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IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND *

v. * CASE NOS. 199103041-46

ADNAN MASUD SYED,

*

Defendant

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(TRIAL ON THE MERITS)

THURSDAY, FEBRUARY 3RD, 2000

BALTIMORE, MARYLAND

BEFORE:

THE HONORABLE WANDA KEYES HEARD, ASSOCIATE JUDGE
(And a Jury)

APPEARANCES:

For the State:

KEVIN URICK, ESQUIRE
KATHLEEN C. MURPHY, ESQUIRE

For the Defendant:

CRISTINA GUTIERREZ, ESQUIRE

BRENDA D. TROWBRIDGE
OFFICIAL COURT REPORTER
533 COURTHOUSE EAST
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CRIMINAL APPEALS
DIVISION
MAR

THURSDAY, FEBRUARY 3RD, 2000

(P R O C E E D I N G S)

(Jury not present in courtroom).

THE CLERK: All rise. The Circuit Court for Baltimore City, Part 9, is now in session, The Honorable Wanda Keyes Heard presiding.

THE COURT: Please be seated. I understand there's a motion in the Syed case that we're going to hear before we resume. I would like to see counsel here on the Fisher matter before I hear that motion.

(The court took up an unrelated matter).

THE COURT: You could technically call your case.

MR. URICK: Thank you, Your Honor. This is State of Maryland v. Adnan Syed, Cases 199103042 through 46, Kevin Urick and Kathleen Murphy for the State.

MS. GUTIERREZ: Good morning, Your Honor. Cristina Gutierrez on behalf of Mr. Syed, who is present and to my right.

THE COURT: Good morning, Counsel. I understand there's a preliminary motion, and I don't know who raised it.

MR. URICK: No. It's just a continuation --

THE COURT: I'm assuming that it's a continuation of yesterday's motion for the court to reconsider its

ruling on the inadmissibility of, or the expert witness testimony that had previously been proffered. M's Connolly, unfortunately I do not have that folder. I would like the order, my copy of the order.

THE CLERK: Oh, I have it right here.

THE COURT: If you have it right there, I would appreciate it. And, also, with regard to Crews v. Director, I have had a chance to take a look at that case. So, if there is some information you have, some proffer that you can do with regard to the questions that I posed yesterday evening, I would appreciate that.

MR. URICK: Your Honor, your first question was, how long had the witness met with the defendant. The defendant was in the nursing area from approximately 8:00 a.m. until 1:00 p.m. She was alone with him, seeing him in her office for what she estimates during that direct block of time of an hour to an hour and a half.

THE COURT: That is from, I'm sorry, 8:00 a.m.?

MR. URICK: Well, he was in the nursing area from 8:00 till 1:00. Sometime after 8:00, shortly after 8:00, she actually took him into her room, and met with him individually for somewhere between an hour and an hour and a half. He stayed in the nursing area till 1:00 o'clock, when he finally left school for the day. But she was alone with him, seeing him in her office for at least an hour,

and possibly an hour and a half.

THE COURT: All right. And did she do a formal assessment of any sort?

MR. URICK: She evaluated him as not needing any further treatment. She does not keep -- at that point she doesn't put on any assessment. She only fills out an assessment form if she refers someone on. Because she evaluated him as not needing any treatment at that time, she did not fill out any paperwork on him.

THE COURT: All right. When you say that she evaluated him, in evaluating him, did she use any written technique or written forms?

MR. URICK: She just used her experience in doing assessments and assessed him at that point as not needing further follow-up.

THE COURT: Do you know what she used to base her -- you don't know specifically which technique she used?

MR. URICK: No, but she's present outside for voir diring on that, for that purpose.

THE COURT: All right. And were you able to provide to counsel some information about her background?

MR. URICK: Yes. We provided a copy of her vitae today.

THE COURT: Very well. All right. M's Gutierrez, the court is inclined to have the witness come

in so that we can, and I say we because the court has to be satisfied that your concerns have been met, if that is at all possible, because likewise they are the concerns of the court as evidenced by my opinion. Preliminarily, do you have any questions of Mr. Urick? I mean, obviously, I think the witness probably could best answer the questions. Would you agree?

MS. GUTIERREZ: I certainly agree with the court. I don't think Mr. Urick has any basis. I received this morning at 7:41 a.m., although the fax is noted that I would have received it at 8:42 a.m., I actually received it at 7:41 a.m., a one-page sheet of the notes of Mr. Urick of his conversation with Sharon Watts at 11:00 p.m. last night. And just moments before the court took the bench, I received a copy of a two-page of what appears to be a CV --

THE COURT: Okay.

MS. GUTIERREZ: -- as to M's Watts. Judge, basically, I don't have a copy of the court's opinion based on my initial motion in limine, but I --

THE COURT: I'm sorry. You don't have a copy?

MS. GUTIERREZ: I don't have it with me.

THE COURT: Okay.

MS. GUTIERREZ: But my recollection in both of the motions hearings and subsequently reading the court's opinion, is that the court only left open a very narrow

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focus regarding what the court raised both at the hearing and in its opinion concerned as to the, you know, not the status of the witness, but the training and experience of the witness. The court went into fairly great detail regarding from the DSM the existence of catatonia as a medical disorder with specific features, and a specific, according to the DSM and according to practical experience, a specific assessment that was required in order to diagnose it.

Of course, the difficulty here is that the faking it opinion is really an opinion that there wasn't catatonia, and there is no evidence at all from which to infer that anyone made a diagnosis of catatonia that existed prior to this witness, who would then be issuing a negative opinion.

My recollection of the court's leaving it open would be to leave it open for additional evidence to establish that this witness would be qualified, not necessarily by licensing but, you know, I don't think that it's enough to say that, well, somebody has familiarity with the DSM. Anybody could have familiarity with the DSM by reading it. That doesn't make them expert enough to make a diagnosis, much less to make a negative diagnosis as to a specific mental disorder, which would be catatonia.

And then my recollection again is that the

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limitation on the State to revisit this issue was to address those specific concerns about the ability to diagnose under all circumstances. And so far what I've read is that M's Watts' CV indicates nothing more other than what we've been told, that she holds a BS in nursing, what she did. It relates specifically in each case, each placement, that she worked in school-based clinics and at the various hospitals. Nothing with any specific, as someone who diagnosed mental illnesses accepted under any format, following any format, accepted for any purpose, and certainly does not articulate any reason based under that.

And specifically in regard to catatonia and as to malingering, which I will note, and in the court's opinion to my recollection was noted, was also a listed, while not a mental disorder, but was listed in the DSM, described as a specific medical forensic condition that relates to the forensic use of psychiatric disorders, i.e., faking symptoms of a disease connected with the forensic assessment. And such forensic assessments, of course, would be limited to issues of competency or criminal responsibility, perhaps custody, related issues where the defendant has put his mental state at issue.

And malingering is listed as an affect designed to mimic the existence of recognized disorders that might be, that would be relevant to any of those considerations

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in a forensic setting.

And nothing that has been presented, I believe, even comes near to allowing the State to re-open the matter based on what they're saying their witness says. The notes of the conversation between M's Watts and Mr. Urick, taking place at 11:00 p.m. sort of list five out of the six criteria listed in the DSM, and just saying whether or not, in regard to catatonia, whether or not he displayed anything relative to any of those five. And then a list of what she calls inappropriate affect, and that was to include that he started talking, that he started crying, that he started making eye contact, that he started moving, and he started questioning, in a wrong way.

THE COURT: M's Gutierrez, what I suggest --

MS. GUITERREZ: So, in sum, I'm saying, I guess, I'm objecting to even opening up the door on the issues that the court decided already. This motion left open the possibility that the State could revisit it if, in fact, they were prepared to answer the court's questions as raised in the court's memoranda outlining the questions that the court had in regard to the ability of a person to diagnose either catatonia or the absence thereof, or malingering or the absence thereof. And that nothing so far that is in the record begins to address the only avenue that the court left open to revisit it.

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So, I would move -- I'm not sure how to phrase it. I guess their motion is to re-open the motion in limine, which they already lost, and which the court granted. So, I guess my motion is to not allow for the re-opening --

THE COURT: Of the motion.

MS. GUTIERREZ: -- of the motion in limine, I guess.

THE COURT: The consideration of the motion in limine. First of all, I will tell you that the court's concern and direction was fueled by your motion in limine. You specifically said malingering, faking catatonic state in your motion.

MS. GUTIERREZ: Uh-huh.

THE COURT: And you got that from the summary that the State provided of what the witness would say, and they used --

MS. GUTIERREZ: Well, no, Judge. What I got that from was the witness' testimony, which I objected to at the first trial.

THE COURT: Well, I apologize.

MS. GUTIERREZ: There was no other information ever provided on this witness.

THE COURT: I apologize. There was attached to your motion the State's amended discovery, where they

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summarized what it was --
MR. GUTIERREZ: Right, in the paragraph.
THE COURT: -- that she would say.
MS. GUTIERREZ: That's correct.
THE COURT: And that's what the motion in limine was directed at, precluding her from testifying in that way. As a result I responded directly on the issue of the words used in that summary, which were catatonic and they used the word faking. You objected to it, and argued that those were medical and psychiatric in nature, and you argued that this witness had not the expertise in psychiatry or psychology or any expertise that would qualify her to make an opinion or diagnose a specific mental state or condition. That was in your Paragraph Number Six.
MS. GUTIERREZ: Yes, Your Honor.
THE COURT: And then you said that she was not qualified to offer an opinion, and then as you went further, I then responded by using for an example the DSM's Four as an example of why I felt that her background as presented was not sufficient. And I concluded that unless the State can satisfy the court that M's Watts is an expert with the requisite medical and psychological training, or unless the State can show sufficient additional evidence that M's Watts has prior expertise training under DSM in

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diagnosing individuals under the Maryland Rules 5-703 and 5-704, her testimony must be limited to those personal observations of the defendant.
And I used 5-703 and 5-704 because the abundance of case law provides that type of qualification that would enable a person to make the type of opinions. And it also talked about the gravity of why those types of opinions are such that certain qualifications must be present with an individual who is offering an opinion.
And so to the extent that that motion did allow, I mean that order did allow for the court to be able to hear or revisit this issue, I do not believe that it is contrary to my order to open the further inquiry at this time, and allow the State to call M's Watts for the purposes of satisfying the court that she does in some way hold the required expertise that the court is looking for.
I first would indicate that I'd like to have that voir dire done. I then will, at the conclusion of which, indicate to you whether I think she is qualified to render the opinion that the State seeks to have admitted, and then I'll indicate to you whether or not she should, in fact, be permitted to testify, because at that point there will be another issue, and that's the issue that we raised at the end of the day. Does the prejudicial effect, and I'm assuming that it's going to be prejudicial, what she is

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going to have to say, outweigh the probative value or vice versa, and whether it's, indeed, relevant. And I think that those were the two issues that M's Gutierrez raised at the end of the day. I think I kind of started that discussion at the end of the day, but I just want all counsel to be aware that just because I find that she's qualified, does not mean I'm still going to allow her to testify.
I'm deeply concerned. And I must emphasize. I'm deeply concerned that we not get into an area where we have what would normally be something that would come in by way of testimony of a physician, not necessarily licensed in the State of Maryland because I think that's what Crews v. Director is directed at. Specifically whether the person is licensed in the State of Maryland or not is not my concern.
MS. GUTIERREZ: I understand.
THE COURT: And I have no in any way -- my order said, because she's not a licensed psychiatrist or a licensed psychologist or psychiatrist or a licensed physician, that she cannot render an expert opinion. That's what Crews talks about. Crews is talking about a director who was not licensed in the State of Maryland, and it said that the court does not violate or does not abuse its discretion where the doctor, who at the time was the

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Associate Director Chief of its Psychiatric Department, was called to testify about an applicant's mental condition. He was a physician, and he was certainly qualified in the field of mental science and disease. And so whether he was licensed to practice in the State of Maryland does not change his scientific and medical competency. And where the court heard about that background and expertise, and determined that it was satisfied that he could render an opinion whether he was licensed in the State of Maryland was no longer relevant.
My concern is the same. I'm not concerned whether he is licensed in the State of Maryland. I'm concerned -- her, I'm sorry. Whether M's Watts had the required expertise to render an opinion as to whether or not, and now I know during the course of an hour or an hour and a half of observing the defendant, she is able to testify whether or not he was faking.
MS. GUTIERREZ: Well, my concern, I guess, further -- I understand the court is essentially denying my motion, but further --
THE COURT: Denying your motion to re-open it --
MS. GUTIERREZ: Right.
THE COURT: -- but not denying your motion in limine because at this point I'm only reconsidering --
MS. GUTIERREZ: I do understand that, Judge, but

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given what's been raised, and I guess these are my concerns and I will tell you where we're coming from. I am not sure and my questions may be answered by the direct of this witness, but they may not. Because the issue of whether or not she was qualified to make such an assessment, which involves making an assessment of a recognized, in both medical, for medical purposes and for forensic purposes, the diagnoses of recognized mental disorders including catatonia, and an assessment of, while it may not be a -- it is not a medical disorder, but it is a recognized medical mental state, i.e., malingering. That is discussed in the DSM, that whether or not there are qualifications necessary to make that. Judge, my thinking and our argument is going to be, is that very question is and should be the subject of the ability of the opposer of a person trying to make that, of expert testimony in and of itself. And I've contacted experts to be available.

There's no way until after I hear her that I can go down that path and arrange to have an expert. So, I will tell the court I may well not be prepared to go forward even after her direct voir dire or even after my voir dire, even on the first issue of whether or not she's qualified before we get to relevancy issues or prejudicial impact.

THE COURT: Which is why, M's Gutierrez, I

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indicated yesterday that they should have another witness available.

MS. GUTIERREZ: Okay. I just wanted to --

THE COURT: Even if I say that she can testify, I would allow you to have an expert witness present in the courtroom to listen to her testimony, because I would think if you would choose --

MS. GUTIERREZ: I haven't even thought that far, Judge. I'm suggesting that I have an expert --

THE COURT: Well, I would think that you would have the opportunity to have that expert present in the courtroom when his expert testifies, so that if you chose in rebuttal to offer another witness to combat, because then you will have the battle of the experts, as to whether he was faking or as to whether he was not faking. And you would be entitled to have that expert sit in the courtroom, observe the testimony, hear it, and if you chose, call that expert as an witness in the defense case, if you chose to do so. So, which is why I said, have another witness available because if it turns out that the expert witness is, if I determine that she can testify, then I would afford you that opportunity to have someone present.

MS. GUTIERREZ: I appreciate that, Judge. I just wanted to make sure that we were on the same page. Secondarily, I would renew the motion to deny any attempt

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to re-open this motion in limine on grounds of due process and fundamental fairness.

The history of this case has been myriad and complex, but from the defense point of view it has been non-stop surprises at the last minute, non-stop withholding of evidence thereby chaffing to the very core the notion of a defendant's due process right to be on notice, to know what the field is; what's going to come against him; where he needs to martial his resources, spend his defense team's energy and his money to best prepare for trial. As I said, I did and I don't, I have a copy of my motion in limine, which I know was filed. I believe it was filed the first week of January. It was filed subsequent to the first trial, and the only notice we had in the first trial was, I believe it's less than a paragraph regarding M's Watts that I attached that to the initial motion and then her testimony.

We had a hearing on this. We had a hearing, I believe, on the 14th of January. It is now the -- well, yesterday when this was first brought up at 4:30 in the afternoon with no prior notice to us, no attempt to, for instance, provide her CV. This is a case that is the only time in my experience where witnesses have refused to speak to me or my investigator, naming by name prosecutors and detectives who have told them not to speak to us, no prior

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disclosures of anything, any circumstances of this interview, and as I said, I don't have the court's order. I don't remember exactly when it came out, but it certainly came out. And they were on notice that they lost this issue, but that maybe the court would hear other evidence --

THE COURT: Did M's Watts testify in the first trial?

MS. GUTIERREZ: M's Watts, yes.

THE COURT: Yes. Okay.

MS. GUTIERREZ: Yes, and she testified essentially to that, you know, that he was pretending to be something and he wasn't; that it was faked.

THE COURT: And you had an opportunity to cross her at that time?

MS. GUTIERREZ: Well, I did cross her, yes.

THE COURT: Okay.

MS. GUTIERREZ: Yes.

THE COURT: I just wanted to know. I didn't know what the circumstances were.

MS. GUTIERREZ: Yes, and that's what I based the motion in limine on. I don't think that --

THE COURT: In expectation that she would be called once again?

MS. GUTIERREZ: For the same thing, and I

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thought it was wrong then, but it came in and I crossed her, you know. And on this argument, Judge, and I make this in all seriousness. It is not a simple matter --

THE COURT: I take all of your motions seriously, M's Gutierrez.

MS. GUTIERREZ: It is not a simple matter to be in a complex trial where a young man's life is on the line, and at 4:30, in the middle of the trial, they have new information. Judge, I'm still reeling from the fact that I've already been through one trial and four separate hearings about statements from my client, and I get them on the eve of a second trial. But to be in the middle of trial, and be forced to spend my energy, his money, my law clerk's time, all of our energy to figure out is something bad, that we already won the issue of, where they have already had an opportunity to challenge it and they did nothing before trial till now, in the -- isn't this the third week of trial, at 4:30 on an afternoon say, oh, by the way, we're still going to try to get in M's Watts' testimony. Yes, we've had at least three weeks to deal with it. We didn't.

We didn't file a motion to reconsider. We didn't bring to your attention before we even raised it the CV of a person they're trying to call as an expert. Judge, that's not the way the rules were designed. That's not the

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notion of a defendant, who is supposed to be able to start trial knowing what he faces. There shouldn't be surprises unless they're lawful. And, Judge, I suggest that most of the law says no surprises should be lawful. The prosecutor has a duty to do justice. That means to do due process. So, on due process grounds, I would move to strike any attempt to bring a new surprise in here in the middle of the trial.

The only reason they want her is to create an inference that is bad in their view, to be able to argue to the jury at a date subsequent to her disappearance, at a time before he was charged or mentioned with a crime, that he pretended to be upset. Although their motive is that he was so upset about this woman that he loved, that he killed her, but that he wasn't upset, and he was just pretending to be upset, and therefore he was malingering. Therefore, it's bad. You know, unless it wasn't bad in their view, they wouldn't be attempting to do it now. Unless it was to their advantage to try to bring in something as a surprise, they wouldn't have hid it. If it was that important, they had all the time in the world, consistent with due process, to try to convince the court that you were wrong, or that they had other things that they could bring that could challenge your ruling.

They chose not to do so. And they should not be

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allowed to change their minds in the middle of the game for the life of Adnan Syed.

THE COURT: Well, Counsel, I appreciate your remarks, and I will at a later time also incorporate that in if I reach that point on the issue of whether or not the statement is unduly prejudicial, and therefore the probative value is sort of dissipated by its prejudicial effect, that it prejudices the defendant in such a way that it violates his due process rights, but also at this particular stage has presented really an unclear way for you to present your defense.

At this time, though, I would like to hear M's Watts, if you would call her as the witness, and have her step in. And I would note to you, M's Gutierrez, with regard to your most recent argument and, M's Murphy, you might want to note this for Mr. Urick since he's away from his desk, Maryland Rule 4-263(b)(4).

MS. MURPHY: 263(b)(4)?

THE COURT: Right. Reports and statements of experts to be produced before trial, which includes the sum and substance of any expert witness testimony, and also we could talk about that at some later time in any event.

I need you to raise your right hand, please. Listen to Mr. White as he provides you the oath.

SHARON WATTS,

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a witness produced on call of the State, after having been first duly sworn was examined and testified as follows:

THE CLERK: You may be seated. Please keep your voice up. State your name and your business address for the record.

THE WITNESS: My name is Sharon Watts. My address is 4213 Club Court, Ellicott City, Maryland 21042.

VOIR DIRE EXAMINATION

BY MR. URICK:

Q Good morning, M's Watts.

A Good morning.

Q Would it be an accurate statement of your expertise to describe it as in the identification and symptomatology of medical deviation or medical abnormality?

MS. GUTIERREZ: Objection to the question. There has been no expertise established.

THE COURT: Sustained. The purposes of your being called at this time, M's Watts, is to familiarize this court with your background and you expertise. Both the State, and the defense and the court may ask you some questions because we're trying to get at, one, what your background and expertise entails and, two, as it specifically relates to the defendant, Mr. Syed what, if anything, you did in making any evaluation as to a mental state he may or may not have possessed at a given time, on

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a given date.
So, as we ask you the questions, you notice that the jury is not here. It is for the court to decide with regard to a motion that's been filed, and that's why we're asking.
THE WITNESS: Thank you.
THE COURT: So, if you would note that the objections or whatever we're trying to do here, is for me at the bottom line. And if counsel would then, with my clarification, focus your questions in that fashion, I would appreciate it.
BY MR. URICK:
Q Let me first ask you about your education. What is your educational background?
A I have a bachelor of science degree in nursing from the University of Maryland at Baltimore in 1974, and then I have a master's in education from Loyola College in 1993. I'm a registered, professional nurse in the State of Maryland, and also a certified guidance counselor of elementary, middle and high school in the State of Maryland.
Q Now, going back to your bachelor's degree from the University of Maryland, what program or what training did that consist of or require.
A Well, we had to spend two years in academia, and

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then we spent two years dividing areas of experience according to the system. So, I would go into an OB/GYN area for two months. I would go into pediatrics for two or three months. I would go into Public Health for two or three months. I would go into psychiatric nursing for two or three months, and then we would rotate through all the systems until we were competent to pass State Boards and go be registered.
Q And based on that training, what professional title were you required to use?
THE COURT: One moment. M's Connolly, will you step in the hallway and see what that State's Attorney wants, please. Thank you. You may continue.
BY MR. URICK:
Q Based on that degree, what professional title were you entitled to use?
A As I've passed my State Boards in Maryland, I was a Professional Registered Nurse.
Q And what does that mean?
A That means I am allowed in the State of Maryland to do nursing assessments and nursing diagnoses, do nursing treatments, do nursing evaluations and do referral.
Q Will you give a brief explanation for each of those terms?
A Okay. A nursing assessment is taking a client,

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or they used to be called patients, and doing an evaluation according to the systems. We do an evaluation for their mental health. You do an evaluation for their respiratory health, cardiovascular health, orthopedic health, and go down the systems in the hope of finding a well client, but if you find a deviation in the normal behavior of the patterns, then you note the abnormality and continue from there and focus on that. That's the assessment.
The referral process, if I would find a well client, nothing has to be done past that point. A professional registered nurse in the State of Maryland is allowed to do a nursing assessment and continue the process no further. If I find a deviation in the wellness of a client, then it's my legal responsibility and my ethical responsibility to refer them on to someone with more training. So, if I found someone with a suspected fracture, I would have to refer them to an orthopedic. If I found someone that was possibly pregnant, I would send them to a gynecologist or an obstetrician. If I found someone that was depressed or suicidal, I would send them immediately for psychiatric intervention.
So, I would do my assessment, and depending on what I found in my assessment, then I would do the referral process.
Q And what is a nursing treatment?

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A A nursing treatment is a scope of practice that's very defined in the State of Maryland, that allows me to do something to improve the wellness of a client. I can do a pustural drainage. I can do endotracheal suctioning. I can start IV's. I can do anything that is a medical nursing function that is very, very specifically described by the State Board of Maryland Nursing. I can do catheterizations, anything medical. I cannot do surgery. I cannot put in stitches, but I -- it's a big question to answer. Nurses can do many things. If you would be more specific, maybe I could address that. Maybe I don't know what you're asking.
Q I was just asking for a, you know, description of what that meant at this time.
THE COURT: Can I ask just for a clarification, and these things that you're describing that you do, are you doing them at the direction of a physician or are you doing them sua sponte, on your own? That is, when you say you put in a catheter or you put in an IV, are you doing so because a physician has made a diagnosis and said to you, put in a catheter, put in an IV, or do you make an assessment and then put the IV in yourself without the necessity of having a physician make a direction or join or concur with your decision?
THE WITNESS: I understand that question. Thank

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you. I'm allowed, if there is a policy of procedure in place at my area of employment, that I'm allowed to proceed according to policy and procedure. In the hospital setting, in the emergency room setting, the policy and procedure would be that I would do my nursing assessment, and then I could put in the catheter or I could put in a Foley. I could do a pustular drainage. I could have a nebulizer treatment for an asthmatic, and then the policy was when that shift ended, the physician signed off on what I did. The same thing with the Baltimore County --

THE COURT: So, you would not have consulted with a physician --

THE WITNESS: No.

THE COURT: -- in advance?

THE WITNESS: No, not if there is policy and procedure in place. The same goes for the Baltimore County Board of Education. If there's policy and procedures, and there are in the clinics in the school based wellness centers, then I'm bound to only do what that allows me to do. Do pregnancy testing, do testing for Streptococcus, draw blood, send blood to the laboratory. Whatever is in the policy and procedure of that institution I am allowed to do as a professional nurse. A two-year or three-year nurse would not be allowed to do that. There's a difference with the Nursing, American Nursing Association

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between a professional and a non-professional nurse.

BY MR. URICK:

Q Have you ever been registered or certified as a nurse?

A Yes. I was certified in 1974.

Q What does that mean, to be certified?

A That means I have completed a certain amount of education. Actually, I'm a registered nurse. I'm a certified guidance counselor. Excuse me. To be a registered nurse in the State of Maryland, I have to have had so many hours of education, so many hours of clinical. I had to pass State Boards. And then to keep your license, a recent addendum is that you have to have so many continuing education hours of education and training.

Q How did that affect your ability to perform your job?

A I think it kept me very abreast of adolescent issues as they evolve. When I became a nurse in 1974, certainly the climate was different than it is now in 1999, and through the educational process, and in services and continuing education units, I'm kept very abreast.

I then went back to school in 1991 to address the psychological, emotional, psychosocial issues that I was dealing with on a frequent basis in the school system, and got my master's and got into counseling.

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Q Has being a registered nurse increased your rights or powers as a nurse?

MS. GUTIERREZ: Objection. Ask for a definition of the term.

THE COURT: Sustained. Can you define what -- one moment, please.

(Brief pause).

THE COURT: You may go ahead.

BY MR. URICK:

Q Before I go on, let me backtrack for a minute. You had mentioned nursing assessments, nursing treatments. What is a nursing diagnosis?

A A nursing diagnosis is something that is again very defined in the State of Maryland. After doing an assessment and finding a deviation from the norm, then you do an assessment according to the system. Again, it's my professional opinion, my professional observations, my professional interaction with the client that I form a diagnosis that I believe the client to have. But I'm very mandated by law, if there is a deviation of extreme concern, I have to refer that patient.

So, if I saw -- professional nurses are allowed to do home visits, and do nursing assessments, and do nursing treatments. School nurses are allowed to do assessments, evaluations and treatments. But if I find a

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deviation where I cannot prescribe a medication or I cannot direct the patient to have another examination, an MRI or a CAT Scan or a cardiac cath, I must by law and ethics again refer that patient to someone higher up, be it a physician or a psychiatrist.

The Diagnostic and Statistical Manual states the role very clearly of the ability of a physician and a psychiatrist, and a social worker, and a professional registered nurse of being able to assess and diagnose.

Q Now, you've distinguished what a professional nurse is allowed to do as opposed to a non-professional nurse. What, if any, effect did becoming a registered nurse have on what you're allowed to do as opposed to being merely a professional nurse?

A If I wouldn't have been a professional registered nurse, if I would have gone through a two or three year program and not had my baccalaureate, or if I would have been a practical nurse or health aide, that's very, very limited what you can do. And you do that under the instruction of either a nurse or a physician. So, I'm very independent as a professional registered nurse. I'm very cognizant of my roles and my responsibilities of referral and what I can and can't do, but as a professional registered nurse I have more autonomy.

Q Now, where was your master's from, again?

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A Loyola College in Baltimore.
Q And what was that in?
A In guidance and counseling. I went to school for a two-year period, and along with my bachelor's in science and nursing, a master's in education and guidance and counseling allowed me to be certified in counseling and guiding children through the age of 19.
Q And what sorts of areas are you allowed to counsel students in?
A There are no limitations unless they're imposed upon the institution. Now, the school system has imposed a restriction. I cannot counsel on abortion. So, if a student came in and needed that directive, I would have to direct that person to my social worker that was on my staff.
Q And what, if any, focus did that education have in crisis counseling?
A That was a big component, to understand the process that someone grieves through, and then how to help that person through the process, and then when to feel comfortable to make a referral or just continue seeing that patient, that client, as a nurse.
Q Would grief counseling be part of that or would that have been a separate area?
A No, that was part of the education. And then,

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also, I do have an in-service, three CU's in grief and counseling.
Q Now, what about putting together college portfolios, would that have been covered in that education as well?
A Yes, it would have.
Q How about substance use and abuse?
A Absolutely. I have been the Chairman of the Baltimore Substance, Drug and Substance Abuse Program in Baltimore County for, in each of the schools, for nine years.
Q Now, what sorts of continuing education credits have you had?
A Well, they're varied. I've had the grief counseling, and I've had a communication course, and a first responder course, and I'm certified in CPR, and I'm a certified child birth educator. There are, after 25 years, there are many. There are many.
Q Now, going back, you've mentioned the term "the systems." What is meant by that?
A It's a classification used recently by the World Health Organization that breaks up a body part into systems, so you can do a more recognized evaluation, and then statistically it can be documented according to systems. So, the system theory, I believe, was begun in

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the 1970's, where you look at someone and you again begin at the top of the head, and you work your way down. So, you do the mental health evaluation. You do the cardiovascular. You do the respiratory. You do the digestive. You do the reproductive, and then the skin and the other sensory organs.
Q Now, based on your training and certifications are you allowed to do nursing assessments, nursing diagnoses, nursing treatment, nursing referrals and mental health?
A Absolutely.
MS. GUTIERREZ: Objection as to the word allowed.
THE COURT: Overruled. But I need you to explain when he says the word allowed, who allows you to do that?
THE WITNESS: The State of Maryland in my licensure allows me to do a nursing assessment on the systems of any client, not just the pediatric patients, but the State of Maryland gives me that right to do that. And then also within my job, the policy and procedure is that that is part of my responsibility to do that assessment on any student that comes in the door. So, I'm doing it on a continually, daily basis.
Last year I saw 13,000 students at Woodlawn High School, and that is the first system I evaluate. You evaluate demeanor, body language, effect, and that's

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another reason I went into guidance and counseling, to develop tools to be able to sit and articulate. And then you go right from there. You know, you look in the eyes, and the nose, and the ears and the throat, and you feel the glands, and go to cardiovascular, and you work from the head down. But that is always done as a nursing assessment.
BY MR. URICK:
Q Now, let me ask you about your work experience.
A Uh-huh.
Q What sorts of jobs have you had since you got your degree in nursing?
A I graduated in 1974, and I began in an Intensive Care Unit, and lasted there, actually it was a Neonatal Pediatric Intensive Care Unit, and then went, after about two years, went to -- maybe a little bit longer. I'm horrible with times. Then went to the Pediatric Emergency Room.
Now, pediatric has to be defined as past neonate. So, past six weeks up through the age of 19. So, when you say pediatric, a lot of people think, you know, seven, eight, nine. Pediatric is through the age of 19. So, I worked in the Emergency Room there for ten years additionally doing other things, developing programs for hospitals, and working, starting the Resuscitation Unit at

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Howard County and getting helicopters, and flying sick children in and out.

And then after 15 years of nursing, I went with the Board of Education for a lot of reasons, but --

Q Now, during that period, prior to going with the Board of Education, were you working in a clinical setting?

A Well, they called it the Pediatric Out-Patient Clinic at St. Agnes. It was a clinic. It was dealing with emergencies, though, depending on the shift you worked, and I would work the 3:30 to midnight shift or the midnight to 8:00 a.m. shift. And that dealt with emergencies, where in the daytime hours, it was just a clinic. So, the answer is yes, it was a clinic.

Q And during that time, if you can estimate, how much actual experience would you have had making clinical observations of clients or patients?

A Again, Mr. Urick, that's what a nurse does. Every patient that I took upon as my charge, I did an evaluation on that client, and then additionally in the emergency room setting, because of the nature of the beast, I would do an assessment on the primary care provider or the parent that came in. If the child was brought in as a DOA. then, of course, I'm not doing the nursing on the child. I'm doing the nursing on the parent, because I'm dealing with somebody that --

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Q About how many times would you have run into that particular situation?

A Well, it was an emergency room, so it was always a crisis. It was always a crisis going on. How many died? When I worked at St. Agnes, less than ten percent. When I went to Howard County, and was the coordinator of the Maternal Child Health Development Program, where they brought me in because so many babies were dying in the delivery room, there had been seven or nine deaths in the year before I came to work. They had no resuscitation model or no way to transport these sick babies. So, I was dealing with that on a monthly basis. Or when a baby died, then I would do grief counseling with the parents, and finally established the program where they would transport babies out to University of Maryland or to St. Agnes, and then I left Howard County and went back to the Emergency Room.

THE COURT: M's Watts, the problem is, is that when you say, I did it ten percent, ten percent of a thousand, ten percent of a million, ten percent of --

THE WITNESS: I'm sorry.

THE COURT: -- ten, we have no way of knowing how many people. When you said that there were more babies that died, and then less babies, because you changed the systems at the hospital, more or less of what? How many

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families did you involve in or were you part of, you know, bereavement or grief counseling? How many? How many means I need a number. If I've done it ten percent of ten, you can see how I might not have done it as many as ten percent of a thousand. So --

THE WITNESS: I see, the number. In a year's time, starting in '74 when I was in Neonatal Intensive Care and babies died frequently, probably 30 a year, in '74 and '75, 30, 40.

THE COURT: A year, and how many years were you there?

THE WITNESS: Well, that was two years there. And then the emergency room for ten years, approximately maybe 50 a year, so 500.

THE COURT: Okay.

BY MR. URICK:

Q And over that time, how many total patients would you have been seeing every year?

THE COURT: Approximately.

A 52 weeks -- not including the Board of Education, is that correct? You're asking in the hospital?

Q Yes.

A I would venture to say if there are 52 weeks in a year, and I worked 50 weeks, 3000.

Q Per year? Thank you.

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A Mr. Urick, that's a long time ago. I didn't track numbers. I mean, you're asking me for a good guess.

Q Now, how did you become involved with the Baltimore County School system?

A I had a friend in the county school system, in a different county, but I was very unhappy with what was going on in the school system, and I was working at St. Agnes, and I thought that I would have an impact on children in a pro-active setting versus a setting where I was always dealing with something happening after the fact, after a crisis. So, I thought I could be a pro-active person, and I applied with the Baltimore County Board of Education, and they offered me a lucrative position as a -- I'm sorry. Go ahead.

Q Please finish your question, I mean, answer.

A In retrospect, I wasn't really -- in retrospect I can see why I was hired now. I have a lot of pediatric experience and emergency room experience, but I asked for a salary when I went with the Board of Education that was first denied, and that was in April or May, and then the day before the school started, at Kenwood High School, I was called by the head of the Health Services in Baltimore County and offered the salary I commanded and began the next day, and found a clientele of very, very needy kids. And then was the one responsible the following year of

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starting the first school based clinic in Baltimore County Public Schools.

Q How did you get that started?

A I identified the needs. I did tracking. I did a needs assessment. I spent a year in the health suite dealing with kids, dealing with faculty, parents, and identifying needs that weren't being met in the community, and then I approached everybody that I could, the Director of Franklin Square Hospital, the Director of Baltimore County Public Schools, who was Dr. DuBell at the time. I approached the Health Department and got monies. Traveled down to Delaware and modelled a program they had, and presented it to the Board of Education, and lo and behold, it was approved.

Q And when the clinic was started, what was your position there?

A I was the manager of the school based clinic.

Q And what duties did you have as a result of being the manager?

A I had a staff, a pediatric nurse practitioner, or a physician, a social worker, a Baltimore County Public Health Nurse. I had a third-party billing clerk, and I was responsible for coordinating their efforts to address the needs of the students that I had first done my nursing assessment on, and then needed to refer to some other

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source besides a professional registered nurse. And I did that for four years at Kenwood High School, and five years at Woodlawn High School.

Q And who supervised these professionals in your clinic?

A I did. I was the manager.

Q During your time there, on an average basis, how many students would you guess you saw every year?

A Oh, I know, because we have to keep statistics. I started out seeing well over 10,000. Last year I saw 13,000. Where I am this year, I'm already up to almost 9,000, and it's only January. We have to turn in monthly reports. So, I saw anywhere -- the smallest number would probably be 10,000 and the greatest number would be 15 in a ten-month period, a six-hour day.

THE COURT: When you say you saw them, what does that mean?

THE WITNESS: I had to do a nursing assessment on them. A client will come in the door, and present with a problem or with what they perceive is a problem, and then I have to start my nursing assessment, again working head to toe. When I find a problem, then I would stop and further assess that problem, and decide at the end of my evaluation, my assessment if that person needed any other medical intervention, if I needed to refer them then to

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someone that dealt with STD's or someone that dealt with, needed a prescription for chronic -- maybe an ear infection or somebody that was pregnant, or somebody that was depressed.

So, I would do a nursing assessment on each child that came in, and then refer them or send them back to class depending if they were well. It was a comprehensive clinic where any need was met. So, if it was not within the policy of the Baltimore County Board of Education for me to treat or to assist with, such as abortion, I could refer them to the social worker, who was not a Board of Education employee, who was indeed a Health Department employee, that within their parameter could do that. The social worker could drive the student and have an abortion at Hillcrest, or the pediatrician could give a shot of penicillin because a kid had Trichomonas or syphilis. And they would have everything done right there in the school.

THE COURT: Do you have anything you record these assessments on?

THE WITNESS: I do. The Baltimore County Board of Education has a student sign-in log. Whenever a nurse has done a nursing assessment and has to refer that student on for further influence, or presents with an illness, then it's documented. If the student comes in and presents as needs a menstrual pad or needs a band-aid or just wants to

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talk, or wants to talk about going into nursing, or wants to talk about breaking up with their boyfriend or their girlfriend, or they have been abused, that's a good for instance, we're very, very limited by law -- well, I'm sorry -- by policy what we are allowed to write in the student's record. We cannot write in the student's record, student examined by nurse, 12 belt marks, lacerations, referred to 911, DSS involved, because that trail follows them. We're very, very limited what we write that's not -- it's called SOAP, Subjective Observation Assessment and Planning.

So, a lot of the issues that we didn't record were not recorded on purpose, so that record wouldn't follow the student, and they were only usually with the psychosocial entities versus the physical entities that are very quantitative, that you can say fever; you can say blood pressure; you can say temperature. We're not allowed to write rule out depression; appears to be suicidal; refer for child abuse; anorexic. Any label that's going to follow that student, we don't document.

THE COURT: You do not record an assessment of those natures anywhere? You don't write down that they came in?

THE WITNESS: I would write down if it had to be referred on. If a student came in, as last week there was

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a child abuse. I made no documentation at all, and there is still no documentation at all, that this child had 24 belt marks on her body. What my documentation did say then the following Tuesday, that the girl came in and presented with another physical complaint, and I documented on that student for that. But, no, I did not document that this child was physically abused by her father. It's not documented anywhere.

So, you can pick up a chart, and it's very benign. Where in a hospital the saying is if it's not written, it's not done, that's their policy and it's too a pro-active, a litigious policy, but in Baltimore County, one of our main concerns is that this record follows students from school, to school, to school, to school. We even purge our records in Baltimore County. If a parent has signed for a check-list to be done by a pediatrician because the child is hyperactive, before that chart goes on, we purge anything and shred it.

We have a specific guideline of what we're allowed to write and document on the chart, and emotional concerns are not documented unless it becomes an illness that needs to be treated, and then you go into documentation.

THE COURT: Very well. I'm sorry I interrupted, but I needed to focus.

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THE WITNESS: Did that clear it?

THE COURT: Yes, it did. Thank you.

BY MR. URICK:

Q During your time with the Baltimore County Schools on an annual basis if you can estimate, how much of your, or how many people would you see where you would engage in grief or crisis counseling?

A Maybe 500 a year, and that was one of the precipitations, too, for me to go back and get my master's in guidance and counseling. I wanted to make sure I was doing it right. About 500, just in grief counseling. Counseling is a whole different issue, because part of my assessment is to guide and counsel. So, that was 13,000.

Q What is the Diagnostic Statistical Manual?

A It's a tool that identifies deviations of mental wellness, mental health that's put out by the World Health Organization and the American Psychiatric Institution, and it's supported by the federal government with Medicaid reimbursement. It's a classification of any abnormality of the mental functioning of the client.

Q Does the Manual contain any statement of who it's intended to be used by?

A Yes, it does.

Q Would you please read it for the court?

MS. GUTIERREZ: Would you identify specifically

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where she's reading from?

THE WITNESS: I'm reading from the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition.

BY MR. URICK:

Q Is that the most recent edition?

A That's the most recent edition as we speak. One is due out in the year 2000. And on page 15, the second paragraph, the second sentence, and it states: "It is used by psychiatrists, other physicians, psychologists, social workers, nurses, occupational rehabilitation therapists, counselors and other health and mental health professionals."

Q What is the purpose of those DSM's?

A To make classification easier, to gather statistics worldwide, to identify accepted diseases in the profession, and symptoms that would suggest what axis to place the illness on. It's according to axis, Axis One, Two, Three, Four or possibly Five, and it's a method by which professionals in the healthcare industry identify and document according to code, a specific code, what the illness is and then it's billed that way also. So, if something was billed to your insurance company, or to the Medicaid, it would be billed as a diagnosis of 298.53 if you had a Five Axis, or 1 point, according to what you found, what you assessed.

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Q Are you legally entitled or legally allowed to make an assessment under the DSM and then bill according to the schedules?

A Yes, and --

MS. GUTIERREZ: Objection.

THE COURT: Sustained as to whether she is legally. If she could just tell me whether or not she uses DSM for that will be sufficient.

THE WITNESS: Yes. All the schools in Baltimore County that have clinics use the DSM. Nurses are trained in identifying, labeling and then billing. As of two or three years ago, we finally added a new department in the Board of Education, third-party billing clerks, because it was just exhausting, the hours after the day, four or five hours spent to get reimbursement, about money, about insurance.

BY MR. URICK:

Q What is catatonia?

A Catatonia is a description. It's a symptom. It's not an illness. It's not a diagnosis. It's not a neurosis. It's not a psychosis. It's a symptom, just as you would say hyper -- well, no, edema, swelling, is not a diagnosis; it's a symptom. When you have edema, when you have swelling, you find out, then you go through the systems and find out why you have swelling.

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Catatonia is a description of the physical state -- well, not just the physical -- of the state that the person presents, is almost in a few, is almost very, very withdrawn. There are five classifications or five definitions of what catatonia involves in the DSM or in the ICDM-9, and you have to have at least two of those symptoms present to call it a catatonic state. One is that you were very, very withdrawn, in a stupor. That's one symptom that you would identify along with another symptom to corroborate a catatonic state.

The second one might be a really agitated state. The third one is that they're usually mute. They don't talk. The fourth one is if they're not mute, that they're very, it's called agraphesia (ph.) where they repeat everything that I would say they would parrot, and then the other one is called, it's a strange name, negativism, where you have to actually have the person move with you. You have to actually move the person to have them move, because they just stand there in a state of stupor.

I think that is the best definition I can give for catatonia. It's a state of stupor.

Q Have you ever had occasion to make assessments of catatonia?

A Always.

Q What is schizophrenic catatonia?

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A That's a psychoses. That's a psychoses that along with the symptoms of schizophrenia, which are very, very involved, also have the features of a catatonic state where they're mute or they parrot, or they're very, very negativism, or there's also something very, very specific to the posturing, that they don't move unless they're led or if you pick up an arm, it doesn't go down. So, it's an additional classification to schizophrenia. Schizophrenia and then you also have these symptoms of catatonia.

So, you can have paranoid schizophrenics. You can have catatonic schizophrenics, and it's the schizophrenic that has the symptoms of a true catatonic stupor.

Q Have you ever had occasion to in a clinical setting observe and make assessments of schizophrenic catatonics?

A Yes. One of my first patients was a 20 year old young man that was a catatonic schizophrenic. He, without saying the name, he cut off his penis in an LSD flashback, and when I saw him a year later, was still in a catatonic state.

Q And about how many schizophrenic catatonics would you have made assessments of over the years or suspected catatonics, schizophrenic catatonics?

A Over my 25 years of nursing?

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Q Yes.

A A half dozen.

Q Now, what is situational catatonia?

A Well, there can be two different situational catatonias, Mr. Urick. One is called a medial catatonia that is caused by maybe a brain tumor or an automobile accident or some marked brain impairment. Then there's another one that is just a short-lived catatonia type behavior. It's not a psychosis. It's a neurosis that is defined as lasting at least one day, 24 hours, but not lasting more than one month or 31 days.

THE COURT: One moment, please. Counsel, I note that it is 12:40. I'd like to know if you would have any objection to me excusing the jurors to go to lunch without having them come in here?

MR. URICK: No.

MS. GUTIERREZ: No.

THE COURT: Ask them to return at 2:00 o'clock. All right. Would you ask the jurors to go to lunch, M's Connolly. Just instruct them that they should go to lunch and return by 2:00 o'clock.

MS. GUTIERREZ: Judge, I want to advise you that with reference to my other responsibilities, I did set up a telephone conference with two judges in Puerto Rico --

THE COURT: We're going to stop.

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MS. GUTIERREZ: -- at 1:00 o'clock.

THE COURT: We're going to stop.

MS. GUTIERREZ: It takes me about five minutes to walk up the street.

THE COURT: Actually, we're going to stop about right now because I have a bench conference in five minutes, and if I'm not there --

MS. GUTIERREZ: I mean, if I have to, I can change it, but I'll need to make some arrangement.

THE COURT: No, it's not necessary because I'm going to the bench conference. But I am going to ask that --

MS. GUTIERREZ: It will be more interesting than this.

THE COURT: Well, I'm going to go, and I'm going to ask that we recess at this point, allowing you to continue your question of this witness after lunch. We are going to come back at 2:00 o'clock, at which time we'll continue.

I would ask that while you're on the witness stand that you not talk to anybody about your testimony, the State or the defense, and that you return at 2:00 o'clock, and we'll resume questioning with regard to the motion at that time.

Any other preliminary things before I go?

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MS. GUTIERREZ: No, Your Honor.
MR. URICK: No, I don't think so, Your Honor.
THE COURT: All right. Just so you know, I did get a letter this morning from Alternate Number 4, who said --
MS. GUTIERREZ: From 4?
THE COURT: Alternate 4, who says, "Yesterday I asked myself if the surname of a potential witness was common or not. I know superficially, but friendly, a Tony Wilds. I know of no relation to Jay Wilds," and it's spelled two different ways, W-i-l-d-s, and W-i-l-d-e-s. "But it occurred to me that the name might not be common."
So, I guess what she's saying or he's saying is that she's trying to determine whether Jay Wilds is related to a Tony Wilds, who she happens to know.
MS. GUTIERREZ: That he is Alternate Number 4?
THE COURT: Number 4, Alternate Number 4. It says Alternate Number 4 on this letter. I'm going to put both of the juror notes, the one from yesterday about Number 6 and --
MS. GUTIERREZ: In light of that question, Judge, I would make a request that we determine --
THE COURT: We will have to voir dire.
MS. GUTIERREZ: That the State's Attorney -- well, so that we don't ruin the juror if we don't have to,

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it's fairly easy to determine by the State asking its witness, or determining does he have a family member, brother, father, whatever, anybody named Tony Wilds, because it just may --
THE COURT: Yes, and that's actually what my suggestion was going to be.
MS. GUTIERREZ: Thank you, Judge.
MR. URICK: I will do my best to obtain that information.
THE COURT: Would you do that, and then if that doesn't work, we'll do it the other way around and ask the witness. We don't know if the person is related, but if they are related, would that in any way interfere with your ability to be fair and impartial. And, as I said, it's Alternate Number 4, so it's not like it's a member of the panel.
MS. GUTIERREZ: Right.
THE COURT: All right. M's Watts, you're excused to go to lunch, and ask that you come back at 2:00 o'clock.
The court stands in recess until 2:00 o'clock.
THE CLERK: All rise.
(LUNCHEON RECESS).
AFTERNOON SESSION
(Jury not present upon resuming).
THE CLERK: All rise.

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THE COURT: Please be seated. Yes, you may return to the witness stand.
(The witness, SHARON WATTS, resumed the witness stand).
MS. GUTIERREZ: Judge, I apologize for being late, but I did call.
THE COURT: It's quite all right. And I called, and that's all I needed, was a head's up.
MS. GUTIERREZ: Thank you, Judge.
THE COURT: I want to remind you, M's Watts, that you are still under oath.
MS. GUTIERREZ: Judge before we continue with the testimony, I would at this time raise what I believe to be my client's privilege under 9-109.1, in light of the fact that the State is attempting to qualify this witness as an expert, although she hasn't defined herself as such, as someone treating --
THE COURT: I'm sorry. 9 dash?
MS. GUITERREZ: I think it's 9-109.1 or 9.10.
THE COURT: Of the Maryland Rules?
MS. GUITERREZ: No.
THE COURT: Or Courts and Judicial Proceedings or --
MS. GUTIERREZ: It would be in Courts and Judicial Proceedings, and it is, I believe it's only been

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enacted -- I only have 9-109. It's only been enacted maybe two years. But it now recognizes in the same manner that it recognizes, you know, privileges between psychologists and defines patients, it now recognizes privileges in regard to mental health, other mental health professionals and nurses, who are acting in that capacity. That's exactly why I was on the phone with my expert.
Based on the testimony that we've heard, he was, and I believe that the basis of the privilege was the recognition of an existent common law privilege for medical care providers, that I believe should include nurses, who are rendering medical treatment.
She has defined that she has seen him. He was brought to her attention in regard to what other medical personnel described to her as symptoms needing her immediate attention. She was the school nurse. She was in charge that day. Whatever it is she did that day was in that capacity and in no other. And, therefore, her relationship with him absent circumstances where he, himself, has put his mental or physical condition at issue in this case, which he has not, there exists a privilege based on her testimony. And I would assert that privilege on Adnan Syed's behalf now to prevent any relinquishment of that privilege, any violation, any testimony regarding anything that she learned from him, from his words or his

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adions would be included in the privileged nature of any communication of any kind conveyed by him to her during any time that she has discussed, and would move to strike any already listened to testimony that has been made in violation of that privilege.

THE COURT: I'll hear from the State, and I have infront of me Courts and Judicial Proceedings Article 9-109.1, which is communications between client and psychiatric mental health nurse specialist. And it defines psychiatric mental health nurse specialist as a registered nurse, who has a master's degree in psychiatric mental health nursing or has a bachelor's degree in nursing and a master's degree in a mental health field, or is certified asa clinical specialist in psychiatric and mental health nursing by the American Nurses Association or by a body approved by the Board of Nursing.

There is a description of what the privilege entails, and according to my reading is applicable in any civil or criminal proceeding, and the only place that the client cannot waive his right is if the proceeding involves criminal charges of child abuse, neglect or an investigation thereof.

So, I'll hear from the State.

MR. URICK: May I take a look at that, please?

THE COURT: Certainly. And at this time, since

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this is a legal argument, I'm going to ask M's Watts if you will have a seat out in the hallway.

(The witness was excused and left the courtroom).

THE COURT: The court notes that I believe given the position of the defense, if the court finds that such privilege exists, it would really make our discussions about this witness' qualifications moot, because we wouldn't get into whether she's qualified to do an assessment or not if we find that she is one of those individuals for which a privileged communication exists.

(Brief pause).

THE COURT: It's 109.1, right?

MS. GUTIERREZ: Right.

(Brief pause).

THE COURT: Counsel, would you kindly return my book to me?

MR. URICK: Let me have it just a second to write something down.

THE COURT: Certainly.

(Brief pause).

THE COURT: All right, Counsel. I'll hear from you.

MR. URICK: Thank you, Your Honor. After having had a chance through the court's courtesy to examine the

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statute, the State would point out that the defendant does not meet the definition of client as contained within the statute, and the witness does not fall within the definition of a psychiatric mental health nursing specialist.

What you're seeing there would be --

THE COURT: What about as a professional counselor?

MR. URICK: It says a professional mental health counselor. That --

THE COURT: No, it doesn't. It says psychiatric mental health nurse specialist or a professional counselor regarding the diagnosis or treatment of the individual's mental or emotional disorders.

MR. URICK: She is not a specialist who could fit that definition.

THE COURT: She's not a certified, licensed counselor under the Health Occupations Article?

MR. URICK: I do not believe she is. If you want to bring her in and ask her, I think she would confirm that.

MS. GUTIERREZ: Judge, we have provided the Maryland State Department of Ed. record of certification that she is listed as a certified Advanced Professional Guidance Counselor Three. That is currently in effect from

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July 1st, 1993 up until July 1st, 2003.

THE COURT: If I may have one moment. I have in front of me the Health Gen. Article. And although M's Guiterrez seemed to hit the nail on the head, but she's listed as a professional counselor, that means she's certified by the State as such.

MS. GUTIERREZ: And I have a copy of the Maryland State Department of Ed., and I ask that that be marked as Defendant's next number. I guess it's the first number on this motion.

MS. MURPHY: Can we see that, please?

MR. URICK: I've got a copy.

MS. GUTIERREZ: You faxed that to me.

MS. MURPHY: I'm sorry. I didn't know what it was.

THE COURT: Well, why don't we do this. Before you pass it to counsel, just let me take a look at it.

MS. GUTIERREZ: They do have a copy of it.

MS. MURPHY: I didn't know it was the same thing we had, Your Honor.

THE COURT: Thank you. Okay. And I can tell you that specific reference under 9-109.1 is in reference to professional counselor means an individual who is certified, licensed or exempt from licensure as a counselor under Title 17 of the Health Occupations Article. This is

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Health Gen. I do actually need Health Occupations. Sorry. I did say Health Gen. This is 16. 17 will be -- the Health Occupations Article 17-101 defines certified professional counselor, and it has the certificate definition basically outlining the definition as someone who receives a certificate, which M's Watts clearly has. Counseling means to assist in any family, individual or group counseling, to understand intra-personal and intra-professional problems, to define goals, decisions, plan a course reflecting needs, interests, abilities, personal, social and emotional educational and vocational development, encouraging family therapy. It includes the certificate that she talked about she had for drug and alcohol counseling.

It appears that she, based on what I heard just in direct, she falls squarely under the Health Occupations Article where her position of professional counselor is defined. And it would appear also that the definition section has not changed very much, although there is a supplement section.

Give this to the State's Attorney, and share that also with M's Gutierrez, who may have already seen it. But it appears that she falls squarely under this section. What it does is offer to her in that particular profession a requirement that she be licensed or receive a

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certificate. And in doing so, it entitles her to some privilege as would be extended to a psychiatrist or psychologist.

MR. URICK: However, I would point the court to Subsection (d). Board means the State Board of Examiners of Professional Counselors. I do not believe that she's certified by that Board. She's certified by the Department of Education, which is a different agency. And under this certificate means a certificate issued by the Board, that is the State Board of Examiners of Professional Counselors. This is issued by the State of Maryland, Department of Education. She's a certified guidance counselor in the educational system. It's a different board that issued this.

THE COURT: Do you know whether she holds a certificate by the State Board of Examiners of Professional Counselors?

MR. URICK: If I could step in the hall, I could find out.

THE COURT: Why don't we have her step in?

MS. GUTIERREZ: Judge, I would also urge that under this title and under the reference under the privileges, that this witness also falls into a counselor. She is not required to be licensed or certified as that last catch-all given what she does and given her

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certification by the Board of Ed.

THE COURT: There's an exemption for certain individuals.

MS. GUTIERREZ: Yes.

THE COURT: Why don't we inquire.

(The witness, SHARON WATTS, resumed the witness stand).

THE COURT: M's Watts, the court has a couple of questions for you, and when I'm done, if counsel needs to ask additional questions, I encourage you to feel free to do so.

Under your description of your profession, are you classified as a professional counselor?

THE WITNESS: I am a professional counselor. I'm not sitting in that position at this time. I have that classification.

THE COURT: You do have that classification through the State of Maryland?

THE WITNESS: Through the State. It should be in with my resume.

THE COURT: You are licensed by --

THE WITNESS: I'm certified by.

THE COURT: You're certified by the State Board of Examiners of Professional Counselors?

THE WITNESS: Yes, I am.

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THE COURT: As well as the Maryland State Department of Education?

THE WITNESS: That's correct.

THE COURT: Two different certificates or licensing, or one and the same, or do you know?

THE WITNESS: I know that what I handed today is my certification with the State of Maryland.

THE COURT: Okay. And do you know if you hold any other certification?

THE WITNESS: With Guidance and Counseling? No, not with Guidance and Counseling.

THE COURT: Are you familiar with any privilege that you're entitled to assert in your role as a counselor?

THE WITNESS: I do not have any privilege, to my knowledge, as a counselor or as a professional registered nurse. I'm not --

THE COURT: Privileged communication.

THE WITNESS: Yes.

THE COURT: I mean, if a young person were to tell you something, do you have a privilege that you can assert and not disclose that information?

THE WITNESS: The only privilege I'm allowed by Maryland State law has to deal with child abuse, has to deal with someone going to hurt themselves or if they're going to hurt someone else.

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THE COURT: It's your understanding that you have some privilege that you can assert in child abuse situations?

THE WITNESS: When I -- I'm sorry. I misunderstood your question. When I speak to a student, I will tell them that I can keep everything confidential except for child abuse, except for if they're going to hurt someone else or if they're going to hurt themselves. I'm sorry. I misunderstood.

THE COURT: So, you believe you do have this privilege that you can keep privileged communications to yourself with the exception of child abuse and where the child may hurt herself, him or herself.

THE WITNESS: I offer the client that privilege. I don't think I'm bound by that privilege. I conferred with the Board of Education's attorney before taking this stand, and I did not have nurse/student privilege.

THE COURT: I understand.

MS. GUTIERREZ: Object and move to strike that last remark.

THE COURT: Well, it's just me.

MS. GUTIERREZ: I understand, but for --

THE COURT: And I'm not really paying attention to the witness' interpretation of the law.

MS. GUTIERREZ: Right.

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THE COURT: Nor am I interested in her understanding as to what her privilege extends to.

MS. GUTIERREZ: Okay.

THE COURT: But I'm on a fact-finding mission --

MS. GUTIERREZ: I understand.

THE COURT: -- as to what it is she does, what position she holds, what degrees and certifications she has, and where she factually falls. And I am not in any way inferring that any lawyer for the Department of Education or otherwise, that their opinion as to what she is, is binding on this court. I'm more interested in understanding her qualifications and her background and training as it relates to the defense's position at this juncture.

With that said, does the State have any questions of the witness merely on the 9-109.1 issue?

MR. URICK: Yes. Thank you, Your Honor.

CONTINUED VOIR DIRE EXAMINATION

BY MR. URICK:

Q Are you familiar with the State Board of Examiners of Professional Counselors?

A I know it's a body that exists.

Q Have you ever applied to them for certification?

A I applied for certification from the Maryland State Department of Education in '93, and since then I

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haven't applied for any counseling certification because I don't have the role as a school counselor. So, the answer is no.

Q In January of 1999 --

A Yes.

Q -- and February of 1999, were you acting as a professional counselor?

A My job in February or January of 1999 was the manager of a wellness center. In that job I did counseling and guidance. That was not my title. That was not on my name badge. That was not on my door. The name on my door and on my name badge, my job description, was the Manager of the wellness center.

THE COURT: M's Watts --

THE WITNESS: I don't know what he's --

THE COURT: I understand that. Why don't I just ask you a straight question. On the day that Adnan Syed presented himself at your nurse's office --

THE WITNESS: Right.

THE COURT: -- you were doing bereavement counseling, weren't you?

THE WITNESS: Yes. I was part of the crisis team.

THE COURT: And you were using your skills as a professional counselor to assist --

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THE WITNESS: That's right.

THE COURT: -- any of the kids, young people --

THE WITNESS: Yes.

THE COURT: -- teachers, whomever, that presented themselves at your nurse's office.

THE WITNESS: Yes. That's correct.

THE COURT: And you were using all of the background training at your disposal for that?

THE WITNESS: Yes.

THE COURT: Specifically your master's degree in counseling.

THE WITNESS: Yes.

THE COURT: Right?

THE WITNESS: Specifically, yes.

THE COURT: All right. Any questions from the State with regard to my specific response or concern to the defense's issue under the 9-109.1 issue?

BY MR. URICK:

Q And in doing that counseling, were you doing so pursuant to the authority conferred by this certification?

MS. GUTIERREZ: Objection.

THE COURT: You can answer the question. It's overruled.

THE WITNESS: Yes.

MR. URICK: Okay. Thank you. I have no further

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questions of the witness.
THE COURT: Do you have any questions? Do you, M's Gutierrez?
MS. GUTIERREZ: No, I do not.
THE COURT: Thank you very much. I need you to step out in the hallway for one moment.
(The witness left the courtroom).
THE COURT: Unless you can tell me how suddenly on one hand she has the qualifications to do a psychiatric assessment and therefore she would have a -- he would, he, the defendant, would have a privilege under the mental health issue of 9-109.1, or in the alternative that she wasn't acting as a mental health or in any relationship mental health type position, but rather was a professional counselor, I think under any stretch of the imagination the defendant has a privilege, which he is asserting at this time.
And so if you could tell me how you can get past that, I'd love to hear it.
MR. URICK: I would refer the court back to the statute. And statutory construction generally you start with the plain interpretation of the language. The plain thrust here is a privilege for someone who has been diagnosed and is seeking treatment from a specialized professional. And it defines what a specialized

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professional is. That is, a mental health counselor is someone who can actually give mental health treatment as defined under Health Occupation, certified by the Board of Professional Counselors.
This particular witness is not that type of professional. She has an expertise. She is a professional. She does not, is not one of those specialized providers under that statute allowed to give treatment to someone who has been diagnosed with that condition.
The statue sets up a confidential situation for someone who has been diagnosed with a mental condition to actually seek treatment with a privilege, to be able to provide the information necessary for that treatment. That is not the case here. This defendant was not diagnosed with a mental health condition. In fact, her preliminary assessment, which she makes and then would refer him to someone who is the specialist that would fall within that, who could give that type of treatment, was that there was no such condition here. It stopped there. He has no condition. Therefore, there was no --
THE COURT: But the statute says the client means an individual who communicates to or receives services from a professional counselor regarding the diagnosis or treatment of the individual's mental or emotional disorder.

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So, he presents himself. She does an assessment using her professional ability, and decides in her diagnosis that, let's say in the best case scenario, that he's faking. She has seen him, because he has gone to her. She has used her professional counseling, and she has made a diagnosis.
Now, the statute says, unless otherwise provided in any judicial, legislative or administrative proceeding, a client or a client's authorized representative has a privilege to refuse to disclose, and to prevent a witness from disclosing communications related to diagnosis or treatment of the client's mental or emotional disorder.
MR. URICK: If I may address that, that language presumes that the disorder is present, and the client is seeking treatment for it, and it is designed to protect communications within that.
THE COURT: It's talking about a diagnosis and assessment. A diagnosis under the DSM-4 of malingering is a diagnosis. A diagnosis of faking, malingering is a diagnosis that she's making, and you're asking her to render an opinion that he was faking based on some diagnosis assessment evaluation that she is making, and you are saying that it requires her specific training and expertise to be able to tell the court and the jury this.
So, on one hand you can't say she has the specific training, and then in the next instance say she

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doesn't have the training. You can't have your cake and eat it, too. She either has the training and expertise, and if she does, then there's a right to a privilege that she and Mr. Syed can assert, or she doesn't have the training and expertise, and then we're back to the point of whether or not I let her testify because she doesn't have the training. But you can't say she does, and then shift gears and say she doesn't.
MR. URICK: However, this statute sets up only a very limited situation. It specifically defines which persons that privilege applies to. She does not fit that definition. And it just struck me as well. It does not protect -- there's no privilege for her observations of behavior. There's no protection from her opinion. It only protects communications, things that the client may have said.
I believe she can testify fully to observed symptoms as long as she doesn't get into communications. And I believe that she can give or render an opinion based on those observed behavioral manifestations. The statute only protects, presents a privilege for communications between the client and the healthcare provider. It does not give any privilege for non-disclosure of observed behavior and an opinion based on that behavior.
THE COURT: Before the defense responds, first,

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I'm inclined to disallow any testimony from this witness based on your assertion of a privilege under 9-109.1, for any conversations and communications made by Mr. Syed, between M's Watts, during the one and a half hours that he was in her office. However, any observations made outside of her office, like in the hallway or in the waiting room where other people were present, I find that that would not be privileged in that other individuals were present, and could see and hear anything he would have said. But anything that he said to her once he entered that office for the one and a half hours, this court is going to disallow.

MS. GUTIERREZ: And observations during --

THE COURT: And observations.

MS. GUTIERREZ: Okay. Then I have --

THE COURT: I don't care what happened in that room.

MS. GUTIERREZ: Then I have nothing else.

THE COURT: Whether he stood there, cried, shouted, jumped up and down, screamed, pulled his hair out, I don't care what happened in that room. It's privileged. You asserted the privilege, and this court is finding that under the statute and my understanding of her background and training that even if she doesn't arguably have that privilege, that Mr. Syed could have believed that she did.

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And for that reason, anything she said, he said to her in that room could have been believed by him to be in confidence, and for that reason, I will not allow it.

If the witness will testify as to her observations before he entered that room, I will allow any of those observations. Now, do you want to be heard, M's Gutierrez?

MS. GUTIERREZ: No, Your Honor. I don't think I need to be.

THE COURT: Very well. Anything further with regard to this witness? I'd like to get down to hearing some testimony before the day actually gets completely past us.

I understand the State doesn't agree with me. I note your objection for the record, but I think that under Defense Exhibit Number 1, and all the information I've heard so far just in the direct voir dire of this witness, I am satisfied that this statute would apply to her, and her privilege and her training. And I would also note for the record there were things that were discussed, for example, the privilege in privacy that a child might have at a certain age that wanted an abortion, and there are a number of other entities. In fact, she took great caution to say that the only exception that she has is an incidence of child abuse, which is legislated by law. But she said,

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I often tell them I will keep your confidence on everything but child abuse.

Well, you can't keep a confidence unless you have a privilege to claim, and she obviously is under some belief that she may have, has this privilege. But regardless of what she believes, my interpretation of her background and my understanding of her background causes me to believe that she falls squarely under that section.

MR. URICK: If I may ask a question to get clarification?

THE COURT: Uh-huh.

MR. URICK: Is it the court's ruling that she can describe any observation of any behavior or statement that was made in the presence, when there was some other person besides herself present?

THE COURT: I don't want to get into a game of semantics with the State, so let me make it clear. If he was in a room with her for an hour and a half being counseled and there happened to be another healthcare provider present, I include that counseling session as privileged communications. If you're talking about something that may have occurred in a lobby area or an outer office where other individuals were present, she may talk about her observations in that setting.

MR. URICK: If there is a sufficient basis of

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facts from those sorts of observations, would you consider whether or not she can state an opinion based on those observations?

THE COURT: I would have to have her voir dired on that issue, because I don't know what she's going to say she saw or what observations she had. She has already told us she did not make a formal assessment. She had already told us that she has not written down anything. So, in an abundance of caution, I would be concerned with any opportunity that she may have to observe the defendant, and that's why I initially asked you how long did she have to observe him and under what circumstances.

Do you know the answer to the question as to how long other than the hour and a half in her office?

MR. URICK: No. I would have to inquire of the witness as to that. So, in order to proceed with the trial, I will call some other witness. And perhaps if there's anything there, that we revisit it in the morning.

THE COURT: Why don't we do this. I have another matter that I wish to take, and I'm going to allow you to take a break, and you can go out and talk to her. I'm going to give you permission to speak to the witness. We have not taken testimony from her.

Counsel, I'm directing that either, M's Gutierrez or Mr. Urick, if you choose to speak to M's Watts during

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the break, you're welcome to do so. If M's Watts does not want to speak to you, M's Gutierrez, obviously I can't force her to.

MS. GUTIERREZ: I understand.

THE COURT: But you can ask her if she would like to speak to you. And I'm going to also ask that my jurors come in because, ladies and gentlemen, we have kept them locked in a room, and they don't know what's going on. So, before we take the break, I'm going to ask the jurors to come in. And then I'm going to ask you to send Mr. Syed back, and get Mr. Fisher.

(Brief pause).

(The jurors returned to the courtroom).

THE COURT: You don't have to go all the way in the box. If you will just come in for a moment, just come in so I can see everyone. Just come on in. Squeeze in so I can see everyone. There's an old saying, the best laid plans of mice and men. We have not been able to proceed this morning because we have some preliminary matters that we have been taking up, and it's requiring a little more time than we expected. Hence you've been locked in that room wondering what are we doing. And so I'm letting you know that I'm going to ask that -- we do need some more time. We are going to get to you.

What we're going to do is have you go back, and

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in a few moments Deputy Church is going to come back and allow you, if you would like, to go get a cup of coffee, stretch your legs, a cup of tea or whatever you need, and bring it back to the jury room. And we will allow you to do that. We are going to have you come out to hear some testimony today, but it is just taking us a little while. And I just wanted to let you know that we really are here, and we really are working and trying to get to the point where we can bring you all in, but it's taking us a little longer than we expected.

If you will just bear with us, we're doing the best we can. And at this time, I am going to ask you to go back to the jury room. You can collect your coats, and then the deputy will tell you when you can go out. You might be able to catch the canteen even. It's 3:00 o'clock. They might still be there, to grab something quick. Otherwise you will have to -- you're shaking your head no. They're gone. All right.

In any event, you would have, when you go out, you have until 3:30, thirty minutes, to stretch your legs, walk around, and then come back. All right. Ladies and gentlemen, thank you very much for your time and your patience.

THE JURORS: Thank you.

(The jurors were excused from the

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courtroom).

THE COURT: Now, Deputy Church, if you would go with them and stand by until -- thank you. Deputy Church is going to go stand by the door and insure that they don't leave. And if you would take Mr. Syed back.

MR. URICK: Your Honor, before you take him away, I just bring to the court's attention on the other matter of a Tony Wilds, the witness, Jay Wilds, does have a relative by that name. So, we would request that you voir dire the alternate.

THE COURT: Okay. I'll remember to do that.

MR. URICK: Should we return at 3:30?

THE COURT: Yes, 3:30. Give yourself a stretch. Talk to M's Watts.

(The court took up an unrelated matter).

(Jury not present in courtroom upon resuming).

THE CLERK: All rise.

THE DEPUTY: Do you need the jury?

THE COURT: I think we're going to need the jury, but we're going to see. I'm not sure. Have a seat. Where are we in this case at this point? Are we going to be calling another witness in the light of the court's --

MR. URICK: Calling a new witness.

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THE COURT: A new witness?

MR. URICK: Yes.

THE COURT: All right. And that witness' name is?

MR. URICK: Yaser Ali.

THE COURT: Can you have Mr. Yaser Ali come in, and also Deputy Church, if you could go around and get our jurors.

MS. GUTIERREZ: Can I just seek clarification so I don't spend any more energy? Does that mean we are closed on the matter of Sharon Watts or does the State intend to seek another opportunity?

THE COURT: Why don't you have a seat for a second?

Do you want to tell me?

MR. URICK: We will try to see if the statute is Shepardized --

THE COURT: You will try again. You are going to see if you can come up with some law for me?

MR. URICK: Yes.

THE COURT: Very well. M's Gutierrez, at this juncture --

MS. GUTIERREZ: Well, Judge, I at least will ask that there be a limit on it.

THE COURT: Tomorrow morning at 9:00 o'clock, I'd

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like to meet with counsel to discuss this issue.
MS. GUITERREZ: Can we make it about ten after? I can't drop my daughter off until ten of 9:00 in Litherville.
THE COURT: Actually, we don't even have to make itthat close. I'll do my case that I have set for 9:00 o'clock. And the first matter we'll handle in the morning will be the issue of whether or not there will be an ongoing, going back and forth on this issue.
MS. GUTIERREZ: All right.
THE COURT: Because I truly believe that defense counsel has the right to know whether one way or another she should expect the testimony. So, if you have any cases that you want to present, I'll see them or hear about them tomorrow at 10:00 o'clock, because at 10:00 o'clock tomorrow, I am going to make a final ruling for this case with the issue of M's Watts. I think the defense is entitled to know one way or another whether that is something that they need to prepare for.
MS. GUTIERREZ: Thank you, Your Honor.
THE COURT: All right. The jury is on its way. And while the jury is coming, when they all get in and sit down, we need you to stand up and be sworn in. Okay? Just have a seat there.
(Jurors present in courtroom).

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THE COURT: Thank you, Mr. White. See, we actually do lock them away, and no one reads them, and then Mr. White puts them back out your chair. Very well. And you may be seated as you reach your seats.
Ladies and gentlemen of the jury, I want to thank you for your time and your patience. We're going to proceed. As I had told you earlier in the week, we are going to go till 5:30, and do you need a pencil or a pen? Is that why I see a hand? Could you pass this -- if you don't mind passing that down the line. Thank you.
Well, Mr. White, in the past you're usually pretty good about that, and this could be the one time, the one time that you didn't get them exactly right.
All right. Ladies and gentlemen, we are going to continue with this trial. Again, I want to thank you for your time and your patience. And if you will raise your right hand, sir, and listen to Mr. White as he provides you with the oath.

YASER ALI,

a witness produced on call of the State, after having been first duly sworn, was examined and testified as follows:
THE CLERK: You may be seated. Please keep your voice up, and state your name for the record.
THE WITNESS: Yaser Ali.
THE CLERK: Spell your first and last name for the record.
THE WITNESS: Y-a-s-e-r, A-l-i.
THE CLERK: And state your address for the record.
THE WITNESS: [redacted] Ellicott City, Maryland 21042.

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DIRECT EXAMINATION
BY MR. URICK:
Q Good afternoon, Mr. Ali.
A Good afternoon.
Q Do you know the defendant?
A Yes.
Q How long have you known him?
A Seven or eight years.
Q How would you describe your relationship with the defendant?
A He's a best friend.
MR. URICK: If I may approach the witness at this time?
THE COURT: Yes, you may.
(State's Exhibit Number 34, listing of calls, marked for identification).
BY MR. URICK:
Q Mr. Ali, I am now going to show you a copy of what's been marked for identification purposes as State's Exhibit 34. Would you ever communicate with the defendant?

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A Yes.
Q What sort of phones did he have, if you know?
A What sort of phones?
Q Yes.
A He had a cellphone.
Q Do you remember its number?
A Not now, but at the time I'm sure I did know the number.
Q Now, I'd like you to look at the top of this sheet. Do you see name of the service user --
A Yes.
Q -- for this cellphone number? Now, if you would, starting at the top and going down, look at line 13.
A Uh-huh.
Q Have you found line 13?
A Yeah.
Q And there's a number beside, in the every next row after the call, Number 13. Can you identify that number?
A That number is my number.
Q And when you say your number, is it a residence number or a cellphone number?
A My cellphone number.
Q Would you read that for the record, please?

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the record.

THE WITNESS: Y-a-s-e-r, A-l-i.

THE CLERK: And state your address for the record.

THE WITNESS: 3509 Char Lil Court, Ellicott City, Maryland 21042.

DIRECT EXAMINATION

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A Good afternoon.

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Q Yes.

A He had a cellphone.

Q Do you remember its number?

A Not now, but at the time I'm sure I did know the number.

Q Now, I'd like you to look at the top of this sheet. Do you see name of the service user --

A Yes.

Q -- for this cellphone number? Now, if you would, starting at the top and going down, look at line 13.

A Uh-huh.

Q Have you found line 13?

A Yeah.

Q And there's a number beside, in the every next row after the call, Number 13. Can you identify that number?

A That number is my number.

Q And when you say your number, is it a residence number or a cellphone number?

A My cellphone number.

Q Would you read that for the record, please?

A Sure. Number 13, 410-340-7374, call --

Q Did the -- I'm sorry. Did I cut you off? Were you saying something else?

A I was going to read the call time.

Q Okay. The time of the call was?

A 6:59 p.m.

Q And the duration?

A 27 seconds.

Q Do you see above, it says that these are the calls made on January 13th of 1999. Do you have any independent recollection of receiving a call on your cellphone at 6:50 --

A 9.

Q -- 9 on January 13th?

A No.

Q Do you have any independent recollection of where you might have been at that time on January 13th?

A Yeah. Either home, either sleeping or doing homework, or I could have been at the Mosque, going to the Mosque.

Q What, if anything, would have been going on at the Mosque at that time?

A There would be tarawee prayers.

Q And those are?

A And those are prayers that you do at the month of

Ramadan.

MR. URICK: With the court's permission, at this time on Line 13 in the blank space, I'm going to write in Yaser Ali's cellphone.

THE COURT: Any objection, M's Gutierrez?

MR. GUTIERREZ: No, Your Honor.

BY MR. URICK:

Q What were the dates of Ramadan back in '98 and '99 if you remember?

A It was during the winter, somewhere in December and January.

Q Does it have a set number of days each year?

A 29 to 31 days.

Q Now, if you would, look at line 3.

A Uh-huh. Yes.

Q Have you found line 3?

A Yeah.

Q Do you recognize that number?

A Yeah, that's my number.

Q And will you read it for the record, again?

A 410-340-7374. Call time?

Q And what -- yes. What time did it occur?

A 10:00, what time -- yeah, 10:00 o'clock to 10:02, 44 seconds, and call duration was six seconds.

MR. URICK: At this time, with the court's

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A Sure. Number 13, 410-340-[redacted] call --
Q Did the -- I'm sorry. Did I cut you off? Were you saying something else?
A I was going to read the call time.
Q Okay. The time of the call was?
A 6:59 p.m.
Q And the duration?
A 27 seconds.
Q Do you see above, it says that these are the calls made on January 13th of 1999. Do you have any independent recollection of receiving a call on your cellphone at 6:50 --
A 9.
Q -- 9 on January 13th?
A No.
Q Do you have any independent recollection of where you might have been at that time on January 13th?
A Yeah. Either home, either sleeping or doing homework, or I could have been at the Mosque, going to the Mosque.
Q What, if anything, would have been going on at the Mosque at that time?
A There would be tarawee prayers.
Q And those are?
A And those are prayers that you do at the month of

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Ramadan.
MR. URICK: With the court's permission, at this time on Line 13 in the blank space, I'm going to write in Yaser Ali's cellphone.
THE COURT: Any objection, M's Gutierrez?
MR. GUTIERREZ: No, Your Honor.
BY MR. URICK:
Q What were the dates of Ramadan back in '98 and '99 if you remember?
A It was during the winter, somewhere in December and January.
Q Does it have a set number of days each year?
A 29 to 31 days.
Q Now, if you would, look at line 3.
A Uh-huh. Yes.
Q Have you found line 3?
A Yeah.
Q Do you recognize that number?
A Yeah, that's my number.
Q And will you read it for the record, again?
A 410-340-[redacted] Call time?
Q And what -- yes. What time did it occur?
A 10:00, what time -- yeah, 10:00 o'clock to 10:02, 44 seconds, and call duration was six seconds.
MR. URICK: At this time, with the court's

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permission, on line 3 in the blank space, I'm going to write in Yaser Ali's cellphone.
THE COURT: Any objection?
MS. GUTIERREZ: No, Your Honor.
THE COURT: You may do that.
BY MR. URICK:
Q Did you attend the same school as the defendant?
A No, I did not.
Q Where did you attend school?
A Centennial High School.
Q Where would you normally socialize or meet with the defendant?
A At the Mosque or, if not, his house or my house.
Q Did know Hae Min Lee?
A Known her as Adnan's ex.
Q And how did you learn about her?
A Adnan had told me about her.
Q What did he tell you?
A That that was his girlfriend.
Q Did you ever personally meet her?
A Yes, I did.
Q When did that occur?
A It was in the summer. I'm not sure when. Maybe in the middle, middle of the summer, July, about --
Q Where did you --

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A -- two years ago. The summer, not the past summer, but the summer before.
Q And where did you come to meet her?
A I had met, we had gone out to eat. It was a Chinese restaurant near Security Mall.
Q What is your understanding of the view of dating in Islam?
MS. GUTIERREZ: Objection. There has been no foundation laid.
THE COURT: Sustained as to the question as posed at this juncture, but you may lay a foundation.
BY MR. URICK:
Q What religion do you practice?
A Islam.
Q And how long have you been practicing that?
A Ever since I could think properly and --
Q Ever since --
A -- was wise enough to make any decisions.
THE COURT: I'm sorry? I could not hear what you said. Ever since you?
A Were wise to enough make any decision.
Q And how would you describe your own practice of the religion?
A I have strong faith in it, but I'm not, I don't follow too much.

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Q Now, when you say ever since you were able to make wise decisions, about what age would you be talking about there?
A Ever since I had an understanding. I guess around seven years old, eight years of age.
Q And how have you studied Islam?
A Through Sunday School, parents.
Q Do you attend Sunday School regularly?
A Yeah, when I was younger.
Q Do you attend religious services regularly?
A Yeah.
Q Do you observe religious occasions faithfully?
A Yes.
Q What is your understanding of the view of dating within Islam?
A It's not agreed.
Q Can you explain what you meant by that?
A It's not allowed.
Q Did the defendant ever say anything to you about how his parents viewed or might have viewed his dating Hae Min Lee?
A Yeah.
Q What did he tell you?
A They didn't accept it.
Q Did that cause any problems for him?

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A Yeah.
Q What were those?
A Just about how much he could see her. She wasn't allowed to call his house.
Q What is your understanding of the view in Islam of premarital sex?
A It's prohibited.
Q Would members of the congregation discuss that fact at Sunday School or at religious services?
A Yeah. There were a few that would.
Q Were you ever present when it was being discussed and the defendant was there?
A I don't think I was.
Q Did you ever have occasion to ask him whether he engaged in premarital sex?
A No, I never asked him.
Q Did he ever tell you whether or not he did?
A Yeah.
Q And what did he tell you?
A That he had.
Q Did he express any concerns about how that might conflict with his religion?
A Um, I can't, really --
MR. URICK: If I may have the court's indulgence for just a second?

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THE COURT: Certainly.
BY MR. URICK:
Q You said that the defendant said his parents did not accept his dating. Did the defendant tell you how he dealt with his parents concerning that issue?
A Yeah.
Q What did he do?
A He hid it.
Q Now, did you know Jay Wilds?
A I knew of him.
Q And how did you know of him?
A I heard him, you know, being talked about, because a couple of my other friends are friends with him, too, and I knew Adnan was friends with him.
Q How did you know Adnan was friends with him?
A Because I've heard his name.
Q Did Adnan ever discuss Jay Wilds?
A No.
Q Did you ever meet Jay Wilds personally?
A I've met him. It was a while back though.
Q To your knowledge, did the defendant ever call Jay Wilds?
A Like within my presence?
Q Either in your presence or say he called him recently?

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A No.
Q Did Jay Wilds ever call the defendant while the defendant was in your presence?
A No.
Q Would Jay Wilds have ever called you?
A No.
Q Did the defendant ever tell you that his relationship with Hae Min Lee had ended?
A Yeah.
Q Did he tell you why that --
A Yeah. Just because it was being too much of a problem for him hiding it from his parents. So, I mean, it was like a kind of a mutual understanding that they couldn't go on, because I believe Hae's parents didn't know about the relationship either.
Q I would like you to look at line two on that document. By any chance do you recognize that telephone number?
A No.
Q How about line one?
A No.
MR. URICK: Witness with the defense.
CROSS EXAMINATION
BY MS. GUTIERREZ:
Q Mr. Ali, you've been Adnan Syed's best friend for

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more than seven years?
A Yeah.
Q And that's, you met him through the Mosque to which both of your families belong. Is that correct?
A Correct.
Q That's the Islamic Society of Baltimore?
A Correct.
Q Located on Rolling Road in Baltimore County?
A Correct.
Q And that Society has a Mosque. The Mosque is a physical space.
A Correct.
Q Is that right? And the physical space that's called the Mosque is where prayer services are heard or people come to pray. Is that correct?
A Correct.
Q As a group, not just as individuals?
A Correct.
Q And according to Islam, the religion of Islam, the faithful pray in a certain way five times a day?
A Correct.
Q And those times are prescribed by the Koran as occurring at specific, designated times related to sunrise and sunset?
A Correct.

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Q During the high point of the sun in the day?
A Correct.
Q And there are proscriptions for how those who follow Islam must follow in their praying, including their position, their physical position?
A Correct.
Q And the direction in which they face?
A Correct.
Q And the words that they say to be the prayer that they're required to recite. Is that correct?
A Correct.
Q And the Mosque is therefore open seven days a week, is it not?
A Correct.
Q And many of the faithful members of the Mosque, when they are able, actually come to the Mosque several times a day.
A Correct.
Q If a faithful Moslem cannot get to the Mosque, they are required to pray wherever they are. Is that correct?
A Correct.
Q And to follow the proscriptions about the form of the prayer.
A Correct.

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Q And their position.
A Correct.
Q And the direction in which they face.
A Correct.
Q So, a faithful Moslem is required to follow those proscriptions whether or not they're able to join with fellow Moslems to do so. Correct.
A Correct.
Q And in Islam, in the Mosque, there are spaces that are designated for men and women, are there not?
A Correct.
Q Okay. And those are followed through, are they not?
A Correct.
Q And there is what you call the Sunday School, is a school -- oh, in addition to the building that contains the Mosque, there are other things contained in or around and near the building, are there not?
A Correct.
Q There's a school now at that Mosque, is there not?
A Correct.
Q It's a separate part of the building, correct?
A Correct.
Q And now goes up, I believe, to fourth grade or

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fifth grade?
A Somewhere around there. I'm not too sure.
Q Somewhere around there. And that that building, that school functions as a regular certified school. Is that correct?
A Correct.
Q And the children that go to that school are sons and daughters of members of the Mosque.
A Correct.
Q And, in addition, the Mosque has many places for there to be activities for the young people of the community. Isn't that correct?
A Correct.
Q There's lots of areas both inside and outside the building that are designated for, encourage sports activities, are there not?
A Correct.
Q There are baseball, I mean basketball courts. Is that correct?
A Correct.
Q And fields of play?
A Correct.
Q And there are lots of activities that are sponsored on a regular and seasonal basis that involve all the young people of the Mosque.

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A Correct.
Q And, now, Sunday School, it's called Sunday School just because it happens to be held on Sunday, correct?
A Correct.
Q And at the Sunday School, young people of different ages are grouped together, are they not?
A Correct.
Q And during the Sunday School, they learn about the tenets of Islam, do they not?
A Correct.
Q What beliefs are held?
A Correct.
Q And what behavior is expected?
A Correct.
Q And what are the correct and proper things for Moslems practicing their faith are expected to do.
A Correct.
Q And how they are to behave.
A Correct.
Q Is that correct?
A Yes.
Q And one attends Sunday School on a regular basis from about the age of seven or eight, correct?
A Correct.

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Q All the way up to and through young adulthood. Is that correct?
A Correct.
Q You don't attend it now?
A No.
Q Correct?
A Correct.
Q But up until the time you were in high school, you attended Sunday School, did you not?
A Correct.
Q And you attended with other similarly aged young Moslems.
A Correct.
Q And Sunday School, was that divided into boys and girls?
A At a younger age it wasn't, but at older age, yeah, it was.
Q So, as girls and boys became or approached teenagehood, they were separated by sex, were they not?
A Correct.
Q And that's part of the tenet of the Islamic faith.
A Correct.
Q Is it not? And in addition to attending Sunday School, you said you attended services regularly. Is that

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correct.
A Correct.
Q And sometimes that could mean going to the Mosqu once a day?
A Correct.
Q Okay. Not always, but it could, could it not?
A Yes.
Q Because there are always services at sundown and then late at night. Is that correct?
A Yes.
Q And in between those services, there are other things that go on at the Mosque, are there not? People socialize?
A Yes.
Q People discuss their faith?
A Yes.
Q People discuss things other than their faith?
A Yes.
Q Sometimes there are speakers on certain aspects of Islam.
A Correct.
Q And on certain aspects of the culture?
A Correct.
Q Is the Mosque membership limited to those who hold the Islamic faith, who are of Pakistani descent?

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A No.
Q There are those who are not of Pakistani descent, whose families also belong to the Mosque.
A Correct.
Q The only criteria for membership is an embracing of the Islamic faith. Is that correct?
A Correct.
Q In addition to Sunday School, there are activities in the Mosque that are religious in nature that involve the young people.
A Yes.
Q Do they not? The specific, I don't quite remember the name, but like young men's groups, are there not?
A Correct.
Q And the young men's groups receive a lot of attention from the adults in the Mosque, who extend themselves to try to talk about things with the young men.
A Correct.
Q And how their lives should be faced and dealt with in the face of young Moslems living out in the world.
A Correct.
Q Among people who are not of the Islamic faith.
A Correct.
Q Who may not understand the tenets of Islam.

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A Correct.
Q And under circumstances where sometimes it is hard to live up to what they are taught in regard to their beliefs.
A Correct.
Q And in regard to their ability to interact with non-Moslems they interact with by necessity, such as in school. Is that correct?
A Correct.
Q And those groupings, the young men's group sometimes meets in addition to the Sunday School?
A Correct.
Q And you participate in them, did you not?
A Correct.
Q And your best friend, Adnan, he participated in them, did he not?
A Correct.
Q And he participated in Sunday School, did he not?
A Correct.
Q And in those groupings whenever the young men would meet, one of the things that they would talk about, whether it was from your own experience or just intellectually, was how do young men of your age live your lives around a culture whose beliefs do not coincide with the beliefs of Islam. Isn't that correct?

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A Correct.
Q The issue of dating, for instance, would be a subject of discussion for you young men?
A Correct.
Q Within the Mosque.
A Correct.
Q With adults?
A Yeah.
Q And with each other.
A Yes.
Q Is that correct? And it would be talked about regularly and continually. Is that correct?
A Yeah.
Q And you participated in those discussions, did you not?
A Yes.
Q And Adnan participated in those discussions, did he not?
A Yes.
Q And there were never, there was never a dispute that it was okay to date, right?
A Yes.
Q It was always understood by the young men that, in fact, it was not okay to date, correct?
A Yes.

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Q And you were clear, were you not -- you, meaning not just you, but Adnan and the other young men, that none of your parents would approve of dating.
A Yes.
Q Isn't that correct?
A Yes.
Q You got that from your parents?
A Yes.
Q And you got that from all other adults in the Mosque.
A Yes.
Q Regular Moslems --
A Correct.
Q -- and also specially trained ones.
A Correct.
Q Okay. Like specific teachers of Islam.
A Correct.
Q And the writings of Islam, is that correct?
A Yes.
Q And that was reinforced a great deal, was it not?
A Yes.
Q You, as a young person, and your best friend, Adnan, as a young person, were encouraged to spend time and become friends with each other, were you not?
A Yes.

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Q And, in fact, many of you did so?
A Yes.
Q And you saw each other very regularly, sometimes every day?
A Yes.
Q And sometimes seeing each other every day would involve the two of you and others of like age praying together?
A Yes.
Q And discussing tenets of faith?
A Yes.
Q And discussing things that had nothing to do with being a Moslem.
A Yes.
Q Is that right? You were encouraged to spend as much time as you could on the property and the grounds of the Mosque, were you not?
A Yes.
Q And to engage in any activity that would be offered to encourage you all to interact as much as possible as members of the community. Is that correct?
A Yes.
Q And when you were on the property of the Mosque, the adults of the Mosque would interact with all of you. Is that correct?

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A Yes.
Q And that's mostly where you saw your best friend, Adnan Syed?
A Correct.
Q Is that correct? Now, knowing that you both understood that the tenets of your faith said that dating was wrong -- Correct?
A Correct.
Q There was never a time when anybody said, well, it's okay as long as somebody doesn't know it, right?
A Correct.
Q Nevertheless, it would be fair to say that most young men in that Mosque dated, would it not?
A Yes.
Q You dated, didn't you?
A Yes.
Q Okay. And you still do, don't you?
A Here and there.
Q And do you tell your parents about it?
A No.
Q Do you tell the Emons (ph.) or the religious leaders of the Mosque that that's what you're doing?
A No.
Q You know that it's wrong, don't you?
A Yes.

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Q And you all tell each other, though, don't you?
A Correct.
Q Okay. And that's okay, isn't it?
A Correct.
Q But there's never an illusion that you think that it's okay to do it, is it?
A Correct.
Q You know that it's against the faith that you've embraced.
A Correct.
Q Is that correct? And you know that your parents would not approve of your dating.
A Correct.
Q Any girl, right?
A Correct.
Q No matter what faith she is, right?
A Correct.
Q The ban on dating is that young people shouldn't have any relationship with each other, of the opposite sex, until they're ready to make a commitment to a marriage and a union within the faith, correct?
A Correct.
Q Is that correct, then, that mating, marriage should be a family affair that involves approval from both families?

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A Correct.
Q That sort of signifies that this is a good union that will go forward in the future.
A Correct.
Q And that a family will be raised within the Moslem faith.
A Correct.
Q Within Islam, correct?
A Correct.
Q You were never told otherwise, were you?
A No.
Q And you never heard anybody else express otherwise.
A No.
Q But you chose to date anyway.
A Correct.
Q Did you tell your parents what you were doing?
A No.
Q Was it agreed among the young men that one way to do that, to date girls, was to do it secretly?
A Correct.
Q And that that sort of cut down on the friction.
A Yes.
Q There was, however, on a regular basis friction among your friends including Adnan, and any of their

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parents.
A No.
Q About dating.
A Oh! Yeah.
Q Only about dating, is that correct?
A About dating.
Q And that periodically parents would get, like any parents, who saw a child go against the tenets of their faith, upset with their children.
A Correct.
Q Did your parents ever find out that you've dated in the past?
A Um, they've got an inkling.
Q They've got an inkling, but you're pretty good at hiding it?
A Kind of.
Q Okay. And have a cellphone, do you not?
A Correct.
Q That sort of makes talking to the girls outside this span a whole lot easier, doesn't it?
A Yes.
Q Don't most of the young men of the Mosque have cellphones?
A Yes.
Q And is not the main reason for cellphones, is

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that it makes communicating with girls of whatever faith far easier than if the girls had to call at the home where a parent might answer?
A Yes.
Q The ban on premarital sex -- well, you understood when Adnan became interested in a girl.
A Yes.
Q He told you about it?
A Yes.
Q You were his best friend.
A Yes.
Q He didn't hide it from you.
A Yes.
Q You understood, though, that he was hiding it from his parents?
A Yes.
Q And from other adult members of the Mosque. Is that right?
A Correct.
Q And you, of course, wouldn't break faith with him, would you?
A No.
Q Did you chastise him for going against his faith?
A No.
Q Did you remind him, and say, Best Friend, you

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know, you're not supposed to do that?
A No.
Q Did you ever advise him not to do it?
A No.
Q Did you ever tell anybody?
A No.
Q Did you help him hide it?
A No.
Q Were you ever asked to help him hide it?
A No.
Q Did you understood -- did you understand from your conversations with him that he continually had to hid it all the time?
A Yes.
Q Okay. And was that a problem for you?
A No.
Q To your knowledge, were you and Adnan the only young men of the Mosque who broke the ban on dating?
A No.
Q And was it more ordinary that the young men would actually be dating than they would not be?
A More.
Q More?
A A lot of them dated.
Q Oh! A lot of young men dated even though they

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considered themselves faithful Moslems?
A Yes.
Q And even though they were counseled all the time to not break the ban.
A Correct.
Q Is that correct? And, sir, you were asked about Ramadan. That's the holy month for the Islamic faith, is it not?
A Yes.
Q It runs, according to a calendar, and generally it falls from about the middle of December to the middle of January.
A Yes.
Q But it runs according to a calendar so the starting date and ending date might end or begin on a slightly different date each year. Is that correct?
A Yeah.
Q Last year's Ramadan, which in the Ramadan and Islamic calendar, that wasn't the year 1998 or 1999, right?
A Yes.
Q It's a different year.
A Yes.
Q Is that correct? According to the Arabic Islamic calendar, is that correct?
A Correct.

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Q And in Ramadan, one of the things that happens for the faithful of Islam is that they are called to pray more often.
A Correct.
Q And to make special prayers.
A Correct.
Q And to fast from sunup till sundown every day for the whole fasting month. Is that correct?
A Correct.
Q And the fasting is meant as discipline, is it not?
A Correct.
Q And it's to remind the faithful and to bring them together more often to try to make their covenant with faith deeper. Is that correct?
A Correct.
Q And during that month, the Mosque plans special activities, does it not?
A Yes.
Q And one of the activities that it plans around the Mosque are opportunities for the young people to lead prayers.
A Correct.
Q Special prayers, is that correct?
A Correct.

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Q That happens several times a month, does it not?
A Correct.
Q Last year the ending date of Ramadan, I believe, was the 17th of January, was it not?
A Somewhere around that date.
Q Somewhere around then?
A Yes.
Q And do you recall, sir, that on the 14th of January, which was a Thursday, that there was a special prayer that was led by a group of young people?
A There was a prayer led, yeah.
Q And do you recall that your best friend, Adnan Syed, participated in that prayer?
A Yes, he did lead a prayer.
Q He led the prayer. And leading the prayer is a, I don't the right word. It's a great honor, is it not?
A Yes.
Q And the young people practice to make sure that they lead the prayer correct.
A Correct.
Q It's not just memorizing the prayer, is it?
A Correct.
Q It's understanding the prayer, is it not?
A Yes.
Q And leading the people with fervor and passion,

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isn't that correct?
A Yes.
Q And you young people, when you're asked to do that, you practice, do you not?
A Yes.
Q During Ramadan, not just because it's required by Islam, but because it's encouraged by the community, the young people are at church more often than at any other time.
A Correct.
Q Isn't that correct? Both praying and meeting, isn't that correct?
A Yes.
Q Just like the rest of the members of the community are at the Mosque more often, is that correct?
A Yes.
Q And, sir, do you recall that during that time like other Ramadans, you see your best friend more often at the Mosque than at any other time?
A Yes.
Q Now, you became aware when he acquired a relationship or initiated or had a relationship with this young woman by the name of Hae Min Lee?
A Yes.
Q And that occurred sometime in the spring of 1998,

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late April of 1998, did it not?
A Yes.
Q You were aware that he took her to his junior prom.
A Yes.
Q And prior to then, even though you didn't attend the same school, you had interacted with and met some of his friends from his public school, had you not?
A No, I really never met his other friends.
Q Okay. Had you ever met Stephanie?
A I had met her at a mall once.
Q Okay. And you had heard her name often, had you not?
A Yes.
Q And she was a non-Moslem.
A Correct.
Q And she was an African-American?
A Correct.
Q Not an Asian, not a Pakistani, correct?
A Correct.
Q You were aware for a long period of time that Stephanie, a girl, and Adnan were best friends --
A Correct.
Q -- in their school, correct?
A Correct.

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Q You knew that because you were his Mosque best friend, correct?
A Yes.
Q And that kind of relationship, they weren't girlfriend and boyfriend, just friends, that was okay, was it not?
A Yes.
Q And young people were allowed to socialize in groups, not in couples, correct?
A Correct.
Q And they were allowed to socialize as long as there was nothing of a sexual or intimate nature going on with members of the opposite sex, were they not?
A Correct.
Q The ban was on dating, right?
A Correct.
Q And then there was the ban on any type of premarital sex, correct?
A Correct.
Q Because within Islam, sex is reserved for married couples with a commitment to establishing an Islamic family.
A Correct.
Q Correct? But socializing with members of the opposite sex was not banned in any way.

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A Um --
Q As long as it was under certain circumstances --
A Yeah.
Q -- where there wasn't any sex or any intimacy, right?
A Correct.
Q So, groups of young people that included boys and girls, that was okay.
A Correct.
Q Is that right, as long as people didn't pair off?
A Yes.
Q You know other young people in the Mosque who attend your school?
A Um --
Q Are there any that attend your school? It's actually in Columbia, is it?
A Ellicott City.
Q In Ellicott City. Are there any members of your school who are also members of the Mosque?
A No.
Q Are there any members of the Mosque that come from schools other than Woodlawn?
A Yes.
Q And as among those young people, are the practices the same that, at least the young men you know,

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that they date?
A Yes.
Q Okay. And is the practice the same as you've described, that more of them date?
A Yes.
Q Than don't date?
A Yes.
Q And would it be fair to say that in order to maintain it, that all of those young men from the Mosque, who date against the ban on dating, do so having to hid it from everybody?
A Correct.
Q Or at least adults.
A Yeah.
Q Okay. And would it be fair to say that they don't hide it from each other?
A Yeah.
Q Okay. It was in the summer that you met Hae Min Lee when the three of you went to a Chinese restaurant in Security Mall.
A Yes.
Q Is that correct?
A Yes, it was by there.
Q Was there any hiding of --
THE COURT: What was that? I'm sorry.

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THE WITNESS: It was by the Security Mall.
THE COURT: Okay.
BY MS. GUTIERREZ:
Q Okay. Not inside but nearby there.
A Yes.
Q Was there any hiding of the relationship from Adnan? Did he hide the relationship to you?
A When we were at the restaurant, I mean, we weren't hiding, or he wasn't hiding because there was no one around.
Q Okay. But to you?
A Was he hiding that he was going out?
Q Yes.
A No.
Q Did he present her to you as his girlfriend?
A Yes.
Q And when you met her, did you know that the two of them had engaged in premarital sex?
A I don't know if I was aware at that time.
Q At some point --
A Yes.
Q -- you did become aware. Is that correct?
A Yes. Correct.
Q And that's because your best friend, Adnan, told you that that's what he did?

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A Correct.
Q And so the hiding never included him hiding the nature of this relationship with this young woman to you?
A Yes.
Q And she didn't hide the nature of the relationship while you were with her at the Chinese Restaurant, did she?
A Yes. She didn't hide it.
Q They presented themselves to the world as girlfriend and boyfriend, did they not?
A Yeah.
Q And for a long time you were aware that they were still girlfriend and boyfriend.
A Correct.
Q You were aware that the hiding exacted a toll on Adnan, were you not?
A Yes.
Q That it bothered him to have to go against his parents.
A Yes.
Q And that it bothered him that they were pained by it.
A Yes.
Q And that it bothered him to go against his faith.
A Correct.

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Q And you were also aware that the young lady, Hae Min Lee, was hiding their relationship from her parents.
A Correct.
Q And you were aware from your conversations with Adnan that that bothered her, too.
A Correct.
Q You were aware that the two of them discussed at length the issues of their loving each other.
A Correct.
Q And he told you that he loved her, did he not?
A Um, he liked her a lot, but I don't think he loved her.
Q He liked her a lot. He felt very strongly about the relationship, did he not?
A Yes.
Q Even though it caused him pain?
A Yes.
Q You were aware that what things that caused him pain were issues that he and Hae discussed a lot.
A Yes.
Q And that their pain time starting in the summer when they took breaks from each other.
A Yes.
Q To try to see how strong their love was or their like.

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A Yes.
Q To try to test the relationship as young people.
A Yes.
Q And your friend, Adnan, was just past 17 then?
A Yes.
Q And you are how old?
A I'm 18.
Q So, a year ago, you were also 17?
A Correct.
Q And by then you became aware that there then became a pattern where they were together, and then they would break up for a little while.
A Correct.
Q Now, you don't attend Woodlawn, correct?
A Correct.
Q And so you would not have ordinarily attended school dances.
A No.
Q You didn't attend the junior prom.
A No.
Q And you didn't attend the Homecoming Dance, did you?
A No.
Q Did you become aware that Adnan's parents went to retrieve him from the Homecoming Dance?

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A Correct.
Q And is that that because he told you about it?
A Yes.
Q And did he tell you that when his parents came, his mother asked to speak to Hae Min Lee?
A Um, I --
Q He didn't get into all the details?
A Yeah.
Q Did you understand from what he told you that he left willingly with his parents?
A Yes.
Q And did you understand from what he told you that as soon as he got home, shortly thereafter he snuck out and bicycled his way back?
A Um, I believe he did.
Q And that he finished the dance with Hae Min Lee?
A Yeah.
Q Who waited there for him to return?
A Yes.
Q Did you understand from your conversations with him that he did that to try to spare his parents some of the pain?
A Yes.
Q To not rub their noses into the relationship that he had chosen to commit some of his energy to?

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A Correct.
Q In mid-December did you become aware that he and Hae Min Lee mutually broke up?
A Yes.
Q And that they both then began to live different lives?
A Correct.
Q Did you understand that it had nothing to do with Adnan's decision-making, whether it was right or wrong under any analysis, as to whether or not to engage in a relationship, but that he and her, Hae, were unwilling to continue to go through the pain caused by hiding from both sets of families?
A Correct.
Q Did you understand from him that Hae Min Lee also hid her relationship with him, Adnan, from her family?
A Correct.
Q Okay. And after, did you learn all this from Adnan?
A Yeah.
Q Okay. You never independently talked to Hae?
A No.
Q After the break-up, after mid-December, were you aware that Adnan was interested in other girls?
A Yeah.

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Q How did you know that?
A He had talked about other girls.
Q Okay. And, in fact, he went to other places, did he not?
A Yes.
Q Places that the purpose of going there, there would be girls there.
A Correct.
Q Is that right?
A Correct.
Q You and he went to some, did you not?
A Um, we had gone to some.
Q Okay. And were you aware that he was responding to other girls by the turn of the year, at New Year's?
A I wasn't with him on New Year's.
Q You were not with him on New Year's?
A Yeah.
Q Or New Year's Eve?
A Yeah.
Q Were you aware that he attended a big party at Scarlett Place?
A Yeah.
Q And were you aware in advance that that party was going to happen?
A Yeah.

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Q That party was not restricted to Moslem youth, was it?
A No.
Q There were youth of every faith?
A Yes.
Q And every race?
A Yes.
Q And from all corners of Maryland.
A Yes.
Q And were you aware that he met a girl he was interested in pursuing?
A Yes.
Q And that there were other girls that he was interested in pursuing.
A Yes.
Q You were aware that Hae Min Lee was his very first dating experience, were you not?
A Yes.
Q And that having premarital sex with her was his very first sexual experience.
A Yes.
Q And he told you that, did he not?
A Yes.
Q And you weren't surprised by that, were you?
A Um --

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Q That he told you these things?
A Oh, no, no.
Q You shared similar things about yourself with him?
A Correct.
Q Okay. As most best friends do.
A Correct.
Q And you became aware that -- you understood he cared about Hae, did you not?
A Yes.
Q He made you aware that the decision to break up was a mutual one?
A Yes.
Q He was pained by it, was he not?
A Yes.
Q He was committed, however, to remaining friends with Hae Min Lee?
A Yes.
Q And to your knowledge did he continue to do so?
A Yes.
Q Okay. Now, you to told us, Mr. Ali, that you have no recollection of phone calls that you've been asked to identify the numbers of. Is that right?
A Yes.
Q The first time that you were asked to recall any

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phone conversation, did that occur near January 13th?
A Yeah, I'm guessing so, because it says these calls were made on January 13th.
Q That's what the paper tells you, right?
A Yes.
Q But you don't know that?
A Yeah.
Q Did somebody ask you on the 14th, the day after, did you make this phone call?
A No.
Q And it was months before you were asked to identify your number, was it not?
A Yes.
Q The police came to speak to you because your number appeared here. Is that correct?
A Yes.
Q Of your cellphone number, is that correct?
A Correct.
Q That you had and used for a similar reason, that is to facilitate communication with girls, correct?
A Correct.
Q Now, to your knowledge, Mr. Ali, you were not the only person with Adnan Syed's cellphone number, were you?
A Correct. I wasn't the only person.
Q No. You knew that others, your mutual friends

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from the Mosque, had his cellphone number.
A Yes.
Q Did you not?
A Correct.
Q And that was a regular way for you all to communicate, correct?
A Correct.
Q The first cellphone call that you were asked to identify, Number 13, sir, that lasted 27 seconds. Is that correct?
A Correct.
Q You don't recall speaking to Adnan.
A No. Sometimes when you call, when you're on the phone, when the bell is ringing, that's also --
Q Okay. So, this 27 seconds phone call could have been to your number but you never actually spoke to him.
A Correct.
Q Is that correct?
A Correct.
Q His cellphone could have been used by somebody else.
A Correct.
Q And you have no recollection of actually speaking to him?
A Correct.

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Q Or where you were whenever it is he called?
A Correct.
Q And the six-second phone call, you also have no recollection of.
A Correct.
Q And the six-second call to your number could have been one in which you never even got to answer.
A Correct.
Q A place where you didn't have your cellphone on, but it was ringing.
A Correct.
Q And it wasn't answered.
A Correct.
Q Or when you were on the phone doing something else.
A Correct.
Q Then you also don't remember?
A Correct.
Q But, again, it wasn't answered at all?
A Correct.
Q Do you have a voice mail on your cellphone?
A Yes, I do.
Q So, if somebody is not able to reach you or you are busy on the phone, it then skirts over?
A Yeah.

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Q And someone can leave a message for you that you can later retrieve.
A Yes.
Q And you have no independent recollection of speaking to him on that day?
A Yes.
Q You were aware back then, in January, that your best friend, Adnan Syed, was a member of the track team of Woodlawn Senior High, were you not?
A Correct.
Q And that he attended track practice in January every day.
A Correct.
Q At Woodlawn.
A Correct.
Q And you were aware, as his best friend, that in February and earlier in January that, in fact, at track meets representing his school, that he won gold medals in the races he ran?
A Correct.
Q He was a good track runner, was he not?
A Yes.
Q He was disciplined about what he did, was he not?
A Yes.
Q He was proud of his achievements, was he not?

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A Yes.
Q And you knew that from talking to him?
A Yes.
Q And you also knew that from talking -- there were other Moslem young men, who were members of the Mosque, who also attended Woodlawn?
A Correct.
Q So, you got information about your best friend corroborated and verified by others who also knew from their own personal knowledge.
A Correct.
Q And you never heard from any of those members anything that contradicted anything that Adnan told you about his relationship with Hae.
A No.
Q Or about his commitment to track.
A No.
Q You knew, in fact --
THE REPORTER: Keep your voice up.
THE WITNESS: Thank you.
BY MS. GUTIERREZ:
Q You knew, in fact, that he was a good student, did you not?
A Yes, I did.
Q And other information corroborated that to you,

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did it not?
A Yes.
Q You've answered my question, Mr. Ali, that you have previously had girlfriends?
A Yes.
Q And you currently have a girlfriend?
A No.
Q Do you engage in premarital sex?
A No.
Q Have you ever?
A No.
Q And have you -- is that because of your Islamic faith?
A Um, no.
Q Did you, Mr. Ali, condemn your friend because he violated his Islamic tenets of faith?
A No.
Q Did you encourage him not to have sex once he told you he was?
A No.
Q Did he tell you, and did you ever know, where he and Hae had sex?
A No.
Q And did you inquire of him those details?
A No.

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Q Were you shocked by Adnan's confession to you?
A Just kind of, that we're all growing up. That's about it.
Q You're growing up. Deciding, having the wherewithal to make a decision --
A Yes.
Q -- as to whether or not you would have sex or not was a sign in and of itself of the fact that you were getting older.
A Correct.
Q And more mature.
A Correct.
Q One of the main tenets of Islamic faith is that it leaves individuals, to use one of the words that you used in the beginning, the freedom to make their own wise choices.
A Yes.
Q And that's in spite of the tenets that might encourage them to make other choices.
A Correct.
Q Is that correct? And that's the Islamic faith and practice of it that you know, is it not?
A Yes.
Q The Jay Wilds that you heard of, did you know any personal information about him?

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A Um, that he was not that good of a person.
Q Okay. And that's the information that was conveyed to you from more than one source, was it not?
A Yeah.
Q It was conveyed to you that one of the reasons that Jay Wilds was known to several of these young people who were Moslems, was because he readily and easily provided dope for them.
A Yeah.
Q And using any kind of dope, in any form, is also against the Islamic faith, is it not?
A Yes.
Q Using anything to desecrate the body, including alcohol, is against the Islamic faith, is it not?
A Correct.
Q Many of the young men, however, on occasion imbibe and drink alcohol, do they not?
A Correct.
Q And attend parties where alcohol is served, correct?
A Correct.
Q Even though that's in violation of their faith.
A Correct.
Q Is that correct? And many of the young Moslem men have also been known on occasion to smoke marijuana, to

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smoke dope?
A Correct.
Q Even though that also is not only a violation of American law, and the law of this State, but a violation of Islamic tenets. Is that correct?
A Yes.
Q But on occasion some Moslem young people are known to have imbibed in that.
A Yes.
Q And the things that you had heard led you to understand that Jay Wilds in regard to the young Moslems at Woodlawn was the person that they went to, to supply them things that they didn't know how to get.
A Correct.
Q Like marijuana?
A Correct.
Q Like other forms of drugs?
A Correct.
Q And like alcohol?
A Correct.
Q You never interacted with Jay Wilds.
A No.
Q And what you heard mostly about him was that he was not a good person.
A Correct.

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MS. GUTIERREZ: No further questions. Thank you, M Ali.
THE COURT: Any re-direct?
MR. URICK: Yes. Thank you.
RE-DIRECT EXAMINATION
BY MR. URICK:
Q And you've heard the defendant call Jay Wilds a friend, haven't you?
A Um, I might have, yeah.
Q Are you aware of whether or not the defendant smokes marijuana?
A Um, yes.
MS. GUTIERREZ: Objection.
THE COURT: Overruled.
BY MR. URICK:
Q You can answer that question.
A Yes.
Q How are you aware of that?
A I had heard about it.
Q Do you have a friend named Tiab?
A Who?
Q Tiab. I'm not certain that the spelling is correct, T-i-a-b. Tiab. Tiab.
A Oh, Tiab. Yeah.
Q Have you ever seen the defendant at Tiab's house?

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A Yes.
Q What, if anything, did you see him do there?
MS. GUTIERREZ: Objection.
THE COURT: Sustained. Are you going to lay a foundation, so I'll know where you're going with this.
MR. URICK: What was going on at --
THE COURT: What, if anything, did you ever see him do there. I have at that point no idea where you're going with it. Some of which he may have been doing is admissible, and some of which is totally irrelevant. So, if you would just give me a foundation or you can come to the bench and proffer where you're going.
MR. URICK: Sure.
THE COURT: Come on up.
(Counsel and defendant approached the bench, and the following ensued:)
THE COURT: Okay.
MR. URICK: I'll proffer that the witness saw the defendant smoking marijuana at that place.
THE COURT: Okay. And what relevance does that have to do with the charges?
MR. URICK: It's a follow-up to the other questions.
THE COURT: Okay.
MS. GUTIERREZ: I'm going to object based on

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relevance and prejudice.
THE COURT: I think you've opened the defendant's character, opened wide by the questions on cross. You can ask the question.
(Counsel and defendant returned to trial tables).
THE COURT: I ask it to be a little more specific and direct the witness.
BY MR. URICK:
Q What, if anything, was going on at Tiab's house at that occasion?
THE COURT: That's not specific enough. So, why don't we just go right to the chase. M's Gutierrez was asking a lot of questions about marijuana. The question is, at Mr. Tiab's --
MR. URICK: Tiab.
MS. GUTIERREZ: Tiab.
THE COURT: -- Tiab's house, did you ever see the defendant smoking marijuana?
THE WITNESS: Yes.
THE COURT: Next question.
BY MR. URICK:
Q Were you aware that before he was dating Hae Min Lee, the defendant had a relationship with a woman with a six-year old child?

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MS. GUTIERREZ: Objection.
THE COURT: Overruled. Did you know of a prior relationship of the defendant involving a six-year old child and woman who had a six-year old child?
THE WITNESS: No.
THE COURT: Next question.
THE REPORTER: Speak up.
THE WITNESS: No.
BY MR. URICK:
Q When was it your understanding that the defendant started dating Hae Min Lee?
A Um, it was during my junior year, during the prom time, which is late spring, I guess.
Q And what is your understanding as to the time that they broke up?
A Last year, and during the winter, but they had previous break-ups.
Q If you recall, when did the defendant get his cellphone?
A During the wintertime.
Q And how did you come to know that he had gotten a cellphone?
A He had called me and told me when he was giving his new number.
Q And how often would he call you on a -- say

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through the month of January, how often would he call you on a daily basis?
A Here and there, just about as much as any other person, not like continuous, you know, every hour or anything. Just like once maybe every day, once every two days, something like that.
Q Now, on January 13th, you mentioned a name for a prayer. What was that name again?
A Tarawee, but that's every night during Ramadan.
Q When does the Mosque open for that?
A The Mosque is open all day.
Q When would those prayers begin for -- or what would be the routine for someone who is observing those?
A It would be around 7:30. They would start around 7:30.
Q And what would someone do?
A Just go there and pray.
Q And describe physically how they would do this.
A It's like a regular prayer, and they would have to do it for about two and a half hours, two or three hours. Just like regular praying, but you do them in sets of two, about 20.
Q And what sort of physical positions would people be in?
A The normal routine of prayers.

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Q Could you describe that, please?
A Sure. First you start off holding your hands. Then you go down, bending over, and then you go down, kneeling on the ground, and then you get back up and do that again for how many ever, regardless of how many times you have to do it for.
Q And that particular set of prayers during Ramadan would take about two and a half hours to complete?
A Yeah, around that time.
Q Would everybody be doing this in the same room?
A Yeah.
Q Would anyone be interrupting their prayer to use their cellphone?
A No.
Q Would anybody be answering their cellphone while they were doing their prayers?
A No.
Q Now, what was your understanding of the defendant's athletic ability?
A Excuse me?
Q What is your understanding of the defendant's athletic ability?
A He's a good runner.
Q How would you describe his strength?
A I just knew him as stronger than me.

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Q About how tall are you?
A Five foot seven.
Q And how tall is the defendant in relation to you?
A About three inches taller, six, five-eleven, six, around there.
Q Are you aware of any jobs the defendant ever had?
A Yeah.
MS. GUTIERREZ: Objection.
THE COURT: Overruled.
BY MR. URICK:
Q How was he employed?
A He had done telemarketing, and he had also done emergency medical technician.
Q And how long had he done that?
A I think about a couple of months. I'm not too sure how long.
Q Were you aware of how Adnan's actual, own parents felt about his, the possibility of him just socializing with females?
MS. GUTIERREZ: I'm sorry. I missed the last part of the question.
THE COURT: Please repeat your last question.
BY MR. URICK:
Q Were you aware of the defendant's parents' views of the possibility of him just merely socializing with

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females?
A Um, I didn't think they agreed.
Q So, for the defendant, it would not have been okay to be with a large group of friends that included females?
A It depends what they're -- it depends on what they were doing.
Q Say, if they got together after school.
A Not really.
Q Did there ever come a time when the defendant was the subject of a sermon at the Mosque?
MS. GUTIERREZ: Objection.
THE COURT: I'll allow the question if you can put a timeframe on it.
BY MR. URICK:
Q During the time that the defendant was dating Hae Min Lee, did there ever come a time when there was a sermon at the Mosque when the defendant was the subject of it?
A No.
MS. GUTIERREZ: Objection.
THE COURT: Overruled.
BY MR. URICK:
Q In terms of his relationship with his parents and his religion, the defendant would have had to sacrifice a lot to have had the relationship with Hae Min Lee, wouldn't

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he?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. Would the defendant have tosacrifice a lot to have the relationship with Hae Min Le?
THE WITNESS: A little. What do you mean by sarifice a lot? The most sacrificing, I think, that was pu in, I guess, was time.
BY MR. URICK:
Q What about respect from his parents?
A He hid it from them, so, I mean, if he was caght, which he was found and, you know, his parents did become aware of it, I mean that's what he sacrificed. I guss, he had the respect.
Q Well, how did you feel when you were hiding the ocasional dating you did from your parents?
A I had guilt.
Q And you never had as long or as deep a relationship as the defendant did, did you?
MS. GUTIERREZ: Objection.
THE COURT: Overruled.
THE WITNESS: It was long. It was six months, I guss.
BY MR. URICK:
Q Did you ever have a physically close relationship

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as he had?
MS. GUTIERREZ: Objection.
THE COURT: Overruled.
THE WITNESS: No.
MR. URICK: Thank you, Your Honor.
RE-CROSS EXAMINATION
BY MS. GUTIERREZ:
Q Mr. Ali, you've described that during the course of your long relationship that you felt guilty for doing it?
A Yeah.
Q And that guilt was occasioned, at least in some respect, because you knew it was against your faith?
A Yeah.
Q And that it was against your parents' desires?
A Correct.
Q And that you were hiding it, concealing it. Is that correct?
A Correct.
Q But your guilt was not enough to make you stop seeing the girl that you saw for at least six months, was it?
A Correct. I just felt bad about it. I mean, I didn't stop, no.
Q But you still saw her, didn't you?

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A Yeah.
Q You still dated her, did you not?
A Yeah.
Q On a regular basis.
A Correct.
Q You still continued to hide it from your parents?
A Correct.
Q And from other Islamic adults?
A Correct.
Q And from anyone who might bring it to your parents' attention.
A Correct.
Q It wasn't enough to stop you from doing what you decided you wanted to do.
A Correct.
Q And I assume based on your answers, Mr. Ali, that it would be fair to say that you cared about this girl?
A Yeah.
Q To some extent?
A Yeah.
Q Now, you understood from Adnan himself that his parents didn't agree with him socializing much less dating Hae Min Lee.
A Correct.
Q But that he did it anyway.

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A Correct.
Q For a long period of time.
A Correct.
Q And under any occasion where he wasn't concerned about his parents seeing it, that he didn't hide the relationship.
A Correct.
Q And that everybody else other than his parents seemed to know that the relationship existed.
A Correct.
Q And that it was a deep one.
A Correct.
Q And that it was an exclusive one.
A Correct.
Q And it was one in which both participants discussed religion and its tenets.
A Correct.
Q With each other.
A Correct.
Q And with others.
A Correct.
Q And that even though he knew his parents didn't agree, Adnan continued in this relationship.
A Correct.
Q And he did it anyway.

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A Correct.
Q And even when his parents didn't agree with him socializing with just females, that Adnan was a very popular young man.
A Correct.
Q Among Moslems and non-Moslems.
A Correct.
Q Among girls and boys.
A Correct.
Q And he continued to socialize even though he knew his parents didn't agree.
A Yes.
Q Mr. Ali, they don't give sermons at the Mosque, do they?
A No.
Q Sermons are not an Islamic term, are they?
A No.
Q There aren't priests that give sermons to the Islamic faithful who come to pray.
A No.
Q And in regard to Ramadan or any other time that the faithful come to pray, people aren't required to come at a specific time or be barred?
A Correct.
Q In fact, people because of lots of things,

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including their own work schedules or their family schedules, come in and out of the Mosque during the appropriate broad time category?
A Correct.
Q And so people would arrive even after a whole other group of people has been there and already started praying.
A Correct.
Q And that lots of times people are praying, and they join the prayers as they're going on.
A Correct.
Q And sometimes people pray themselves at their own pace.
A Correct.
Q Even though other Moslems are praying together at a different pace.
A Correct.
Q And prayer, because depending upon what prayer you do and how many repetitions you do of it, requires different postures that change throughout the prayer.
A Correct.
Q And from prayer to prayer.
A Correct.
Q And so within the Mosque -- and incidentally, there are about a thousand families that belong to this

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Mosque?
A Yes.
Q And during Ramadan, most of them attend almost on a daily basis.
A Correct.
Q To pray.
A Correct.
Q That if all of them attended, they might all be praying at a different pace.
A Correct.
Q And praying a different prayer.
A Correct.
Q And holding themselves in a different physical posture.
A Correct.
Q Because they would be at a different place in the prayers.
A Correct.
Q And none of that is frowned upon, is it?
A No.
Q If the faithful can't get there at exactly the start of the evening prayer, they are encouraged to come as soon as they can, are they not?
A Yes.
Q And if they can't be there for the whole time, or

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conduct the whole prayer, they are encouraged to come as often and for as long as they can, can they not?
A Yes.
Q And, in fact, they do, do they not?
A Yes.
Q There's nothing unusual about faithful Moslems coming in and out of the Mosque all around and near prayer time.
A Correct.
Q And for some to stay for the whole time.
A Correct.
Q And some to stay for a little bit and then leave.
A Correct.
Q And that is not seen not only during Ramadan but any other time as being disruptive to the remaining faithful?
A No.
Q The faithful encourage each other to be there however long they can.
A Yes.
Q And under whatever circumstances they can.
A Correct.
MS. GUTIERREZ: Thank you. Nothing further.
MR. URICK: Just briefly.
RE-DIRECT EXAMINATION

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BY MR. URICK:
Q Was the defendant's relationship with Hae Min Lee ever the subject of discussion, either formal or informal, within the Mosque?
MS. GUTIERREZ: Objection.
THE COURT: Overruled. Yes or no, was it the subject of discussion to your knowledge?
THE WITNESS: No.
THE COURT: Next question.
BY MR. URICK:
Q Now, what is your understanding of the penalty in a society ruled by Islamic rules --
MS. GUTIERREZ: Objection.
Q -- for premarital sex?
THE COURT: Overruled.
MS. GUTIERREZ: Judge, may we approach the bench?
THE COURT: No, you may not, and I understand and note your objection for the record.
MS. GUTIERREZ: Thank you.
THE COURT: The door to this line of questioning is open. You may ask the question again.
BY MR. URICK:
Q What is your understanding of the penalty within a country ruled by Islamic law for premarital sex?
THE COURT: Now that objection is sustained,

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because that was not your first question. Your first question was, what is the penalty within the religion. Now, the second question is, in a country. And you have not laid a foundation that this witness knows what a penalty is in a country. So, until you lay that foundation, that question is sustained.
BY MR. URICK:
Q What is your understanding of the penalty within the Islamic religion for premarital sex?
A That is not allowed.
Q What would be the penalty for it?
A We actually say that should be taken care of by God. It's not for us to discuss or, you know, chastise.
Q Have you studied countries ruled by Islamic laws?
MS. GUTIERREZ: Objection.
THE COURT: Sustained.
BY MR. URICK:
Q Had the defendant ever told you that Hae Min Lee had started dating another man?
A No.
MR. URICK: No further questions.
RE-CROSS EXAMINATION
BY MS. GUTIERREZ:
Q Was Hae Min Lee ever your concern, Mr. Ali?
A No.

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Q And when you answered the question about the penalty in the religion, would it be a fair statement to say that in Islam, in the religion, that the faithful Islamics believe that judgment is for God, between God and a faithful Moslem?
A Yes.
Q And that other Moslems have nothing to do with rendering judgment?
A Yes.
Q Or imposing any sanctions?
A Yes.
MS. GUTIERREZ: Okay. Thank you.
THE COURT: Anything further?
MS. GUTIERREZ: No, Your Honor. Thank you.
MR. URICK: No. Thank you, Your Honor.
THE COURT: May this witness be excused from the State?
MR. URICK: Yes.
THE COURT: And excused from the defense?
MS. GUTIERREZ: Yes.
THE COURT: May this witness be released from subpoenaes?
MS. GUTIERREZ: Yes.
THE COURT: At this time, I must advise you that you may not discuss your testimony with anyone who has yet

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to testify in this case, who may be a witness, but you are released from the summons at this time. So, you would be free to go, but because you are a sequestered witness, you can't discuss it with anyone who has yet to testify, but you're welcome to sit in the court because they have released you from your summons. Do you understand?
THE WITNESS: Yes.
THE COURT: You are free to go at this time. Thank you very much. I know that there is an exhibit that is still on the witness table, and I'd ask counsel -- thank you very much. Please pass that forward.
I note that it is now 5:30, and we are going to recess for the day. I understand from my clerk that we have one case on the docket for tomorrow, is that correct, Mr. White?
THE CLERK: Yes, one case.
THE COURT: One case, which means that hopefully we will get started somewhere between quarter of 9:00, quarter of 10:00 and 10:00 o'clock. So, I'm going to ask you to tomorrow to go to the Jury Commissioner's office between 9:00 and 9:30 and be paid. And then I'm going to ask that you be in the jury room no later than 9:30. As soon as I'm finished my docket of one case, I will ask that you come out so we can resume this case.
And I advise you for tomorrow evening, we will

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reess between 4:30 and 5:00 o'clock. We will not work any later than 5:00 tomorrow.

I would ask that you not discuss the testimony that you've heard today, the little bit that you did hear, with anyone at home or any other testimony that you've herd the course of this trial. And anyone means amongst yourselves, or with your family or friends. I ask that you now leave your notepad face-down on your chairs. Have a safe journey home, and I will see you tomorrow.

(The jurors were excused and left the courtroom).

MS. GUTIERREZ: Mr. Urick, who are you next witnesses going to be?

THE COURT: The court would like to know how many witnesses that you now have remaining. I know you told me eight to ten.

MS. GUTIERREZ: Ten. Is that right?

MR. URICK: I believe there's at least seven.

MS. GUTIERREZ: Okay.

THE COURT: Tomorrow's scheduling. I have one case, and I expect to try to take the issue of any additional information challenges, case law, as well as to M's Watts at 10:00 o'clock. If you have something, I would like it in my office before I go on the bench, not a few minutes before, but in enough time for me to read whatever

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cases. If you want to call my office or chambers tonight, and leave a message on my answering machine so that when I come in, in the morning, I know what cases you're going to cite, I would greatly appreciate that.

Next, I would like to tell you that tomorrow I have no appointments, which means we should be able to move very well or, hopefully, very well. We will recess between 12:30 and a quarter of 1:00 to allow M's Gutierrez to go to her 1:00 o'clock meeting, resume about 2:00 o'clock, and then go until 4:30 or 5:00 o'clock. And when I say 4:30 or 5:00 o'clock because if we have a witness on the stand at 4:30 we could finish up with that witness. We won't call a new witness at that juncture. The idea being that I'd like to try and get as much done as possible.

MS. GUTIERREZ: And then we're not sitting at all on Monday?

THE COURT: We're not sitting, cannot sit on Monday. I have been placed as the Civil Chambers Judge, and I have hearings every thirty minutes on Monday. I also have a docket Monday morning of criminal matters. So, as a consequence, I will not be sitting in this case on Monday. You have Monday off. I will be sitting again on Tuesday, Wednesday and Thursday of next week, doing as I've done each day, my docket in the morning, and then trying to -- if you call my chambers on Monday, I can tell you how many

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cases.

MS. GUTIERREZ: As to what time we'll start on Tuesday?

THE COURT: So that you would know what time on Tuesday. At this point, we don't have a docket for Tuesday yet, do we?

MR. WHITE: Not yet.

THE COURT: No. So, I don't know what the docket looks like for Tuesday, but if you call my chambers on Monday, my secretary will tell you. And, you know, use your best judgment. If I have one case, you'll know that we pretty much will be able to get started by 10:00. If she tells you I have five cases, figure that the court is going to be sending a message to you, because I will call you on Monday, to tell you what time. But if you want to get a sense in the morning, what it looks, we will be able to tell that way.

Any other matters that you wish to discuss?

MS. GUTIERREZ: No, Judge. We would just ask for notice of who the next witnesses are so that we can prepare.

MR. URICK: Right now we've got Butler, Vinson and Warren lined up.

MS. GUTIERREZ: I'm sorry. Butler, Vinson --

THE REPORTER: I can't hear you.

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MS. GUTIERREZ: I'm sorry.

MR. URICK: Inez Butler. She's actually seated out in the hallway right now. Kristi [redacted]. Debbie [redacted]. And possibly depending on how those three go, we have also got Jen Pusateri, Jay wilds, Abe Aronowitz and Greg MacGilvary, although I don't believe we will get to MacGilvary tomorrow.

THE COURT: All right. MacGilvary is also one of the witnesses that's on call.

MS. MURPHY: Yes.

THE COURT: And if I'm not mistaken, what was the date that he indicated that he was --

MS. GUTIERREZ: No. MacGilvary is here. It's --

MR. URICK: He has canceled his plans.

MS. GUTIERREZ: -- Ritz that went away --

THE COURT: Ritz has gone, and he's due back --

MS. GUTIERREZ: -- and he's back on the 16th, which would be Wednesday.

THE COURT: Right. Okay.

MS. GUTIERREZ: The reason, Judge, I just have, we have two witnesses who are out of town that we have to make plane reservations for.

THE COURT: As soon as we know?

MS. GUTIERREZ: Right.

THE COURT: I think you probably will be in good

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stead to know by Tuesday.
MS. GUTIERREZ: Yeah. The only problem, as the court knows, is making plane reservations like a day before ortwo days before costs a fortune, and we're trying to sort of go against the odds to avoid thousand dollars plus plane fares. So, obviously, if we can't, we can't, but --
THE COURT: I can't -- I'm trying as best as I can to give you a gauge. I tried --
MS. GUTIERREZ: Is there anything else on the court's schedule for the rest of the week that might interfere and drag it out?
THE COURT: Next week?
MS. GUTIERREZ: It looks like to me that even though we miss Monday, that they will likely, or they should be finished by Thursday at the latest, but if I --
THE COURT: I can ask my -- unfortunately, I can't ask.
MS. GUTIERREZ: Well, maybe we can find out tomorrow.
THE COURT: I can do that tomorrow. I'll ask to see if we can get a docket at least for next week.
MS. GUTIERREZ: Right. Okay. That would help.
THE COURT: If we can get the docket for next week, that might give us an indication. And I have my calendar for next week, so I certainly can tell you what

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court mandated meetings or other matters that I have. I can tell you I didn't attend the bench meeting today. I mean, I have tried to adjust my calendar the best that I can, but I also have asked to try to be relieved of the civil chambers duty. I started trying to do that as early as the end of last week, and was told that that would not happen. You notice that my law clerk has not been here, and that is because she has been preparing for that. So, I have at least, I believe, eight matters set for that Monday in intervals of every 30 minutes. So, there is no way that I can do a jury trial. There's not even any sense to even try.
All right. Ladies and gentlemen --
MR. URICK: If I may just --
THE COURT: Yes?
MR. URICK: I know Greg MacGilvary is not available tomorrow. I have not contacted the other witnesses, so far I don't know their availability, so I really can't say for definite my schedule. However, possible witnesses tomorrow are Inez Butler, Debbie Warren, Kristi Vinson, Jay Wilds, Abe Aronowitz, Jennifer Pusateri.
THE COURT: Okay. I mean, obviously, it would be wonderful if you were able to get through all those witnesses, but at this point, well, you know, we'll see how things go. The court would let you know that I appreciate

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your flexibility. I have observed your coming back when I've asked you, and as you can see I am usually doing something. I try to give you high signs, to tell you to go get some coffee or tea or whatever, but I just want you to know that I'm doing the best I can do to move this case, and I just would appreciate your continued cooperation.
And I also want you to know that in no way should you ever feel slighted in making a motion or making argument. I appreciate your argument. I do listen to what you have to say. I take to heart any law you cite, any case law you cite, and to the extent that you can give me a heads up in advance, it is very helpful, and that's why I say that my answering machine is on in the evening. If you anticipate making an argument, and want to leave at least a heads up of the case law on the machine, it will allow me at least to look at the case, and read it in advance of being on the bench.
And with that said, this court will stand in recess until tomorrow at 9:30.
THE CLERK: All rise. This court is now in recess until 9:30 a.m. tomorrow morning.

(CONCLUSION OF PROCEEDINGS)
* * * * * * * * * *

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REPORTER'S CERTIFICATE

I, Brenda D. Trowbridge, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that I recorded the proceedings in the matter of State of Maryland v. Adnan Masud Syed, Case Numbers 199103042-46, on Thursday, February 3rd, 2000.
I further certify that the foregoing pages constitute the official transcript as transcribed under my direction in a complete and accurate manner.
In witness whereof, I have hereunto set my hand this 20th day of February, 2000.

Brenda D. Trowbridge
BRENDA D. TROWBRIDGE, OFFICIAL COURT REPORTER

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