

ADNAN SYED VS. STATE OF MARYLAND
October 25, 2012 BEFORE JUDGE MARTIN P. WELCH

ADNAN SYED	*	IN THE
Petitioner	*	CIRCUIT COURT
V.	*	FOR
STATE OF MARYLAND	*	BALTIMORE CITY,
Respondent	*	STATE OF MARYLAND
	*	199103042-046 and
	*	Post-Conviction No. 10432

* * * * *

TRANSCRIPT OF OFFICIAL PROCEEDINGS
(Post-Conviction)

BEFORE: THE HONORABLE MARTIN P. WELCH, Judge

HEARING DATE: October 25, 2012

APPEARANCES:

For the Petitioner: Justin Brown, Esquire

For the Respondent: Kathleen Murphy, Esquire

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1 P R O C E E D I N G S

2 (On the record - 11:30:20 a.m.)

3 THE COURT: Would you call the matter, please?

4 MS. MURPHY: Thank you, Your Honor. Good
5 morning. Calling State -- or I'm sorry, calling Adnan
6 Syed vs. State of Maryland, Case No. 199103042 through
7 046, Post-Conviction No. 10432. Kathleen Murphy for the
8 State.

9 THE COURT: And Mr. Brown?

10 MR. BROWN: Good morning, Your Honor. Justin
11 Brown, on behalf of Adnan Syed, who is seated to my right.

12 THE COURT: And Counsel, again, I want to thank
13 you for cooperation. I think we were last here on the
14 October 11th, in accommodating the Court's schedule. And
15 we did, that day, we did complete, at least two witnesses,
16 I believe. Is that correct?

17 MR. BROWN: That's correct, Your Honor.

18 THE COURT: And we really have the balance of
19 the day. So, we can figure out when we would like to take
20 a break for lunch but I was hoping we could get a little
21 bit done before then and so I'm as flexible as you all
22 need the Court to be.

23 MR. BROWN: Your Honor, my intention is to call
24 Mr. Syed first. And then the second witness would be
25 Margaret Meade as our expert witness. And I tentatively

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1 told her to be here around 2:00, but certainly I can shoot
2 her a text message or something to change that.

3 THE COURT: And any other witnesses after?

4 MR. BROWN: No, Your Honor.

5 THE COURT: Okay. Any, Ms. Murphy?

6 MS. MURPHY: At this point, the State is not
7 intending to call any witnesses, Your Honor.

8 THE COURT: Okay. Any idea -- well, and Mr.
9 Syed is probably your longest witness, I assume.

10 MR. BROWN: I would imagine.

11 THE COURT: Okay. Well let's sort of see where
12 we are and then we can always adjust. So, is the
13 Petitioner prepared to call its next witness then, Mr.
14 Brown?

15 MR. BROWN: Yes, Your Honor. I would like to
16 before I call Mr. Syed, I just want to address one issue
17 that came up at the last hearing. We -- I discussed, that
18 it was my understanding there was a stipulation regarding
19 a note that was found in Ms. Gutierrez's file. And Ms.
20 Murphy initially objected, that she didn't recall there
21 being a stipulation. But we have had the opportunity to
22 discuss it. And, in fact, there was an agreement that an
23 affidavit, she would not object to its admission into
24 evidence.

25 So, I would like to introduce it into evidence

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1 at that time and briefly explain to Your Honor what it is.

2 THE COURT: All right. And I missed the first
3 thing you said as to what it was. So maybe you'll --

4 MR. BROWN: Your Honor, there was a note found
5 in Ms. Gutierrez's file related to the alibi witness, Asia
6 McClane. And, essentially what the note said was, "Asia
7 McClane saw him in the library at 3:00. Asia, boyfriend
8 saw him too." That's a handwritten note.

9 And I was able to determine that that note was
10 written by a law clerk to Ms. Gutierrez named, Ali
11 Cornedor (phonetic), who's now an attorney in Washington
12 D.C. So I sent that note, along with some requests for a
13 jail visit to Mr. Cornedor, so that he could authenticate
14 them. And say that, indeed, that was his handwriting.
15 That by the best of his recollection, he visited Syed,
16 obtained that information, and that in the normal course
17 of being a law clerk, he would have relayed that
18 information to Ms. Gutierrez.

19 So, I believe we're on Defendant's Exhibit No.
20 5. And I would move that into evidence at this time, Your
21 Honor.

22 THE COURT: And, Ms. Murphy?

23 MS. MURPHY: No objection, Your Honor.

24 THE COURT: So admitted then as Defendant's
25 Exhibit No. 5.

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1 (Whereupon, Defense's
2 Exhibit No. 5 was admitted
3 into evidence.)

4 (Pause.)

5 THE COURT: And if I didn't say it then, this
6 would be admitted then as Defendant's -- or Petitioner's
7 Exhibit No. 5, I'm sorry.

8 MR. BROWN: Thank you, Your Honor. And with
9 that taken care of, I would call Adnan Syed.

10 THE COURT: If you'll take the witness stand,
11 please.

12 ADNAN SYED

13 (A witness produced on call by the Petitioner, first
14 having been duly sworn according to law, testifies as
15 follows:)

16 CLERK: I ask that you speak directly into the
17 mic. State your name for the record.

18 THE WITNESS: My name is Adnan Syed.

19 DIRECT EXAMINATION

20 BY MR. BROWN:

21 Q Good morning, Mr. Syed.

22 A Good morning.

23 Q And, again, please make sure -- if I may
24 pull that even closer to him. Well, I guess that's as
25 good as it gets. Mr. Syed, where are you currently

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1 incarcerated?

2 A North Branch Correctional Institution.

3 Q And how long have you been there?

4 A Approximately four years.

5 Q How long have you been incarcerated total,
6 for the case that we're here for today?

7 A Almost 14 years.

8 Q And what is the sentence that you're
9 currently serving?

10 A Life plus thirty.

11 Q I'd like to take you back to the winter of
12 1999, prior to your arrest, and how old were you then?

13 A Seventeen.

14 Q Who did you live with?

15 A My mother and father.

16 Q And what are their names?

17 A My mother's name is Shamim Rahman and my
18 father's name is Masud Rahman.

19 Q Were you in school at the time?

20 A Yes.

21 Q Where did you go to school?

22 A Woodlawn High School.

23 Q And is it true that you were in the Honors
24 Program there?

25 A Yes.

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1 Q At that time, did you have any criminal
2 record?

3 A No.

4 Q Ever been arrested, any juvenile offenses,
5 anything?

6 A No.

7 Q Do you recall that you were arrested on
8 February 28, 1999?

9 A Yes.

10 Q And do you remember where you were detained
11 initially?

12 A At the Baltimore City Detention Center.

13 Q Were you able to get released on bail?

14 A No.

15 Q Were you represented by an attorney at your
16 bail hearing?

17 A Yes.

18 Q Do you recall the name of that attorney?

19 A I believe it was Professor Douglas Colbert.

20 Q Okay. And did there eventually come a time
21 when you obtained a lawyer other than Professor Colbert to
22 represent you?

23 A Yes.

24 Q And who was that other lawyer?

25 A Ms. Cristina Gutierrez.

1 Q To the best of your recollection, how did
2 Cristina Gutierrez come to represent you?

3 A Well, when I was arrested, the community
4 that I was a part of, they raised money to hire an
5 attorney. So, that's how she was hired. The members of
6 the community, they hired her.

7 Q Okay. Were you personally involved in the
8 selection process?

9 A No.

10 Q Had you met with Ms. Gutierrez prior to the
11 time when she was officially retained?

12 A No.

13 Q Do you recall when you first met Ms.
14 Gutierrez?

15 A Yes.

16 Q And I assume that was prior to the trial;
17 is that correct?

18 A Yes.

19 Q Do you remember where that meeting took
20 place?

21 A In the city jail visiting room.

22 Q Okay. What was she like at that meeting?

23 A Well, I would characterize my interactions
24 with Ms. Gutierrez in the same manner that I would
25 interact with, I guess, my teachers, or my coaches, or

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1 even my doctor. In the sense that, they were very much,
2 you know, the adult. And they were in charge. And
3 whatever they said, that's what it was. You know, I
4 depended on them. I trusted on them. So, I guess, that
5 would be the best way to describe my interactions with Ms.
6 Gutierrez.

7 Q Is it fair to say that Ms. Gutierrez was
8 assertive?

9 A Yes.

10 Q Did you feel at all intimidated by her?

11 A To an extent. I guess, the best way to
12 describe it was like the relationships I just described,
13 that whatever she said, that's what it was.

14 Q Okay. And you testified before, that you -
15 - this was the first time you'd ever been arrested, right?

16 A Yes.

17 Q How much did you know about the whole
18 process of being charged with a crime?

19 A Other than what I had seen on T.V. or read
20 in the books, I didn't have any experience with it.

21 Q What, if anything, did you know about the
22 discovery process?

23 A I didn't know much of anything about it.

24 Q What, if anything, did you know about the
25 plea bargaining process?

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1 A I didn't -- until the initial hearings
2 began and through conversations with other inmates over at
3 the city jail, I didn't know anything about the plea
4 bargaining process.

5 Q Did you understand suppression issues and
6 other evidentiary issues?

7 A No.

8 Q Did you understand anything about jury
9 selection?

10 A Not in detail.

11 Q Did you know all the components of a jury
12 trial?

13 A No.

14 Q And did Ms. Gutierrez explain all of these
15 things to you?

16 A Not in any detail.

17 Q Now, I want to ask you a few questions
18 about the discovery in this case. Do you now know what I
19 mean when I use the word discovery?

20 A Yes.

21 Q Did Ms. Gutierrez explain to you the
22 State's evidence piece by piece, or at least what she
23 understood to be the State's evidence?

24 A Not in any detail.

25 Q Did she explain to you --

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1 MS. MURPHY: Your Honor, I'm going to object to
2 the leading nature of these questions.

3 THE COURT: Sustained.

4 BY MR. BROWN:

5 Q What, if anything, did Ms. Gutierrez
6 explain to you about cellular telephone evidence?

7 A She didn't really go into detail about any
8 aspects of cellular. Just, she did mention that -- when
9 she would describe the case to me, when I would ask her,
10 she would give me bits and pieces in a sense. And she
11 would tell me that, for example, they're trying to use
12 your cell phone to pinpoint where you were during the day.
13 So that was the gist of her explanations to me. They were
14 not in any great detail.

15 Q Did she attempt to explain to you what
16 other witnesses would testify to?

17 MS. MURPHY: Objection as to the leading nature
18 of the question.

19 THE COURT: Sustained.

20 BY MR. BROWN:

21 Q What, if anything, did Ms. Gutierrez tell
22 you about other witnesses and how they might testify
23 against you?

24 A She didn't go into great detail with me
25 about the total extent, I guess, of what she knew about

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1 the prosecutor's case.

2 MS. MURPHY: Objection, Your Honor. As to what
3 she knew.

4 THE COURT: Sustained as to what she knew.

5 BY MR. BROWN:

6 Q Let me ask you this, did you feel like you
7 had a good grasp of the evidence against you?

8 A Not to a great extent.

9 Q Now, you mentioned that there was at least
10 one meeting with Ms. Gutierrez. Did there ever come a
11 time when other people from her office would visit you?

12 A Yes.

13 Q And I'm going to read you a couple of names
14 and I want to ask you if you recall those people and
15 whether they visited you at all. Do you recall someone
16 named Michael Lewis?

17 A Yes.

18 Q Who is Michael Lewis?

19 A He was one of, I guess, a paralegal or a
20 law clerk or. I guess he was a lawyer who worked
21 underneath of -- I'm not even sure what the term is for
22 that.

23 Q What about Caleoby (phonetic) Farmamous
24 (phonetic)?

25 A She was in the same capacity.

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1 Q What about Rita Pazmiacous (phonetic)?

2 A She was an attorney who worked with her or.

3 Q Did you recall someone named Ali Cornedor?

4 A Yes.

5 Q And did any of these people ever visit you
6 prior to your trial?

7 A Yes.

8 Q Was there one in particular, or was it the
9 sum of them, or was it all of them? What do you recall?

10 A They would come at different intervals.
11 So, they would come individually, at different times.

12 Q And what, if anything, was your
13 understanding as to whether those people would relay
14 information to Ms. Gutierrez?

15 A I was under the impression that whatever I
16 told them, they would pass it along to her.

17 Q Okay. Now, prior, there were numerous -- I
18 want to ask you a few questions about your court
19 proceedings but not your trial, but prior to the trial.
20 Do you recall any of those proceedings?

21 A Yes.

22 Q And do you recall who represented you at
23 those proceedings?

24 A Yes.

25 Q Who was that?

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1 Q Did you ever have the opportunity to speak
2 with your lawyer about how strong the case against you
3 was?

4 A Yes.

5 Q And what, if anything, do you recall her
6 saying?

7 A Well, I asked her and I asked some of her
8 legal people that work with her when they would come to
9 visit me. I would ask them, you know, what are the
10 elements of the State's case? You know, do you guys know
11 what they're going to present against me? Essentially,
12 what is it that I'm facing? And, they never really went
13 into great detail about it. They would just kind of ask
14 me the questions and then that was it. And to the extent
15 that I explained earlier, that that was my relationship
16 with them. I mean, specifically with Ms. Gutierrez that,
17 I trusted her. And I took it to be that, well, she
18 understood what was important, she would come and ask me
19 what it was. And I may ask her a question or not, but
20 whatever her response was, that's what it is. I mean, the
21 best way I can explain it is, is to be 17-year-old and go
22 visit your doctor. And your doctor asks you questions and
23 he tells you something, you listen to what they say. You
24 know, whatever they say, that's what it is.

25 Q But, did you feel like you understood how

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1 strong the case was against you or wasn't against you?

2 A I definitely did not have confidence that,
3 unless I was able to prove I didn't commit this crime,
4 because it seemed as if from what the State was saying at
5 these different hearings, that they were pinpointing,
6 like, an exact time and an exact place where this murder
7 took place.

8 Q Did there come a time when Ms. Gutierrez
9 sat down with you and explained your options with regards
10 to pleading guilty or going to trial?

11 A No.

12 Q Did you ever raise this issue with Ms.
13 Gutierrez?

14 A I did.

15 THE COURT: You said you didn't?

16 THE WITNESS: Oh, no, I'm sorry, Your Honor. I
17 said, I did. Yes sir, I did.

18 THE COURT: You did.

19 THE WITNESS: Yes sir, I did.

20 BY MR. BROWN:

21 Q And how did you -- you mentioned before
22 that you'd never been arrested for a crime. How did you
23 come to ask her about this issue, this issue about
24 pleading guilty or proceeding to trial? How did you come
25 to ask her about it?

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1 A Well, when I was housed in the city jail, a
2 lot of times, you know, other inmates and myself we would
3 talk about our cases. And my conversation with some older
4 guys, I would explain that, I really didn't have
5 confidence in my case. Because, I felt that, the time
6 that they said -- or excuse me, the time that it seems the
7 State's theory was that this murder took place or the time
8 that they were alleging in the bits and pieces of
9 information that Ms. Gutierrez was giving me, it seemed
10 that I couldn't prove I was somewhere else or with someone
11 else at that time. So, I felt that I was expressing I
12 didn't really have confidence in my case. And it was
13 suggested to me that, well, you should ask your attorney,
14 did the State offer a plea deal or, you know, what is the
15 possibility of that. And it was explained to me that
16 that's pretty much common practice. That in most cases,
17 the State will -- you know, a person will be offered a
18 plea deal. So that's how the conversation came up about
19 the plea deal and the idea came to me.

20 Q Okay. Do you know approximately when this
21 conversation took place?

22 A It was prior to the first trial.

23 Q And what exactly did you ask Ms. Gutierrez
24 to do?

25 A Well, I asked Ms. Gutierrez if the State

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1 offered a plea deal. She said no. My next question to
2 was to her, could she speak to the State's Attorney or
3 request some type of a plea. And I explained to her that
4 I didn't really have confidence that I'd be able to prove
5 I was somewhere else when the murder take place and when
6 the State's theory that the murder took place, from the
7 information that we were getting. So that's what I asked
8 her.

9 Q And how did she respond to your request?

10 A She responded in the affirmative. And I
11 took it to mean that, okay, she was going to ask her.

12 Q And did she ever follow-up on this?

13 A Well, my next time that I saw her, I asked
14 her, what was the end result? Did she get a chance to
15 speak to the State's Attorney? And her response was,
16 "They're not offering you a plea deal." So, when she said
17 that, that's what it was. There was nothing else for me
18 to ask her after that, because I believed that she went
19 and spoke to the State's Attorney, the State's Attorney
20 said no, and that's what it was. Whatever she said, I
21 mean, that's what it was. I didn't feel the need to
22 question her about it. I took her for her word.

23 Q Okay. And do you recall, do you recall how
24 your first trial ended?

25 A It ended in a mistrial.

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1 Q And do you recall why it ended in a
2 mistrial?

3 A Yes.

4 Q Why was that?

5 A Well, Judge Quarles had called Ms.
6 Gutierrez a liar during an exchange and Christopher Flohr
7 was sitting behind us. He made reference to Ms. Gutierrez
8 about it and Judge Quarles also stated that he received
9 the letter from the juror saying that they heard him call
10 her a liar in court.

11 Q Were you able to hear him call her a liar?

12 A I was able to hear it, yes.

13 Q What was that like to hear the judge call
14 your client -- your attorney a liar?

15 A I mean, it was -- I didn't really have a --
16 I don't even know what to say. I mean, I didn't -- it was
17 just kind of shocking to hear that.

18 Q Do you recall whether the mistrial occurred
19 before or after Jay Wilds (phonetic) testified?

20 THE COURT: I'm sorry, after who testified?

21 MR. BROWN: I said, does he recall whether the
22 mistrial occurred before or after Jay Wilds testified --

23 THE COURT: Jay Wilds.

24 MR. BROWN: -- testified in your trial, in that
25 first trial?

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1 THE WITNESS: I know that he had testified
2 extensively. I don't know if his testimony -- I can't
3 remember -- I don't recall if his testimony was complete
4 at this time.

5 BY MR. BROWN:

6 Q And is it fair to say that Jay Wilds was
7 the State's primary witness against you?

8 A I believe now that I'm able to say that the
9 answer is yes. And I was able to hear the State's entire
10 opening arguments. And specifically, at that time when
11 they pinpointed that at 2:36 p.m., I made a phone call to
12 Jay Wilds to come pick me up in the Best Buy parking lot,
13 and I showed him the body of Hae Lee in the trunk of the
14 car.

15 Q Now, after that mistrial, do you recall how
16 long it was until your second trial started?

17 A I believe it was several weeks. It wasn't
18 long at all.

19 Q And during that interim, did you have an
20 opportunity to speak to Ms. Gutierrez?

21 A Yes.

22 Q And did you, at any time, raise the issue
23 of a plea?

24 A Yes.

25 Q Can you describe to the Court what

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1 happened?

2 A Well, at this point, my fear was even
3 greater. And it was confirmed because, once again, back
4 to the original point, I felt that I needed to prove that
5 I didn't commit this crime. And I felt the best
6 opportunity to do that was to be able to prove at the time
7 they said the murder was committed, I was somewhere else
8 or with someone else. And absent of that, I didn't
9 believe that I would prevail at trial. And I had a pretty
10 good opportunity of seeing all of the State's case, so my
11 fears were confirmed earlier. And my request to her was,
12 I guess, based on an even greater fear that I wouldn't be
13 able to prevail at trial.

14 Q Can you tell me though, what did you tell
15 her with -- or what, if anything, did you tell her about
16 the pleas?

17 A Well, I expressed to Ms. Gutierrez again
18 that, I really didn't have confidence in the case because
19 now, my fears are confirmed that, that's essentially to me
20 what it came down to. The perception in my mind was, this
21 is what this case comes down to. Where was I at this
22 time. So, I asked Ms. Gutierrez once again, do you think
23 the State will offer a deal? Could you talk to them
24 again?

25 Q And, did she respond?

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1 A She responded that, they're not offering
2 you a deal.

3 Q I'm going to turn your attention to
4 somebody named, Asia McClane. Do you know Asia McClane?

5 A I went to school with her.

6 Q And how long did you know her at school?

7 A She was the girlfriend of a friend of mine,
8 who I had went to school with since middle school.

9 Q And what's that person's name?

10 A His name is Justin Adger (phonetic).

11 Q Justin Adger?

12 A Yes, sir.

13 Q Okay. Did you -- did you know her well?

14 A I only knew her through him. We had a few
15 classes together. But other than that, I only knew her
16 through him.

17 Q Were you aware of whether she had a
18 boyfriend?

19 A Well, when I knew her, she was his
20 boyfriend. I knew they had broken up. So, I did not know
21 at the time whether she had a boyfriend or not.

22 Q Okay. Were you aware of whether she was a
23 good student or not?

24 A We were in a lot -- some of the same
25 classes together. So, I believe, that she was a pretty

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1 good student.

2 Q And I believe you mentioned before that you
3 were in some type of Honors Program at the school; is that
4 correct?

5 A Yeah. It was a magnet program.

6 Q Were you aware of whether she was also in
7 that program?

8 A She was in some of the classes. So, I
9 believe she may or may not have been. But, I know we were
10 in a lot -- but we were in a few of the same classes
11 together.

12 Q And, did there come a time when she
13 contacted you following your arrest?

14 A Yes.

15 MR. BROWN: Your Honor, may I approach the
16 witness?

17 THE COURT: You may.

18 (Whereupon, Counsel approached the witness stand
19 and the following ensued:)

20 BY MR. BROWN:

21 Q I'm going to show you what's been marked as
22 Defendant's Exhibit 6. Do you recognize that document?

23 A Yes.

24 Q Can you describe for the Court what this
25 is?

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1 Exhibit No. 7?

2 A Yes.

3 Q What's Defendant's Exhibit No. 7?

4 A It's the first letter that she wrote me.
5 It's dated March 1, 1999 and I was arrested the day
6 before, February 28, 1999. So, I probably received it
7 maybe two or three days after I was arrested.

8 MR. BROWN: Your Honor, I would like to move
9 Defendant's Exhibit No. 7 into evidence.

10 THE COURT: And again, any objection, Ms.
11 Murphy?

12 MS. MURPHY: No, Your Honor.

13 THE COURT: So admitted then, as Defense Exhibit
14 No. 7.

15 (Whereupon, Defense's
16 Exhibit No. 7 was admitted
17 into evidence.)

18 BY MR. BROWN:

19 Q So, do you recall chronologically which
20 letter you received first?

21 A I received Exhibit No. 7 first. It's
22 dated, March 1, 1999.

23 Q And do you recall what impression these
24 letters had on you?

25 A Well, once I was arrested, I realized that

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1 it was very important for me to be able to recount exactly
2 what happened that day. And, when I received these
3 letters, it kind of fortified the memory that I had of
4 after school that day. School ended at 2:15, that after
5 school that day, I went to the public library. And I
6 stayed there between approximately 2:40 to 3:00, and then
7 I went to track practice. So, these letters essentially,
8 they verify in my mind what my memory was of that day.

9 Q Were you surprised to receive these
10 letters?

11 A I was surprised to received these letters.
12 And in them, she stressed several things to me. She
13 stressed number one, that she was very clear and concise
14 about remembering that day. And she was very emphatic
15 about being able to help me out. She was emphatic about,
16 she provided me with her phone number, her, I believe, her
17 mother or her grandmother's phone number. She requested
18 me to ask my attorney to contact her, so that she could
19 come forward with this information. And, I mean, she --
20 and, I guess, what surprised me in a sense was that, she
21 wrote me back to back. And she told me that she also took
22 it upon herself to visit my family and she spoke to my
23 mother. And, you know, she expressed these things to my
24 mother. So, yeah.

25 Q And all that's in those letters?

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1 A All of this contained in these letters.

2 Q If I could turn your attention to Exhibit
3 No. 6, is there a mention of someone named, Justin Adger?

4 A Oh, yes, sir. There is.

5 Q Is that the same Justin Adger who you
6 mentioned before in your testimony?

7 A Yes.

8 Q And, again, who is Justin Adger?

9 A He was a friend of mine, that I had known
10 since middle school.

11 Q And just to be absolutely clear, did those
12 letters come to you before the trial or after the trial?

13 A I received these letters within the first
14 week of being arrested. So that was way prior before the
15 trial.

16 Q And did you solicit these letters in any
17 way?

18 A Not at all.

19 Q Is what she said, in these letters about
20 January 13th true?

21 A I -- it's absolutely true. She -- one of
22 the things that really stuck out in my mind, was that she
23 stated that she spoke to the librarian who stated that
24 they had security cameras. And one of the things that she
25 mentioned was that, that's something that we should look

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1 at, trying to secure those or retrieve the security camera

2 Q Tell me, and not what these letters say,
3 but tell me what your own recollection is from that date
4 of January 13th, with regard to Asia McClane?

5 A I would say my -- well, my recollection is
6 --

7 THE COURT: And, I'm sorry, January 13th is the
8 date of the letter or?

9 MR. BROWN: Your Honor, that's the date when Ms.
10 McClane ran into Mr. Syed at the library. It's the date
11 when the murder took place.

12 THE COURT: Okay.

13 THE WITNESS: I was in the library and Asia
14 McClane, she came over and there were two other guys with
15 her. And she introduced them as her boyfriend and her
16 boyfriend's best friend. So, we sat, and we talked for a
17 little while about different things, like, college and
18 what's going on in high school. You know, things like
19 that. And, I would say the two things particularly that
20 really stuck out in my mind, and she did mention them --
21 excuse me, she did mention them -- excuse me. The one
22 thing that stuck out in mind was the fact that, there were
23 two snow days immediately after this day. And she
24 mentioned that in the letter. And, so, that would be
25 January 14th and 15th. We didn't have school those two

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1 days. And that stuck out in my mind was because, when I
2 met her boyfriend, I had put in my head that, well, when I
3 see Justin tomorrow in school, you know, I'm just going to
4 let him know, you know, I met Asia's boyfriend. He seemed
5 like a pretty nice guy. 'Cause I just felt like that was
6 something, you know, he -- you know, he may want to know.
7 But I didn't have a chance to tell him this until the
8 following Monday because we had two snow days.

9 Q Do you recall what you were doing at the
10 library at that time?

11 A I'm fairly certain that I was accessing my
12 e-mail from the library.

13 Q Okay. And why, why had you not told anyone
14 this before about the library?

15 A Well, prior to me being arrested, I had
16 absolutely no idea that I would need to -- have to recount
17 every single aspect of my day that day. I didn't know
18 that I was going to be charged with her murder. I had
19 absolutely nothing to do with her murder. So, up until
20 the day I was arrested, in my conversations with the
21 detectives or with anyone for that matter, I never went
22 into great extent or felt the need to, because I didn't
23 believe I needed to provide an alibi. I didn't know that
24 I was going to be charged with her murder.

25 Q And is it correct that, to the best of your

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1 recollection, the victim's body was not found until nearly
2 a month later, after this date, this January 13th date?

3 A I believe it was February 9th, 1999.

4 Q And is it correct that you were arrested on
5 February 28th, 1999?

6 A Yes.

7 Q And after receiving the letters from Ms.
8 McClane, did you notify Cristina Gutierrez?

9 A I immediately notified her.

10 Q How did you notify her?

11 A Well, it would have been, the next time
12 that I saw her on a visit, I showed her the two letters
13 and she read them. And I asked her, could she please do
14 two things, contact Asia McClane, and try to go to the
15 library to retrieve whatever security footage was there.

16 Q And do you recall whether this conversation
17 with Ms. Gutierrez took place prior to the start of the
18 trial?

19 A It took place very much prior to the start
20 of the first trial.

21 Q Do you -- we mentioned this name before.
22 I'm gong to run it by you again, Ali Cornedor. Do you
23 recall who he was?

24 A Yes. He was one of Ms. Gutierrez's law --
25 I don't know. He was a lawyer, I think. So, I don't know

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1 if that's called a law clerk. But he worked for her and
2 he would come talk to me about the case.

3 Q And do you recall meeting with him?

4 A Yes.

5 Q And did there come a time when you told him
6 about Asia McClane?

7 A Yes.

8 Q And, just very briefly, because we've been
9 over it. But what did you tell him about Asia McClane?

10 A Well, I told him that I remembered being in
11 the public library with her that day from right after
12 school, which is about 2:15 to around 2:40, 2:45'ish,
13 close to three.

14 Q And, again, when you spoke to him, was it
15 your understanding that that information would eventually
16 be conveyed to Ms. Gutierrez?

17 A True. And I specifically pointed out the
18 two things about this, the surveillance cameras. And I
19 also asked him if he could please, well, pass along that,
20 about the e-mail access. And I gave him my e-mail address
21 and the password.

22 Q Okay. And did Ms. Gutierrez, or anybody
23 working for her, working under her, ever get back to you
24 about Asia McClane?

25 A Subsequent to the time when I mentioned

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1 this to Ms. Gutierrez, the next visit, I immediately asked
2 her, what -- did you speak to Asia McClane? What did she
3 have to say? Were you able to secure the surveillance
4 cameras?

5 Q And how did she respond?

6 A Her response was, I looked into it and
7 nothing came of it.

8 Q Did you press her on this?

9 A When I asked her, and her response was
10 that, I asked her again, well, Ms. Gutierrez, did you go
11 speak to her? You know, did they say that -- I just began
12 in my mind to try to understand what she meant, but she
13 moved onto another subject. And I understand now, it
14 looks one way, but to be a 17-year-old kid in this type of
15 situation, whatever your lawyer tells you, that's what it
16 is.

17 Q And after you were told by Ms. Gutierrez
18 that nothing came of it, which is what you just testified
19 to. Did this -- what, if any, affect did this have about
20 how you felt about the strength of the case?

21 A Well, as I explained before about the plea
22 deal, this was what precipitated my fear, that I wouldn't
23 be able to prove where I was at this time. I didn't know
24 the exact timing at the time, but I would find out at the
25 first trial. But from the pieces and tidbits of

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1 information that was gleamed from the hearings that we had
2 and some of the things, Ms. Gutierrez, I understood that.
3 That was the most crucial time during the day, right after
4 school. People had seen me in school. People had seen
5 Hae Lee in school afterwards. People testified that they
6 saw her leaving by herself. People testified that they
7 saw me after school by myself. That this timing was the
8 most crucial time between 2:15 and come to find out later
9 2:36 p.m. It's the window of 21 minutes, that was the
10 most crucial time. If I was going to prove I didn't
11 commit this crime, that was where it was. My case lived
12 and died in those 21 minutes, that's it. There was
13 nothing else to -- you know, that's what it was.

14 So, when Ms. Gutierrez told me that I looked
15 into it and nothing came of it, I took that into mean
16 that, now I have no way to prove I was somewhere else at
17 this time. So that precipitated my fear and the
18 conversations about -- I didn't have confidence in my case
19 at all then, because that's where the case lived and died
20 at. At that time, right then and there.

21 Q Okay. And what, if any, affect did this
22 have on your willingness to take a plea?

23 A Well, at that time, particularly after the
24 first trial when I heard the -- for the most part, the
25 State's entire theory. The State's entire case was that,

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1 if I couldn't prove right then and there, or at that
2 particular time I was some place else, other than what the
3 State's theory was placing me, then I wasn't going to
4 prevail at trial. And I had come to learn that with a
5 first-degree murder conviction comes a life sentence. So
6 in my mind it was, take a life sentence or take something
7 else. It would be no difference if, like, a doctor said
8 if you have an infection in your leg, I would cut your leg
9 off of you're going to die. It was never in mind that
10 take a plea deal or go home. No, it was take a plea deal
11 and go to prison for X amount of years or don't take a
12 plea deal, and lose at trial, and spend the rest of my
13 life in prison. I had absolutely no confidence that I
14 would prevail once Ms. Gutierrez indicated to me that the
15 alibi that I provided to her, it didn't pan out. So there
16 was nothing else to do.

17 Q Okay. And you mentioned a specific time
18 and that time is 2:36.

19 A Yes.

20 Q And that's on January 13, 1999?

21 A Yes.

22 Q How did you learn that that was the time
23 when the murder supposedly took place?

24 A Well, specifically in opening statements,
25 the prosecution -- that was their theory. That at 2:36

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1 p.m., I was in a Best Buy parking lot, on the phone,
2 calling Jay Wilds. Telling him, come pick me up. You
3 know, I, I, I, I, killed Hae Lee. And so that was -- it
4 was the exact same time. And, I guess, the -- well,
5 during trial, they had a board with the cell phone records
6 on it and they indicated 2:36 p.m. That was when a call
7 was made. So that's how I knew that was the exact time.

8 Q And was there any witness testimony
9 supporting this?

10 A As far as the (inaudible), no one places me
11 with -- Jay Wilds' word is the only thing that places me,
12 at this Best Buy parking lot, at 2:36 p.m. No
13 surveillance footage showed me at 2:36 p.m. in the Best
14 Buy parking lot. There's no phone record of me making a
15 call to the cell phone from the Best Buy parking lot.
16 It's in the middle of the holiday season, 2:36 p.m., broad
17 daylight, somehow I'm able to kill Hae Lee in the car, get
18 her body to the trunk of a car, in broad daylight, in the
19 middle of the parking lot. So, as far as this information
20 right here, I think it's crucial, because that makes our
21 case right there.

22 Q And I just want to be absolutely clear, I
23 asked you was, there any testimony about this time 2:36.
24 Did Jay Wilds testify consistent with this?

25 A Oh, yes, sir.

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1 Q Okay. And once this became apparent to
2 you, did you have any further conversations with Ms.
3 Gutierrez about it?

4 A After the first trial, I specifically asked
5 her about the plea deal situation. And -- well, as I
6 stated earlier, I asked her once again about the plea deal
7 situation and her response was, "They're not offering you
8 a deal."

9 Q Okay.

10 THE COURT: I'm sorry. And the response was?

11 THE WITNESS: Her response was, "They're not
12 offering you a deal."

13 BY MR. BROWN:

14 Q And for the sake of clarity, was this a
15 conversation that took place between the mistrial and the
16 second trial?

17 A Yes, sir.

18 Q And based on your being present at the
19 second trial, was the time 2:36 consistent in the second
20 trial with what it was in the first trial?

21 A I mean, it was absolute. The cell phone
22 records were presented like an exact science. As if to
23 say, Jay Wilds said the murder was committed at this time.
24 The cell phone records prove it. So I knew that that was
25 the exact time. If I couldn't prove it at that time -- no

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1 one puts me with Jay Wilds anywhere near 2:36 p.m. No one
2 puts me anywhere near Hae Lee at 2:36 p.m. It's just his
3 word versus nothing. And that's why I felt it was so
4 crucial about her contacting Asia McClane. So when she
5 contacted -- so when she impressed upon me that she spoke
6 to her and nothing came of it, that's what led to me, just
7 completely having lack of faith in my defense. Because I
8 realized that nothing -- it didn't matter if someone came
9 to court and said, I was a good son or I went to the
10 mosque, or I was a good student, or a good athlete. None
11 of this stuff mattered.

12 Because no one came to court, not one single
13 person, you can look at the transcript, and said they
14 witnessed me threatening Hae Lee, they witnessed me
15 physically abusing her, emotionally abusing her. Hae Lee
16 -- no one testified that Hae Lee expressed to them that
17 she was afraid of me. Except for Jay Wilds, no one said
18 anything about us being anything but friends. So, none of
19 that other stuff mattered about, if I was a good son.
20 This whole case was built -- could I prove that I was
21 somewhere else when Jay Wilds said I was here. And if I
22 couldn't do that, I had no confidence in the case
23 whatsoever.

24 Q Okay. How was your relationship with Ms.
25 Gutierrez throughout the second trial?

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1 her. No one ever called her. Nothing.

2 Q Were you surprised to hear this?

3 A I was completely surprised. I was shocked.
4 And I, in turn, Rabia Chaudry, she -- well, Asia McClane
5 met Rabia Chaudry and she signed an affidavit. So, Rabia
6 Chaudry sent me a copy of it. So, this is -- I found all
7 of this information out at once. And I immediately called
8 Ms. Gutierrez from the city jail phone. And it was a
9 short conversation, because the jail phones, they only
10 last for like five or ten minutes.

11 And the first thing that I asked her was, Ms.
12 Gutierrez -- and I read through the affidavit and I
13 reminded her about the letters. And I said, Ms.
14 Gutierrez, did you speak to her? Did you talk to her?
15 Did you contact her? And she said, no. And I was very
16 upset at that point. Because I said, Ms. Gutierrez, it's
17 the exact same time. And I asked her, did she ever try to
18 go to the library to secure the video footage? And she
19 said, no. So, I became very upset with her. And I asked
20 her, was there anything we can do at this point? And she
21 said, no. We need to focus on the appeal.

22 Q Okay. I'm going to take you through this
23 step-by-step. But, did there come a time when you
24 terminated Ms. Gutierrez's representation?

25 A Well, I did -- after that conversation, I

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1 realized that I didn't trust Ms. Gutierrez. I didn't
2 believe she had my best interests at heart. And, at the
3 end of the conversation, when she was mentioning about the
4 appeal, she said that, she would need an extra, I think it
5 was forty or fifty-thousand dollars for the appeal.

6 Now, at that point, I had come to realize that,
7 between the community and my family, they had gave her
8 almost 100 -- or about \$100,000. So, in that short brief
9 conversation that we had, towards the end, I said, Ms.
10 Gutierrez, what did you do with the \$100,000? There was
11 no forensic experts. There was no psychology experts. I
12 just asked her, what did you do with the \$100,000 that you
13 need \$50,000, and the only person I asked you to contact
14 was Asia McClane? There was no, the only physical
15 evidence found on this case on Hae Lee's body was two hair
16 samples that the State's expert said didn't match me. So
17 there was no need for a forensic expert or none of that
18 other stuff. What in the world did she do with \$100,000
19 that she needed another \$50,000?

20 But, to make a long story short, I decided to
21 discharge her for two particular reasons. Number one, I
22 felt she was dishonest with me about the whole Asia
23 McClane situation. I felt that she lied to me. And then
24 I felt that she was just being dishonest about the money.

25 Q Okay. And were you successful in obtaining

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1 a new lawyer for sentencing?

2 A Yes. I was appointed a Ms. Charles Dorsey
3 -- Mr. Charles Dorsey.

4 Q And you mentioned the name of Rabia
5 Chaudry.

6 A Yes.

7 Q Correct. And she testified earlier in this
8 post-conviction, correct?

9 A Yes.

10 Q And you know that she's an attorney now?

11 A Right.

12 Q At that time, what was your relationship
13 like with Ms. Chaudry?

14 A I was close friends with her brother, Saad
15 (phonetic). I didn't really -- I only knew her as his
16 sister.

17 Q Okay.

18 A As his older sister.

19 Q And can you just provide a description of
20 how, how you came to speak to Ms. Chaudry about the topic
21 of Asia McClane?

22 A Well, subsequent to the conviction, I had
23 called Saad's mother, and I guess she was there. And so
24 we were talking about the case. And that's when I
25 broached the subject of Asia McClane. And when I

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1 expressed to her that Ms. Gutierrez intimated to me that,
2 you know, it didn't pan out. And she said, well, let me
3 check into it. So I sent her the information. And she,
4 in turn, reached out to Asia McClane and Asia McClane
5 informed her that no one had ever contacted her. And then
6 she agreed to -- she met with Rabia to get it notarized,
7 to get the affidavit notarized. And then she sent the --
8 and then Rabia Chaudry sent the information to me. And I,
9 in turn, forwarded it to Ms. Gutierrez.

10 MR. BROWN: Your Honor, could I retrieve
11 Petitioner's Exhibit No. 2?

12 THE COURT: Certainly.

13 MR. BROWN: Is the affidavit. I'll show you
14 what's already been introduced into evidence as, it says
15 Defendant's Exhibit No. 2 on that. What is that?

16 THE WITNESS: That's the affidavit that Asia
17 McClane met with Rabia and they went and signed. And then
18 Rabia Chaudry sent it to me.

19 MR. BROWN: Thank you.

20 BY MR. BROWN:

21 Q Mr. Syed, do you know what a motion for a
22 new trial is?

23 A I know now. I didn't know back then.

24 Q Are -- let me -- I'm going to show you
25 what's been marked as Exhibit 8, Petitioner's Exhibit 8.

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1 Do you recognize this exhibit?

2 A Yes.

3 Q Would you like to take a minute to review
4 it or can you describe what it is to the court?

5 A I would like to read it to myself please.
6 (Pause.)

7 BY MR. BROWN:

8 Q Okay. And is there a date on that letter?

9 A Yes, sir. March -- well, 3/30/2000.

10 Q And can you put that into perspective. How
11 long is that after your sentencing?

12 A Well, I was convicted in February of 2000.
13 And so this was, in-between my conviction date and my
14 first sentencing date.

15 Q And what is it?

16 A It's a letter that I sent to Ms. Gutierrez,
17 asking her about, could she please file something about
18 this to the court and try to mention something about Asia
19 McClane to the court before I get sentenced.

20 Q And is there a stamp on that letter?

21 A Yes.

22 Q What does the stamp say?

23 A It says, "Received, April 1, 2000."

24 Q And is that your handwriting on the letter?

25 A Yes, sir.

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1 Q Is that your signature?

2 A Yes.

3 MR. BROWN: Your Honor, I would move
4 Petitioner's Exhibit No. 8 into evidence.

5 THE COURT: Any objection to its introduction,
6 Ms. Murphy?

7 MS. MURPHY: No, Your Honor.

8 THE COURT: So admitted then as Petitioner's
9 Exhibit No. 8.

10 (Whereupon, Petitioner's
11 Exhibit No. 8 was admitted
12 into evidence.)

13 MR. BROWN: Thank you, Your Honor.

14 BY MR. BROWN:

15 Q So, can you explain in your own words
16 exactly what you were asking Ms. Gutierrez to do, by way
17 of this letter.

18 A Well, I was asking her to make it apparent
19 to the court that, Asia McClane existed and that she had -
20 - that she could provide an alibi for me, along with two
21 other people, her boyfriend and her boyfriend's friend,
22 for the exact time that the State alleged or Jay Wilds
23 testified that I committed this murder.

24 Q Okay. And do you recall how specifically
25 you asked Ms. Gutierrez to raise this issue?

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1 A Yeah. In the letter it says, Motion for a
2 New Trial. I mean, I didn't know the in's and out's of it
3 or I didn't know the technical aspects of it. But I just
4 came to understand that through talking to other inmates
5 in the city jail, that's really the only thing you can do
6 after you've been convicted, until you get to your appeal.

7 Q And do you recall whether Ms. Gutierrez
8 raised that issue in a motion for a new trial?

9 A From what I can recall, she didn't. And
10 she refused to do it. She emphasized that that's
11 something we can -- that can only be raised on appeal.
12 That is nothing that we can use right now. So, I -- I
13 mean, what can I do but just take what she said as true.

14 Q I'm going to -- I want to turn your
15 attention back to the issue of plea bargaining. Did there
16 come a time when Ms. Gutierrez explained to you what an
17 Alfred plea is?

18 A No. But I did learn about Alfred plea when
19 I wrote to the city jail library. You can (inaudible)
20 because I was a juvenile at the time, so I was housed on
21 the juvenile (inaudible). We didn't get a chance to go to
22 the library. So, I wrote to the city jail library and
23 asked them about Alfred plea because it was recommended to
24 me by another inmate. And I received the information from
25 the librarian that, essentially, the Alfred plea was a

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1 plea that you take when you acknowledge that you can't --
2 a person is afraid to win a trial -- excuse me, a person
3 is afraid they're not going to win a trial. So, they
4 would plead guilty to the charge in exchange for a lesser
5 sentence than would be imposed if a person went to trial.
6 That was my understanding of it.

7 Q Okay. And if you had been offered a
8 reasonable plea, would you have accepted it?

9 A I mean, I absolutely would have, once I
10 realized that there was no way I could prove that I was
11 somewhere else, when the State's theory placed me -- or
12 excuse me, the State argued that I was committing this
13 murder and Jay Wilds testified to that. So, in my mind,
14 it wasn't a choice of taking a plea deal or going home.
15 It was a choice of taking a plea deal for X amount of
16 years or going to prison for the rest of my life.

17 Q And I just use the word reasonable to
18 describe a plea deal. What does that mean to you?

19 A I mean, well, it was explained to me, as I
20 said, you know, when you're a young guy coming through the
21 jail, a lot of older guys would tend to try to educate you
22 to things and share advice about different things. And
23 from what I gathered, it would be something like 20 or 30
24 years and I would do half the time. And -- once again,
25 this is what the impression was in my mind, at what was

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1 being told to me by other guys in the jail. And I was 17
2 at the time. So that would play a strong factor, because
3 I was young. I didn't have a criminal record. So, I
4 mean, I did have some understanding of it. And
5 essentially, that's what led me to -- I mean, I could say
6 the chronology of the events was, get little bits and
7 pieces of it, of what the State's theory was. After I
8 received the letter from Asia McClane, gave the letter to
9 Ms. Gutierrez. Ms. Gutierrez told me, she looked into it,
10 nothing came of it. And then afterwards, I felt that
11 there was no chance for me to prevail at trial. Because
12 at the end of the day that's -- in my mind, that's what
13 was the most important part. What happened between 2:15
14 and 2:36 p.m.? If I couldn't prove that, nothing else
15 mattered.

16 Q Okay. Would you -- you mentioned a plea
17 of, I think you said, 20 to 25 years.

18 A I mean, I was understanding that something
19 like 20 or 30 years.

20 Q Would you have accepted a longer plea?

21 A As I stated before that to me, it wasn't a
22 case of me taking a plea deal or beating it at trial, or
23 going home. It was a case of me going to prison for X
24 amount of years versus me going to prison for the rest of
25 my life.

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1 Q Mr. Syed, are you aware of whether there
2 was a Motion for a Modification of Sentence filed in your
3 case?

4 A At the time I was not. Well, once I
5 discharged Ms. Gutierrez, Mr. Dorsey was appointed to me.
6 And I did broach the subject of, you know, this Asia
7 McClane situation. And he, in turn, also said, well, we
8 just got to focus on the sentencing. So, I said okay.
9 And I didn't know at the time that -- well, I didn't
10 understand that the whole concept of filing a motion for
11 reconsideration of sentence and I didn't find out until
12 actually probably 2006 that it was filed and denied. I
13 think, within like 30 days. So, I believe, that Judge
14 Heard, on the docket entries, it says, "Read, considered,
15 and denied." Within, like, a few weeks of my sentencing.

16 Q And, I'm sorry, who was the judge that --

17 A Judge Wanda Heard.

18 Q And was Judge Heard also your trial judge?

19 A Yes, sir.

20 Q So, are you aware of whether Mr. Dorsey
21 asked Judge Heard to hold that motion for modification sub
22 curia?

23 A At the time, I had no knowledge of it. But
24 now, I do have an understanding that he did not ask for it
25 to be held in advance or sub curia. And, probably in 2000

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1 -- a couple of years ago when I found out about this, I
2 couldn't figure out how someone could be sentenced to life
3 in prison, and if you file for a modification request, you
4 don't ask for it to be held. Because the modification is
5 intended to demonstrate to the sentencing court, that the
6 defendant has changed or that he's earned an opportunity
7 to get a lesser sentence. And it just didn't make sense
8 that if I just received a life sentence plus 30 years,
9 what could I possibly show the judge within the 30 or 60
10 day time limit that I deserved a sentence reduction. It
11 didn't make any sense to me. Had I known at the time, I
12 absolutely would have asked him to -- for it to be held
13 sub curia or in advance. Because realistically, what
14 could I do in 30 to 60 days to demonstrate to the
15 sentencing judge that I deserve a sentencing cut.

16 Q And, again, your motion for modification
17 sentence was denied in approximately what year?

18 A I mean, it was denied -- I believe 30 days
19 after my sentence.

20 Q So that would have been the year 2000?

21 A The year 2000. Yes, sir.

22 Q Okay. Since that time, since the year of
23 2000, have you gotten into any trouble while you've been
24 locked up?

25 A No, sir. I've maintained a very clean

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1 adjustment record. And I participated in all the programs
2 that are offered. I have certificates which you got right
3 there. I have recommendations. Throughout my
4 incarceration, I worked in the Chaplain's Office. I
5 participated in a lot of programs and a lot of fundraising
6 programs, and a lot of (inaudible) programs. I mean, I
7 have certificates for them. I just always try to -- yeah.

8 MR. BROWN: I'm going to -- Your Honor, I'm
9 going to show the Defendant or the Petitioner what's been
10 marked as -- it's actually a series of exhibits --

11 THE COURT: They're all of the same nature?

12 MR. BROWN: Correct. There are numbered 9A --

13 THE COURT: That's fine. I was going to suggest
14 that.

15 MR. BROWN: -- through 9L, as in Larry.

16 BY MR. BROWN:

17 Q Mr. Syed, could you take a look at these
18 exhibits and very briefly just go through them and very
19 briefly explain to the court what they are. In fact, I'll
20 put the page -- starting with Exhibit 9A.

21 A Well, it's -- it -- I guess all of them are
22 specifically, they are certificates awarded to me by the
23 voluntary activities coordinator, Sgt. Lynn. Then there
24 was a Sgt. Porte (phonetic). There's the Warden's Office.
25 The Warden himself, I mean, they're basically certificates

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1 that people achieve when they stay three years infraction
2 free, four years, five years, six years, seven years, when
3 you participate in different programs. Essentially, I
4 mean, I did all this and tried to stay positive because I
5 believe one day I'd be able to go back to court and
6 demonstrate that -- I'd either earned opportunity to get a
7 sentence cut or to get paroled or whatever. Or if I would
8 get a chance like today, to plead my innocence to the
9 court.

10 Q So, I just -- I'm flipping through these
11 here. I'm on 9I, 9J, 9K. Have you had a chance to -- and
12 I'm sorry, and 9L. Have you had a chance to see all of
13 these exhibits, 9A through 9L?

14 A Yes, sir.

15 Q And do you recognize them to be
16 authenticate, copies of actual certificates you received?

17 A I mean, absolutely. A person -- you could
18 contact the case manager at the prison. That's who I got
19 these from. They're in my base file. So he's the one who
20 gave me the copies of them.

21 MR. BROWN: Your Honor, I move for the
22 introduction into evidence of Defendant -- or Petitioner's
23 Exhibits 9A through 9L.

24 THE COURT: Any objection, Ms. Murphy?

25 MS. MURPHY: No, Your Honor.

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1 THE COURT: The Court will admit into evidence
2 then Petitioner's Exhibits 9A through L.

3 MR. BROWN: Thank you, Your Honor.

4 (Whereupon, Petitioner's
5 Exhibit Nos. 9A-L was
6 admitted into evidence.)

7 BY MR. BROWN:

8 Q If this Court were to modify your sentence
9 and even if it were a minimal modification. For example,
10 if your sentence had been reduced from life, plus 30, down
11 to life. What affect would that have --

12 MS. MURPHY: Objection as to relevance, Your
13 Honor.

14 MR. BROWN: Well, Your Honor, we have raised an
15 issue based on the Motion for Modification of Sentence and
16 --

17 THE COURT: Well, I guess the question is, would
18 I -- even if the Court --

19 MR. BROWN: I'm sorry, I guess --

20 THE COURT: -- even if the Court granted that
21 relief, I would not be the judge to -- would consider the
22 motion, correct?

23 MR. BROWN: I'm sorry, Your Honor?

24 THE COURT: Even if, or if, were the Court to
25 grant the relief requesting a form of, I guess, a revised

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1 Motion for Modification of Sentence, I wouldn't be the
2 judge.

3 MR. BROWN: I guess what I should have asked,
4 Your Honor, if you can give me a chance again.

5 BY MR. BROWN:

6 Q If the initial judge who denied your motion
7 for modification, if she had even reduced your sentence
8 from life plus thirty, down to life, would that have had
9 an impact on your incarceration?

10 MS. MURPHY: Objection as to relevance, Your
11 Honor.

12 MR. BROWN: Your Honor, it goes directly to
13 prejudice.

14 THE COURT: I'll overrule the objection.

15 THE WITNESS: Well, it would have a tremendous
16 affect. Because as it stands right now, I'm housed in a
17 maximum security prison and I've completed all of the
18 programs that are available. And I'm ineligible to go to
19 medium, not because of my record, but because of my
20 sentence. So if it was to be a situation, and it does
21 happen a lot, where sentencing judges will look at the
22 person's record and say, well, I'll take away the plus,
23 but I'll leave you with the life. And that makes you
24 eligible to transfer to medium where you'll be afforded
25 the opportunity to participate in more programs and things

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1 of that nature. So, it would further the programs that I
2 could participate and the opportunities that I would have
3 while I'm incarcerated. So, it would have a tremendous
4 affect. And it wouldn't even have to be such a drastic
5 reduction either.

6 MR. BROWN: Your Honor, I have no further
7 questions at this time.

8 THE COURT: And, Ms. Murphy, it's about 12:30
9 now. Do you want to keep going or?

10 MS. MURPHY: Um --

11 THE COURT: Because I'm almost inclined to --

12 MS. MURPHY: Are you inclined to take a break
13 now?

14 THE COURT: No, I'm thinking.

15 MS. MURPHY: That's fine, Your Honor. I don't
16 expect to be lengthy but I can certainly do it after the
17 break.

18 THE COURT: Okay. Let me just check. Sheriff
19 and Madam Clerk, are you two okay?

20 CLERK: How long is she thinking?

21 THE COURT: Hmm?

22 CLERK: How long is she thinking?

23 THE COURT: (Inaudible.)

24 (Open court:)

25 THE COURT: Ms. Murphy, why don't we go ahead

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1 and try and let's sort of see where we are.

2 MS. MURPHY: Okay. Thank you, Your Honor.

3 THE COURT: And, as much time as you need. But
4 let's -- it's productive time.

5 CROSS-EXAMINATION

6 BY MS. MURPHY:

7 Q . Mr. Syed, you've always maintained your
8 innocence, correct?

9 A Yes, ma'am.

10 Q And that's what you conveyed to Ms.
11 Gutierrez, that you were innocent?

12 A I conveyed to Ms. Gutierrez that I was
13 innocent, but I did not have confidence in prevailing at
14 trial.

15 Q I'm just asking you, that's what you
16 conveyed to Ms. Gutierrez, that you were innocent,
17 correct?

18 A Yes, ma'am. Along with the fact that I
19 didn't have confidence --

20 Q I'm just asking that one question. Thank
21 you. Now, you were actually called by the police the
22 night of January 13th, correct?

23 A I believe it was Officer Agcot (phonetic),
24 who called my cell phone and he testified that we had
25 about a three, four minute conversation.

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1 Q Right. So you knew, you were one of the
2 first to know essentially that, Hae Min Lee was missing,
3 correct?

4 A Yes, ma'am.

5 Q So that day would be significant to you,
6 correct?

7 A Well, as far as -- I didn't know that she
8 was missing. The only thing that he mentioned to me was
9 that, her family was -- she didn't -- I believe, she
10 didn't go pick up her cousin from school. So, as far as
11 saying that I knew that she was missing, I didn't know
12 that she was missing.

13 Q Okay. You and Hae Min Lee had been very
14 close that year, correct?

15 A We had been close for the four years that
16 we knew each other.

17 Q And that year in particular, you had been
18 very close, correct?

19 A We had dated for about six months.

20 Q And that included a sexual relationship,
21 correct?

22 A Yes, ma'am.

23 Q You spoke on the phone often, correct?

24 A Yes, ma'am.

25 Q You didn't call Hae Min Lee on the 13th,

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1 did you?

2 A Well, I would have seen her in school that
3 day. So, if we were both in school, I wouldn't have
4 called her.

5 Q You didn't call her after Officer Agcot
6 called you, did you?

7 A Did I call her?

8 Q Yes.

9 A Did I call her house? She didn't have a
10 phone or anything?

11 Q Did you call her house after Officer Agcot
12 called you?

13 A I did speak to several of her friends.
14 From what I understood from the conversation, he was at
15 her house saying that, asking me, had I seen her that day
16 --

17 Q I'm just asking you, did you call her
18 house?

19 A He called me from her house.

20 Q Did you call Hae Min Lee's house after you
21 spoke to Officer Agcot?

22 A When he called me from her house. I don't
23 understand, why would I call her house back if he's at her
24 house calling me, asking, you know, did I see her that day
25 or anything like that.

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1 Q So, I take it from your answer, that you
2 did not call Hae Min Lee's house after Officer Agcot spoke
3 to you on January 13th, correct?

4 A He called me from Hae Min Lee's house.

5 Q All right. So you spoke to Officer Agcot
6 on the 13th?

7 A Yes, ma'am.

8 Q You also were interviewed by detectives in
9 the days and weeks following, correct?

10 A I believe it was a Det. O'Shea, on the
11 25th.

12 Q From Baltimore County, right?

13 A Yes, ma'am.

14 Q Less than a week later?

15 A It was on the -- yes, ma'am.

16 Q And Det. O'Shea asked you where you were on
17 the 13th, right?

18 A I believe that he asked me if I had seen
19 Hae Lee that day.

20 Q You told Det. O'Shea you had been at school
21 that day and had gone to track practice, correct?

22 A Yes, ma'am.

23 Q And that was in response to his questions,
24 I presume, correct?

25 A Yes, ma'am.

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1 Q Thank you. There also came a time that
2 police did a search warrant at your house, right?

3 A I know that from trial.

4 MS. MURPHY: Court's indulgence one moment,
5 please.

6 (Pause.)

7 MS. MURPHY: No further questions, Your Honor.

8 THE COURT: Any redirect, Mr. Brown?

9 MR. BROWN: I just have a very brief question.

10 REDIRECT EXAMINATION

11 BY MR. BROWN:

12 Q Ms. Murphy asked whether you called Hae
13 Lee's house on the 13th. Were you dating her at that
14 time?

15 A No, sir.

16 Q Were you aware of whether she had another
17 boyfriend at that time?

18 A Well, yes, sir.

19 MR. BROWN: No further questions.

20 THE COURT: I'm sorry. The answer was, yes sir?

21 THE WITNESS: Yes, sir. That I was aware that
22 she had another boyfriend at the time.

23 MR. BROWN: No further questions, Your Honor.

24 THE COURT: Any limited recross, Ms. Murphy?

25 MS. MURPHY: No, Your Honor.

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1 THE COURT: All right. You may step down then,
2 Mr. Syed.

3 (Witness was excused.)

4 THE COURT: And, your next witness then?

5 MR. BROWN: It would be Ms. Meade. And if --
6 Your Honor, if you could advise me as to what time I
7 should tell her to be here.

8 THE COURT: And this will be your last witness?

9 MR. BROWN: Correct.

10 THE COURT: You want to err on the side of
11 caution and maybe say 2:30?

12 MR. BROWN: 2:30, okay.

13 THE COURT: So, the Court will take its luncheon
14 recess. We'll reconvene at 2:30.

15 (Whereupon, a luncheon recess was taken at
16 12:43:42 p.m., and the proceeding resumed at 2:44:55 p.m.,
17 as follows:)

18 A F T E R N O O N S E S S I O N

19 THE COURT: And, Ms. Murphy, would you be so
20 kind to recall the matter then, please.

21 MS. MURPHY: Thank you, Your Honor. Recalling
22 Adnan Syed vs. State of Maryland, Case No. 199103042
23 through 046, Post-Conviction Petition No. 10432. Kathleen
24 Murphy for the State.

25 THE COURT: And, Mr. Brown?

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1 MR. BROWN: Good afternoon, Your Honor. Justin
2 Brown on behalf of Adnan Syed, who's seated to my right.

3 THE COURT: And I believe when we broke, we were
4 continuing with the Petitioner's case. And is the
5 Petitioner prepared to call its next witness, Mr. Brown?

6 MR. BROWN: Yes, Your Honor. Very briefly, I'd
7 like to introduce another exhibit, which I believe is
8 self-authenticating. It's a court --

9 THE COURT: Is it 10? Would be 10?

10 MR. BROWN: Number 10. It's a portion of the
11 transcript. And, specifically, it's the portion in which
12 the State, in closing arguments, specifies the time range
13 when the murder took place. So, I would offer Defendants
14 Exhibit No. 10 into evidence.

15 THE COURT: And so, it's trial transcript pages,
16 page numbers?

17 MR. BROWN: The date is February 25, 2000, pages
18 65 and 66.

19 THE COURT: And any objection, Ms. Murphy?

20 MS. MURPHY: No, Your Honor.

21 THE COURT: So admitted then as Petitioner's
22 Exhibit No. 10.

23 MR. BROWN: May I approach?

24 THE COURT: You may.

25 (Whereupon, Petitioner's

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1 Exhibit No. 10 was admitted
2 into evidence.)

3 MR. BROWN: And, Your Honor, at this time, the
4 Petitioner calls Margaret Meade.

5 THE COURT: Ms. Meade.

6 MARGARET MEADE

7 (A witness produced on call by the Petitioner, first
8 having been duly sworn according to law, testifies as
9 follows:)

10 CLERK: Please state your name and address for
11 the record.

12 THE WITNESS: Margaret A. Meade, 1 North Charles
13 Suite 2470, Baltimore, Maryland, 21202.

14 THE COURT: Thank you, Ms. Meade. And, Mr.
15 Brown.

16 MR. BROWN: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. BROWN:

19 Q Good afternoon, Ms. Meade.

20 A Good afternoon.

21 Q Where did you go to law school?

22 A University of Baltimore.

23 Q And did you work as a law clerk after law
24 school?

25 A I worked as a law clerk during law school

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1 for the Honorable Judge John N. Prevas, worked in the
2 Attorney General's Office. And then when I -- and worked
3 at two small criminal defense firms, Walker -- excuse me,
4 Crew, Curlin (phonetic), Rosenberg (phonetic) during and
5 Dominic Donnelly (phonetic) during law school. And then I
6 went to, upon graduation, I clerked on the Court of
7 Special Appeals for Judge Wenner. Excuse me, prior to
8 that, I went back to clerk with Judge John Prevas. And
9 then I went to clerk on the Court of Special Appeals for a
10 year, for Judge Wenner and Frederick. And then I went to
11 work at the law firm, at that time the name was Walker and
12 Van Bavel.

13 Q And what year were you admitted to the
14 Maryland Bar?

15 A I was sworn in in June of 1990.

16 Q Are you admitted into any other Bar's?

17 A Yes. The United States District Court, the
18 Fourth Circuit, and the United States Supreme Court.

19 Q Okay. And since you were admitted into the
20 Maryland Bar, have you been practicing law ever since?

21 A Yes.

22 Q And how much of that, approximately, what
23 percentage has been criminal law, criminal defense?

24 A Eighty-five percent, 90 percent.

25 Q And, again, could you -- could you tell me

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1 the name again of the firm, where you first started your--

2 A As an associate, I first went to work for
3 Walker and Van Bavel. And that was in July of 1991. And
4 then it became Walker, Van Bavel, Amaral and Meade. And
5 then after eight years there, I left and formed a
6 partnership with Catherine Flynn. We had done a complex
7 death penalty case. Well, it was three death penalty
8 cases, three separate incidences -- excuse me. Correct
9 that. It was two death penalty and a regular trial of
10 assault and false imprisonment, same client. And we got
11 along well, had similar values. And so we formed a
12 partnership in June of 1999.

13 Q Okay. And, do you still have a firm today?

14 A Yes.

15 Q What's that firm called?

16 A It's now Meade, Flynn and Gray.

17 Q And in your career as a defense attorney,
18 have you ever represented a defendant charged with murder?

19 A Yes.

20 Q Have you ever represented a defendant
21 charged with attempted murder?

22 A Yes.

23 Q Approximately how many times have you
24 represented someone charged with murder?

25 A I probably have, probably 10, 12 murders a

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1 year, attempt murder. Some years it can be as much as 20.
2 But, it's -- I would say alot of what I do in our office
3 are either the sex offenses or attempted murders, murders.
4 I seem to have a lot of those.

5 Q And are you able to tell what percentage of
6 those have been in Baltimore City?

7 A The vast majority, intentionally, the vast
8 majority of my 22 years has been either in Baltimore City
9 or Baltimore County. Because I think it's important to,
10 sort of, know the system. It's a better way of
11 representing an individual. So, best guess, 75 -- 65, 75
12 percent of homicide cases have been in Baltimore City.

13 Q Do you hold any leadership positions in the
14 Baltimore legal community?

15 A I'm the co-chair of the Criminal Law
16 Committee for the Bar Association for three years. I'm
17 the Attorney Grievance Commission Peer Review. On the
18 character committee, the Maryland Bar Law Examiner's
19 Character Committee. And I've been doing that now for six
20 years, maybe seven years.

21 Q Do you have any experience teaching, either
22 young attorneys or in law school?

23 A Well, I've been involved in the mentor
24 program and the law (inaudible) program, but I've also
25 done three -- two primary teaching courses, Fourth

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1 Amendment type courses with Judge Gordy and then with
2 Judge Kathleen Cox to judicial institute. And, so, in
3 that capacity. And I volunteer at the University of
4 Baltimore for the moot court competitions, that sort of
5 thing.

6 Q Okay.

7 MR. BROWN: Your Honor, I'm not sure if the
8 State wishes to voir dire --

9 THE COURT: Well, why don't you make your motion
10 first.

11 MR. BROWN: Okay. Your Honor, I would move to
12 have Ms. Meade admitted as a criminal -- as an expert in
13 the practice of criminal defense in Baltimore City murder
14 cases.

15 THE COURT: An expert in the field of -- in the
16 practice of criminal defense in Baltimore City?

17 MR. BROWN: Of murder cases in Baltimore City.
18 Yes, Your Honor.

19 THE COURT: Any voir dire, Ms. Murphy?

20 MS. MURPHY: No, Your Honor. I'll --

21 THE COURT: Any objection?

22 MS. MURPHY: I won't object to Ms. Meade's
23 expertise in that area. I'll just note my continued
24 objection to the relevance of her testimony.

25 THE COURT: Your objection is duly noted.

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1 MS. MURPHY: Thank you, Your Honor.

2 THE COURT: But the Court finds that Ms. Meade
3 is, in fact, an expert in the practice of criminal defense
4 of murder cases, in the Circuit Court for Baltimore City.

5 BY MR. BROWN:

6 Q Ms. Meade, I'd like to go through some of
7 the materials that you've reviewed for this case. I'll
8 just name the document, you tell me if you've reviewed it?
9 Have you read the post-conviction petition?

10 A Yes.

11 Q Have you read the supplement to the post-
12 conviction petition?

13 A Yes.

14 Q Have you reviewed the exhibits that are
15 associated with the petition and the supplement?

16 A Well, the exhibits that were provided to
17 me, yes.

18 Q Are you familiar with the judges who have
19 been involved in this case? That being Judge Heard and
20 Judge Quarles?

21 A Yes. Very familiar.

22 Q Are you familiar with the prosecutors who
23 have been involved in this case, that being, Kevin Urick
24 and Kathleen Murphy?

25 A Yes.

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1 Q And are you familiar with Cristina
2 Gutierrez?

3 A Yes.

4 Q Now, the way that you practice law and the
5 way that you defend murder cases, is that in conformity,
6 to the best of your knowledge, of the prevailing norms of
7 practice?

8 A What I do? Yes. I think it is. I mean, I
9 have a good reputation about it. But, yes, I think it's
10 the norm.

11 Q Okay. I'd like to turn your attention to
12 general case preparation, how you approach a case. And,
13 in particular, a murder case. And what, if any,
14 significance do you attach to having a young client who's
15 charged with such a serious offense, such as, a 17-year-
16 old?

17 A The issue with a juvenile or somebody young
18 or inexperienced in the criminal justice system is that
19 you do have to spend a significant amount of time
20 explaining the process. And, I do it to everybody but
21 it's -- you know, people don't understand the process of
22 preliminary hearing versus an indictment. And, for
23 example, I describe it as, it's two different ways to
24 drive to your house. The State can do this or the State
25 can do that. And lots of times people are, well, why

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1 can't I have a preliminary hearing? Well, the State's the
2 driver. So, I think particularly with young individuals
3 and they have minimal or no experience in the criminal
4 justice system, they need a lot of hand-holding. And
5 sometimes I find that the family may need it more. But,
6 it is extremely important, in any kind of case, but
7 particularly murders and attempted murders because the
8 consequences are so high. That your client, one's client,
9 my client, has a deep understanding of the judicial
10 process.

11 Q Okay. And what, how much, if at all, would
12 you be concerned with the culture in which your client was
13 raised? Is that a factor in how you would approach the
14 case?

15 A Well, I have a very, 10-page form that I
16 fill out. Everything from the names of your parents, your
17 children, do you have church, background, how far you got
18 in school. It's important in any case to really have an
19 understanding about your client's educational background,
20 cultural background. Because the way they do things, for
21 example, I'm representing somebody who's Korean. So,
22 explaining things and making sure that they understand,
23 not only the process, but the culture that someone grows
24 up in, does have an impact on how you defend them, what
25 mitigating factors can come up. So it is -- the totality

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1 of the person is important.

2 Q Okay. And before you testified about the
3 importance of educating your client on various issues,
4 without going into a whole lot of detail. What basically
5 do you tell them about a jury trial and their right to
6 have a jury trial?

7 A Well, I always with my clients start with
8 the preliminary hearing. And this is a conversation that
9 I have repeatedly. And I often make my clients repeat it
10 back to me. So I know that when we show up at 11:00, in
11 Part 45, and no court's available, they understand that
12 it's not me holding it up, or the judge, or the prosecutor
13 has some hidden agenda to drag out their case. That they
14 understand how the court system as a whole works. So, I
15 always start out with preliminary hearing or the
16 indictment. And a lot of times people think the
17 indictment means, they've basically been found guilty.
18 Well, it's not. You know, I use the example, you can get
19 a ham sandwich indicted for murder. And so, explaining
20 the arraignment and what you have to do at the
21 arraignment. And why, for example, I just explained this
22 the other day. Why, at the arraignment, the indictment is
23 read out, in Baltimore City. It's not done in other
24 jurisdictions, is read completely, and so.

25 Q And specifically, again, for someone

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1 charged with murder, what would you tell them about the
2 prospect of a jury trial, in general?

3 A Well, a jury's a gamble. You know, and
4 with all due respect to this Court. You know, when I'm
5 explaining, you can have a court trial -- there are three
6 things, four things that can happen that I explain.
7 First, the State could dismiss the case. Second, you
8 could enter into a plea. Third, you can have a court
9 trial. Fourth, you can have a jury trial. And when I go
10 through that process, you know, I'll have clients say,
11 well, tell them I'll take a stet. Well, that is not an
12 option here. So, when we get past the part that the State
13 is going to dismiss the case or that circumstance, then it
14 becomes a discussion on plea negotiations as well as jury
15 trial and court trial.

16 And I'll say, sometimes a court trial is a long
17 guilty plea. So, you have to have legal issues or there's
18 certain rare circumstances that you do a court trial. And
19 like I did one a couple of months ago in front of Judge
20 Williams, because it was clear that there was some very
21 clear -- I didn't mean to say clear twice. But it's --
22 there were legal issues that it was inappropriate to try
23 the case in front of a jury. So, in explaining the guilty
24 plea process, the court trial process, and the jury trial
25 process, I often say, you never know what a jury is going

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1 to do. And if you want justice, go to church. If you
2 want to roll the dice, 'cause we don't know with 12
3 people.

4 Q Can you tell the court a little bit about
5 the discovery process? In a murder case, how do you as
6 the attorney, obtain discovery related to the case?

7 A Well, you file motions. And the State is
8 obligated to produce certain evidence, mitigating Brady
9 material under 4-263, the Rule 4-263. And then once you
10 get the discovery and you start evaluating it, it's an
11 ongoing process. Are there loopholes? Like, I'm involved
12 in a case where there were some text messages. So, it's
13 going back and some are missing. And so you have to have
14 an open communication with the prosecutor to make sure
15 you're getting all of the discovery.

16 Q And do you share that discovery with your
17 client?

18 A Absolutely.

19 Q How do you do that?

20 A There was a time that people would just
21 Xerox it and mail it to the jail. And not that I don't
22 want my client to have the discovery but I don't want
23 anybody else to have the discovery. 'Cause I do -- early
24 in my career, somebody else, and it was in Baltimore
25 County, got the discovery from my client. And then was

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1 able to fashion some level of cooperation with the State.
2 Ultimately, that was discovered. So, I have found
3 particularly in Baltimore City, they move inmates between
4 the JI building, or Central Booking, or the city jail, and
5 it's hard for them to have this legal packet following
6 them. So, I take -- I go and see them. As I'm getting
7 discovery, I review it with them. I usually do a summary
8 that I give to them. And then there are certain
9 statements or certain things, I will give them a copy of.
10 Again, depending on, if there's been any kind of agreement
11 with the State not to disclose certain information. So,
12 it -- I mean, it's my client's case. This is not about
13 me, it's about my client. I work for my client. So, they
14 need to know what's going on. The good, the bad, and the
15 ugly.

16 Q And is this a discretionary thing on your
17 part or is it something that you believe, or that in your
18 opinion, a defense attorney has a duty to?

19 A The defense attorney has to do -- I mean,
20 it's a must. How can you ever think to defend somebody if
21 they don't know what the information is against them. I
22 mean, they may be able to explain something or provide you
23 with information about somebody's statement or a
24 circumstance that you don't know. I mean, you don't get
25 everything about a case necessarily in discovery. There

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1 are two sides.

2 Q Okay. I'd like to ask you some questions
3 about plea bargaining. Why in a criminal case, and in
4 particular in a murder case, why is plea bargaining
5 important?

6 A Plea bargaining or plea negotiations are
7 crucial in any case. Again, because going in front of 12
8 people that you don't know. You don't know who they're
9 going to be. I mean, that jury panel can come in and you
10 are fine with almost everybody in it. That jury panel can
11 come in and you're thinking, did all these people just get
12 brought in from Carroll County. No disrespect to Carroll
13 County, but, you know, there's geographical differences.
14 So, you don't know what 12 people you're going to get.
15 And the consequence can be so devastating. You know, if
16 you don't have a discussion about resolving a case, you
17 not only put your client at very, serious high risk or
18 very lengthy, or harsh punishment. But it's not good for
19 the system. It's not good for witnesses. You know, a
20 plea is -- although some people don't like pleas, but a
21 plea is one of the best ways to resolve a case, in
22 reality.

23 Q In your opinion, what, if any, duty does
24 the defense have, defense attorney have with respect to
25 plea negotiations?

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1 A I believe that an attorney, a defense
2 attorney, has an affirmative duty to engage or at least
3 speak about plea negotiations.

4 Q Okay. And looking at that from the flip-
5 side, what, if any, duty is there for the attorney to keep
6 their client in the loop about any such discussions?

7 A I'm a firm -- I work for my client. I work
8 for that person. So, as an employee of that person, I
9 have a duty to keep them informed and give them all of
10 their options. I mean, this is their case. They are the
11 ones that are going to go to prison or not go to prison.
12 They need to be involved in the decision making.

13 Q What other kind of scenario in which your
14 client insists on his innocence, what, if any, affect does
15 that have on whether you will engage in plea negotiations?

16 A Well, as I tell all my clients, there are
17 innocent people sitting in jail. So, you have to evaluate
18 with your client, so that there is an understanding, that
19 what the evidence is against them. And that there's
20 always the option of an Alfred plea, North Carolina vs.
21 Alfred or Alfred vs. North Carolina, where you can say,
22 the State has all this evidence against me. I'm not
23 guilty, but I want to take the benefit of a bargain.
24 'Cause, again, it's a gamble. And so, it is important to
25 have those discussions with your client.

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1 Q And just so I'm clear, even if the client
2 is maintaining his innocence?

3 A It depends on what the evidence is. I just
4 had this discussion with a client the other day. That,
5 you know, I think we're going to win at trial but the
6 State has made a reasonable offer. And he has a couple of
7 days to think about it. And, you can maintain your
8 innocence, but you could do a long time in jail. So, I
9 characterize it as a damage control. You know, what is
10 the best of way handling something when you're faced with
11 these kinds of charges.

12 Q And before you mentioned an Alfred plea,
13 from your experience, is it difficult to convince a court
14 to accept an Alfred plea in Baltimore City?

15 A I've never had a problem with it. I've
16 never had -- I can't recall, could it have happened?
17 Maybe. I can't recall any incidents where judges said,
18 I'm not taking an Alfred plea.

19 Q Now, when you are -- once you have engaged
20 in plea negotiations or when you're considering engaging
21 in them, what are the factors that weigh most heavily in a
22 plea bargaining decision?

23 A Well, first, what does my client want to
24 do. And second, it's what are the consequences? What's
25 the worst case scenario and what's the best case scenario?

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1 That's how I describe it to my client. Worst case
2 scenario, first-degree murder, life plus 50,000 years, you
3 know. Best case scenario, not guilty. What is in there,
4 what's in there between? And, again, you have to -- every
5 single case is different. You have to look at, what is
6 the evidence against this particular person, and
7 evaluating plea negotiations. What are your strengths and
8 weaknesses. You know, if the State has a dead-up strong
9 case, then your plea position, your negotiating position
10 is a little weaker. If they've got five witnesses and
11 only two are showing up to court all the time. They can't
12 find the other -- when there are some weaknesses on the
13 part of the State's case, then that makes plea
14 negotiations a little different. But you've got to know
15 your case.

16 Q Is it fair to say that if the State's case
17 is stronger, that would push you further in the direction
18 of a plea agreement?

19 A I'm not sure I understand the question. If
20 the State has a lot of evidence against my client.

21 Q Yes.

22 A Would I push? Yes.

23 Q And what, if any --

24 A But it's not -- let me strike that. It's
25 not a push. It's not like I'm forcing, because I

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1 ultimately always say to my client, this is your choice,
2 your option. But they need to know what all their choices
3 are. They need to know what their options are and what
4 the consequences are for each of those choices. So, you
5 know, I would pursue it. Particularly, if somebody was
6 facing first-degree murder and life, a potential life
7 sentence.

8 Q And what -- what affect, if any, might the
9 presiding judge have over this process?

10 A A tremendous, tremendous impact on plea
11 negotiations.

12 Q How?

13 A Well, it's ultimately, the judge, is the
14 neutral detached magistracy. And I would be willing to say,
15 90 percent or more of the judges on the Baltimore City
16 Circuit Court are very good about doing a King Solomon
17 and, you know, split the baby so to speak. It's -- you
18 know, the State has one position, the Defense has one
19 position. And it's important to have the judge be
20 involved in that. I mean, the State always comes to me
21 with, oh, I want 20 years, for example, and something.
22 I'm like, let's see what judge we have. We'll approach
23 the bench and discuss it and see what the judge says.

24 Q And is that the typical genesis of a plea
25 deal in this courthouse, that initially the State brings

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1 it to you or can it be the other way around?

2 A It happens in all ways. Again, depending
3 on the case, but usually I'll bring a -- I'll say to the
4 State, what are you offering? Now it's much easier now
5 than it was back in 1999 or 2000. Now, we have, what I
6 call, the cheat sheets, and they go to Reception Court.
7 The State's Attorney fills out the cheat sheet, is again
8 as I've nicknamed it. And there's always a column for
9 State's offer. And so it's much more well documented as
10 well as better communicated, as far as what the offers
11 are. And that way when the State's Attorney changes,
12 'cause they might move around the office, there's some
13 document and some consistency from one State's Attorney to
14 the other. So, now it's easier, you just take the cheat
15 sheet, approach the bench, and engage in whatever
16 discussion. But back in 1999, 2000, it was a little more
17 -- usually before going to court, there would be
18 discussions, or at the court, there would be some
19 discussions. What are you offering? I can't think of a
20 case I've ever not asked the State, what's your offer.

21 Q Okay. And just one more question about the
22 process. Do you ever involve your client's family in the
23 plea bargaining process?

24 A I do. Because, I find that if -- for a
25 couple of reasons and I've learned this the hard way. Is

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1 that if I am communicating with the family, then my
2 client's not talking to them on jail calls. Jail calls
3 have been a problem. A benefit to the State and a
4 detriment to the defense. So, it's important that the
5 family's on board. And, particularly, in cases, a serious
6 nature of attempted murder or murder, that the family --
7 if my client is maintaining that I'm innocent, I didn't do
8 this. The family wants to believe that. Whether they do
9 or not is case-by-case, but wants to believe that. So,
10 it's important to explain to a family why now your son or
11 daughter is going to enter a plea. But I thought he was
12 innocent. Well, there are innocent people in jail, going
13 to trials, a gamble. So, this is why we're engaging in a
14 plea. So, it's very important that the client knows that
15 the family will keep writing letters when he goes to
16 prison. And, you know, that everybody is on board.
17 Everybody has the information.

18 Q Okay. And you briefly mentioned what it
19 was like back around 1999 to 2000, in that time period.
20 Were you defending murders back then?

21 A Yes.

22 Q And were there a lot of murders in
23 Baltimore City around then?

24 A Well, yes. I mean, unfortunately, there
25 are a lot of murders in Baltimore City. But, yes. I know

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1 that the murder rate's gone down a little. Although, this
2 year it's suppose to be up from last year. But, yes.

3 Q And what -- can you describe what
4 experiences you have plea bargaining in murder cases with
5 the Baltimore City's State's Attorney's Office around that
6 time?

7 A Positive. You know, I never had a
8 situation where I had a State's Attorney ignore me about
9 plea negotiations. Then, it was more what judge you were
10 going to be in front of. And I think a lot more of plea
11 negotiations, during that time occurred more in the
12 courtroom, approaching the bench, engaging the judge more.

13 Q Okay. We'll get to that. But, I mean, you
14 said that you were never ignored, but were you ever told
15 by a State's Attorney that, no, we will not offer your
16 client --

17 A Never. Never. I never had that.

18 Q Um --

19 A I mean, I can't even imagine -- I can't
20 even imagine a State's Attorney saying, we're not offering
21 anything.

22 Q Did there ever come a time when the best
23 offer that you got was a life sentence?

24 A I don't recall ever being -- I had one
25 where there were two people killed and the offer was,

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1 like, life, suspend all but 60. And sometimes if you get
2 an offer like, life, suspend all but 60 -- I think it's
3 important to look at what count they're calling to.
4 Because if you -- if they're insisting on calling, for
5 example, first-degree murder. Then I've got to look at,
6 my client's going to have letters versus numbers. And
7 what is his or her life going to be in the DOC. So that's
8 a consideration. But in that case with the two, the
9 double homicide, it was life, suspend all but 60.

10 And then you always could go to the judge. I
11 mean, it is certainly common that a judge can, people call
12 it undercut the State. But, it's the judge looking --
13 doing what a judge is suppose to do. When the judge
14 shouldn't take just what the State says. The judge should
15 look at both sides and make what is a fair and appropriate
16 proposal, or say what he or she would do in a particular
17 circumstance.

18 Q So is it fair to say that if you weren't
19 satisfied with the State's offer, you'd take it to the
20 judge?

21 A Right. I mean, I can't think of a case
22 that there wasn't an opportunity to discuss -- every
23 judge's first question, have you guys discussed a plea?
24 Have you guys discussed resolving this and not have a jury
25 trial? I can't -- I can't think of an experience where a

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1 judge would say that.

2 Q Okay. I'd like to turn your attention now
3 to Mr. Syed's case. And based on what you know about this
4 case, in your opinion, is this a case in which the defense
5 attorney should have, at least, obtained a plea offer for
6 Mr. Syed?

7 A Yes. Absolutely.

8 Q Why is that?

9 A Well, he was 17, potentially facing a life
10 sentence. It was a emotional kind of homicide. And it --
11 the consequences were very steep, (inaudible) life
12 sentence. So, plea negotiation should have been done. I
13 would have done a plea negotiation. Even if -- even if my
14 client was saying I'm innocent. I would say, we need to
15 look and see what are your options. That way you're
16 making an educated choice.

17 Q And are you aware that a -- there was a co-
18 conspirator, who testified against Mr. Syed?

19 A Yes. Who supposedly helped him bury?

20 Q Yeah. What, if any, significance would
21 that have in your calculation, in terms of seeking a plea?

22 A It would have a significant -- I mean, when
23 you look at a murder case, I do witness chart, crime scene
24 charts, and then a summary. That's what I do always.
25 And, you look at the witnesses. All right. You have a

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1 co-conspirator, what are the options of discrediting this
2 individual by, in that this individual is providing hands-
3 on information, eye-witness kind of information, a jury is
4 going to give that some weight. So that would be
5 something that would be very important in balancing
6 whether or not to go to trial versus plea negotiations.

7 And it's not -- and I want to make the record
8 clear. It's not that you only do a plea, only go to
9 trial. You prepare for trial. When you start getting
10 mounting evidence against your client, you look at what
11 all the options are, short of trial.

12 Q You mentioned before that you are familiar,
13 of course, with Judge Wanda Heard, correct?

14 A Very familiar.

15 Q And do you have experience plea bargaining
16 with her?

17 A Yes.

18 Q And are you aware that she's the judge that
19 presided over Mr. Syed's second trial?

20 A Yes.

21 Q What experience do you have plea bargaining
22 with Judge Heard?

23 A Judge Heard, I've had trials with her.
24 I've had pleas with her. And she always asks about a
25 plea. I mean -- and, in fact, Your Honor, I said to Mr.

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1 Brown, go check the record. I can't imagine there were
2 not some kind of discussions, on the record, or indication
3 that there were discussions on the record, about plea
4 resolution. The only way that Judge Heard would have not
5 gone into that, is if somebody said, no plea negotiations.
6 I'm not doing that. Going to trial. Unless that was, the
7 line was drawn in the sand, so to speak. But Judge Heard
8 always -- and she's very good to work pleas out with.
9 She's very fair. She's very reasonable. She will listen
10 to both sides. I mean, I love taking a case in front of
11 Judge Heard, both for trial as well as, I want to work it
12 out. Oh, great, I've got Judge Heard.

13 Q You just mentioned before, someone drawing
14 a line in the sand. Who was in the position to draw such
15 a line?

16 A The defense attorney would be the only one
17 in the position of that.

18 Q Are you aware that Mr. Syed's -- well, of
19 course you are, because we discussed it. His first trial
20 ended in a mistrial.

21 A Right. Because Judge Quarles had found
22 that something with Cristina Gutierrez didn't tell the
23 truth about something.

24 Q Correct.

25 A There was a rather a blow-out. In fact, I

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1 remember hearing about it at that time.

2 Q Did you have any experience with Judge
3 Quarles?

4 A Yes.

5 Q And what --

6 A I did a family law case in front of Judge
7 Quarles and I did some criminal matters in front of Judge
8 Quarles.

9 Q Was Judge Quarles receptive to plea
10 bargaining?

11 A Yes. And Judge Quarles -- again, different
12 judges. Judge Quarles is extremely intelligent. He was
13 very formal. He had a -- I think he has a very nice, dry-
14 whit sense of humor. But, in the courtroom, it was no
15 nonsense. He was -- he expected everybody to be prepared
16 and come in and -- I wrote my one and only check for
17 contempt, because I was two minutes late in his courtroom.
18 He had a little thing about it. But, he was -- and that
19 is an example. He was very precise and he was an
20 excellent judge. He is an excellent judge.

21 Q If you -- and I imagine over the years
22 you've had numerous cases that end in mistrials.

23 A I actually haven't had numerous. I've had
24 a couple, but it's not been -- it's not very often,
25 there's a mistrial. It's usually something pretty

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1 startling to generate a mistrial.

2 Q Okay. Well, from what experience you have
3 had, after a mistrial and prior to a new trial, if indeed
4 the State seeks a new trial, is that another opportunity
5 to plea bargain?

6 A Absolutely. And, in fact, that's often --
7 and again, not having a lot of them. But it's often a
8 good chance to say, now you know what a jury is, now you
9 see what that experience is. Because no matter how much
10 you describe a jury, and the panel, and the selection
11 process to a client, I've had them say when the panel was
12 coming in, what are all these people doing here? Well,
13 there's the 12 people we're going to be picking. So that
14 is an excellent opportunity to work out a resolution,
15 short of going through another trial. I mean, trials are
16 very stressful and very difficult for everybody. You
17 know, the attorneys but more important, the client. And
18 if that can be avoided and it's in his or her best
19 interest, then that's what should happen.

20 Q Do you have experience with clients, your
21 clients, asking you about a plea deal?

22 A Yes.

23 Q Asking you what's my offer?

24 A Yes.

25 Q And --

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1 A Well, they phrase it, what does the State
2 want? Well, I don't know what the State wants. Let's
3 find out or, you know, the State's wanting 25 years but
4 we're going to go in front of the judge and see what it
5 is. It's always a discussion.

6 Q And based on what you know about this case,
7 would you expect that someone in Mr. Syed's shoes would
8 make that inquiry to their lawyer?

9 A Yes. And this is why, he was in jail.
10 There are jailhouse lawyers. And those jailhouse lawyers
11 will say, well, what's the State want? What do you --
12 what are they offering? That is -- I've had people that
13 are inexperienced with the system and they always ask
14 that. I mean, that's standard.

15 Q Based again on what you know about Mr.
16 Syed's case, if you had been his lawyer and if you were
17 seeking a plea deal for him, in your opinion, what kind of
18 deal would you be looking for?

19 A I'd try to push the State for a second-
20 degree. And maybe they would do it and maybe they
21 wouldn't. But, you know, it -- I would want to try to
22 push for a second-degree, try to demonstrate mitigating or
23 unique circumstances. And again, you know, I did not have
24 the benefit of having, outside of the -- reviewing the
25 transcript, sort of, the flavor of all of the State's

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1 evidence. But, the State's case, even though there was
2 certainly this alibi issue but the State's case was pretty
3 strong. And there was -- would be a lot of emotions with
4 this because where somebody might rob somebody and don't
5 know them. Most murders or attempted murders, are
6 somebody you know -- they're over an issue. They're some
7 sort of relationship between the parties. And so, in
8 that, Mr. Syed had a relationship with the decedent in
9 this case, the victim in this case, that would be
10 something that could possibly generate a depraved heart,
11 sort of, argument for second-degree.

12 And his being 17, and no experience, no prior
13 criminal record, you know, I would try to push for a 25 or
14 30 year sentence. You know, I don't think that the
15 sentence, as tragic as it is for the victim and the
16 family, you know, to put somebody away at 17 for life over
17 this type of circumstance and all, I don't think would
18 have been fair, or just, or what society should do.

19 Q And what would you have done if you had
20 received an offer from the State that you didn't like,
21 that you didn't think was fair under the circumstances?

22 A Approach the judge. I mean, I --
23 occasionally in District Court, they won't let you
24 approach the bench. But, I've never had a judge, that I
25 say, judge, I want to discuss a potential plea offer.

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1 I've never had a judge say, no. No plea negotiations. No
2 plea discussions. Going to trial. I've never had that.
3 I mean, the judge may agree with the State and sort of
4 leaves me in that same box. But you don't know until you
5 try. Especially with Judge Heard. I mean, she just --
6 she's fair and she's reasonable.

7 Q Okay. If I can turn your attention to the
8 other issue we're pursuing; the alibi witness. Could you
9 very briefly explain the significance of an alibi witness
10 in a murder case?

11 A Well, an alibi witness in any case, I use
12 the example of the young man who was supposedly committed
13 a robbery in just recently, in Federal Hill. And it turns
14 out the guy's on a video at a pizza place, at the same
15 time that he's been I.D.'d as having committed this
16 robbery. An alibi is important to pursue. And you have
17 to look at, who is providing the alibi, how they know what
18 they know, and the circumstances regarding it. But you
19 have to investigate it. It's an affirmative defense. I
20 mean, it's -- I am looking at all these documents in this
21 case, looking at all of the circumstances, the fact that
22 this fellow student wasn't interviewed. And I don't mean
23 to get ahead of you, Mr. Brown. I just -- it's
24 incogitable. I can't -- maybe if I interview them, or I
25 usually would send somebody else to interview them. I

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1 interview them and no, they're lying. They're on the
2 wrong day. Then I've done what I'm supposed to do. But,
3 not to interview an alibi witness is just -- not to
4 interview any witness is just wrong, not right.

5 Q Okay. And you mentioned that you had
6 reviewed some of the documents. I just want to run
7 through a couple of them and make sure that you have seen
8 them. Did you review Asia McClane's affidavit?

9 A Yes.

10 Q Did you review the letters that Asia
11 McClane wrote to Syed?

12 A Yes.

13 Q Did you review the handwritten notes of Ali
14 Cornedor who was a law clerk?

15 A The law clerk for --

16 Q For Cristina Gutierrez.

17 A Yes, I did.

18 Q And did you review the relevant parts of
19 the State's closing argument, in which, they discuss the
20 time when the murder occurred?

21 A Right. The time, I think they put the
22 time, basically, I'm summarizing, 2:20 to 2:40 in that,
23 2:36 p.m. I think the decedent was seen leaving the
24 school, getting a snack at 2:20, getting in her car, and
25 then not being seen again.

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1 Q Now, if you were to take my word that the
2 defense, Mr. Syed, was primarily a reasonable doubt
3 defense. In general, would an alibi witness be consistent
4 with a defense like that?

5 A An alibi would be crucial to a defense like
6 that. Reasonable -- and every case is reasonable doubt.
7 That's a standard, the State did -- the State did not
8 prove this case beyond a reasonable doubt. Yes, they had
9 A, B, and C, but that could also be interpreted as D, E,
10 and F. The old saying is, is your cup half empty? Is
11 your cup half full? Same thing, but it sounds different.
12 It creates a different mental image. So, when the
13 argument is, the State hasn't proven its case, an alibi,
14 just like self-defense, is an affirmative defense that
15 bolsters the issue of the State didn't prove its case. I
16 mean, I just -- maybe the alibi witness is wrong, maybe
17 the person that's the co-defendant is lying, but that is
18 up for a jury to decide. And I was particularly disturbed
19 that the alibi witness was not even interviewed. I find
20 that very surprising.

21 Q Now, obviously, you've never met the alibi
22 witness. But based on what you know about the alibi
23 witness from these documents you've reviewed, do you think
24 that that would initially be a credible witness?

25 A Yes. I mean, this is not a girlfriend,

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1 baby's, you know, mother or something like that, or
2 grandmom. Everybody always wants to discredit that. But
3 this is a fellow student who knows this individual, knows
4 the parties, has no hidden agenda. I mean, she doesn't
5 have any reason to lie. And when she brought herself
6 forward, it wasn't like, oh, a friend of a friend, gets
7 somebody to say a lie. I mean, she volunteered. Wait a
8 minute, I saw you at that time. And I think she did it
9 relatively shortly after his arrest. So, it's not like
10 it's a year later that she's miraculously appearing. But
11 it's pretty soon that she would be able to put together
12 and verify certain information. So, not only should she
13 have been interviewed, but certainly -- if she sounds --
14 if she's as good as what her document sound, the way she
15 clearly can describe certain events, surrounding having
16 seen Mr. Syed at the library. Then I would predict that
17 she would probably be very credible in front of a jury.

18 Q And can you think of any strategic reason
19 why a criminal defense attorney would not even bother to
20 interview or investigate an alibi witness, such as, Asia
21 McClane?

22 A There would be no reason. There would be
23 no reason not to find out and send an investigator to talk
24 to this person. Give the information -- now, we have to
25 get the information -- well, actually back then you had to

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1 give the information to the State. But there was no
2 follow-up on that, to allow the detective to investigate.
3 And when somebody's in jail, I mean, they're -- they can
4 only call collect. Their link to the outside world and
5 their case, the defense of their case, is their lawyer and
6 their family. And most importantly, as far as the defense
7 of the case is concerned, witnesses or information, their
8 connection to that is their attorney. And the attorney's
9 obligation, affirmative obligation, is to investigate any
10 defenses. And an alibi witness being one of the best,
11 this kind of alibi witness. There are some alibi
12 witnesses you don't want.

13 Q Just a few more questions. I'm going to
14 ask you about motions for modification of sentence. In a
15 case like this, in which a defendant receives a very long
16 sentence. What is your policy about whether you file a
17 motion for modification of sentence, and how do you file
18 that?

19 A You automatically file a motion for
20 modification. Why wouldn't you? I mean, there's nothing
21 to be hurt by doing it. So, it should be automatic.

22 Q And what, if any --

23 A You have a pretty long time to do it, 90
24 days. I have missed on one or two occasions that 90 day,
25 but -- for bad filing over the years, but.

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1 Q In the case of a very long sentence, is it
2 possible to have that motion held sub curia?

3 A Yes. Back in 1999, 2000, I'm trying to
4 remember when it changed. It use to be that the judge
5 could hold, to have that motion to modify indefinitely.
6 Could hold it sub curia indefinitely. Now, the rule
7 changed and you have to have it within five years, a
8 hearing on it within five years. But, there's nothing --
9 there's no harm. There's harm to do, for example, a
10 three-judge panel review if you have 20 years and you
11 could get life. There's a harm in going to a three-judge
12 panel, potential harm. So, there may be a reason not to
13 do that. But, there's no reason not to file a motion to
14 modify.

15 Q And what is the advantage of having it held
16 sub curia? Whether you can do that for five years or
17 longer?

18 A Well, the advantage to asking the judge to
19 hold it sub curia is to, maybe a couple -- first of all,
20 calm things down. Put some distance between event. And
21 also to show if your client has been infraction free while
22 incarcerated, has gone to school, has made some steps of
23 rehabilitation, that that can serve as a basis for a judge
24 to consider modifying his sentence.

25 Q And from your experience, do judges

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1 generally grant that motion or that request to hold the
2 motion sub curia?

3 A Most do. Every once in a while, if a judge
4 is very strong about a circumstance, a particular case,
5 they might not. But most of them hold it sub curia if you
6 ask.

7 Q And regardless of the judge's reputation,
8 would you ask anyway?

9 A Absolutely. Why wouldn't you ask? I mean,
10 what's the worst thing that could happen? The answer is
11 no. You know, it is -- might as well.

12 MR. BROWN: I've got no further questions for
13 this witness.

14 THE COURT: Any cross examination, Ms. Murphy?

15 MS. MURPHY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. MURPHY:

18 Q Hello, Ms. Meade.

19 A Hello, Ms. Murphy.

20 Q So you were not involved with this case in
21 '99 and 2000?

22 A No.

23 Q You didn't have any extensive discussions
24 with the counsel involved at the time?

25 A No. I was well acquainted with Cristina

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1 Gutierrez. Because, when I first saw her, when I was
2 clerking for Judge Prevas, and she was the only woman out
3 there, doing criminal defense. So, she was sort of a
4 semi-mentor, semi-idol, for a while. So, I was --

5 Q But you didn't have any extensive
6 discussions with her about this case?

7 A No, no.

8 Q I assume you didn't have any discussions
9 with Judge Quarles or Judge Heard about the case?

10 A No.

11 Q Did Mr. Brown provide you with just the
12 transcript of the closing argument and no other
13 transcripts?

14 A I looked at some other transcripts but it
15 was mainly going through, he explained the circumstances
16 and the evidence, and going through the petition and his
17 supplemental petition.

18 Q But you didn't get all 35 volumes?

19 A Oh, no.

20 Q You would remember that, right?

21 A I would remember that. There was one other
22 part. It was sections of it that I reviewed.

23 Q So, basically the only knowledge you have
24 of this case is what the Defendant has provided you?

25 A Right.

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1 Q Now, we talked a little bit about Alfred
2 pleas. We talked about various offers that clients have
3 received over the years. And you mentioned that, you
4 know, you could always go to the judge. In any of those
5 scenarios, it's correct, is it not, that the judge has to
6 accept the plea?

7 A Yes. I mean, a judge can say, I'm not
8 going to accept -- that's why I'm saying, the judge gets
9 involved in it, because a judge is going to say -- let's
10 say if the State wanted 25 years and I want 10. The judge
11 might say 20. You know, the judge may say, I think 25 is
12 fair.

13 Q Right. But, ultimately, the judge gets the
14 final word?

15 A Yes. Well, ultimately, actually the
16 defendant gets the final word because whether or not to
17 accept the plea. But they have to have the information to
18 be able to know what their choices are and whether or not,
19 how they should proceed with their respective case. And
20 you know, quite frankly, the judge could say 25 and the
21 State come back the next trial date and say, okay, I'll do
22 20. I mean, it's a fluid -- and case-by-case
23 circumstance.

24 Q I understand. What I'm driving at is,
25 regardless of what is proposed by the State or the

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1 Defendant, the judge must be in agreement?

2 A Yes.

3 MS. MURPHY: I have no other questions, Your
4 Honor.

5 THE COURT: Any redirect?

6 MR. BROWN: Just a follow-up.

7 REDIRECT EXAMINATION

8 BY MR. BROWN:

9 Q Ms. Murphy asked you about whether you had
10 any discussions with Ms. Gutierrez about this case. And
11 you said you did not, correct?

12 A About this specific case, no.

13 Q Did you discuss other legal matters with
14 Ms. Gutierrez?

15 A When I --

16 MS. MURPHY: Objection. Objection.

17 THE COURT: Sustained.

18 MR. BROWN: Okay. No further questions.

19 THE COURT: Thank you, Ms. Meade.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Nice seeing you. You are excused.

22 (Witness was excused.)

23 THE COURT: And, Mr. Brown?

24 MR. BROWN: Your Honor, the -- that would be our
25 final witness. The one, I guess, motion I would like to

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1 make would be that the trial transcript be incorporated
2 into this proceeding. Just to put that on the record for
3 future references to the transcript.

4 THE COURT: All right. And I assume, Ms.
5 Murphy, there's no objection?

6 MS. MURPHY: None, Your Honor.

7 THE COURT: All right. So noted.

8 MR. BROWN: And with that, if I could have the
9 Court's indulgence for just one moment to check with my
10 client.

11 THE COURT: Sure.

12 (Pause.)

13 MR. BROWN: And, Your Honor, with that, we close
14 the Petitioner's case.

15 THE COURT: All right. Thank you. And, Ms.
16 Murphy?

17 MS. MURPHY: Your Honor, I would ask the Court
18 to incorporate by reference, a letter that was filed with
19 Cristina Gutierrez, on October 5, 1999, with the Court.
20 It should be in the court file. I have a copy here, just
21 for easy reference for the court. But I ask you to
22 incorporate that document by reference --

23 THE COURT: Into the court file. Would it be
24 easier just for, I think, for the purposes of review, that
25 -- and if there's no objection, maybe just introducing it

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1 as an exhibit --

2 MS. MURPHY: Certainly, Your Honor.

3 THE COURT: -- even though there may be some
4 duplication. That way we're not searching through the
5 record and it could be marked as such.

6 MS. MURPHY: I can do that.

7 MR. BROWN: Your Honor, I have no objection.

8 THE COURT: All right. And I assume, Ms.
9 Murphy, this would be State's 1, correct?

10 MS. MURPHY: Yes, Your Honor. This is State's
11 1. And as I stated, Your Honor --

12 THE COURT: And just one second. So that's a
13 letter to the court from Ms. Gutierrez?

14 MS. MURPHY: I believe it's a letter to the
15 State from Ms. Gutierrez, making the State aware of a very
16 large number of potential alibi witnesses in this case.

17 THE COURT: And the date of that letter, Ms.
18 Sullivan is?

19 CLERK: October 4th.

20 THE COURT: 2000?

21 CLERK: '99.

22 THE COURT: '99. So the Court will admit that
23 into evidence.

24 (Whereupon, State's

25 Exhibit No. 1 was admitted

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1 into evidence.)

2 MS. MURPHY: Thank you, Your Honor. The State
3 has no witnesses at this time.

4 THE COURT: Okay. Argument?

5 MR. BROWN: Your Honor, I'd like to go through
6 the (inaudible) -- first of all, we have covered three
7 issues in the course of today's hearing and the hearing
8 two weeks ago. For all other issues that are raised both
9 in the original post-conviction petition, as well as, the
10 supplement, we submit on the record and we don't wish to
11 waive any of those issues, by virtue of not having
12 discussed them with the witnesses presented today.

13 First of all, alibi witness. The law, the law
14 on that is that there is a duty to investigate. There's a
15 duty for a defense attorney to investigate their client's
16 case. And, in addition, if the attorney does not fulfill
17 that duty, that would satisfy the first deficiency prong
18 of Strickland vs. Washington. As the Court is well aware,
19 there is also a prejudice prong from Strickland vs.
20 Washington.

21 The question though is not whether the error
22 would have changed the course of the trial but it's
23 whether the error undermines our confidence in the jury's
24 verdict. And all of this is in our papers, for more
25 citations to that effect.

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1 So what did we prove with regard to the alibi
2 witness? Well, first, after Syed was arrested, he
3 received two letters from Asia McClane. He did not
4 solicit these letters. These letters came to him right
5 out of the blue. In those letters, which are in evidence,
6 this alibi witness reminds Syed that she recalls being
7 with him on the day of the murder, at approximately the
8 time of the murder.

9 We can prove that Syed communicated the fact of
10 this alibi witness to Gutierrez. And the way that we
11 prove that is through the affidavit of Ali Cornedor, which
12 is also introduced into evidence. Mr. Cornedor has
13 verified the note, that was found in Gutierrez's file.
14 He's confirmed that it was his handwriting. He's
15 confirmed that he visited Syed and those are his notes
16 from Syed. And he's also stated in that affidavit, that
17 it wouldn't have been the normal course of his employment,
18 working for Ms. Gutierrez, that those notes would have
19 been turned over to her. That essentially, he was an
20 extension of her when he visited Mr. Syed.

21 So, we also know that at trial, Asia McClane was
22 never called as a witness. The State has just introduced
23 some evidence. That's a list of potential alibi
24 witnesses. I would also note that Asia McClane's name
25 does not appear on that list. There's a huge number of

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1 people that appear on that list. You will not find Asia
2 McClane on that list.

3 So what happened? Syed gets convicted. And
4 afterwards, he discusses what happened. He discusses Asia
5 McClane with Rabia Chaudry, who you heard testify two
6 weeks ago. I would submit to the Court that Ms. Chaudry
7 was an exceptionally reliable and competent witness.
8 She's an attorney. She's a member of, I believe, it's the
9 Virginia Bar. She's worked for Homeland Security, other
10 law enforcement agencies. She testified about exactly how
11 she learned about Asia McClane and about exactly how she
12 obtained that affidavit from Asia McClane.

13 Significantly, that affidavit puts Syed in the
14 library, speaking to Asia McClane, and her boyfriend, and
15 her boyfriend's friend at precisely 2:36 or at least
16 during a span that covers that time. So, it is a complete
17 alibi to this murder case. We also know that she was
18 never contacted by the Defense from that affidavit.

19 Syed made every effort he possibly could to get
20 Gutierrez's attention with regard to this. He wrote her a
21 letter. There were correspondence from the family, which
22 Ms. Chaudry helped them draft, because they were unable to
23 draft it themselves. Essentially, begging her to raise
24 the Asia McClane issue. For whatever reason, she did not
25 do it.

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1 Now, there was a hearsay objection to that
2 affidavit coming in. And one of the arguments that I
3 would like the Court to consider is because this issue is
4 framed as a failure to investigate, that affidavit should
5 also come in, because it's not hearsay. It's not offered
6 to necessarily prove what is written in the affidavit.
7 Rather, the fact is, that that affidavit was out there and
8 those statements were out there. And, therefore, the
9 attorney had the duty to at least investigate it. Not
10 necessarily, it's not necessarily provable in the sense
11 that things would have turned out that way. But at the
12 very least, Cristina Gutierrez had to investigate such an
13 alibi witness.

14 We heard from Kevin Urick about the same alibi
15 witness. Kevin Urick spoke to her on the phone. We heard
16 from him that she lives in Oregon now. Your Honor, we
17 tried -- and I submit, as an officer of the court, Your
18 Honor, has granted a certification in which we attempted
19 to get her here. For whatever reason, she evaded service
20 in Oregon. We could not produce her. But we know from
21 Kevin Urick that she's real. That she exists. That she
22 called him up. Sure, she said that she felt coerced or
23 pressured into signing that affidavit. But, by saying
24 that, she's acknowledging that she did, in fact, sign that
25 affidavit.

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1 And I would submit to the Court that the
2 overwhelming evidence is that, she was not coerced. She's
3 the one who wrote two letters, that came out of the blue,
4 and that Mr. Syed received while in the Baltimore City
5 Detention Center.

6 You heard from Ms. Meade that this alibi witness
7 would have dovetailed perfectly with the defense, with the
8 insufficiency of the evidence defense, or I'm sorry,
9 excuse me. With a reasonable doubt defense, which is what
10 Gutierrez employed at the trial. You know, it's hard to
11 fathom why any defense attorney would not, at the very
12 least, followed up with this witness. At the very least,
13 send an investigator out to talk to her. Don't just
14 dismiss it out of hand, because this could have been the
15 best thing they had going in that defense case.

16 The plea issue. That's the second major issue
17 we've raised. The law is that, a defense attorney must be
18 constitutionally effective in the plea bargaining process.
19 There's a couple supreme court cases that came out
20 recently, Lafler and Frye, which although they don't touch
21 on this specific issue, they do underscore the importance
22 of defense counsel in the plea bargaining process.

23 And another thing that those cases say, those
24 cases note that something like 95 percent of all cases end
25 up in a plea bargain. So that in many respects, the plea

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1 bargaining phase is arguably more important than the
2 actual trial phase itself. Because, such a high
3 percentage of cases are resolved that way.

4 In terms of the prejudice prong with respect to

5 --

6 THE COURT: I have to ask, though, unless I'm
7 missing something, Mr. Brown. What evidence is there at
8 all in this case, that there were any plea negotiations?
9 That one was offered either by the State, sought by the
10 Defense, or that the judge became involved?

11 MR. BROWN: There is none, Your Honor. And
12 that's the problem. The problem is, you know, number one,
13 is you heard Ms. Meade say, the defense attorney has a
14 duty to at least find out what the plea offer is. Mr.
15 Syed was 17-years-old at the time. He could not make an
16 intelligent choice. The most difficult choice in the
17 whole process of a criminal trial, do you plead guilty or
18 do you go to trial? How can you possibly make an
19 intelligent choice with that if you don't even know what
20 the plea offer is. What's more, Mr. Syed has testified
21 and credibly, and it's entirely believable, that he did
22 ask her. He said, find out what my plea is. He did it
23 before trial and he did it after the mistrial. What
24 client doesn't say that?

25 Again, you heard from Ms. Meade, that's entirely

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1 typical. You're waiting around in the Baltimore City
2 lock-up and everyone is talking about him, what's your
3 offer? What's your offer? What does the State want from
4 you? So, the fact that Mr. Syed would convey that to him.
5 Here he is, the only one in there who hasn't heard what
6 his plea offer is. So, not only does she not follow his
7 instructions, she does not go to the State and talk about
8 it. And, again, you heard testimony from Mr. Urick, they
9 were never approached by Gutierrez about it. But what's
10 more, is she reports back to Syed that there is no plea
11 offer.

12 Your Honor, I'm sure is familiar with the
13 Merzbacher case, which I believe just went up to the 4th
14 Circuit. There was an article in the paper yesterday
15 about it. In the Merzbacher case, at least she -- at
16 least Ms. Gutierrez pursued a plea offer. She took that
17 first step and where she failed was not taking the second
18 step and conveying the offer back to her client. Well,
19 here, she was even more ineffective, because she didn't
20 even take that first step. Her client asked her to get
21 his plea offer and she disregards that request and comes
22 back and lies to him.

23 So, hopefully that answers your question. But,
24 you're absolutely correct. Nothing from the State about
25 it. They've been straightforward about it. No transcript

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1 about it. No judge talking about it. Completely absent
2 from this case. And you're talking about a 17-year-old
3 who's facing a life sentence --

4 THE COURT: Wouldn't that be on the record --
5 wouldn't that be on the record somewhere?

6 MR. BROWN: Your Honor --

7 THE COURT: I mean, I know --

8 MR. BROWN: I have scoured the record. This is
9 actually, this document I have, it's a summary. Just a
10 summary of the transcript, it's 75 pages long. You know,
11 I -- when Ms. Meade was consulted, that's what she said.
12 She said, go back and look again at the record. And there
13 is nothing on the record. I asked Mr. Urick, or Ms.
14 Murphy asked Mr. Urick, were there any discussions with
15 any judge about this at any time. He said, no. And I
16 propose to you -- and Your Honor knows this --

17 THE COURT: So what we have then, I assume, is
18 the allegation, or the testimony of your client, that he
19 asked Ms. Gutierrez?

20 MR. BROWN: That's correct.

21 THE COURT: And that's all there is, correct?

22 MR. BROWN: Well, you know, we filed a
23 supplement. We tried to introduce other evidence, a lie
24 detector test, to this effect, and the Court found that
25 was inadmissible. But I propose that his, not only was he

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1 a credible witness but his statement about this is
2 entirely believable. And Ms. Meade confirmed that. Ms.
3 Meade, she talked about, you know, the guys sitting around
4 at lock-up and that's what they talk about. And she's use
5 to it all the time. They come out, hey, what's my offer?
6 What does the State want from me? She said, that's how
7 they ask it.

8 So that, for him to ask that was entirely
9 consistent. Moreover, we're talking about a case in which
10 there was a mistrial, where he had the opportunity to see
11 what the trial looked like. And he had the opportunity to
12 hear the main witness against him, Jay Wilds, on the
13 witness stand, the co-conspirator, basically standing up
14 there, incriminating him.

15 So, Your Honor, I propose that it is entirely
16 credible testimony by Mr. Syed. But, based on what Ms.
17 Meade said, even if he didn't ask that, she would have --
18 Gutierrez would have had an affirmative duty to go find
19 out, at least, lay the options on the table for your
20 client, here at this most critical juncture of a criminal
21 case.

22 Finally, Your Honor, the motion for modification
23 issue. You know, Ms. Meade testified and obviously Your
24 Honor is very experienced in that. But it is and should
25 be standard practice that when a defendant receives a very

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1 long sentence, at least, the defense attorney, file a
2 motion for modification, had it held sub curia. Allow the
3 defendant some time, number one, for things to cool off.
4 And, number two, to show that he can rehabilitate himself,
5 that he can follow the rules. That he can do what they
6 ask of him in the DOC. He can come back. Ms. Meade is
7 correct, now, I believe -- I'm not sure whether it's five
8 years or ten years that they have to do that, to activate
9 the motion. However, it is sufficient time for them to
10 come back with some certificates, with some letters. And
11 perhaps get that sentence reduced a little bit. Mr. Syed
12 testified that even if his sentence came down from life,
13 plus 30, down to life, while that would not necessarily
14 mean he'd get out earlier. It would mean that he could go
15 to a lower level of security and he could, at least, go to
16 school. He'd perhaps have access to more books, something
17 like that, while he spends the rest of his life in prison.
18 So that's that issue. A pretty simple issue.

19 We've also raised the issue of cumulative
20 ineffective assistance of counsel. You know, these two
21 issues that we raise, in a lot of ways they go hand-in-
22 hand. And, Mr. Syed, did an excellent job of articulating
23 that when he was on the witness stand.

24 It was apparent to Mr. Syed that his chance of
25 prevailing at his trial relied on having an alibi. There

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1 was evidence against him. And, he had to be able to show
2 where he was when this murder took place. There was an
3 alibi witness. There was an alibi witness who was willing
4 to talk. But his defense attorney completely blew that
5 off. As his hopes were dwindling, mentally, he turned
6 more toward the plea deal. Yet, she failed him again.
7 Because she never followed up on that plea deal. So the
8 two additives that he had for resolving this case, trial
9 and guilty plea, they were both ruined by his lawyer. His
10 lawyer, who has been disbarred. Who, this Court is well
11 aware of, there were scores of clients whom she cheated
12 out of their money.

13 THE COURT: Well, I, I -- the Court is unaware
14 of that. And --

15 MR. BROWN: Okay. Well, you heard testimony
16 from Mr. Syed's mother about those interactions.

17 THE COURT: Yeah. But I, in all fairness, Mr.
18 Brown, to the late Ms. Gutierrez.

19 MR. BROWN: I understand your point, Your Honor,
20 without you saying it. She certainly had some great
21 moments as a defense attorney. But, I think the record,
22 that we have established is that, she also had some not so
23 great moments. And, this was one of them. Thank you,
24 Your Honor.

25 THE COURT: I didn't mean to cut you off.

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1 MR. BROWN: Well, no, I mean, that's --

2 THE COURT: I -- I --

3 MR. BROWN: That's the gist of --

4 THE COURT: I'm unaware -- I'm unaware, the
5 Court has some knowledge of Ms. Gutierrez may have been
6 disbarred, but the Court is unaware specifically as to
7 what may have brought about that disbarment.

8 MR. BROWN: Your Honor, in our petition, that's
9 discussed. And there are some footnotes and some
10 citations provided, should the Court care to delve more
11 into that.

12 THE COURT: Okay. Thank you, Mr. Brown.

13 MR. BROWN: Thank you, Your Honor.

14 THE COURT: Ms. Murphy?

15 MS. MURPHY: Thank you, Your Honor. I have
16 filed with the court and provided Mr. Brown a copy of a
17 written response. But, I do feel that it is important to
18 spend just a moment talking about the facts of the case,
19 Your Honor. Simply because the Defendant took the stand
20 today and claimed that this case lived and died in a 21
21 minute time frame. And this case was so much more than
22 that.

23 This was one of the earliest cases, I believe,
24 to incorporate the use of a cell phone and cell tower
25 records. And this case truly demonstrated the power of

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1 those records. Essentially, those records, not only did
2 the cell phone records identify many vital witnesses in
3 this case but they corroborated everything that was said.
4 What the witnesses said matched the records and what the
5 records said matched the witnesses. And it all fit into
6 place, and Jay Wilds was central to all of this. And you
7 can't emphasize strongly enough, that there's no way that
8 Jay Wilds could concoct a story like this and know to put
9 himself in specific places at specific times, because some
10 cell tower, somewhere, was going to record that he was on
11 the phone with somebody. It's just simply not fathomable.
12 In fact, Jay Wilds was cross-examined for five days by Ms.
13 Gutierrez in this trial. And, clearly, based on the
14 verdict, the jury still found him credible in spite of
15 that.

16 Yes, the call at 2:36 was a significant call,
17 but there were many others. Even if the Defendant had
18 managed to account for some alibi at that particular point
19 in time, there's been no showings to what affect that
20 would have in light of the other evidence. It wouldn't
21 explain why he's in Leakin Park with Jay Wilds at 7:00 on
22 the night that Hae Min Lee is murdered. That is the
23 strength of the State's evidence in this case.

24 I think if this Court could decide his post-
25 conviction entirely on the prejudice prong alone, I will

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1 address each argument individually. But, I think there's
2 simply no showing that the outcome of the case would have
3 been any different.

4 There's a suggestion there's simply no physical
5 evidence in this case. That's not true. The autopsy
6 report revealed that Hae Min Lee had been brutally
7 strangled. She had bruising to the back of her head,
8 which entirely corroborates Jay Wilds' statements that the
9 Defendant told him that this occurred in her car. The
10 back of her head would have been pressed against the
11 window. Jay Wilds also testified that this Defendant told
12 him that as she struggled, she broke the signal switch on
13 the steering column. And yes, in fact, the signal switch
14 in Hae Min Lee's car was dangling from the steering
15 column.

16 There was a map book found in the back seat of
17 Hae Min Lee's car, an ABC map book. It was, as I said, in
18 the back seat. And from that book was ripped the page
19 bearing the map of Leakin Park, the particular section
20 where the victim was buried. On the back cover of the map
21 book, Your Honor, was the Defendant's left palm print.

22 The evidence in this case speaks volumes. This
23 was a strangulation that resulted in a disappearance of a
24 beautiful young woman. It's an unusual set of facts, Your
25 Honor, even from Baltimore City. And I think Mr. Urick

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1 did a good job of conveying that. This is not a case we
2 see every day. And for that reason, Ms. Meade's testimony
3 is utterly unhelpful. You had an entire cross-section of
4 people, students from Woodlawn High School. For the most
5 part, there's no evidence that any of these kids were
6 anything but good kids. Honor students, athletes, all
7 involved as witnesses, and as our Defendant. These are
8 young, college-bound kids from good homes. It's simply
9 just not your typical case. And what Ms. Meade does or
10 does not do in her cases on a day-to-day basis in
11 Baltimore City, gives this Court no guidance on what may
12 have happened in this case.

13 With respect to the alibi witness, the
14 Strickland case discusses the duty to investigate and does
15 state, "That strategic choices are virtually
16 unchallengeable. Even without an investigation, choices
17 are reasonable to the extent the professional judgment
18 supports the communication. Counsel has a duty to make a
19 reasonable decision that makes a particular investigation
20 unnecessary. Counsel must assess in all the circumstances
21 and the Court must apply a heavy measure of deference to
22 Counsel's judgments."

23 Your Honor, we can look at what the records
24 shows, what Cristina Gutierrez did do, was prepare an
25 alibi defense as suggested. She would only do so based on

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1 information provided by her client, provided by other
2 sources, other fact gathering that she'd done. And what
3 that information suggests, and if Your Honor looks closely
4 at the letter that was filed, that I've admitted as
5 State's Exhibit 1. She identified more than 80 potential
6 alibi witnesses in that letter. And she states, "That on
7 January 13, 1999, Adnan Masud Syed, attended Woodlawn High
8 School for the duration of the school day. At the
9 duration of the school day, the Defendant remained at the
10 high school until the beginning of his track practice."
11 That was also consistent with what the Defendant told to
12 the Baltimore County detective, as he conceded here in his
13 testimony today. He said nothing about attending a
14 library, going to the library after school.

15 And these detectives, as was brought out in
16 testimony today. He was called by a police officer,
17 January 13th, the night Hae Min Lee disappeared, he
18 received a phone call. Then again, in the days and weeks
19 to follow, he was interviewed and that's when he said he
20 attended track practice today. So for him to stand before
21 this Court and say that it had not been apparent to him
22 that he needed to account specifically for his whereabouts
23 is simply disingenuous. I find that not to be credible at
24 all.

25 And the actions that Ms. Gutierrez took are

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1 entirely consistent with that. She tried to fashion an
2 alibi defense out of the information she had. Information
3 that was consistent with other evidence that was provided.
4 And the fact that Asia McClane contradicts the stated
5 alibi of her own client, would be the basis for a
6 reasonable judgment by Gutierrez to not further
7 investigate.

8 Now, assuming that her refusal to investigate
9 that witness. I'm not conceding that's deficient. But if
10 we assume for the sake of argument that that's the case,
11 we must consider Veeney (phonetic) vs. Warden (phonetic).
12 Because in this case, the Defendant has failed to produce
13 this witness at this post-conviction hearing. And in
14 Veeney, "A proffer is simply not persuasive than the
15 plain's testimony would have affected the outcome in this
16 case."

17 Her affidavit is not effective in this regard.
18 In fact, this is clearly a witness that the State would
19 have spent some time cross-examining with respect to bias,
20 memory, motive, credibility. And I'll point out a few
21 things in these letters, Your Honor, that the Defense
22 provided both in their petition and as exhibits during the
23 course of this hearing.

24 At the completion of the handwritten letter,
25 dated March 1, 1999, Ms. McClane actually writes, "If you

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1 were in the library for a while, tell the police."
2 Certainly this witness needs to be cross-examined about
3 whether she's even certain, because that doesn't convey
4 any certainty at all. She's asking him, if you were in
5 the library. That letter also conveys a very clear bias.
6 She says, you know, "If so, I will try my best to help you
7 account for some of your unwitnessed, unaccountable, lost
8 time from 2:15 to 8:00 p.m., January 13th." Which is also
9 interesting because the Defendant testified, you know, he
10 really didn't think he had to account for his time in that
11 time frame. This letter is mailed to him, he says right
12 after he's arrested, I believe, yes. And someone who
13 really isn't even involved in the case, someone who never
14 came forward as a witness, is aware of the time that he
15 needs to account for.

16 I think that -- it brings to light how
17 sensational this case was among the students at Woodlawn.
18 It was constantly discussed. It was what everyone was
19 talking about, students and teachers alike. And I think
20 the record is replete with examples to support that along
21 with Ms. McClane's letters. And Ms. McClane seems to be
22 eager to interject herself into this case. In the typed-
23 written letter, dated March 2nd, I believe, she asks a lot
24 of very pointed questions of the Defendant. She wants to
25 know specifically where he was that day. What he told the

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1 police. And then she explains, "You see, I have an
2 analytical mind. I want to be a criminal psychologist for
3 the FBI one day." And she goes on to ask some unusual
4 questions. In particular, "Why doesn't he have any
5 markings on his body from Hae's struggle?" This witness
6 is seemingly interjecting herself well into the facts of
7 the investigation that, by all counts, she's not involved
8 with.

9 So, as I was saying, Your Honor, if somehow this
10 Court finds that Ms. Gutierrez was deficient. And, again,
11 the State does not concede that. There's no way that
12 Petitioner can satisfy the second prong of Strickland
13 which is prejudice. There's absolutely no showing,
14 because he has not produced Asia McClane, that Asia
15 McClane's availability at trial would have in any way
16 affected the outcome of the case.

17 Addressing the motion for modification, Your
18 Honor. First I'll begin by stating, there simply is no
19 precedent to indicate that a failure to ask to have a
20 motion for modification held sub curia is ineffective
21 assistance of counsel. The original motion was filed in a
22 timely matter and was denied. So this is clearly not a
23 (inaudible) situation where the court did not have an
24 opportunity to consider it. In this situation, the
25 Petitioner simply cannot remotely show prejudice. He has

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1 not called Judge Heard to testify. To ask Judge Heard, if
2 she would have held the motion sub curia. And to
3 establish what, if any, relief she might have granted.
4 So, the only evidence we have is in the record. And that
5 indicates quite to the contrary.

6 We can look to the record of sentencing in this
7 case, Your Honor. And what happened at sentencing was
8 that, Mr. Dorsey had asked the Court to consider this
9 case, almost as a second-degree case. He said, consider
10 it as a crime of passion, Your Honor, in light of the
11 Defendant's age and his emotional state. And the Court
12 stated, "I disagree with you, Counsel. This wasn't a
13 crime of passion. The evidence meant premeditated with
14 malice and forethought, as we say in the law. That means
15 you thought about it. The evidence was, there was a plan
16 and you used that intellect. You used that physical
17 strength. You used that charismatic ability of your's
18 that made you the president of the -- what was the king or
19 the prince of your prom? You used that to manipulate
20 people. And even today, I think you continue to
21 manipulate, even those that love you, as you did to the
22 victim. You manipulated her to go with you to her death."

23 So, even on the date of sentencing, Judge Heard
24 had ample evidence of the very things that most defendants
25 would bring to light at a motion for modification and she

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1 did consider these. Stating, "Both you and the person
2 whose life you choose to end, unlike so many others, had
3 the world in front of you. Not only did you have support
4 of family, but you had the intelligence, the intellect,
5 the physical strength and the ability, to do anything you
6 wanted."

7 And I find it interesting today, Your Honor,
8 that even in his testimony, Defendant concedes, had he
9 known that his sentence wouldn't be reviewed, he wouldn't
10 have gone through all of these programs. That was why he
11 was doing it. Again, it's the same manipulation.

12 MR. BROWN: Objection, Your Honor. He never
13 said that.

14 THE COURT: It's argument.

15 MS. MURPHY: And now at this point, Your Honor,
16 I'll address the failure to seek a plea agreement. I
17 think on this argument we have to address the Defendant's
18 credibility. I've touched on it, but I believe what you
19 heard from the Defendant here today is not credible.
20 Keeping in mind, that he's no longer cloaked in innocence,
21 as he is at trial. He stands before us convicted of
22 first-degree murder, in a particularly heinous case. The
23 acts involved are replete with deceit, lying, strangled a
24 woman to death and buried her body so that her family
25 might not ever know what became of her.

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1 The records are clear, he drove her car around
2 with her body stuffed in the trunk, while he and Jay Wilds
3 looked for marijuana and sought to get high. And as he
4 was getting high, he bragged to Jay Wilds, "I killed
5 somebody with my bare hands."

6 Even before that, the record exemplifies the
7 deceit that he employed with his only family in trying to
8 maintain his relationship with the victim in this case.
9 He utilized people from his mosque and other friends to
10 hide his activities. One of the very reasons that this
11 relationship was so complicated and problematic for both
12 the Defendant and the victim. As Judge Heard said,
13 manipulative, from start to finish. His testimony here
14 today was not credible.

15 Particularly when -- Your Honor, has a clear
16 idea that this case garnered a lot of attention. There
17 was lots of speculation and some media coverage at the
18 time. But -- well, I'm not going to repeat myself. But
19 for him to acknowledge that he was called by the police,
20 on the very dates she disappeared. And then again
21 interviewed by the police, as to his whereabouts on that
22 date, to say that he wasn't aware he had to account for
23 those whereabouts, is just entirely disingenuous. And the
24 Court had the opportunity to observe how evasive he was as
25 the State asked him questions. He simply refused to

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1 answer the State's question at one point.

2 The Defense is relying heavily, and has since
3 the beginning of this petition, on Merzbacher. It's not
4 coincidental that this petition comes on the heels of that
5 case. Although that case is still yet to be resolved.
6 And, although Counsel has produced no concrete evidence of
7 when Ms. Gutierrez was disbarred, as the Court has pointed
8 out, or any circumstances around that. What's clear is
9 that there has simply been no evidence shown that her
10 disbarment had anything to do with this case. That it
11 occurred -- that even if anything that was going on at the
12 time of this case, led to her disbarment. There simply is
13 no factual record of that.

14 And the parallels between Merzbacher and this
15 case are pretty slim. About the only thing that they had
16 in common was that they were high profile cases and that
17 Ms. Gutierrez represented the Defendants. Merzbacher was
18 a case with multiple victims. Victims who didn't come
19 forward for years, and years, and years, after they were
20 sexually assaulted by a teacher.

21 THE COURT: And just if I could, though, and you
22 can chime in for a second if you need to, Mr. Brown.
23 Although I was on the bench at the time, Merzbacher, there
24 was some evidence that there was an offer, correct?

25 MS. MURPHY: Interesting that the Court says

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1 that. There was evidence that an offer was discussed in
2 an in-chambers meeting between counsel. Whether it was a
3 firmly conveyed offer or whether it was simply brought up.

4 THE COURT: But there was some scent.

5 MS. MURPHY: Right. It was brought up and
6 discussed. And that truly distinguishes Merzbacher from
7 this case. Because in this case, there's simply no
8 evidence of any offer whatsoever and that's undisputed.

9 THE COURT: Okay. And, Mr. Brown, if you want
10 to interject now, you can, or you can save it for your
11 rebuttal, if you wish.

12 MR. BROWN: I'll save it.

13 THE COURT: Just don't forget. I'm sorry, Ms.
14 Murphy.

15 MS. MURPHY: Oh, that's all right, Your Honor.
16 But, Merzbacher was the kind of case where it's
17 foreseeable that the State might entertain plea
18 negotiations, because of the nature of the case, the
19 multiple victims, and the length of time that had
20 transpired from when the crimes occurred.

21 There is no constitutional right to a plea
22 offer, Your Honor. And I think Counsel has raised two
23 recent Supreme Court opinions, both *Lafler v. Cooper* and
24 *Missouri v. Frye*. Both which deal with the
25 responsibilities of counsel in a plea negotiation case.

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1 Both cases must be distinguished from where we
2 are today. Because, in each of those cases, plea offers
3 had been extended. In one case, Lafler, the defendant
4 rejected an offer that was extended, based on bad advice.
5 And in the other case, the defense counsel failed to
6 convey an offer before it lapsed.

7 So, again, we're in an entirely different
8 situation. But the court in Lafler points out, and I
9 believe this is very important. The Court states, "It is
10 of course true, the Defendants have no right to be offered
11 a plea, nor a federal right that the judge accept it. If
12 no plea offer is made, or a plea deal is accepted by a
13 defendant, but rejected by the judge, the issue raised
14 here simply does not arise."

15 Not only has Petitioner not established that
16 there's a deficiency in that regard, Your Honor. But
17 there's absolutely no showing of prejudice. To attempt to
18 show prejudice, Petitioner would have to show that the
19 State would have conveyed an offer, what it might have
20 conveyed, what it would have conveyed, and that's bearing
21 in mind the high-profile nature of this case. The nature
22 of the facts. It's particularly a compelling and heinous
23 crime. The premeditation involved. I mean, Mr. Urick so
24 accurately stated, this was not a run of the mill, first-
25 degree homicide, if there is such a thing. This was

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1 simply not it.

2 Furthermore, Petitioner has not shown that the
3 Defendant would have accepted such an offer or if any
4 court would have accepted it. Judge Quarles and Judge
5 Heard have not been asked, what, if any, offer would you
6 have given in this case? What, if any, offer would you
7 have accepted in this case? Everything that has been
8 presented, even this testimony of Ms. Meade, which is why
9 the State noted its continuing objection. It's just
10 speculation.

11 I think what is clear, is that throughout this
12 case, Your Honor, the Defendant maintained his own
13 innocence. I do think it's worth pointing out, after the
14 first trial, after both Ms. Gutierrez and the Defendant
15 have an opportunity to see almost the entirety of the
16 State's case. The case ended in a mistrial. And there
17 was a bail hearing right after that mistrial. Petitioner
18 was present and Ms. Gutierrez stated, "We felt confident
19 about the first trial. All the post-trial interviews with
20 the jury has certainly supported the confidence in that.
21 There is no reason to be afraid of a second trial from Mr.
22 Syed's part."

23 I think that speaks volumes about the tenure of
24 what was going between attorney and client, the decision
25 moving forward, and the fact that this Defendant was

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1 maintaining his innocence. His own statements at his
2 sentencing speak, and support the notion, that he wished
3 to assert his right to a trial. He stated, "Since the
4 beginning, I have maintained my innocence. And I don't
5 know why people have said the things that they have said
6 that I have done, or that they have done. I have
7 maintained my innocence from the beginning. And to my
8 family and to those who have believed in me since the
9 beginning, I would just like them to know that it is for a
10 reason."

11 He also stated his intention to pursue an appeal
12 and his desire for yet another chance in court. He's now
13 attempting to assert, 10 years after the sentencing, that
14 sentencing, that what he really wanted back in 2000, was
15 an opportunity to plead guilty. And that contention is
16 simply not credible, Your Honor. Thank you.

17 THE COURT: Thank you, Ms. Murphy. And any
18 rebuttal, Mr. Brown?

19 MR. BROWN: Thank you, Judge. A few points.
20 The State is apparently raising the argument that it was
21 strategic, strategic work by Cristina Gutierrez, not to
22 investigate an alibi witness. Because somehow that alibi
23 witness would have conflicted with the 80 other alibi
24 witnesses that were listed in the letter to the State.

25 First of all, the letter sent to the State which

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1 would have been an alibi -- notice of alibi witnesses, is
2 not evidence in the case. So, therefore, there would be
3 no reason why a defense counsel would be afraid that by
4 interviewing another alibi witness, they might produce
5 some kind of evidence that contradicts the evidence of
6 those 80 other people. With all due respect to Ms.
7 Murphy, to say there was a strategic decision made not to
8 investigate an alibi witness is -- I find that hard to
9 fathom.

10 Second, talking about the case Veeney that Ms.
11 Murphy cited and other cases about this, where there's a
12 failure to produce an alibi witness. The difference
13 between those cases and this case, is in this case, we
14 have a contemporaneous statement by the alibi witness.
15 She was saying things at the time when the trial would
16 have happened. So we do have a good idea of what she
17 would have said, had she gone to trial. If we -- let's
18 say we did succeed and we got her in here today, 10 years
19 later, what she might say now, 10 years later, is a far
20 less value than what she would have said 10 years ago.
21 And I would even submit to the court, that the only thing
22 really matters is what she would have said then. It
23 doesn't matter what Asia McClane might say or not say
24 right now. So, I think that's a little misleading. And I
25 think those cases that she's referring to, talk about

1 witnesses who are called to provide a after-the-fact
2 statement as to what they would testify about. And
3 attempt to do so through proffer, through affidavit,
4 rather than through live testimony at a post-conviction
5 hearing.

6 Second of all, moving on to the plea issue.
7 Merzbacher and Syed do have something in common. And what
8 they have in common is that they're both a case in which
9 the attorney, Cristina Gutierrez, was determined to take a
10 high-profile case to trial. In Merzbacher, as I said
11 before, she at least did take that first step and got a
12 plea offer, but after that first step is where she failed.
13 Because she didn't convey the plea offer to her client.
14 Again, here, we have a client who requests a plea offer
15 yet her error was in not even taking that first step in
16 that process.

17 THE COURT: But you --

18 MR. BROWN: Yes, Your Honor.

19 THE COURT: And again, I guess the question is,
20 the only evidence of that, is the testimony of the
21 Petitioner as to that request.

22 MR. BROWN: Well, that and the corroboration by
23 our expert witness, Ms. Meade. Who said that that's
24 entirely consistent with her experience. That when
25 defendants are sitting around in the lock-up, that's a

1 common thing that they talk about. And that it is
2 reasonable to expect that a client would make such a
3 request.

4 But, you're correct. There's no, you know, add-
5 on witness who heard him say that, Your Honor.

6 THE COURT: Okay. I wanted to make sure I
7 wasn't --

8 MR. BROWN: Yes, that is correct. And
9 apparently, and I'm not sure if this is the State's
10 argument or not. But, if they are saying that the State
11 would not offer a plea in this case, I think, Ms. Meade's
12 testimony pretty clearly, demonstrated that that might not
13 necessarily be the case. And certainly, Your Honor, can
14 draw from your experience on the bench as to whether
15 something like that would happen with a 17-year-old kid,
16 with no criminal history whatsoever.

17 But, Ms. Meade's experience is that she has
18 never had a case in which she could not get a plea. And
19 if someone like Ms. Gutierrez wanted a plea, certainly, I
20 think she could have gotten one.

21 In terms of the law, you know, again I want to
22 read some quotes from our supplement as to this issue of
23 the plea. Cases have found an attorney's failure to,
24 quote, "Explore possible plea negotiations and deals on
25 the Defendant's behalf, may fail the first prong of

1 Strickland when particular circumstances of the case and
2 prevailing practice standards, show that a reasonably
3 competent attorney would have done so." That's page 8 of
4 the supplement, cited in Newman vs. Vasbinder, which is a
5 6th Circuit Case.

6 Also cited there is Freund vs. Butterworth,
7 "Exploring possible plea negotiations is an important part
8 of providing adequate representation of a criminal
9 client." Mason -- and I'm sorry, that's at an 11th
10 Circuit case. And then there's a 5th Circuit Case, Mason
11 vs. Valcom (phonetic), "Ineffective assistance in part due
12 to counsel's failure to plea bargain when his client may
13 have benefitted from plea bargaining."

14 And then there's a quote also from a book about
15 the professional responsibility as a criminal lawyer, "If
16 the nature of the case warrants it, defense counsel should
17 explore plea discussions with the prosecutor." So, I
18 think those cases do go right to the legal issue of
19 whether the first prong of Strickland is satisfied by this
20 issue.

21 And in the test for the prejudice is articulated
22 in a Maryland case called Williams vs. State, 326 Md. 367,
23 at 379. It says, "A defendant need not establish that he
24 definitely would have accepted a plea offer. All that is
25 required, is that the totality of the evidence supports an

1 inference that the outcome may well have been different,
2 had he been fully and accurately informed."

3 And that's the problem we have here is, again,
4 you've got a 17-year-old kid with absolutely no experience
5 in the criminal justice system, being forced to make the
6 biggest decision of his life. And that's where Lafler and
7 Frye are important, that they highlight, this is the,
8 arguably be, I think they referred to it as the most
9 critical phase of a prosecution. The decision whether to
10 plead guilty or to go to trial.

11 And what is suppose to happen, as Ms. Meade
12 articulated, there's suppose to be some options for him to
13 choose. And his lawyer is suppose to educate him on each
14 option, the pluses and minuses, and help him make that
15 decision.

16 What happened here, the option, the option --
17 the primary option that resolves 95 percent of all cases,
18 nationally, was not provided to him. He didn't really
19 have an option in this case. And that's where the problem
20 lies. Again, it's a 17-year-old who has no experience in
21 the --

22 THE COURT: I mean, isn't this the class or type
23 of cases though, I agree, at one far end of the spectrum
24 of the typical, what your expert says, is the type of
25 cases tried in Baltimore City, this is somewhat a-typical.

1 MR. BROWN: A-typical?

2 THE COURT: Of the run of the mill murder case,
3 and I hate characterizing that way. That there wouldn't
4 be any plea negotiations. A 17-year-old without any
5 prior, without any prior record, not drug related, not
6 gang related. But a case like this, you know, the case
7 would be tried strictly on the defendant maintaining his
8 innocence and that's the run of the case.

9 MR. BROWN: But what Ms. Meade has testified to
10 and, you know, she has been admitted as an expert in
11 criminal defense in Baltimore City, is that there is a
12 duty to go out and find out what that offer is. And, in
13 particular, after there had been a mistrial. Ms. Murphy
14 read the quote from the bond hearing after the first
15 mistrial. Those were the words of Ms. Gutierrez. Those
16 aren't the words of Mr. Syed.

17 So, we think these cases establish that duty and
18 this is, this is a cognizable issue on post-conviction.

19 THE COURT: Thank you, Mr. Brown.

20 MR. BROWN: Thank you, Your Honor.

21 THE COURT: The Court is going to hold its
22 ruling sub curia and issue a written opinion. Thank you.
23 And, Counsel, I do thank you for your schedule being --
24 I'm surprise we were able to get it done in the two days
25 that we had. So, thank you.

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MR. BROWN: Thank you, Your Honor.
MS. MURPHY: Thank you, Your Honor.
(Off the record -- 4:37:34 p.m.)

TRANSCRIBER'S CERTIFICATE

This is to certify that the proceedings in the matter of Adnan Syed versus State of Maryland, Case Number 199103042-046, and Post-Conviction No. 10432, heard in the Circuit Court for Baltimore City on October 25, 2012, was recorded on digital media with video.

I hereby certify that the proceedings, herein contained were transcribed by me or under my direction. That said transcript is a true and accurate record to the best of my ability and constitutes the official transcript thereof.

In witness thereof, I have hereunto subscribed my name on this 8th day of March, 2013.

Sherry R. Miller

Sherry R. Miller, President



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