going to take a lunch and recess at this time. I'm going to advise you that as you get ready to leave I'm reminding you to leave your note pads face down on your chairs, they will be secured in the lunch and recess. I'm going to ask that you not talk to anyone during the recess about this case or amongst yourselves about the testimony.
I ask that you do as you've been asked to. If anyone tries to approach you or talk to you about this case that you let the Court know either through the staff, the courtroom clerk, the Deputy Sheriff or my law clerk and I also would appreciate your being advised that I've instructed all witnesses not to have any contact with you. So if you do see them in the hallway and they look at the ceiling or look at the floor, go in the opposite direction, catch the next elevator, it's because they're abiding by my request not to have any contact with you. That contact extends to Counsel for the State and for the Defense and any individuals working for them or working with them with this case.

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At this time ladies and gentlemen, I'm going to ask that you go to lunch, go with Ms. Connelly who's going to walk you around to the jury room at this time and we're going to return with this case -- Counsel, I'm advising you 1:30. It is now 12:40, 1:30, 1:30.

(The jury was excused from the courtroom.)

(At 12:40 p.m., a luncheon recess was taken.)

MS. GUTIERREZ: Can we see you about that?

THE COURT: Well, all right. 1:45?

MS. GUTIERREZ: No, Judge in light of the previous - THE COURT: How about two o'clock?

MS. GUTIERREZ: Yeah, because we have to review the tape and --

THE COURT: All right. Two o'clock, ladies and gentlemen, two o'clock. Thank Ms. Gutierrez for the extra time for lunch. All right. Two o'clock. Yes.

MR. URICK: A scheduling matter that we would like to bring to your attention --

THE COURT: Yes.

MR. URICK: Before we break.

THE COURT: Before you do that. Mr. Wilds, I'm going to ask that the Sheriff escort Mr. Wilds to the hallway at this time and see that he gets on his way, but I'd ask that you wait until the hallway is

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cleared of the jurors before he's permitted to leave. Yes.

THE COURT: Mr. Wilds, the Sheriff is going to show you where you are to be after the luncheon recess. It is not where you have been in the past. You must go there and the Sheriff will come and get you when we need your testimony at two o'clock, do you understand?

SHERIFF: (inaudible)?

THE COURT: Pardon.

SHERIFF: (inaudible)?

THE COURT: Yes, he's going to go with you to retrieve those items and then he's going to show you where you are to wait. All right. Very well. You may go with the Sheriff at this time. All right, the scheduling situation or problem?

MR. URICK: Ms. Murphy will fill you in.

THE COURT: Yes.

MS. MURPHY: Well Your Honor, one of our witnesses, Ms. Vincent has a test scheduled Monday afternoon, this is not a regular school exam, it's a different type of test that was scheduled months in advance and costs as I understand it a significant amount of money. She has just requested that she not be present Monday at all. We, you know have other

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witnesses we can try to get here, but if we should be stuck on Monday without a witness I just want the Court to understand that this is something, she's asking for special consideration. She has been here upwards of eleven hours already in this trial.

THE COURT: How many other witnesses do you have?

MS. MURPHY: Four.

THE COURT: So, today is Friday, I can tell you we're going to come back at two o'clock, I doubt that we'll get through with Mr. Wilds, but even if we do I doubt that there's a problem with calling Ms. Vincent and if there is, how long do you expect Ms. Vincent on direct?

MS. MURPHY: I wouldn't expect more then a half hour, forty minutes.

THE COURT: Okay. Well, why don't you in abundance of caution plan to call her on Tuesday or some day after Monday.

MS. MURPHY: That's currently what we've planned, but the Court just ask that we advise you of any difficulties and I just wanted to inform you.

THE COURT: Thank you for advising, Ms. Murphy. You can note that I'm sure that you could call three witnesses and if we finish early on Monday we can

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always discuss jury instructions or any other things that we can discuss. I'm sure they'll be an abundance of things that we could discuss before the Defense would have an opportunity to put on one if they choose to put on a defense.

MS. MURPHY: Thank you, Your Honor.

THE COURT: So, if we even get to the point where they would put on a defense because we don't even know that yet. All right. This Court will stand in recess.

MS. GUTIERREZ: What if anything do we have to do to review the tape?

THE COURT: Just plug it in. I'm going to instruct Ms. Connelly to just make sure that the machine is rolled up here to the front and the Court will stand in recess. I'm going to advise the clerk that if you need to call down and have someone sit in the courtroom while you go to lunch, someone needs to be here, we have evidence.

THE CLERK: I have my lunch here, I'll just stay here.

THE COURT: Do you have a problem with that?

THE CLERK: No, I don't.

THE COURT: You can eat your lunch in here. Very well, this court will stand in recess then until

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two o'clock.
BAILIFF: All rise.
(Luncheon recess.)
(Jury not present upon reconvening.)
THE COURT: Are we going to need to discuss anything before Mr. Wilds comes out?
MS. GUTIERREZ: Yes.
THE COURT: All right. So after Mr. Syed gets here but before Mr. Wilds?
MS. GUTIERREZ: Yes.
THE COURT: Very well. Thank you. All right. Ms. Gutierrez, you had a matter?
MS. GUTIERREZ: Yes, Your Honor. During the break we had an opportunity to view the tape that was brought up and as I understand it and I don't have any personal knowledge, I don't know how the court reporter locates a specific tape but having dealt with it before there's some system that they pull up the number and the name you can locate. The tape that was sent up because all that it covers is really the hearing that took place on the 7th of September before Judge McCurdy during which Mr. Urick was present, Ms. Benaroya was present, Ms. Murphy came into the courtroom but didn't sit at the trial table, Mr. Wilds was present and that is in fact that I viewed before. It is what they keep

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calling, you know, the plea. All that happened on that tape was Judge McCurdy asking Mr. Wilds, you know the plea litany questions as a predicate to taking the plea. Then there was a short discussion because, of course Judge McCurdy recognized it wasn't a plea, he couldn't enter a verdict and between Judge McCurdy and the clerk with some input from Mr. Urick about what to call it since it was a plea and then the setting of a date for the further hearing on 1/04, 1999.
Now we knew about that and Judge, it was my recollection, but we sought and with the clerk's assistance we obtained the court file that is the only court file that I know of in existence regarding Mr. Wilds and his charge. I will note that that court file took us a while to locate because the number on the plea agreement which is the only number that there is, is not the number assigned to the criminal information here and for whatever reason --
THE COURT: Is it the number that I gave -- that was given to us to locate the file?
MS. GUTIERREZ: That's not the number on the plea agreement.
THE COURT: No, it's a different number then the number that was given out loud in Court for the --
MS. GUTIERREZ: Yes, it's a different number

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then that number. So, anyway we asked and the clerk enabled us, we went and got that to see if in fact there was some other entry of some other date that perhaps Ms. Sheldon missed that indicated there was some proceeding and as the Court is looking at it, the only proceeding, well it's not even a proceeding. The only entries on 1/4 and 1/4, 2000 that what's called a disposition although above that it's clear it not a disposition, but that it was postponed and reset.
Judge, we knew about the 1/4 date and I knew before looking at that tape that nothing would appear but Mr. Urick wasn't here at the time so I was unable to ask him. But I knew from my own personal knowledge that Mr. Wilds didn't appear that day that there was nothing called on Judge McCurdy's because as you can imagine I was awaiting that day knowing this trial was coming up to find out what, in fact happened to Mr. Wilds but I was not surprised to learn that in fact he got it postponed without anybody appearing. Mr. Urick confirmed that for me. We did glance through the tape of 1/4. There's nothing that signaled to be Mr. Wild and that didn't occur. I walked down learning, after learning from Mr. Urick that the way that it happened was that Mr. Urick had a conversation with Judge McCurdy in which he requested that Judge McCurdy speak

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to this witness including the offer essentially of Judge McCurdy determining if, in fact Mr. Wilds wanted to withdraw the plea. That's a surprise to us Judge, and if those are --
THE COURT: Wait, when did this conversation happen?
MS. GUTIERREZ: I don't know.
THE COURT: But you're offering that there was such discussion?
MS. GUTIERREZ: Well, Mr. Urick offered that to me.
THE COURT: When?
MS. GUTIERREZ: Just now. I inquired, you know how is it that in my attempt to locate the tape of this proceeding having all other efforts exhausted I turn to Mr. Urick and asked some questions and he answered them and the information he conveyed was that they way it happened was that he asked Judge McCurdy to have a conversation with Mr. Wilds and that that included and, you know that in case Mr. Wilds wanted to withdraw the plea.
Now, I didn't ask when that occurred because he already told us whatever occurred, occurred sometime in September and obviously this conversation took place some time before then. Judge, I then walked down to

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Judge McCurdy's intending to ask Judge McCurdy if he had any recollection or any indication of the date or how or what, anything that happened since to my way of thinking which, you know I certainly could be wrong, but it is such an unusual event to occur I can not imagine a Judge having been asked to inquire as to whether somebody wanted to withdraw a plea or not, that such a conversation would not have taken place on the record. Whether it took place in a courtroom or in a Judge's chamber and could not imagine that such a conversation could take place without notice to the lawyer even if the lawyer or without appointment of another lawyer for that to happen.

But what I discovered was a note on Judge McCurdy's courtroom and chambers that made me think, it appeared that he was not here. I just noticed that his docket was being called over the Mitchell Courthouse in front of Judge Quarles and I asked the clerk and he again, graciously assisted us in discovering that in fact, Judge Quarles is calling Judge McCurdy's docket, Judge McCurdy is not here.

So, I haven't been able to go any further, but I will tell you, you know now I have even greater concerns. I haven't had an opportunity to ask Mr. Urick any other questions about it, but certainly lots

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of questions are now raised that I think are significant issues.

In the first case we maintain that Mr. Urick deciding and providing a lawyer for the witness was an unusual event and we know and have not been put on notice of any other intervening event that might trigger the lawyer who chose the lawyer for this witness. Going to a Judge after that lawyer has represented the witness in what they report to be a plea litany continued to call a plea agreement that the Judge who took that plea agreement with that lawyer present, allowed that lawyer to act would then be asked to hold a conversation with a witness who's represented with counsel, that included an inquiry regarding whether or not the client wanted to continue with the plea. That's certainly relevant to all of the issues that concern us. What was the bargain, how fluid was his plea agreement, who was in control of it and of course, Judge it's out contention that Mr. Urick was always in control and this certainly seems to support itself. It makes that hearing critical to us and Mr. Urick has told us it occurred, it doesn't appear to be on any record, we're sort of at a wall. I don't know where else to go.

Obviously, I will continue to seek information

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from Judge McCurdy when Judge McCurdy is available and Judge, he's already gone on our witness list and I don't know where it will lead. I am concerned and it's certainly something that I will be entitled to ask this witness about. I'm entitled to know about it before I ask any, you know scratch at the edge's to see what's safe before deciding whether it's worth it to go after. It sure as hell appears to be worth it, but I know nothing and Judge, everything unusual has happened about this case. We couldn't find the case, we couldn't find a court file, it turns out it's filed under a non-existent number, a hearing that was suppose to have occurred doesn't appear somewhere.

I'm scared Judge, to go after anything else without knowledge on which to base it. I think I'm entitled to not just have to scurry around the edges and then see, is this safe, can I take another little baby step. My client is entitled to the best that I can do, whatever that it is and I'm entitled to be on notice. You know, I now regret --

THE COURT: Ms. Gutierrez, before you go any further I have a question and I hate to be rude, but you have two attorneys or two individuals at trial table.

MS. GUTIERREZ: Yes, Judge.

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THE COURT: One of them you asked if they could sit there, the other one you did not.

MS. GUTIERREZ: I'm sorry, Judge. She did remind me that I hadn't done that.

THE COURT: So, can you tell me who she is.

MS. GUTIERREZ: This is Kelly Parthamos. I did introduce the Court to her last Friday, she's also third year law student, she also is an assistant and as the Court knows we have many different transcripts to work with and that is my purpose. That they are familiar with everything we locate and thereby save time, then if I and asking the questions also I have to flip through three different transcripts to find them and so, I wasn't actually where she's here and we had the Sheriff just put a chair up for her when she arrived and she has reminded me that I again introduced her to you and every time she writes it down I have forgotten. So, I would request permission for her to continue to do that.

THE COURT: She may remain, but I need you to talk to her. You want to come up.

MS. GUTIERREZ: Sure.

THE COURT: Mr. Urick.

MS. GUTIERREZ: Do you want her up too?

THE COURT: No.

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MS. GUTIERREZ: Okay.
THE COURT: Ms. Murphy. Mr. Syed, you may come up as well.
(Counsel and Defendant approached the bench and following ensued:)
THE COURT: I have no problems with her staying there.
MS. GUTIERREZ: Okay. Was she expressive?
THE COURT: You're going to have to talk to her about courtroom etiquette. Between the note passing, which I don't mind, but that, the facial expressions, the chewing gum yesterday and talking when I'm talking to you.
MS. GUTIERREZ: I will Judge, and I apologize.
THE COURT: I understand that she's a third year, she may not know.
MS. GUTIERREZ: When I'm over there and I don't look and I don't notice.
THE COURT: I know. Mr. Lewis has been extremely appropriate.
THE COURT: Okay. I'll talk to her.
THE COURT: In fact, there are times when I think he tries to ignore her in an attempt not to cause a problem.

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MS. GUTIERREZ: Okay.
THE COURT: And I think Mr. Syed also tries to ignore her.
MS. GUTIERREZ: Because he's sitting next to her and I'm at the other end, so I apologize I haven't noticed.
THE COURT: No, no, no. Today, yes and he's been helping and I think if she's going to be in trial you're going to have to talk to her.
MS. GUTIERREZ: I'll talk to her.
THE COURT: Because -- or I will talk to her.
MS. GUTIERREZ: I understand.
THE COURT: Okay.
MS. GUTIERREZ: Thank you.
THE COURT: And so, to that end she may remain, but you're going to have to do something because I really can't.
MS. GUTIERREZ: I'll sick Mr. Syed on her.
THE COURT: Well, whatever, whatever.
MS. GUTIERREZ: I do.
THE COURT: And with regard to the motion. It would appear to the Court that every effort was made to hide the existence of Mr. Wilds plea or attempted to plead because this says guilty verdict held sub curia. Which means what you did was you did everything except

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for have the Court find the Defendant guilty. He held the issue of whether or not the Defendant was guilty sub curia pending the State providing a statement of facts it appears and the only reason why one would do that, in my mind is so that there would be no record of a guilty plea because if there's no guilty finding that he hasn't been found guilty. He didn't hold sub curia the sentencing, he held sub curia the finding of guilt.

The other thing that I find interesting is that as Counsel has pointed out, I've never seen a file like this before. Now, I've worked in the District and I've been around the courthouse for many of time and I was a law clerk, but every indication, every printed page, every item is not computer generated except for this, for the case number for one witness to plea guilty, no witnesses which is so unusual. It appears very, very odd and unusual and I can see why would Ms. Gutierrez would start to wonder.
MR. URICK: Your Honor, if I may point something out. MS. Gutierrez keeps saying a non-existent number.
THE COURT: It's right here.
MR. URICK: The number she refers to, the tracking number --

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THE COURT: It's right there.
MR. URICK: That's on the plea is right there.
THE COURT: Yeah, but that's the case -- the case number is there.
MR. URICK: But she keeps complaining that there's a non-existent number on the plea agreement.
THE COURT: There's an existent number.
MR. URICK: And that correlates to that. The plea agreement is drawn up, we do the CI. then they assign a case number.
THE COURT: That's not my point, Mr. Urick. You understand -- you understand my point.
MR. URICK: There is no -- this is a very common file for a Circuit Court originate case.
MS. GUTIERREZ: Judge, I would like to have the Court review State's Exhibit 35. This is what was given to us.
THE COURT: I understand.
MS. GUTIERREZ: That number isn't this number.
THE COURT: I understand, I understand, but that's not the point. The point is, is that it had you call I think the clerk's office and attempted like one would normally do, do you have a listing for Jay Wilds.

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what's the case number. The case number is going to be 299250001 and that's the case number and that's the case number that would reflect that.

MS. GUTIERREZ: But we did that, Judge and it still took us a month.

THE COURT: But the case number -- well, --

MS. GUTIERREZ: Once we discovered the right number it still took us a month to locate the file.

THE COURT: Where did you find the file?

MS. GUTIERREZ: Well, now today, it's there, we went over.

THE COURT: It downstairs in the file room.

MS. GUTIERREZ: September of 1998 it wasn't there.

THE COURT: Did you have any difficulty finding the file when you looked for it?

THE CLERK: I just called down and said do you have this --

THE COURT: Case number?

THE CLERK: Right.

THE COURT: And that was the case number I gave you? The case number, the 299 case number? All right. With regard to your request, your request then is on the record --

MS. GUTIERREZ: Well, Judge I have a couple

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of questions.

THE COURT: Well, I would like you to respond.

MS. GUTIERREZ: Okay.

THE COURT: Because I haven't heard a response from the State yet.

MS. MURPHY: I'm sorry.

MR. URICK: Your Honor, I would like to point out that the guilty plea has not been hidden. We divulged the plea agreement, we went through discovery. Any Circuit Court computer that runs that name will pull that up in about five seconds, it is not hidden. It should pull it up by the CC number as well. CC numbers are also correlated with -- there's nothing difficult about finding the court file based on the information in the agreement. We disclosed that I believe --

THE COURT: Well, what was difficult Mr. Urick, the other day when we asked, I know I asked whether or not Mr. Wilds pled guilty, you said he pled guilty.

MR. URICK: Your Honor, I --

THE COURT: But the verdict wasn't entered. I mean to say, to lead the Court to believe that the verdict was entered is not true. It was a guilty plea

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and the reason as Counsel has been asking over and over, how could there be a guilty plea with no statement of facts. It's very simple, is that no guilty verdict was entered, that's how you kept the statement of facts out.

MR. URICK: The plea was taken, he's entered his plea. According to the plea agreement he can not withdraw it at this point. He has --

THE COURT: That's not the issue I'm asking.

MR. URICK: You're asking my reasoning and why I described something that way because to my way of thinking he had entered his plea, the plea is quite consistently shown --

THE COURT: So, you considered it a plea off guilty?

MR. URICK: I considered it a plea -- according to the plea agreement he can not withdraw it once he makes that plea and it was made explicit in the written plea and it was also, as I recall made explicit at the hearing on September 7th that his entry of plea was a binding, non-withdrawable plea. So, in my mind this is his guilty plea because the statute does not require everything to be held in one proceeding --

THE COURT: No, it doesn't.

MR. URICK: To be completed.

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THE COURT: Obviously it does not. The next question I have is, did you or did you not represent to this Court that you weren't there?

MR. URICK: No, I did not say at that I was not there. What I said was at the review for his advisement of his right to assistance.

THE COURT: To have an attorney?

MR. URICK: Yeah. I was not there. I asked Judge McCurdy --

THE COURT: You were there for the guilty plea?

MR. URICK: I was there for the entry of the guilty plea.

THE COURT: But at the time that he wanted Counsel, he asked for Counsel you're saying that --

MR. URICK: When we asked Judge McCurdy to advise him of his right to Counsel due to review of that to make sure he understood it and that he was in fact, his assistance of counsel.

THE COURT: And when did that happen?

MR. URICK: It happened sometime in September. I did not --

THE COURT: You don't know what day?

MR. URICK: No, I don't.

THE COURT: It happened sometime in

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September?
MR. URICK: Yes.
THE COURT: And at that time an attorney was afforded to him?
MR. URICK: Ms. Benaroya showed up with him that day, he was given the option, you know explained. In abundance of caution we asked Judge McCurdy to do an in camera review to make sure that he understood his right to counsel, that he was making his election of his counsel of choice and that he was getting independent assistance of counsel. Judge McCurdy did a review of that with him.
THE COURT: Okay.
MR. URICK: And that was done in an abundance of caution.
THE COURT: And that was done on some other day other then the day that this -- beginnings of guilty plea was taken?
MR. URICK: Yes.
THE COURT: Okay.
MS. GUTIERREZ: Judge, to make sure, I'm not sure the Court understands. On the day that the beginnings of the guilty plea were taken Ms. Benaroya was there. The guilty plea litany was done by Judge McCurdy to the letter including an inquiry of counsel.

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Having taken the beginnings of the plea or if you accept Mr. Urick's version, well he thought that was a guilty plea then what reason would exist to ask the Judge to review the voluntariness or the adequacy of the satisfaction with the lawyer.
THE COURT: Good question.
MS. GUTIERREZ: Something had to happen.
THE COURT: Did something happen post plea.
MR. URICK: We were just discussing all possibilities. We thought in abundance of caution we should.
THE COURT: What does that mean? Did something happen post plea?
MR. URICK: Post plea. No, it was debating around our office how we were proceeding.
THE COURT: Post plea?
MR. URICK: Yeah.
THE COURT: On what? If he's pled guilty. The only thing his disposition you need to have a conversation with the witness as to whether or not he's going to withdraw his plea, is that what happened?
MR. URICK: No, we wanted Judge McCurdy to -- do that we had made sure that there was an independent judicial advisement of his right to counsel, that he understood and that he was exercising it. We thought -

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THE COURT: That's post plea. I'm asking after the plea. Okay. Let me get the scenario right because I'm getting confused.
MS. GUTIERREZ: Judge, we do have the videotape here of the original plea.
THE COURT: I'm not worried about the plea.
MS. GUTIERREZ: Okay.
THE COURT: You're saying it was to the letter I believe it.
MS. GUTIERREZ: Judge, it's less than ten minutes.
THE COURT: The one before it, the advising of his right to counsel was done by Judge McCurdy, correct? Before the plea at the time he has no lawyer, he asks for a lawyer, Judge McCurdy advises him of his right to a counsel --
MS. GUTIERREZ: No, that's afterwards. That's what I was trying to explain.
THE COURT: So, there is no such hearing before?
MR. URICK: Correct.
THE COURT: All right. So, the Defendant --
MS. GUTIERREZ: He has a lawyer on the 7th. All we know is from Mr. Wilds that Mr. Urick helped him

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get that lawyer but we don't any circumstances.
THE COURT: After he pleads -- after he pleads guilty, after he asks to saw the litany then Judge McCurdy revisits with him the issue of whether or not his effective assistance of counsel.
MR. URICK: And that he understands full his right to independent assistance of counsel and that he's satisfied that he's getting it. We wanted to make -- just in an abundance of caution to make sure that we had a full record to that, so we asked him to do an in camera hearing.
THE COURT: All right. And in light of what you just told you provided that last bit of information to Ms. Gutierrez before I came out on the bench, correct?
MR. URICK: No. She missed -- I did not say what she said I said over break. The only thing I said at break, was she asked me who set up the hearings, she was trying to find the date, I said, Judge McCurdy did. I asked him to schedule a hearing, he did, he took care of the details. That's when she went down to see --
THE COURT: Hearing, you mean the guilty plea hearing or the second hearing?
MR. URICK: No. The in camera review.
THE COURT: And you asked him to set up the

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hearing?
MR. URICK: Yes.
MS. GUTIERREZ: That's what I said.
THE COURT: Did you do that with consent of counsel for the Defendant, Mr. Wilds?
MR. URICK: Yes, I did. Yes.
THE COURT: So, the two of you asked to set up the hearing?
MR. URICK: Yes.
THE COURT: And he set up the hearing?
MR. URICK: Yes.
THE COURT: And it was on the record?
MR. URICK: I was not there. My belief was that it was on the record.
THE COURT: And what date was it?
MR. URICK: It was sometime in September. I did not keep a record of the date.
THE COURT: And you don't know when that was?
MR. URICK: No, I don't.
THE COURT: But this was your witness? Someone -- did someone go on your behalf?
MR. URICK: No, no one from my office showed up.
THE COURT: So, it was just the Defendant and his lawyer --

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MR. URICK: Yes.
THE COURT: And Judge McCurdy?
MR. URICK: Yes.
THE COURT: Who represented the interest of the State at this proceeding?
MR. URICK: Our interest --
THE COURT: You're suggesting that a Judge would have ex parte communication with a Defendant and his attorney without the presence of the State?
MR. URICK: It was with our permission. We waived our presence. We wanted to be sure that Mr. Wilds right to counsel was fully and adequately protected.
MS. GUTIERREZ: Judge, then we need to make a demand, why? We're entitled to that and Judge, I ask this in all seriousness. There are some areas --
THE COURT: I take everything that you say with -- in all seriousness and I don't want you in anyway think that I don't. Everything that you say --
MS. GUTIERREZ: I don't mean to imply that Judge, that's just something --
THE COURT: I generally attempt to follow your arguments to the letter which is why I ask so many questions.
MS. GUTIERREZ: I appreciate that.

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THE COURT: I don't ever suggest that you are saying anything to me that does not require my full and complete attention and right now the Court does have a lot of questions. I am very, very concerned at this point that I don't have all the facts in front of me that I need to answer this question and so, in order that I give the Defendant and his Counsel my complete and considered opinion I would like to have a hearing on this issue. We're going to -- what time is it?
MS. GUTIERREZ: I can't see that far.
THE COURT: It's not quite three o'clock, it's not quite three o'clock. You have questions for this witness?
MS. GUTIERREZ: Well, I do Judge.
THE COURT: Not on this issue, not on the issue of the plea agreement. But --
MS. GUTIERREZ: I do have some other areas to clean up. Maybe that's an hour and my concern and I'd asked to stop now is that I've interrupted my cross of this witness.
THE COURT: I know.
MS. GUTIERREZ: I regret doing so now, but I can't go back and change that. I don't know what impact, when I get the answers to these questions it's going to have. I think it's going to be great. I'd at

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least like to preserve the ability that the decision where I put it --
THE COURT: What exactly do you want at this point?
MS. GUTIERREZ: Well, not I want to talk to Judge McCurdy, I want maybe Judge McCurdy can help us locate the tape because I can not imagine that this didn't take place on the record. To review that tape, to ask Judge McCurdy about how and why it occurred. I'd like a whole list of questions of discovery that I think we're entitled to from Mr. Urick. I even had time to think about them. How did it come about? It wasn't just some bright idea, who suggested it, who were the people talking? Why did they have questions about whether or not we needed another inquiry into the adequacy of Counsel? Was there any communication from Mr. Wilds, from Ms. Benaroya? You know, something had to occur to make this extraordinary hearing happen and then to review that hearing, perhaps talk to some of those witnesses, inquiry as to these circumstances and then once having gotten both the answers and reviewing that tape. It's like this record makes clear that this is an ongoing proceeding. I can't imagine it's not on the record. There is something somewhere and I certainly can't imagine --

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THE COURT: What is it that's on the record something somewhere?
MS. GUTIERREZ: That Judge McCurdy would not remember this. This clearly is an unusual proceeding and so he might --
THE COURT: I would note that the Court file does not show any other proceeding.
MS. GUTIERREZ: Right.
THE COURT: Court file shows only the proceeding on 1/4/00 which is the deposition was postponed. It doesn't say anything about there being about another hearing held under case number 299250001 referencing anything.
MR. URICK: I have no explanation for that as you are aware, my office does not handle that aspect of that. Chambers handles scheduling --
THE COURT: This is your case, Mr. Urick. It's your case. It says right here, Assistance State's attorney Kevin Urick. You're telling me on your case you allowed the Court and the Defense attorney to go forward on a hearing or a matter or a proceeding on your case without you being present?
MR. URICK: That's correct.
MS. GUTIERREZ: I realize (inaudible) Judge, is to suspend any further cross examination because as

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I said, I at least want the possibility of how to utilize and to have some room of some coverage either to end with it and thereby making it bigger or to bury it in the middle or connect it up to other things then to be forced to finish on the matters I would have to finish and then be left with having to make a decision, do we continue with just this baldly in front of the jury.
THE COURT: Your first request is that we dispense with any further testimony today --
MS. GUTIERREZ: Yes, of this witness.
THE COURT: And resume on Monday --
MS. GUTIERREZ: Yes.
THE COURT: With regard to this witness on Monday?
MS. GUTIERREZ: Yes.
THE COURT: You do not want any other testimony I take it or --
MS. GUTIERREZ: I'd prefer not, Judge. I'd find that difficult. I've already had to juggle many things.
THE COURT: Very well. What's your position from the State? Do you understand what the Defense concern is? I'm not saying you have to agree with it, do you understand their concern? She has a witness on

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the stand, there's been a hearing involving this witness that may or may not reflect on the credibility of this witness, we don't know if the proceeding was under oath, we don't know what he said during the proceeding, we don't know what he was asked during the proceeding, but he is your star witness in your case. She's reviewed a statement, it's the guilty plea, but there was another hearing held involving this very same witness for which she has no clue what it's about and to ask or inquire blindly means she doesn't know what she's dealing with. Perhaps we could bring him in and ask him. Perhaps he knows. But you can understand why she might want that information as a lawyer.
MR. URICK: All I can say is that it was my belief that it was on the record. I have no explanation for what appears in the Court file.
THE COURT: Very well.
MS. GUTIERREZ: I guess I would also request the assistance of the Court -- not any suppressions on Judge McCurdy but to sort of help smooth, that we at least try to get word to Judge McCurdy perhaps to make himself available on Monday.
THE COURT: Well, that part I can't do because I'm not convinced Judge McCurdy really could shed any light on this in that I have no idea whether

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or not Judge McCurdy knows what occurred. I mean I don't know, but I can tell you this, I think the starting place is to check with the witness and ask him whether or not there was some proceeding and then from there I'll make a determination whether or not there's something else we might be able to do. It could be that Judge McCurdy is the only answer. Lets find out what it is that occurred.
MS. GUTIERREZ: Or Ms. Benaroya.
THE COURT: Because we have a Court file that -- I'm going to ask at the end of the close of the day if the courtroom clerk would make a search of your records to determine whether that there was a proceeding that took place in this case was entry has not reached the file. Do you understand what I'm saying? Sometimes things happen in cases and they don't have the Court file.
THE CLERK: Right.
THE COURT: And then later they go back and put an entry in, correct? Can you find out whether or not that has occurred with regard to this file? If there is an entry floating around somewhere that has not caught up to the Court file which -- which would perhaps serve to clarify what has occurred. In the meantime we can check with the witness and find out. I

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think it does and I think that's the starting place, Ms. Gutierrez. I will hold in advance your request --

MS. GUTIERREZ: Okay.

THE COURT: To contact Judge McCurdy if we find that we're not satisfied that we've gotten is the information we require and I do see that it is now three o'clock and if you wish to dispense with any further questions of Mr. Wilds, I understand. Unless there are some areas that you can go into that is apart from this.

MS. GUTIERREZ: Well, there are a couple of areas, but they're discreet and I guess my request is that I be allowed to save them in case I want to use this an wrap it around so that --

THE COURT: Okay. So, you don't want to have to use it now.

MS. GUTIERREZ: Right, right.

THE COURT: Okay. Very well.

MS. GUTIERREZ: I don't want to lose it in case I need it.

THE COURT: No, that's your strategy and you're entitled to do that in whatever fashion you deem appropriate in your defense so we will do that. Is there -- I don't want to call another witness because I do not want to interrupt what we have going, so at this

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point I'm going to ask Mr. Wilds to come in. The Court has a few questions with regard to this post hearing, but I want to bring -- let me bring the jury in first, let them go home. Could you bring the jury in please. Yes.

(Counsel and Defendant returned to the trial tables and the following ensued:)

(The jury returned to the courtroom.)

THE COURT: Ms. Gutierrez, I have a quick question.

MS. GUTIERREZ: Yes.

THE COURT: On January 4th when the disposition was postponed --

MS. GUTIERREZ: Yes, Judge.

THE COURT: Do you know whether or not there were any additional questions asked?

MS. GUTIERREZ: Judge, my understanding --

THE COURT: Just yes or no. the jurors are coming in, I just want to know yes or no.

MS. GUTIERREZ: There is nothing, no appearance, nobody, no hearing that I know of.

THE COURT: It's just nothing.

MS. GUTIERREZ: Just the entry.

THE COURT: But there's a tape from that day.

MS. GUTIERREZ: No, we reviewed that.

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THE COURT: And nothing on that tape?

MS. GUTIERREZ: Nothing.

THE COURT: All right. Ladies and gentlemen, don't get comfy, we're going to send you home for the day. I must advise you that it appears there are a number of matters that we're going to have to deal with and rather than have you sit in that room waiting for us to finish it makes more sense to let you go home.

Especially, since there have been a couple days when we ran later then we had promised and we actually had to come in earlier then we originally agreed on one day I'm going to tell you that you may go home with my request that you not discuss the testimony that you heard with anyone. I know your family is probably itching to know all about this and they keep saying, well you said this weekend. Well, you just let them know that, you know we can't always anticipate and so therefore, once again, you can not discuss this case with them over the weekend, nor should you visit the scene of this incident or do anything else in any kind of investigatory fashion including discussing the testimony with each other. You have to leave your notes face down in your chair and not discuss this with anyone. Not amongst yourselves or with anyone else nor read anything in the newspaper, listen to anything on

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the television or on the radio about this case. I see you all are smiling, just means that if you see something come on you turn the channel, look at something else, cartoons, I don't care, but you can't read or view anything about this case. I'm going to ask also that you have a pleasant weekend and I have good news that Judge Gordy has kindly allowed us to continue in the courtroom next week.

So, to the extent that it is a little more comfortable, we have adjusted the heat so you're not roasting as you were the other day and I'd ask that you continue to let me know in the event you have any problems hearing, seeing, you're uncomfortable. We try to anticipate your needs when we see you coughing or in need of tissues in order to make your stay in here as comfortable as possible during the course of the trial. We will continue to try to keep according to the schedule we've provided which we will do again on Monday to give to you and again, please understand the Court greatly appreciates your patience with us as we try to accommodate you and get through the trial.

So, at this time I'm going to ask that you have a pleasant weekend, I will see you on Monday and on Monday I'm going to ask that you do the very same thing that you've been doing each day. That is go to the

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jury assembly room between nine and 9:30 and pick up your money. You may go to the canteen or where ever and get some coffee or tea, bring it back to the jury room. We expect to get underway by ten o'clock. We'll do our best to keep to that schedule and Madame Forelady, as we've had you do each day, count heads. Your numbers changed a little bit then originally when we started so, as it is now you count to fifteen and as the clerk or the Sheriff or my law clerk will come and ask if everyone is present and accounted for. Please have a pleasant weekend and I will see you on Monday. In the event of snow, WBAL, in the event of any other problems you can call my chambers at the number I've already provided to you.

JUROR: Have a nice weekend.

THE COURT: Have a good weekend.

(The jury was discharged.)

THE COURT: Now Mr. Sheriff, I'm going to ask that you go around and obtain Mr. Wilds for us and bring him back to the courtroom. Thank you very much, sir.

EXAMINATION

BY THE COURT:

Q Mr. Wilds, please step up to the witness stand. Have a seat. I'm going to remind you sir, that

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you're still under oath. The Court has a few questions. First, I want to advise you that what you may have said or what you say between you and your attorney, I think her name is Benaroya. Benaroya, is between you and your attorney. You have an absolute privilege not to disclose conversations that you've had with your attorney. It's not my intention to get you to invade that privilege. If for some reason you don't mind and you want to tell me everything that you said that's fine, but my purpose of my questions is to get a chronology of events of what has transpired. And my question starts, I understand it was a guilty plea that you did and you talked about that, is that correct? Is that a yes?

MR. WILDS:

A Yes, ma'am.

Q Okay.

A We --

Q And that was in front of Judge McCurdy, is that correct?

A Actually, no. The first time we talked about it was --

Q Not when you talked about it, when you went to a courtroom.

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A Yes.

Q That's what I'm concerned about, when you went to a courtroom.

A Yes.

Q In the courtroom there was a guilty plea in front of Judge McCurdy, correct?

A Yes. I was issued --

Q A summons to come to Court?

A Yes.

Q Okay. And then after that guilty plea you received a date when the case was going to be disposed of, that is you would be sentenced, is that right?

A Yes.

Q And do you remember that date being like around January 4th?

A Yes.

Q Does that sound familiar?

A Yes, yes.

Q All right. On January 4th did you come to Court?

A No.

Q You didn't come to Court?

A No.

Q Did someone tell you not to come to Court?

A They said that I wouldn't -- it was depending

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on whether my plea was depending on whether I told the truth in Court.

Q Okay.

A And so if I had lied in Court then the plea didn't stand so that I would be -- something different would happen.

Q At the sentencing?

A Right.

Q Okay. So they had to wait to see --

A Right.

Q What you did at the trial --

A Right.

Q In order to determine whether or not the sentence would be some or what the sentence would be.

A Right.

Q Okay. And when you say they, did someone explain this to you?

A Well, me and Ms. Benaroya sat in a room and before I even signed the plea and we went through it and all it led back to was that even if I didn't sign the plea and I got recharged or something that even when I went to Court and sat on the stand I would still get charged with the same thing because I would still have to say that I did the same thing. Telling the truth, I'd still have to be saying it my involvement --

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Q No matter what you would have to tell the truth?
A Right. So, that this was just a rock and a hard place and it would be like null and void to go through all of that again and then be recharged and then something else, like if I --
Q Wait a minute, wait a minute. Before you go any further, who explained that to you?
A Ms. Benaroya.
Q Okay. And you said you were in a room?
A Um-hum.
Q Who was with you?
A No one, just me and her before I signed the plea.
Q Okay. I don't want to know about when you were talking just the two of you.
A Okay.
Q What I'm interested in knowing is when you were in a room and there are other people present.
A Yes.
Q Did that occur, an explanation occur while there were other people present?
A No.
Q Okay. So, I do not want you to tell me what the two of you discussed.

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A Okay.
Q Okay. Because you have a right to have conversations with your lawyer and that's a right and privilege that you keep with you.
A I'm sorry. I did meet with the Judge and Ms. Benaroya after that.
Q Okay. And when was that, do you remember?
A I thought it was a conflict of interest, myself.
Q Okay. Now, when, when did you meet?
A This was after the plea agreement.
Q After the plea agreement.
A I couldn't get in touch with Ms. Benaroya and I was beginning -- I was beginning to get upset.
Q Because you couldn't reach her?
A Right and I thought that she just came in to get me to sign this thing and that I wouldn't see her again.
Q Okay. Now, wait a minute, wait one second. Was your conversation with Ms. -- with -- when this concern you had that Ms. Benaroya may have just come in for that one day, that concern you're talking about?
A Yes.
Q Did that happen before January 4th or after?
A Before January 4th.

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Q Before January 4th, okay. And it happened after the plea had been signed by you --
A Yes.
Q And Judge McCurdy had asked the questions?
A He asked me --
Q No, no, no. My question is --
A Yes.
Q And before -- after McCurdy had asked you the questions? McCurdy asked you the questions, then you got concerned, Judge McCurdy asked you the guilty plea questions, you signed the form and then -- no. Okay. Tell me what sequence.
A I went to McCurdy, I received the paper to come back on the 4th.
Q Right.
A He -- the only questions I had asked him there was just legal questions, like when I was suppose to be places and what were the repercussions of certain things.
Q Of pleading guilty?
A Yeah.
Q He told you what a jury trial was?
A Right, yeah, he explained all of that.
Q Those questions after the day that those questions were asked on you, you became concerned?

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A Yes.
Q Okay. And then there was another occasion when you met with Judge McCurdy?
A Yes.
Q Do you remember when that was?
A The date?
Q Yeah, or approximately when.
A Probably -- it was before I was suppose to go to Court for this case and that was in October.
Q Before this case. All right. Wait a minute. October?
A Yeah, it was before October.
Q Before October, but after the day when Judge McCurdy asked you the questions?
A Yes.
Q And long before you had received the notice that told you to come to Court on January 4th? Had you received that notice, the one that said come to Court on January 4th?
A Yes.
Q You had already gotten that?
A Yes.
Q Okay. May I see the Court file again on Wilds?
A I had got both of those notices at the same

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time.
Q Okay.
A The one for this one.
MS. GUTIERREZ: I'm having difficulty hearing the witness.
THE COURT: He said that he had gotten both of the notices for this proceeding at the same time. Correct? All right. Mr. Clerk, can you check this Court file and see what date his summons is?
BY THE COURT:
Q When Judge McCurdy met with you did he meet with you in his courtroom?
MR. WILDS:
A No.
Q In his chambers?
A Yes.
Q All right. And who was present?
A Me, Ms. Benaroya and Judge McCurdy.
Q The three of you?
A Yes.
Q Who told you to go there? The day that you went to Judge McCurdy's chambers, who told you to go there?
A I had contacted his clerk with some questions --

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Q Who's clerk?
A Mr. McCurdy's.
Q You called Judge McCurdy on your own?
A Yes. I had contacted his clerk with some questions and I guess he contacted Ms. Benaroya and wanted to see what was going on.
Q And you contacted Judge McCurdy when you couldn't get a hold of your lawyer?
A Yes.
Q And someone told you, Judge McCurdy's clerk told you to come to his chambers?
A No.
Q Okay. Who told you to come to his chambers?
A I believe he contacted my lawyer and told us to come in there.
Q So then she called you?
A She was the one who told me to come to see him.
Q And when you got there it was just Judge McCurdy, your lawyer and you?
A Um-hum.
Q And you had a conversation with the Judge at that time?
A Yes.
Q And your lawyer was present?

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A Yes.
Q Was there anyone from the State's Attorney's Office present?
A No.
Q Did you have an understanding that the State's Attorney's Office knew you were there meeting with Judge McCurdy?
A No.
Q Okay. Has anyone from the State's Attorney's Office asked you about what happened in your meeting with Judge McCurdy on that day?
A No.
Q That's a no?
A Yes.
THE COURT: In light of the Court's question I will allow Defense Counsel and the State to inquire of Mr. Wilds, but I will indicate that I in no way believes Mr. Wilds is waiving his privilege. That is his privilege to communications between he and his Counsel and that -- to the extent that I made a question or he thought I meant what happened, I did not in anyway in attempt to violate that privilege.
So, I'm striking from your consideration in the record what his response was to me, the Court about what he and his lawyer discussed because I don't think

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that that is appropriate and it's not a place for inquiry. But I do find that to the extent Counsel would like to inquire about the circumstances leading up to the meeting with McCurdy and his lawyer you may inquire, but I think that we clearly have a witness under oath who has indicated that the State was not involved with that.
MS. GUTIERREZ: To his knowledge.
THE COURT: Pardon.
MS. GUTIERREZ: To his knowledge.
THE COURT: To his knowledge, well, to his knowledge and the only thing that I can be concerned about is his knowledge because that's the credibility that we have before the Court, that the motion is based on.
So, if you have a question Ms. Gutierrez, I'll let you start since it was your motion and your request that has brought us to this point. Mr. Wilds, I need to remind you, you have a privilege and privilege means that when you communicate with your lawyer you don't have to tell anybody what you say with your lawyer. Do you understand? That's a yes?
MR. WILDS: Yes, ma'am. I'm sorry.
THE COURT: All right. And so therefore, as you're answering questions at this time understand you

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do not have to unless you want to. You choose to tell us what you said with your lawyer you're well within your right to do so, but understanding once you open that door you can't then turn around and close it. Do you follow me?

MR. WILDS: Yes, ma'am.

THE COURT: Once it's open anybody can come in.

MR. WILDS: Okay.

THE COURT: I'm guarding it's being closed at this time for you, but if you would like to open it and allow Counsel to inquire that is your right to do so.

MR. WILDS: Yes, ma'am.

THE COURT: Likewise, your attorney can't open the door unless you say it's okay. So, any conversations you had with your lawyer your attorney can't open the door to a discussion about and allow us to find out what you said to your lawyer. Do you understand what I've just said?

MR. WILDS: Yes, ma'am.

THE COURT: Any questions?

MR. WILDS: No, ma'am.

THE COURT: Very well. With that understood -- yes.

MR. WILDS: What should I say if it is a

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question that I would not like to answer?

THE COURT: Pardon.

MR. WILDS: What should I say if there is a question I would not like to answer?

THE COURT: You just say what you just said.

MR. WILDS: Okay.

THE COURT: I would not like to answer that one.

MR. WILDS: Okay.

THE COURT: And I will ask you if that's your privilege and you can indicate, yes, a privileged conversation. Very well. Do you understand?

MR. WILDS: Yes, ma'am.

THE COURT: Any questions?

MR. WILDS: No, ma'am.

THE COURT: Very well. Ms. Gutierrez.

MS. GUTIERREZ: Thank you, Your Honor.

CROSS EXAMINATION

BY MS. GUTIERREZ:

Q Mr. Wilds, you said in answer to the Judge's questions is that you sought to get a hold of Judge McCurdy because you thought it was a conflict between you and your lawyer?

MR. WILDS:

A Yes, ma'am.

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Q And as a conflict, did you mean trouble between the two of you?

A No, ma'am.

Q Had you had a fight?

A No, ma'am.

Q Had you had a disagreement?

A No, ma'am.

Q Had you met with her at all from the time you had the plea --

A No, ma'am.

Q And this time? Not at all?

A As to present or?

Q Yes, had you -- no.

A The time in question?

Q Right.

A No, ma'am.

Q No. And you hadn't been able to get in touch with her?

A No, ma'am.

Q And that's through the means that she had given you to reach her?

A Yes, ma'am.

Q Okay. And you also said that you thought she came in just to get you to sign this thing?

A Yes, ma'am.

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Q By this thing you were referring to the plea agreement, right?

A Yes, ma'am.

Q And so by conflict you thought that maybe she didn't have your interest at heart?

A Yes, ma'am.

Q Who's interest did you think she might have at heart?

A I didn't --

Q You didn't know?

A No.

Q But you didn't think it was your interest, right?

A At one point in time.

Q And at the time you contacted Judge McCurdy you thought her only purpose was in getting you to sign the plea agreement?

A Yes, ma'am.

Q And by the plea agreement it's that document that you seen when you testified?

A Yes, ma'am.

Q That's the plea agreement, right?

A Yes, ma'am.

Q The one that you signed on the 7th of September?

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A Yes, ma'am.
Q And so you called Judge McCurdy's office?
A Yes, ma'am.
Q And you spoke to someone?
A Yes, ma'am.
Q And do you know who that was?
A No.
Q Was it a male or female?
A It was a female.
Q Did you think it was his secretary?
A They identified themselves as the clerk on the phone.
Q The clerk?
A Yes.
Q Okay. And you explained your problem?
A Yes.
Q You explained your concern about the conflict?
A Yes.
Q And that you had been unable to reach your lawyer?
A Um-hum.
Q And you gave her your name?
A Yes, ma'am.
Q Okay. And how to reach you, right?

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A Yes, ma'am.
Q And the next thing is that you were told by your lawyer, show up to Judge McCurdy's?
A The clerk --
Q The clerk --
A Wasn't very helpful. I had to actually leave a voice mail message on McCurdy's mailbox.
Q Okay. Through the phone voice mail?
A Yes.
Q Okay. And did you leave that voice mail directly for Judge McCurdy?
A Yes.
Q And you identified yourself?
A Yes, I gave him my case number.
Q And as a result of leaving and did you tell the voice mail anything differently in that you told us?
A No.
Q Did you mention on the voice mail that you wish to withdraw the plea?
A No.
Q Did you explain that you had entered a plea, you were sort of under the gun on a plea agreement?
A I believe I may have mentioned something like that.

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Q Okay. And in that voice mail did you ask in any way to alter that plea agreement?
A No.
Q And when you had spoken to his clerk on the phone did you mention in anyway that you might want to alter the plea agreement?
A No.
Q Or that you might withdraw the plea agreement?
A No.
Q Did you receive a call back from Judge McCurdy?
A No.
Q No. And so how is it that you found out to appear in front of Judge McCurdy on the day that you were in his chambers with Ms. Benaroya?
A I was contacted by Ms. Benaroya.
Q Okay. And that was her making the effort to contact you?
A Yes.
Q And that's how you found out when and where to appear?
A Yes.
Q At that time and I'm not asking you to discuss, to tell us what you discussed, but did you

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have discussions with her that day?
A Pertaining to?
Q The day that she -- and she contacted you by phone, right?
A Right, yes.
Q And on the phone -- don't -- I'm not asking you what you said to her, what she said to you, but did you have a discussion with her?
A No, it was -- she just told me that I needed to there.
Q To be at Judge McCurdy's. And was it days in advance or was it like the next day or?
A I believe it was the next morning.
Q All right. And did you understand what the purpose of you going to Judge McCurdy's was?
A Yes.
Q Had you contacted anybody else in the interim?
A No.
Q Had you spoken to any of the detectives?
A No.
Q Had you spoken to Mr. Urick or Ms. Murphy?
A No.
Q Anybody from their office?
A No.

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Q Had you written them any letters?
A No.
Q Had you written Ms. Benaroya any letters?
A No.
Q And had you many any further attempt to contact Judge McCurdy?
A Other then the voice message?
Q Right.
A No.
Q After that? All right. And so you showed up that day, right?
A Yes, ma'am.
Q And your lawyer was here?
A Yes, ma'am.
Q And chambers, tell me what you mean by that?
A The Judge's chambers.
Q What -- where the Judge's office is?
A I'm sorry. Let me explain. It was an office that had flags in it.
Q It was not the courtroom?
A No, ma'am. It had --
Q You had already been in Judge McCurdy's courtroom on that prior occasion, right?
A Yes, ma'am.
Q And it was not the same place?

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A No, ma'am.
Q It had a desk in it?
A Yes, ma'am.
Q Okay. And when you were in the chambers, the only people there were you, Ms. Benaroya and Judge McCurdy?
A Yes, ma'am.
Q And was there a court reporter there?
A No, ma'am.
Q You know a stenographer like we had in the downstairs courtroom?
A The video camera was going.
Q The video camera. And did you notice that the video camera was on?
A Yeah, he told me he was going to turn it on.
Q He told you he was going to turn on the video camera and then you could see that some lights if you look over to Judge Heard that set of lights, did you see that appear?
A No.
Q No, okay. But he told you that this was going to be on the record because of the video camera, right?
A Yeah.
Q And you didn't object to that, did you?

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A No.
Q And so everything that happened between you and Judge McCurdy and Ms. Benaroya that day should appear on the video camera?
A Yes, ma'am.
Q Okay. Because at that occasion you never asked them to turn it off?
A Yes, ma'am.
Q Right?
A Correct.
Q And Ms. Benaroya didn't ask so?
A No, ma'am.
Q And Judge McCurdy didn't ever indicate to you that he did so?
A No, ma'am.
Q All right. Now, when Judge McCurdy -- did he call it like he did in the courtroom like open the case?
A No, ma'am.
Q Or any identification of the case or case number?
A No, ma'am.
Q And did he on the record tell you why you were there?
A Yes, ma'am.

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Q And did you know why you were there?
A Because I had concerns.
Q Okay. And you had concerns about your lawyer, right?
A The process, yes.
Q And whether or not your lawyer's conflict free, right?
A Yes.
Q Because you understood that concept, right?
A Yes, yes.
Q You didn't want a lawyer who's only job was to get you to sign the plea agreement, right?
A Correct.
Q Because you had concerns as to whether or not that lawyer was independently representing you, right?
A Yes, ma'am.
Q Or she was representing some other interest?
A Yes, ma'am.
Q And the interest that you were concerned that she might be representing coincided with the interest of Mr. Urick?
A Yes, ma'am.
Q And the interest of the detectives, right?
A Yes, ma'am.
Q And her freedom, her independence concerned

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you, correct?
A No.
Q Well, when you speak about the words of conflict that you were just limited as to really who she was representing?
A No, I'm not. I'm sorry, then yes.
Q Yes, okay. And so --
THE COURT: I'm sorry. Now I'm confused. Then yes, what?
MR. WILDS: That she asked me was my only concern was who she was representing if -- if my question -- if my answer to her question was no.
THE COURT: And then you're changing your answer?
MR. WILDS: Yes.
THE COURT: Then you're saying then, yes you were concerned about who she was representing?
MR. WILDS: Yes.
THE COURT: All right. Very well, your next question.
BY MS. GUTIERREZ:
Q And when Judge McCurdy indicated that it was on the record, did he put anything on the record about why you were all there?
MR. WILDS:

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A Yes.
Q Did he ask you questions?
A Yes.
Q What kind of questions did he ask you?
A Was I secured in my -- was I pleased and happy with my attorney, did I want to change attorneys. He asked me a couple, I think he asked me a couple of questions about my rights, but mostly what was going on between me and my attorney that I called him.
Q And did you say to him that you were concerned about what interest your attorney was representing?
A I told him -- I told him that I had concerns, but they had been laid to rest.
Q Okay. And so you had an opportunity to discuss things with your lawyer before you went into Judge McCurdy's chambers?
A Yes.
Q Where did that discussion take place?
A At my home.
Q At your home?
A Yes.
Q So, prior to the hearing you had an occasion to discuss in person with Ms. Benaroya the concerns that you had?

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A Yes.
Q And did you explain to Judge McCurdy your concerns that it might be a conflict for your lawyer to represent you?
A Yes.
Q And did you ask him any questions during this time?
A I can't recall asking him any.
Q Okay. Did he ask you any questions to define terms, like what do you mean when you say conflict, Mr. Wilds, did he ask you any question like that?
A I believe so.
Q Okay. And did he ask you -- did you tell him then on the record that you had thought that she came in just to get you to sign the plea agreement?
A I believe my words were, things smell fishy.
Q Things smell fishy. And when you said that did he ask you what you meant by the word fishy?
A I believe so.
Q Okay. And you explained to him what you meant?
A I believe so.
Q And what did you tell him?
A That I hadn't been able to get in touch with my lawyer, that the only time I had seen her was the

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one occasion that she had got me to sign the plea agreement and that -- that I had spoken with her this morning, that I came to the understanding that she was separate from the State, that she was doing this pro bono and that -- and then he just asked me, was I pleased with my lawyer, if I would want to change.
THE COURT: And your response to that?
MR. WILDS: Oh, no. I told him no.
BY MS. GUTIERREZ:
Q You told him no, you weren't pleased --
MR. WILDS:
A No, no.
Q Or no you didn't want to change?
A I didn't feel it was necessary for me to change lawyers.
Q Okay. Let me make sure I'm clear, Mr. Wilds. Did Ms. Benaroya pick you up that day --
A Yes, ma'am.
Q The same day that you went to -- at your home?
A Yes, ma'am.
Q And so when she came to pick you up is when you had the one and only opportunity to discuss with her your concerns?
A Yes, ma'am.

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Q And then you proceeded directly from your house down here?
A Yes, ma'am.
Q In her car?
A Yes, ma'am.
Q She provided those arrangements?
A Yes, ma'am.
Q And you came here and that's when you saw Judge McCurdy?
A Yes, ma'am.
Q But prior to that time you had no contact with her?
A No, ma'am.
Q Okay. Now, when -- you just said something -- at some point you had concern that she might be connected with the State?
A Yes, ma'am.
Q What gave rise to your concern?
A With all of the investigations and stuff I was on edge and anyone who was official that -- my biggest -- the biggest thing is that I couldn't get in tough with her, it made me concern that who she was with and --
Q And you thought maybe she was with the State?
A I wasn't clear on that, that's what I needed

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to find out.
Q You thought that that might be a possibility?
A Not with the State, but -- I don't want to -- like friends with the State. Not --
Q Friends with the State?
A Yes.
Q And that's because that was a thought that came into your head?
A Yes.
Q Nobody put that thought in your head, right?
A Correct.
Q Nobody suggested that to you?
A No.
Q But you thought that based on what happened in your case, right?
A Yes, yes.
Q Because the only interaction that you had with your lawyer was down here in this courthouse --
A Yes.
Q Right?
A Yes.
Q And the day that you entered your plea was the first time you met your lawyer?
A Yes, ma'am.
Q And you met your lawyer, physically where

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were you?
A Here.
Q Here, in this building?
A Or the West Building.
Q In the hallway?
A No, ma'am.
Q You were provided a room, were you not?
A Yes, ma'am.
Q And that room was within a suite of offices that the State's Attorneys acted from?
A Yes, ma'am.
Q Yes. And that was the only time you had ever spoke to your lawyer?
A No.
Q Well, on the 7th was the first day -- I'm just talking about the 7th.
A Oh, yes, yes.
Q You hadn't talked to her before then?
A No.
Q Because you hadn't met her?
A Correct.
Q So the first and only time on the 7th you spoke to her was when -- in an office that was located within the State's Attorney's Offices, right?
A Privately, yes.

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Q Yes. And you -- you had asked Mr. Urick for assistance in getting this lawyer, right?
A No, ma'am.
Q He just provided the lawyer?
A I was told the day before that I was going to be charged with criminal papers or --
Q The day before this day?
A Yes.
Q So, that would have been the 6th of September?
A Yes. I'm sorry.
Q And where were you when you were told that?
A The detectives were at my house.
Q Okay.
A They were telling --
Q And --
A I'm sorry.
Q Okay. And --
A They were telling me -- I'm sorry, go ahead.
Q No, go ahead finish your answer.
A They were telling me that I was going to have to be brought down and I would have to meet -- there was like two or three lawyers I was suppose to meet that were people that do work for free, pro bono stuff.
Q To pick a lawyer?

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A Yes.
Q Okay. So, before you came down that day you were told by the detectives that you were going to get a chance to pick your own lawyer?
A From -- from a couple of lawyers, not --
Q Okay. From out of a couple?
A Yes.
Q Pick a lawyer out of a couple, right?
A Yes.
Q So, that you would be able to select your lawyer?
A Yes.
Q Okay. And how did you get down to the court on the 7th?
A The detectives.
Q Okay. So, they picked you up and brought you down?
A Yes.
Q And were you taken to the State's Attorney's Office?
A Yes.
Q Okay. And that was actually in the other building, not this building, the Mitchell building?
A Oh, yes, yes.
Q Is that right?

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A Yes.
Q And when you were brought there were you introduced to a couple of a lawyers?
A No.
Q Were you allowed to interview some lawyers?
A They introduced me to Ms. Benaroya.
Q To Ms. Benaroya. Who is the they that introduced you?
A The State.
Q The State meaning Mr. Urick?
A Yes.
Q He just --
A That was the first time I had met Mr. Urick, too.
Q Okay. First he introduced himself?
A No, actually first he introduced Ms. Murphy and then himself.
Q Okay. And then he introduced you to your lawyer?
A He told me that this is Ms. Benaroya, he didn't tell me it was my lawyer.
Q And did you soon find out she was the lawyer?
A I selected her, they didn't -- it wasn't forced on me. It wasn't like they said, this is your lawyer. They asked me, they said well, you can meet

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with her and see if you want her to be your lawyer.
Q So, you had an opportunity to test her out?
A Yes.
Q You could have rejected her?
A Yes.
Q And demand to interview another lawyer?
A I don't know if they had any others arranged to be -
Q You didn't ask that?
A Interviewed but it's possible, yes.
Q It's possible you asked them?
A No, it's possible that they could have had more arranged to be interviewed.
Q Oh, you didn't ask that question?
A No, ma'am.
Q So, you never found out?
A No, ma'am.
Q And they really volunteered to you that they might have other lawyers there from whom you could pick?
A No, ma'am.
Q Okay. Were you ever given a piece of paper that referred you to a building across the street, the Public Defender's office?
A No, ma'am. I had attempted to call the Public Defender's office.

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Q You had on your own?
A Yes.
Q Okay. But not through Mr. Urick?
A No, ma'am.
Q And not through Ms. Murphy?
A No, ma'am.
Q And not through Detective McGilvary?
A No, ma'am.
Q Or Detective Ritz?
A No, ma'am.
Q Okay. And so you get down there and he introduces you to Ms. Benaroya. He told you to sort of go interview her and see if she was okay?
A Yes, ma'am.
Q Okay. I mean is that the essence of what he said?
A He just told me to go talk with her.
Q Okay. Now before you walked down there you hadn't negotiated a plea agreement with the detectives, had you?
A No, ma'am.
Q Before they came -- they came to your house the night before, right or the day before?
A The evening, yes.
Q And they told you, you were going to be

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charged, right?
A Yes, ma'am.
Q That was the first time that you knew that you were going to be charged?
A Yes, ma'am.
Q And did they tell you what you were going to be charged with?
A No, ma'am.
Q And did they suggest to you that you might appear in front of a Judge the next day when you were charged?
A I asked them, was I going to be arrested?
Q And they answered you?
A I have to go to criminal booking.
Q You had to go to booking to get your photo taken and your fingerprints and stuff?
A No.
Q And that didn't happen?
A No.
Q You didn't have to get your fingerprints?
A They didn't say I had to go to booking. They said I had to go to some place called criminal booking.
Q Okay. And --
A It's like a --
Q Did you get your photograph taken?

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THE COURT: One moment. It's like a what?
MR. WILDS: They explained to me it was like a document place or something where I had to sign papers to say I was being formally charged.
BY MS. GUTIERREZ:
Q And did you -- were you taken to such a place?
MR. WILDS:
A Yes.
Q And where is that located?
A I believe it was in the homicide office.
Q Down the same place where you gave your earlier interviews?
A Yeah.
Q The same building?
A Yes.
Q Okay. And that's where you received your charge papers?
A Yes.
Q And you didn't have the lawyer then?
A No.
Q And Ms. Benaroya wasn't there?
A No.
Q And no other lawyer was presented to you then?

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A No.
Q Okay. And from there you were taken up to the Clarence Mitchell Courthouse?
A Yes.
Q And when you met Ms. Benaroya who escorted you to the room in which you spoke with her?
A I believe Mr. Urick.
Q Mr. Urick. And did Mr. Urick say anything about Ms. Benaroya?
A He said that this a very good attorney that does pro bono work.
Q Who does pro bono work, that's how he announced her to you as if she were a lawyer who -- she didn't have to charge fees, did you understand that?
A To my understanding I would not be charged, to my understanding, yes.
Q And that's what you understood him when he used the term pro bono?
A Yes.
Q Meaning that you were not going to get charged for her services?
A Yes.
Q Is that right?
A Yes.
Q And that's how she was presented to you?

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A Yes.
Q As a free lawyer?
A Yes.
Q It wasn't going to cost you a thing?
A Yes.
Q Had you had prior to that any discussions with Mr. Urick about the cost of lawyers?
A I hadn't talked to Mr. Urick before that.
Q Okay. And you hadn't met him?
A Never.
Q Or with Ms. Murphy?
A I may have received a phone call from her but that was it.
Q Okay. But not -- in that phone call had you had any discussions with her, you didn't have any money to hire a lawyer in case you needed one?
A No.
Q Okay. And had you had any discussions other then that first time on February 28th when you had the discussion when you asked Detectives McGilvary and Ritz to turn off the tape so you could ask them how to get a lawyer. Did you have any other discussions with them after that time?
A No, ma'am.
Q Up until the night before?

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A No, ma'am.
Q And when you spoke to the detectives the night before and they advised you that you were going to get arrested and processed the next day did you ask them to get you a lawyer?
A No, ma'am.
Q Did you discuss your financial circumstances in any way?
A No, ma'am.
Q Did you ever make any statement to them, guys I think I need a lawyer?
A No, ma'am.
Q And did you tell them, since you thought you needed a lawyer, you did not get one because you couldn't afford one?
MR. URICK: Objection.
THE COURT: You can answer that. Did you say that to them?
MR. WILDS: No.
THE COURT: Okay. Very well.
BY MS. GUTIERREZ:
Q Now, when Mr. Urick said this is a pro bono lawyer, a pretty good lawyer who does pro bono cases, is that right?
MR. WILDS:

A Yes, ma'am.
Q You understood her to be somebody you could choose to take or not to take?
A Yes, ma'am.
Q Okay. So before you went in a room with her by yourself you understood you had a decision to make?
A Yes, ma'am.
Q Okay. You hadn't met her before, had you?
A No, ma'am.
Q You hadn't been told anything else about her?
A No, ma'am.
Q And you knew no other information about her, did you?
A No, ma'am.
Q And didn't know how long she had been a lawyer?
A No, ma'am.
Q Or what her previous jobs, if any had been?
A Not at that time, no.
Q Or what her experience had been?
A No, ma'am.
Q All right. And did you have any information as to how Mr. Urick knew her?
A No, ma'am.
Q Or anyone else?

A No, ma'am.
Q Or what kind of cases she had been pro bono on?
A Until we spoke, no.
Q No. And so you went in the room and you spoke to her, correct?
A Yes, ma'am.
Q And then ultimately you made a decision that she was okay to be your lawyer?
A Yes, ma'am.
Q Did you have any discussion with her concerning payment?
A No, ma'am.
Q Did you have any discussion with her to ensure that because she had been introduced to you as a pro bono lawyer that she wasn't going to charge you a fee?
MR. URICK: Objection.
MR. WILDS: Is that part of what me and her talked about?
THE COURT: Yes.
MR. WILDS: I don't choose to answer that question.
BY MS. GUTIERREZ:
Q You don't choose to answer the question about

whether or not you had any discussion about fee?
MR. WILDS:
A Yes.
Q Okay. Did you pay her a fee?
A No.
Q No. You never paid her a fee?
A No, ma'am.
Q And at any time after the time that Mr. Urick introduced her to you, did he have any further discussions with you about her?
A No, ma'am.
Q And did you obtain information from any other source about her in regard to making your decision as to whether or not to accept her?
A No, ma'am.
Q How long did you discuss things with her?
THE COURT: You don't have to answer that. Now, that -- the length that you consulted with your attorney is privileged because the time although it's not necessarily indicative of a privilege --
MR. WILDS: It's leading.
THE COURT: Right. So, it's up to you whether you answer.
MR. WILDS: I choose not to answer that question.

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BY MS. GUTIERREZ:
Q Okay. How long were you in the courthouse on that day from the time you arrived to the time you left?
MR. WILDS:
A Probably about three and a half, four hours altogether.
Q Okay. And that time included going to Mr. Urick's office?
A Yes.
Q And that included whatever time it may have been that you discussed things with your lawyer?
A Yes, ma'am.
Q And it also included going to Judge McCurdy?
A I do not believe so.
Q Well Mr. Wilds, you recall that you entered your plea on 7th of --
A Yes, we went directly downstairs, yes, I'm sorry.
Q Okay. Right downstairs on the fourth floor?
A Yes.
Q And that was in fact, the same day that you met your lawyer, right?
A Yes, ma'am.
Q The very same day we're talking about when

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you first met Mr. Urick, right?
A Yes, ma'am.
Q And the same day that you decided --
A Yes, ma'am.
Q In that room to accept Ms. Benaroya as your lawyer, right?
A Correct.
Q Okay. All of that was included in that -- did you say three and a half to four hours?
A Yes.
Q Okay. All of those things took place within that time?
A Excluding the courtroom.
Q Excluding the courtroom?
A Yes.
Q And how long did the courtroom take?
A It wasn't very long, there wasn't anyone in there.
Q Okay. So, that wouldn't have added much time?
A No, ma'am.
Q All right. Now, at some point you made a decision that day while you were in a room with Ms. Benaroya --
A Yes.

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Q To accept her?
A Yes, ma'am.
Q And did the fact that she was not -- at some point whether or not you had a discussion with her, did you understand that the fact that you had been told she does pro bono work that that was going to cover you?
A I'm not understanding.
Q You were told that she was -- she's a lawyer who handles pro bono cases, right?
A Yes, ma'am.
Q Now, I'm not asking if you asked her about it, but did there come a point when you understood that if she was going to represent you, that it was going to be pro bono?
A Yes, ma'am.
Q Okay. And you arrived at that decision on your own or from other information?
A Together with other information.
Q Okay. And did you run that by Mr. Urick?
A There was no need.
Q And did you run it by Ms. Murphy?
A Oh, that I had chosen her?
Q No, the issue about -- that led you to believe that she was going to be pro bono.
A No.

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Q And you understood then that you weren't in her office?
A Yes, ma'am.
Q And you've never been to her office, have you?
A No, ma'am.
Q You don't even know where it is?
A Rockville, Montgomery Airport.
Q Montgomery Airport?
A It's a --
Q In Montgomery County.
A Montgomery County. Near --
Q Several counties over?
A Near the airfield, yes.
Q Okay. But you've never physically been there?
A No, ma'am.
Q Okay. And at any point that day did you seek -- did you understand that she handled all of her cases pro bono?
A That was not to my understanding that that was not her practice, no.
Q That was not?
A Yes.
Q So, it was something specific to you?

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A Yes.
Q Okay. The pro bono part?
A I don't know specific to me, but she had chosen me for some reason.
Q She chose you?
A No, he had chosen me for some reason, that this was something pro bono.
Q This was something?
A That could be taken pro bono.
Q Oh, okay. So -- and you didn't know why?
A I don't know what her -- yes.
Q But as she was presented to you, you clearly understood that if you accepted her she was not going to cost you any money?
A Yes.
Q And on September 7th Mr. Wilds, were you in a position to -- and I mean no disrespect by this, to afford an attorney?
A No, ma'am.
THE COURT: You don't --
BY MS. GUTIERREZ:
Q Had anybody inquired of you as to your ability to afford an attorney?
MR. WILDS:
A No, ma'am.

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Q Did you know what the Public Defender's office was?
A Yes, ma'am.
Q That's why you had called them, right?
A Yes, ma'am.
Q And were you aware that lawyers generally cost money?
A Yes, ma'am.
Q That they charge you for their services?
A Yes, ma'am.
Q On September 7th, would you have been able to hire a lawyer?
A I don't know.
Q And whether or not anybody had asked you about it, had you made it known --
A No, ma'am.
Q To anyone --
A No, ma'am.
Q That maybe you might not?
A No, ma'am.
Q Or that you needed help?
A No, ma'am.
Q Okay. But you clearly understood that for a reason that you may not have know that Ms. Benaroya was willing to represent you at no charge to you?

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A Yes, ma'am.
Q And you understood that clearly enough that you didn't have to even discuss it with her?
THE COURT: That's one of those questions.
MR. WILDS: I choose not to answer that question.
BY MS. GUTIERREZ:
Q And you didn't discuss that issue with anybody else?
MR. WILDS:
A No, ma'am.
Q Okay. And did you ever understand Mr. Wilds, why it was Ms. Benaroya out of thousands of lawyers in the area?
A I'm not understanding.
Q Well, you understood before that day that perhaps that would be several lawyers there that you could essentially pick from, is that right?
A Yes, ma'am. Not several, but --
Q But some?
A Yes.
Q More then one?
A Yes, ma'am.
Q Right? That it would be up to you to pick your lawyer?

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A Yes, ma'am.
Q And when you made that understanding did you also understand that any lawyer that would be presented to you would not be a Public Defender?
A That was my own understanding.
Q That was your own understanding?
A That's the way I took it.
Q Because you knew what a Public Defender was?
A Yes.
Q And you had already tried to contact them, right?
A Yes, ma'am.
Q And did you understand that any lawyer that you were presented with -- this is any time before the 7th, that that lawyer would be available to you free?
A Any time before the 7th?
Q On the 6th after you were told you were going to be charged and you discussed a lawyer.
A Did I know that it was going to be pro bono?
Q Yes.
A Yes.
Q Is that something that you were told or that you assumed?
A I was told that, but not prior to the 7th.
Q On the 7th you were told that?

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A Yes.
Q Okay. And who were you told that by?
A Mr. Urick.
Q Okay. And when you were told that you believed that, did you not?
A That she wouldn't charge me?
Q Yes.
A Yes, ma'am.
Q Okay. Now you never questioned the accuracy of what Mr. Urick said, did you?
A No, ma'am.
Q And would it be a fair statement Mr. Wilds, that the fact that a lawyer was free was important to you?
A No, ma'am.
Q Would it have made a difference in trying to decide about Ms. Benaroya if you had known that she might charge you?
A I truly don't know.
Q Okay. It might have?
A Possibly.
Q Because you had called the Public Defender concerned out of the same concerns that led you to call Judge McCurdy?
A Yes, ma'am.

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Q Is that right?
A Yes, ma'am.
Q Because you were concerned about whether this lawyer had just been brought in --
A Yes, ma'am.
Q To sign the plea agreement?
A Yes, ma'am.
Q Right?
A Yes, ma'am.
Q And so when you called the Public Defender's you were concerned about wanting to be represented by the lawyer?
A Yes, ma'am.
Q Now, did all of this come up in chambers in front of Judge McCurdy?
A All of what?
Q The things that I've been asking you.
A No.
Q And at the time that you were in Judge McCurdy's chambers, did the origin of your lawyer, Ms. Benaroya come up?
A I believe so.
Q How she had been gotten?
A I believe so.
Q Did she explain to Judge McCurdy how she got

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in there?
A I believe so.
Q And what did she say?
THE COURT: Okay. Now --
MS. GUTIERREZ: Judge, I would object. That's not a privileged communication.
THE COURT: Well, can I just let the witness -- he's looking at me because he wants to know if this is one of those questions and I'm going to tell him that it's not one of those questions but I'm going to explain to him why so that he doesn't respond and then implicate one of those questions.
MS. GUTIERREZ: I apologize.
THE COURT: What she would like to know is if Ms. Benaroya told the Judge how she got involved in the case.
MR. WILDS: Yes, I'm sorry.
THE COURT: Okay. And you can answer that, but you don't have to say anything that you and her or you and she discussed about her representing you.
MR. WILDS: Okay.
THE COURT: Regardless of how she got involved, any discussions you had about her continuing representing you, why she wanted to represent you or anything that you and she discussed.

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MR. WILDS: Yes, ma'am.
THE COURT: Because I don't know what she told Judge McCurdy.
MR. WILDS: Yes, ma'am.
THE COURT: Okay. So, if it involves a discussion with you then that would be privileged.
MR. WILDS: Okay.
THE COURT: If it doesn't involve you then it would not be. Do you understand my point to you?
MR. WILDS: Yes, ma'am.
THE COURT: Very well.
MR. WILDS: You'd like to know how she explained herself being involved to Mr. McCurdy?
BY MS. GUTIERREZ:
Q Yes.
MR. WILDS:
A She had told Ms. McCurdy that she had been contacted by the State, that there was a --
Q Mr. Urick?
A Yes.
Q Okay.
A That there was a gentleman that had needed some help, speaking off myself and she came in and took a look at my case.
Q Did you either as a result of that when you

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were with Judge McCurdy or your earlier meeting on the 7th understand what her relationship was, if any with Mr. Urick?
A Not more then professional.
Q And did you ever discover either during your meeting with Judge McCurdy (inaudible) or in the meeting on the 7th or anytime in-between from any source did you get any information on Ms. Benaroya's professional background?
A From other then her?
Q From anyone?
A Yes, I did.
Q Okay. And what source was that?
A Ms. Benaroya.
Q Ms. Benaroya, herself?
A Yes, ma'am.
Q And she told you those things on the 7th?
A No, ma'am.
Q And did she tell you those things in front of Judge McCurdy?
A No, ma'am.
Q On the same day?
A Yes, ma'am.
Q But before you got to Judge McCurdy?
A No, ma'am.

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Q Afterwards?
A Yes, ma'am.
Q Now, when you were in front of Judge McCurdy, did you speak to Judge McCurdy about withdrawing the plea that you had entered in front of him?
A I don't believe so.
Q Did he speak to you about it?
A I don't believe so.
Q And did your lawyer bring it up?
A I don't believe so.
Q Did Judge McCurdy ever ask yo if you wanted to withdraw the plea?
A Yes, ma'am.
Q Now, Judge Heard asked you earlier, were you aware -- I don't quite remember the question, but essentially were you aware that the State's attorney knew you were there?
A I was not.
Q You were not aware of that?
A No, ma'am.
Q And in-between the time you entered the plea on the 7th and this day, whatever day it was, it wasn't too much longer after, was it?
A About two weeks.
Q About two weeks later. In-between that time

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frame did you have any further contact with Mr. Urick?
A No, ma'am.
Q And any further contact with Detective McGilvary?
A No, ma'am.
Q And any further contact with Detective Ritz?
A No, ma'am.
Q And any further contact with Mr. Urick?
A No, ma'am.
Q You knew then that the trial in this matter was set to start on October 13th?
A Yes, ma'am.
Q Is that right?
A Yes, ma'am.
Q Just about six weeks after your plea?
A Excuse me, yes ma'am.
Q And you were aware at least as of the date you entered into the plea on the 7th that you were going to have to testify at this trial on that trial date if it went forward then, right?
A Yes, ma'am.
Q But you had no contact in regard to preparation for your testimony?
A No, ma'am.
Q And no phone calls?

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A No, ma'am.
Q And no inquiries?
A No, ma'am.
Q Is there any reason given that you've been introduced to your lawyer and you understood then that the State that you insisted in your getting a lawyer, why you didn't call them when you couldn't reach your lawyer?
A Pardon me.
Q Why you didn't call them when you couldn't reach your lawyer?
A I did.
Q You did?
A Yes.
Q And so at the same -- was that concurrent with your effort to get a hold of Judge McCurdy?
A Yes.
Q Okay. So you were trying to get anyone to get a hold of your lawyer, right?
A Basically.
Q And because you knew she came from the State you called them?
A That's where I had met her.
Q Okay.
A I figured they would at least have her

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number.
Q And besides which at the time you were suspicious about her connection with them, right?
A Yes, ma'am.
Q You thought she really might be one of them?
A Not quite?
Q Not quite but close?
A Yes.
Q Somebody working for them?
A Yes.
Q Somebody who might have their interest in their heart more than they had your's?
A Yes.
Q But because you had met her there and you had gotten her through there you called them?
A Yes.
Q When you problems reaching her?
A Yes.
Q And did you tell them what those problems were?
A Yes.
Q And did you tell them what your suspicions were?
A No.
Q No. Just that you really needed to see your

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lawyer.
A Yes.
Q You kept your suspicions about what you thought might be a conflict to yourself?
A Yes, ma'am.
Q And Mr. Wilds, with whom did you speak?
A Ms. Murphy.
Q And was that over the telephone?
A Yes, ma'am.
Q All right. And was that one time or more then once?
A Just once.
Q Just once. And did you ask Ms. Murphy to do anything?
A No. She just kept asking me, was I in any kind of trouble, was I okay, is anything wrong and I just asked her for Ms. Benaroya's number. She told me she couldn't find it and she would either call me back with it or leave a message on her box to call me.
Q Your box meaning your message center?
A Yes.
Q Is that voice mail?
A Ms. Benaroya's message center.
Q Oh, on Ms. -- that she would try to reach Ms. Benaroya first --

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A She would try to reach me first and if she didn't get it --
Q For you, is that right?
A Yes, ma'am.
Q Now, did you ask her to do that?
A Yes.
Q Did you make clear that you wanted to speak to your lawyer?
A Yes.
Q And did you indicate to her though I know you've told she could tell exactly what your concerns were, that you wanted to do so because there was a problem?
A No.
Q Okay. Just that you really needed to speak to your lawyer, is that right?
A Yes.
Q And you had already made an attempt to reach Ms. Benaroya?
A Yes.
Q That had not been successful?
A Yes.
Q And did you tell Ms. Murphy that?
A Yes.
Q And did you ask her to do anything else?

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A No.
Q At that time did you prepare in anyway for your testimony in the upcoming trial?
A No, ma'am.
Q Did you set a date to prepare?
A No, ma'am.
Q No. And did you speak to Ms. Murphy or see Ms. Murphy at any time after your phone call up until the date that you came down when Ms. Benaroya brought you down to speak to Judge McCurdy?
A No, ma'am.
Q Did you speak to Mr. Urick?
A No, ma'am.
Q Or anybody --
A No, ma'am.
Q Else, somebody else from the police department, either of the detectives?
A No, ma'am.
Q Or anybody they sent?
A No, ma'am.
Q Now, when you're in front of Judge McCurdy he never asked you if you wanted to withdraw the plea, right?
A I believe he did ask me.
Q Oh, he did ask you that?

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A He never asked me any -- you were asking conditions of it or something.
Q Oh, okay. So, he never went back into what was the plea, right?
A No.
Q But he asked you at some point, did you want to withdraw the plea?
A Yes.
Q And when he did that Ms. Benaroya, this lawyer rather mute at questions was sitting right there?
A Yes.
Q Did he ever ask if you wanted Ms. Benaroya to go out of the room?
A No.
Q And did he ever ask if you wanted him to appoint another lawyer?
A Yes.
Q And did any other lawyer ever come in?
A No.
Q And did Ms. Benaroya ever leave the proceeding?
A He sent one of us out. I can't remember whether it was I that left or Ms. Benaroya that left, but one of us had to leave for a moment.

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Q It could have been either of you?
A Yes.
Q Okay. And something happened -- you don't remember what it was, right?
A I felt it was insignificant. It didn't --
Q Okay. And you don't remember what happened if you were in the room?
A Yes.
Q So, it wasn't -- it would be more likely that you were the person that left then, would it not?
A Yes.
Q As opposed to Ms. Benaroya?
A Yes.
Q And however long you were out of the room it was in your mind an insignificant period of time?
A Yes, ma'am.
Q And then you were called right back in?
A Yes, ma'am.
Q Okay. And during that time where were you?
A There's a -- in the clerk's room, I think the clerk's office. Is that --
Q That attached to his office?
A Yes.
Q Okay. And you couldn't see or hear what was going on there?

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A I believe the door was still open, but I wasn't concerned.
Q Okay. And when the Judge may have asked you to leave you just left?
A Yes.
Q Okay. And you waited to be called back in?
A Yes.
Q And did the Judge have an inquiry about why you were concerned that your lawyer might have a conflict?
A An inquiry? Did he ask me any questions?
Q Well, did he ask you any questions?
A Yes.
Q And what did he ask you?
A Just about that and I did more explaining to him. I explained to him that me and Ms. Benaroya had just not been in touch, basically where the -- what do call it, differences came about.
THE COURT: Mr. Wilds, while Ms. Gutierrez is --
and was the tape recording that was going on -- was that still going on at that time?
MR. WILDS: He turned that on as soon as we went in.
THE COURT: I'm sorry.

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MR. WILDS: We went in, he said I'm going to put this on video or whatever, he turned the machine on and he sat down.
THE COURT: Turned it on and left it on?
MR. WILDS: Yes.
THE COURT: Very well.
BY Ms. GUTIERREZ:
Q Just, Mr. Wilds, how long did this all take?
MR. WILDS:
A In Mr. McCurdy's office?
Q Yeah, the day in Judge McCurdy's office.
A Maybe about fifteen, twenty minutes altogether, it wasn't very long.
Q And did that include the time that you were waiting in the -- his clerk's office?
A The intermission?
Q Yes.
A Yes.
Q Okay. And -- I think I'm done.
THE COURT: Thank you, Ms. Gutierrez. Does the State have any questions?
MR. URICK: Just a few.
CROSS EXAMINATION
BY MR. URICK:
Q When did you try to contact the Public

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Defender's office?
MR. WILDS:
A Somewhere in the middle of the investigation?
Q What happened when you tried to contact them?
A They told me I wasn't charged with anything so I couldn't get an attorney.
Q Did you come to be satisfied that Ms. Benaroya is representing your interest?
A Pardon me.
Q Are you satisfied that Ms. Benaroya is representing your interest?
A Very.
MS. GUTIERREZ: Objection.
THE COURT: Overruled.
MR. WILDS: Very.
MR. URICK: Nothing further.
THE COURT: Did you ever convey that to Judge McCurdy?
MR. WILDS: Yes. To the utmost. That was one of the -- that was he was the biggest question he asked me, was I happy with my lawyer.
THE COURT: Very well. All right. Any other questions on this point?
BY MS. GUTIERREZ:
Q Did you just use the word happy?

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MR. WILDS:
A Yes.
Q Is that what he asked you?
A Pleased, satisfied.
Q Satisfied?
A Yes.
Q And did he use any other term?
A None that --
Q Did he ask you to explain what you understood as to his words? The words pleased, satisfied, happy, whatever word he used.
A No. He asked me just that I understand him, he asked me did I understand what he was saying. He didn't pertain --
Q When he used those terms.
A Pleased, satisfied, he didn't ask me to define them for him, no.
Q And were those words that meant happy with your lawyer?
A Yes.
Q Did Judge McCurdy ever ask your lawyer that day if she had just come in to get you to sign the plea agreement?
A No.
Q And did he ever inquire of her any of the

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circumstances in which she came to be the person there that day offered to represent you?
A Yes.
Q She did. And did she explain how that happened?
A Yes.
Q She answered his questions?
A Yes, he was speaking to her, she answers.
Q What did she say about how she came to represent you?
A That she did pro bono work. That --
Q I'm sorry. I can't hear you.
A She explained to Mr. McCurdy that she did pro bono -- that she does pro bono work and that she found a case where she felt there was a need where someone needed help.
Q So her explanation was (inaudible).
MR. URICK: Objection.
THE COURT: Overruled. Well, the answer is sustained, the question is sustained.
MS. GUTIERREZ: I'll try to rephrase it.
THE COURT: The answer is going to remain in, the objection is overruled. Do you have another question?
MS. GUTIERREZ: I don't think so.

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THE COURT: All right. Very well. And Mr. Wilds, let me direct you that we need you to return on Monday. The Deputy Sheriff has told you where it is that you are to wait. You know where that location is, correct? That's a yes?
MR. WILDS: Yes, ma'am.
THE COURT: All right. And I need you to be there tomorrow, I mean, sorry, Monday at 9:30.
MR. WILDS: Yes, ma'am.
THE COURT: All right. And just wait and that's the location that we're going to have you sit and wait and when we're ready for you we'll come and get you.
MR. WILDS: Yes, ma'am.
THE COURT: Now, I must admonish you not to have any contact with any of my witnesses.
MR. WILDS: I apologize. I'm sorry.
THE COURT: Witness, any of the attorneys because you're still on the witness stand which means you can't talk to Mr. Urick, you can't talk to Ms. Murphy, you can't talk to Ms. Gutierrez or any of her staff, you can't talk to the jurors.
MR. WILDS: I can't talk to my lawyer about any details of the case.
THE COURT: Correct. Unless you first ask

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me, right?
MR. WILDS: Yes, ma'am.
THE COURT: And then I'll let you know if you can talk to her.
MR. WILDS: Yes, ma'am.
THE COURT: But if you wish to speak to her I need you to let me know right away, okay?
MR. WILDS: Okay.
THE COURT: If you decide you need to talk to her you have my card, correct?
MR. WILDS: No, ma'am.
THE COURT: Did I give it to you? Mc. Connelly, do you have my card here? No. I'd like you to go to that spot where we want you to wait and my law clerk is going to come and give you my card.
MR. WILDS: Okay.
THE COURT: And if you need to speak to your lawyer I want you to give the chambers a call, okay.
MR. WILDS: Yes, ma'am.
THE COURT: Now, for the record Counsel, I have been in contact with Mr. Wild's lawyer at your request and she is available. She's maintaining contact with the chambers which means that when you need her to come in she will come in. I can have her available on Monday afternoon if you would like. Think

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about it, let me know and I will --
MS. GUTIERREZ: Judge, I guess my request would be that I believe (inaudible) --
THE COURT: We don't need to do it -- right. But I'm just letting you -- I'm just giving you a heads up because Mr. Wilds has indicated that he may want to talk to her, but if you do let me know first, okay? You may have a good weekend, I'll see you back on Monday at 9:30.
MR. WILDS: Yes, ma'am.
THE COURT: Very well. And if the Deputy Sheriff would walk Mr. Wilds around to that area so that we can make sure that there's no one there and then you're free to go, Mr. Wilds. Have a pleasant weekend. Okay. Mr. Wilds is gone. Mr. Urick, I see you're on your feet. Do you have an issue or a motion?
MR. URICK: Yes. I want to renew my motion in limine at this time, Your Honor.
THE COURT: Which motion in limine is that?
MR. URICK: Under Jeffrey Ebb v. State of Maryland that the Defense not be allowed to pursue these matters, that they are the subject of this voir dire without this witness any further. I would point out that under Ebb the Court noted the Judge must engage in a balance giving wide latitude to cross exam

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for bias, but not permitting the questioning to stray into collateral matters. In order to show bias or motive to adfadbricate the cross examination must focus on the witness state of mind.
It is clear from what Mr. Wilds was saying that he is here pushing his interests, he's no conscious of any interest of the State that he's questioned, he's satisfied that it's his interests that are being represented, that that's what he's doing. To permit this sort of examination of this witness before the jury would be to go into a collateral matter not related to Mr. Wild's state of mind, but would be in an attempt to attack the State which is a collateral issue. For that reason I would request a motion in limine that this line of examination not be conducted in front of a jury.
THE COURT: Very well. Ms. Gutierrez.
MS. GUTIERREZ: Well Judge, frankly I haven't really read but the first page of that because we nearly got to that issue this morning. I'm a little familiar with Ebb and I think it's totally in opposite. It relates to the ability to cross witnesses on things that may deal with this, but in any event Judge, I thought we we're different place. I know I'm slow and maybe I missed something, but I thought this

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examination of this witness was related to something entirely different and I don't know where it's going to lead and that is on cross you allowed me to ask this witness questions and I thought Mr. Urick, you know related to the issue of the significance. What if any significance the subsequent hearing before Judge McCurdy may have had.
First of all, did it exist, what was it, when was it and may even find out that if it in fact occurred and what were the parameters. But I didn't think I was slow enough to miss everything. I really thought I heard Mr. Urick offer an entirely different explanation as an officer of the Court for why it occurred and the fact that Mr. Wilds may or may not know that or may or may not have had other concerns and sure Judge, we'll take what he answered and absolutely, particularly since this Court has given us leeway for other reasons, there are issues that are now fair game in any cross examination regardless of how this Court rules on the issue about this so called hearing.
Unfortunately Judge, I know it's not what you want to hear, but Mr. Wild's testimony raises more questions then we had to begin with and I guess the first thing that I wrote down if that we want Ms. Benaroya here on those issues. I do want an opportunity to pursue, what

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I would have already done and that is contacted Judge McCurdy and done any further efforts that we can now do to determine when this occurred. We now know from this witness that it was videotaped which, I don't know that to be true, this is not a witness that I believe, but I told you Judge, I could not imagine Judge McCurdy holding anything for any reason with a witness on which, you know I don't care what you call it, the plea bargain happened or not whether the plea litany happened or not that Judge McCurdy would even think about having such a conversation not on the record. I don't know that he's given us enough to help us locate that tape, but I certainly now do believe there was a tape somewhere that's available that may aid us in the truth in something that is still very critical to Mr. Syed.

I guess my relief would be, so Judge, well if you really need a response from me to his response about the motion in limine well, then give me five minutes and I'll read Ebb or just take my silence to, you know indicate what I think about it. But in regard to --

THE COURT: Why don't I do this, I'll give you more then a few minutes. I do find Ebb very interesting. I think Mr. Urick's point that it does actually go to the issue of whether or with regard to

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any witness the State has disclosed or any promise, reward or inducement in exchange for the testimony and I find the language inducement of particular interest, but I would tell you that the purpose of my questioning Mr. Wilds was in fact, a fact finding mission on behalf of the Court. I could not rule on your motion --

MS. GUTIERREZ: Right.

THE COURT: With the information I had in front of me. I was lacking sufficient information to know the relevance of any questions that you might want to ask because I didn't know what the witness was going to say and I don't think any of us did, quite frankly. Nor did any of us know that the contact with Judge McCurdy came from the witness himself, on his own, picks up the phone.

MS. GUTIERREZ: Maybe it did and maybe it didn't, Judge.

THE COURT: Well.

MS. GUTIERREZ: Maybe it came about for both reasons.

THE COURT: He says he called, he says he called because he wasn't getting an answer.

MS. GUTIERREZ: He also said he called the prosecutor.

THE COURT: But the point is he made the

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call. He wasn't calling because someone told him to, he wasn't calling because of anything other then his own concern and he expressed to the Court why and he also expressed that he was satisfied and as I said at the outset when I ruled on this motion initially, that it's up to the Defendant, that individual charged to accept his attorney or not. to fire his attorney if he wants, to indicate he's satisfied --

MS. GUTIERREZ: I'm (inaudible), judge.

THE COURT: And he's indicated not only was he satisfied but that his concern about whether this was quote, "fishy" in his own words and so for the reason that I held a hearing for the fact finding mission that I was on, at this juncture I'm satisfied that there is nothing there, there's nowhere to go with this, this is a dead end. There's no reason to go any further other then to as the State indicated, go off on a collateral issue.

However, I still remain firm on your right in closing argument to use any of the facts that have appeared before this jury to attack the credibility of this witness and to the extent that there are facts that you may argue present and inference that might be drawn by the finder of fact that he acted and in some way as a result of an implied benefit that the State

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was offering. That he was doing so, not for the reasons that he says, but for some other reason, that he was not being factually accurate because of this benefit that he wanted. That his credibility is in question as a result of this deal. As you might use the plea agreement itself to do that. I believe it generated in this trial in front of this jury are facts for you to do that and I do not find that this fact finding mission has changed my position that you should be afforded the opportunity to make that argument and to argue those facts that may in the record.

However, I do end the fact finding mission here. I end it here in that there is nothing further to do other then to delve into the right that this witness has to speak to his attorney, to select an attorney using whatever standards -- he could have decided Ms. Gutierrez, that he liked the way she looked, he could have decided that he liked the way she dressed. It has nothing to do with her competency.

MS. GUTIERREZ: (inaudible).

THE COURT: But that's his decision. That is not a decision that you can go into and say, well see Judge, he didn't know how good she was or he didn't have enough time to talk -- those are all decisions that we can not make for another individual and to

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allow further questioning into that aspect of what he thought about in the selection of his lawyer. Is not something that your client is going to be permitted to do in this trial because I find that this is collateral and is not relevant -- is not relevant other then to credibility and you've already been given leeway to ask those questions.

MS. GUTIERREZ: Well Judge, we don't dispute -- I don't care about this witness's right to select his own lawyer, that's his, we don't challenge it.

THE COURT: Very well.

MS. GUTIERREZ: What I care about however, I believe is generated. Here we now have this witness expressing his own concern about the tie between his lawyer and the State and we do intend to go after that.

THE COURT: Ask the question in front of the jury.

MS. GUTIERREZ: That's not collateral. That's the purpose his motion --

THE COURT: Ask the question in front of the jury --

MS. GUTIERREZ: In limine.

THE COURT: Get the fact in front of the jury and argue it on an issue of credibility, but in terms

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of anything other then a find tuned, was there a point in time when you were concerned that your attorney may have not been acting in your best interest? Answer, yes. What was your feeling? Answer, it was "fishy," and then leave it at that. I'm not going to allow you to go into a long questioning of the witness into his decision whether to fire his lawyer or not fire his lawyer, to keep his lawyer, I don't think is relevant.

MS. GUTIERREZ: Judge, I know that those questions are permissible and I don't ask impermissible questions.

THE COURT: I know you don't.

MS. GUTIERREZ: What I'm asking --

THE COURT: When I don't let you.

MS. GUTIERREZ: However, Judge is I think I have a right to now get this tape and I need an order from this Court and the assistance of the Court because what if, Judge entirely different happened there? And what if that tape of this very unusual proceeding indicates that in fact, that proceeding happened because of what Mr. Urick said and not what this witness said. That would be an issue, that would be important to our concerns. Not challenging whether or not he can challenge his plea on voluntariness or on the effective assistance of Counsel. Those issues we

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do not care about them.

THE COURT: How would you -- how would you argue the admissibility of anything on that tape?

MS. GUTIERREZ: Well Judge, the tape may or may not be admissibility. I haven't even thought about that issue.

THE COURT: Because I'm thinking about that.

MS. GUTIERREZ: But I could start thinking about and let me sure you I could come up with a reason, but that's not my purpose of my looking on the cut to look and see and maybe based on it, it leads us somewhere else or leads us to a place where we seek to get in the substance of it, not through the tape, through something else. We're entitled to do that and if in fact, -- now, I can't imagine Mr. Urick making up on the spot some spurious lie as to why it occurred. I'm certainly more inclined, notwithstanding this be the case, to get more credence to hand them to Jay Wilds.

THE COURT: Are you sure about that?

MS. GUTIERREZ: Well, not quite. But, we're --

THE COURT: I mean at this point Mr. Wilds has provided the clearest indication of what has transpired.

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MS. GUTIERREZ: Except Judge, he may not be telling the truth.

THE COURT: That's true. And he's under oath.

MS. GUTIERREZ: He's an admitted liar.

THE COURT: Ms. Gutierrez, he's under oath and at this point the Court has to assume that he is telling the truth because there's nothing --

MS. GUTIERREZ: No, Judge. I don't think that's correct.

THE COURT: Why not?

MS. GUTIERREZ: The Court never has to make that assumption. You're not called on to decide his credibility and we are entitled as Defense --

THE COURT: When I'm conducting -- when I'm conducting a fact finding mission to determine how to rule on your motion, that's precisely what I have to do. I have to weigh what I hear which is why I asked the questions because my concern was as the Court to make sure that what I had in front of me was enough facts to be assured that I could rule on the motion and that's precisely what I needed to do and I found his answers very credible and I found his responses straight forward. In fact, as you questioned --

MS. GUTIERREZ: But you're not on the jury.

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Judge.
THE COURT: Well, for the purpose of this hearing, for the purpose of this hearing I needed to make a decision as to whether or not to allow this any further and to the extent that it allowed you more information to assist you on cross --
MS. GUTIERREZ: We're grateful.
THE COURT: Then it was -- it's there and available to you, but then to say, okay I need the tape and now I need Judge McCurdy. I mean, I think we're now going into a totally collateral area none of which would be admissible.
MS. GUTIERREZ: Collateral if it's not true. Why would it be collateral if in fact, Mr. Urick's explanation is the truth and that that hearing had nothing to do with him causing it and in fact it was caused by the action of that whom -- of them who controlled the bargain or the benefit.
THE COURT: I'll tell you what, Ms. Gutierrez.
MS. GUTIERREZ: And it's not collateral.
THE COURT: I will make available to you Ms. Benaroya. She will be contacting my chambers on Monday at 9:30 and you can make inquiry to her. In the meantime, I'm sure you're going to contact Judge

McCurdy.
MS. GUTIERREZ: Yes.
THE COURT: And I at this point have no reason to believe that you require an order and so I'm not going to address that right now.
MS. GUTIERREZ: I will need an order I think from this Court, again for the same reasons articulated. I wouldn't be privileged to that.
THE COURT: At such time -- at such time that you are not able to get this tape then let us readdress the issue of whether you need an order, but at this juncture it could be that Ms. Benaroya on Monday assists you in getting the tape.
MS. GUTIERREZ: Or at least has the date.
THE COURT: Or gives you the date and she certainly would be entitled to get a copy of the tape and if she chose to share it with you and Mr. Wilds has already indicated to you that it was on the record and at that point I think that -- as I said, you may not even need the Court's assistance in getting anything beyond that.
And at this point I'm going to stand in recess until Monday at 9:30. I will advise you and I'm advising my clerk that when Ms. Benaroya makes that call my question is what time will she be here at

Court? What time can she be here at which time when she arrives Ms. Gutierrez, you'll be able to talk to her and if the State wishes to talk to her at that time the State will be able to do so as well with the eye towards gathering any additional information about this hearing.
But I can tell you at this juncture I'm not going to allow any fishing expedition on anything more then what we already have. I think we have enough information and the tape is only going to be available because I am not going to get into your manner and method of defending your client. You can go find the tape, that still doesn't mean it's going to be admissible. All right. Very well. This Court stands in recess until Monday at 9:30.
BAILIFF: All rise.
(Whereupon, the hearing concluded.)

CERTIFICATE

This is to certify that the proceedings in the matter of State of Maryland vs. Adnan Syed, 199103042-46 held on February 11th, 2000, were recorded by means of videotape.

I do hereby certify that the aforegoing 31 ~~212~~ pages constitute the official transcript as transcribed by me from said videotaped proceedings in a complete and accurate manner.

In Witness Whereof, I have hereunto subscribed my name this 7th day of October, 2000.

CHRISTOPHER W. METCALF, CVR
Official Court Reporter

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