

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND,

vs.

Indictment Nos. 199103042-46

ADWAN SYED,

Defendant.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

(Trial on the Merits)

Baltimore, Maryland

Thursday, January 27, 2000

BEFORE:

THE HONORABLE WANDA KEYES HEARD, Associate Judge  
(and a jury)

APPEARANCES:

For the State:

KEVIN URICK, ESQ.

KATHLEEN C. MURPHY, ESQ.

For the defendant:

M. CRISTINA GUTIERREZ, ESQ.

REPORTED BY:

Charles F. Madden

Official Court Reporter

507 Courthouse West

Baltimore, Maryland 21202

## TABLE OF CONTENTS (Continued)

Page

STATE'S EXHIBITS (Con't.)

IDENTIFIED IN EVIDENCE

12

201

a00

11

## T-A-B-L-E O-F C-O-N-T-E-N-T-S

Page

Defense's objection to seating Juror Number 6

2

Defense's motion to have the jury visit the crime scene (reserved)

18

Defense's motion for sequestration (granted)

49

Preliminary remarks by the Court

81

Opening Statement by Mr. Urick

91

Opening Statement by Ms. Gutierrez

109

State's motion for mistrial

146

State's motion in limine re: Polygraph and referring to offenses not impeachable

153

## STATE'S WITNESSES

EMMANUEL OBOT

Direct Examination by Mr. Urick

168

Cross-Examination by Ms. Gutierrez

180

Redirect Examination by Mr. Urick

191

KEVIN FORRESTER

Direct Examination by Mr. Urick

195

Cross-Examination by Ms. Gutierrez

203

STATE'S EXHIBITS  
EVIDENCE

## IDENTIFIED IN

36-A and B

170

30

178

6

197

8

200

1

## PROCEEDINGS

(10:50 a.m.)

(The jury was not present upon reconvening.)

THE COURT: Good morning, Ladies and

Gentleman. On our -- the morning docket, the Syed case, before the snowstorm, Ms. Gutierrez indicated that she might have some preliminary matters. Are there items that we should take up before we proceed with opening and, of course, witness?

MS. GUTIERREZ: Yes, Judge. Preliminary, I guess; number one, we would note an objection to the seating of what is now Juror Number 6. And just how for the record, we had seated 12 jurors -- at that point I believe I had used 14 strikes. The State had used none.

And we both passed on the jury. We then went on to select alternate jurors. I didn't keep count, but I believe I used most of my strikes as to each of the five seats for alternates and therefore the alternates as seated did not necessarily get seated in the order in which they came, given the use of strikes subsequently.

And at the point where the Court was about ready to excuse the remaining jurors on the venire and swear the jury. And in addition there were, I think,

1 about 15 jurors who had been struck that the Court  
2 held, pursuant to Mr. Urick's request on his Batson  
3 motion -- Batson-type motion, were still remaining in  
4 the courtroom.

5 And I believe there were nine to 12 venire --  
6 of the venire left who had not been picked. All other  
7 jurors remaining in the venire had been previously  
8 excused by the Court once we began jury selection as it  
9 was clear that if all of those jurors -- even if all  
10 strikes were used that we would never reach a certain  
11 number.

12 And that at that juncture what was then Juror  
13 Number 6 started waving his hands and then -- in an  
14 insistent way to approach the bench. They came up to  
15 the bench, insisted that he could not be fair and  
16 impartial. that he would be biased, spoke briefly of  
17 his brother who was accused of murder or in jail for  
18 murder. I wasn't very clear.

19 And notwithstanding the fact that that juror  
20 had not asked a single question that called for such  
21 information -- I mean, had not answered a single  
22 question, that called for such information, the juror  
23 was insistent and ultimately the Court excused that  
24 juror.

25 THE COURT: Could you pause one moment

1 MS. GUTIERREZ: Sure.

2 THE COURT: Ms. Connolly, you don't have the  
3 file, do you?

4 THE LAW CLERK: I do.

5 THE COURT: And if you would hand it to me  
6 I'd appreciate it. Thank you.

7 You may continue.

8 MS. GUTIERREZ: That ultimately the Court  
9 reluctantly, but based on what the juror said, then  
10 excused the juror, Juror Number 6, for cause.

11 And then we stood at the bench. Momentarily,  
12 I guess the Court contemplated what it was going to do,  
13 made -- my recollection is that the Court made an  
14 observation that I had not, that I had remaining  
15 challenges left. Which was accurate, I believe I had  
16 six at that point.

17 THE COURT: With regard to the panel.

18 MS. GUTIERREZ: With regard to the -- the --  
19 the panel of 12, even though we had already completed.  
20 And then without any discussion or asking for input,  
21 the Court had us select a new Juror Number 6 from the  
22 remaining jurors.

23 And in order to do that, I believe I then  
24 exhausted all of my remaining challenges which I  
25 believe was six. And that venire person was then

1 seated in the regular panel, Seat Number 6.

2 I guess; one, we would object entirely to the  
3 seating of that juror. It's not a process that I know  
4 of that's ever been done. The prejudice to Mr. Syed, I  
5 believe, is clear. And that is that now the juror  
6 seated in Seat Number 6 is seated there above at least  
7 five other members of the venire, the five alternates,  
8 all of whom came before that juror in numbers, and  
9 would have, any one of those -- and I don't suggest  
10 that they would have been seated in order because  
11 that's not how the jury selection and the exercise of  
12 strikes would have let those jurors be seated.

13 But at least all five of them would have been  
14 seated in Seat Number 6 prior to the juror now seated  
15 in Seat Number 6. And I believe that is violative of  
16 due process.

17 I understand the strangeness of circumstances  
18 that led to that, but -- but for a second or two, all  
19 remaining veniremen would have been gone and then the  
20 only remedy, if at all, would have been to seat one of  
21 the alternates in the jury panel as I believe the only  
22 other available remedy -- and as I said, if at all,  
23 frankly Judge, I -- I really didn't have time to do any  
24 research over the last couple days.

25 And I don't know, it's such an odd

1 circumstance. I have certainly never encountered it in  
2 20 years or have heard of such a circumstance, a juror  
3 right prior to being sworn, having been seated, having  
4 not answered suddenly insists in such a way that the  
5 Court must excuse that juror and then seat another  
6 after a process that would have selected other jurors  
7 to sit in that seat.

8 So number one, we would raise an objection to  
9 the seating of Juror Number 6. Number two, in -- in --  
10 if the Court is not inclined to grant that objection,  
11 our request would be, and that would be to be  
12 consistent with due process, understanding that -- it -  
13 - and I don't know Judge. There may be a way.

14 I could not determine from my notes the order  
15 in which the strikes were exercised on the alternates,  
16 to be able to ascertain, know which juror would have  
17 been one of the first up, assuming that Juror Number 6  
18 had brought to the Court's attention while the process  
19 was going on.

20 But that either if the Court could determine  
21 that and if not, that Alternate Number 1 be seated as  
22 Juror Number 6 and that Juror Number 6 be excused or  
23 seated in Alternate Seat Number 5.

24 And as I said, the Court may be able to  
25 determine --

<p style="text-align: right;">Page 7</p> <p>1 THE COURT: If you would just repeat your 2 recommend -- your --</p> <p>3 MS. GUTIERREZ: The request would be that 4 Juror Number 6 be excused from sitting as Juror Number 5 6, the now seated Juror Number 6; that then in Seat 6 Number 6 on the panel --</p> <p>7 THE COURT: Excused entirely?</p> <p>8 MS. GUTIERREZ: Well, either excused entirely 9 or secondarily would be to then be put in at the end, 10 meaning Alternate Number 5, but that be seated in the 11 panel be either Alternate Number 1, or if there is a 12 way for the Court to determine by reason of the way 13 strikes were done, the first alternate seated and not 14 struck -- you know, that was seated in the order those 15 alternates would have come up on the panel and that 16 that alternate be thereupon seated in Seat Number 6.</p> <p>17 And as I said I -- I did try to go through my 18 notes, but I know what strikes I used and how many per 19 seat but I really could not figure out how to ascertain 20 in what order those strikes were used to figure out 21 which of the five alternates, you know, would have been 22 the first.</p> <p>23 I believe it would not have been Alternate 24 Number 1. Because the juror who was first seated in 25 Alternate Seat Number 1, I exercised two strikes</p>	<p style="text-align: right;">Page 9</p> <p>1 That's why I asked Mr. White to check. That's what I 2 have on my notes.</p> <p>3 MS. GUTIERREZ: 299 was a strike that I 4 exercised against Seat Number 4 -- was my second 5 strike.</p> <p>6 THE COURT: Okay.</p> <p>7 MS. GUTIERREZ: -- against Alternate Seat 8 Number 4. But my last regular strike, and the Court 9 wants to look and I numbered them and then drew a line 10 under strike number 14. And then the remaining strikes 11 begin at 377 to 402 -- were the six strikes I exercised 12 prior to refilling Seat Number 6.</p> <p>13 THE COURT: So, Mr. White, were you able to 14 locate your notes?</p> <p>15 THE CLERK: Judge, we -- we really don't keep 16 notes like when there --</p> <p>17 THE COURT: I know. When you -- I'm just 18 talking about the sheet that you were using, the yellow 19 pad sheet, do you not have that? If you would -- just 20 turn.</p> <p>21 (Pause.)</p> <p>22 THE COURT: All right. Mr. White's notes are 23 only as to the number of strikes utilized by the 24 conclusion.</p> <p>25 MS. GUTIERREZ: Would the Court like to</p>
<p style="text-align: right;">Page 8</p> <p>1 against that seat and so that juror was at least three 2 or four -- five plus down the road.</p> <p>3 THE COURT: Before you go any further.</p> <p>4 Mr. White, do you have your notes from jury 5 selection?</p> <p>6 THE CLERK: Yes.</p> <p>7 THE COURT: At the time we were about to 8 swear the jurors, can you confirm for me how many 9 strikes the defense had remaining with regard to the 10 panel, even though the panel had already been 11 identified and we had moved on to the alternates -- how 12 many strikes remaining Ms. Gutierrez and how many 13 strikes remaining the State had?</p> <p>14 MS. GUTIERREZ: The State had 10. They never 15 exercised a single strike.</p> <p>16 THE COURT: I understand. I just want to 17 confirm for the record what the Clerk had in his notes. 18 That's what I have but I want to make sure.</p> <p>19 (Pause.)</p> <p>20 MS. GUTIERREZ: Judge, if it will help, my 21 notes reflected I exercised a 14th strike on Juror 22 Number 90 and then my 15th strike I exercised on Juror 23 Number 377. So there's quite a -- the alternates were 24 selected in between there.</p> <p>25 THE COURT: I have 90, then 299, then 377.</p>	<p style="text-align: right;">Page 10</p> <p>1 review my notes then?</p> <p>2 THE COURT: Well, what I am doing is I'm 3 looking at my own notes, and I just want to confirm 4 that I have --</p> <p>5 And, Mr. Urick, do you have any notes that 6 follow the sequence of jury selection?</p> <p>7 MR. URICK: I do have notes and also -- and 8 on the day in question, I was aware that the defense 9 had struck 14 when we seated them, so she had six 10 remaining.</p> <p>11 THE COURT: She had six remaining as to the 12 panel.</p> <p>13 MR. URICK: Yes.</p> <p>14 THE COURT: As to the alternate, Seat Number 15 1, I have that you used both strikes.</p> <p>16 MS. GUTIERREZ: Yes. That's what I have.</p> <p>17 THE COURT: 289 --</p> <p>18 MS. GUTIERREZ: But I didn't write down the 19 numbers.</p> <p>20 THE COURT: 289 and 351 are my notes.</p> <p>21 (Pause.)</p> <p>22 MS. GUTIERREZ: So Judge, that would indicate 23 that the juror now seated in Alternate Seat Number 1 24 would not have been the first juror up.</p> <p>25 THE COURT: Correct.</p>

1 MS. GUTIERREZ: You know, on the venire. I  
2 have no strikes exercised against Seat Number 2 but I'm  
3 not sure if that's accurate.

4 THE COURT: I have -- my notes do not reflect  
5 any strikes against Seat Number 2.

6 THE CLERK: Alternate Number 3.

7 THE COURT: Wait a minute. Let me just  
8 check.

9 MS. GUTIERREZ: Alternate Seat Number 2,  
10 yeah.

11 THE CLERK: You used one strike.

12 THE COURT: Yes, you did.

13 MS. GUTIERREZ: I used one strike --

14 THE COURT: As to 292.

15 MS. GUTIERREZ: Wait a minute. Well then,  
16 Seat Number 2. And then -- see Judge, from my notes I  
17 believed that the only seat that I did not exercise any  
18 strikes against as of the five alternates, was Seat  
19 Number 5.

20 THE COURT: Correct. That's what my notes  
21 show.

22 MS. GUTIERREZ: And I believe -- I mean, I  
23 could be incorrect, I tried to figure this out. But my  
24 belief is then that the person seated in Seat Number 5,  
25 whose only number I have would have been the first

1 juror up, assuming that, you know, we exercise the same  
2 strikes that we did.

3 And I will tell you that all of my strikes  
4 were exercised for a specific reason against a specific  
5 juror; that then the juror that would have come up  
6 normally and naturally, if those strikes to -- to  
7 reseal Juror Number 6, whether he'd been removed for  
8 cause or whether he had been struck, would be the juror  
9 seated in Seat Number 5.

10 And so our request, assuming the Court  
11 doesn't strike the whole panel, which would be our  
12 first request, would be to seat juror seated in Seat  
13 Number 5, whom I only know by number, 321, be seated in  
14 Juror -- the panel Seat Number 6.

15 And, Judge, I guess at this juncture, if the  
16 Court does that then we would have no objection to  
17 seating -- to the juror who's now seated in Seat Number  
18 6, wind up now as Alternate Number 5, if the Court is  
19 insistent on having five alternates.

20 I guess our preference would be to then just  
21 go with four alternates because I think the whole  
22 procedure is so strange after two days of voir dire and  
23 the seating that I just worry about the impact on that  
24 juror who's now, if the Court decides to go this way,  
25 would then be removed from the jury and then put back

1 as an alternate. So, our first line would be,  
2 of course, to dismiss the entire jury panel, and  
3 alternatively we would ask for Alternate Number 5 to be  
4 seated in Seat Number 6 and that the juror in Seat  
5 Number 6 be excused entirely.

6 THE COURT: Thank you.

7 Any response with regard to the defense  
8 request with regard to the panel of 12 plus five as it  
9 appears?

10 MR. URICK: Very briefly, Your Honor. I know  
11 the State would object and oppose the defense request.  
12 They had -- with the first point we'd make is that it  
13 is waived at this point. They had plenty of  
14 opportunity on the day in question to raise -- raise an  
15 objection if they wanted to. They choose not to.

16 We went through an entire procedure without  
17 objection. It is now waived.

18 Secondly we would point out that there is no  
19 set order that jury selection has to be done. The  
20 Court can begin at the top, can begin at the bottom,  
21 there is no order such as that. So we would oppose  
22 that.

23 If the Court disagrees and wishes for a  
24 remedy, I remember this happened with one time in front  
25 of Judge Gordy, where either just before or just after

1 we were ready to swear the panel, one of the jurors who  
2 was sitting in the panel remembered that I had  
3 prosecuted them.

4 So Judge Gordy at that time released him,  
5 seated Alternate Number 1 in -- in that seat. So --

6 THE COURT: And that, you would agree, would  
7 be the normal course?

8 MR. URICK: Yeah. Would be --

9 THE COURT: Was that before or after the  
10 panel had been sworn?

11 MR. URICK: I can't remember. I think it may  
12 have been just before they were sworn that he just  
13 excused the juror that was let go. I think we'd  
14 already excused the entire panel and he just put  
15 Alternate Number 1 in that seat.

16 And if your going to seat -- you know, if  
17 you're grant the request, we just say move Alternate  
18 Number 1 to that seat.

19 However, we would oppose the request being  
20 granted. We think it's waived and that there was no  
21 violation of due process through the procedure that the  
22 Court employed on that day in question.

23 THE COURT: So do I -- do I have at least an  
24 agreement between counsel that Juror Number 6 should  
25 take Seat Number 5; that Juror Number 1 -- Alternate



1 Number 1 should take Seat Number 6?  
 2 Was that not your initial request, Ms.  
 3 Gutierrez?  
 4 MS. GUTIERREZ: That is my request, Judge,  
 5 yes.  
 6 THE COURT: And is that not the State's --  
 7 State's request, indicating he has no opposition to  
 8 that?  
 9 MR. URICK: If the Court is going to seek a  
 10 remedy, that's what we say. But we think that there's  
 11 no remedy required here.  
 12 THE COURT: I understand. For the record,  
 13 there was an unusual circumstance that occurred. And  
 14 the Court's recollection was that prior to the swearing  
 15 in of the panel, Juror Number 6 indicated he had a  
 16 problem.  
 17 In fact, the problem he outlined would have  
 18 required, as Counsel for the defense points out, that  
 19 the Court strike him for cause. There was no objection  
 20 by either counsel as to the striking of Juror Number 6.  
 21 In fact, both agreed that Juror Number 6 had to be  
 22 stricken.  
 23 At that time, the defense had effectively  
 24 exhausted its strikes with regard to alternates, save  
 25 Juror Number 5, which would have given them two

1 strikes.  
 2 The Court opted to give the defense and the  
 3 State the opportunity to utilize as many strikes as it  
 4 had left. And that was the reason the Court opted to  
 5 allow the selection be -- to be for a member of the  
 6 panel, to fill Seat Number 6 and effectively allowing  
 7 the State to have -- use as many of its strikes it had  
 8 left. And that's why I directed that the  
 9 selection would be as to the panel, which in a sense  
 10 gave the defense six strikes to exercise and the State  
 11 to use whatever remaining strikes it had with regard to  
 12 the panel as opposed to the two strikes the defense  
 13 would have had for an additional alternate and the one  
 14 strike that the defense -- the State would have had.  
 15 As I recollect, the State did not use any  
 16 strikes; is that correct?  
 17 And -- but the defense choose to. And do you  
 18 recall, Ms. Gutierrez, how many strikes you used before  
 19 we were able to seat?  
 20 MS. GUTIERREZ: On my notes I have that I  
 21 used six strikes. I have the numbers.  
 22 THE COURT: Right. So you would have been  
 23 only afforded two strikes had I given you the strikes  
 24 for an additional alternate.  
 25 MS. GUTIERREZ: Right. But that would only

1 have occurred if the Court had moved up.  
 2 THE COURT: Correct.  
 3 MS. GUTIERREZ: And then, of course, we would  
 4 have had this argument as to in what order.  
 5 THE COURT: And what order --  
 6 MS. GUTIERREZ: To move up.  
 7 THE COURT: And then --  
 8 MS. GUTIERREZ: Yes.  
 9 THE COURT: And then what -- and then we  
 10 would have had an argument as to whether or not you  
 11 would then have been entitled to additional strikes --  
 12 MS. GUTIERREZ: Right.  
 13 THE COURT: -- towards the juror that would  
 14 then be Juror Number 5.  
 15 MS. GUTIERREZ: And Judge --  
 16 THE COURT: Where you never exercised a  
 17 strike.  
 18 MS. GUTIERREZ: I will note for the record it  
 19 was after five o'clock. I think it was close to six  
 20 o'clock. It had been a very long day.  
 21 THE COURT: Well, I --  
 22 MS. GUTIERREZ: All of us in, I think  
 23 everyone was taken by surprise and --  
 24 THE COURT: Well, that --  
 25 MS. GUTIERREZ: -- unclear to what to do.

1 THE COURT: -- in not an unusual occurrence.  
 2 In fact, I've seen it happen before. But by moving the  
 3 jurors up in order, it would have effectively then  
 4 caused an additional issue as to whether or not you  
 5 would then have been entitled to an additional strike,  
 6 --  
 7 MS. GUTIERREZ: Right.  
 8 THE COURT: -- having shuffled the order of  
 9 the alternates. And that I have a not seen until after  
 10 a jury has been sworn.  
 11 MS. GUTIERREZ: Yes.  
 12 THE COURT: And so --  
 13 MS. GUTIERREZ: But then, of course, that's a  
 14 different circumstance.  
 15 THE COURT: Different circumstance. So for  
 16 the reasons that I've indicated for my rationale, I am  
 17 going to deny the motion. I'm going to leave Juror  
 18 Number 6 as Juror Number 6. The panel was then sworn  
 19 and so you had an opportunity to exercise six strikes  
 20 towards that particular juror.  
 21 And the Court finds that the process was done  
 22 in a manner that afforded both the State and the  
 23 defense an opportunity to have a fair selection. And I  
 24 will deny your motion.  
 25 Is there another motion with regard to the

1 panel itself -- I mean with regard to the case itself?  
2 I understood that we were going to have some -- a bit  
3 of argument on a another motion.

4 MS. GUTIERREZ: Yes, Judge. I don't think  
5 either of these motions will take much time.

6 The first is that we've prepared -- we filed  
7 a similar motion in the last trial. And we're making a  
8 motion to have the jury view the crime scene and Best  
9 Buy. We are prepared to bear the financial cost of  
10 transporting the jury. And we've sought ways to do  
11 that by small bus that can carry the jury, the  
12 alternates, the Court, whatever other personal.

13 If transporting Mr. Syed is an impediment to  
14 granting this motion, he is prepared to waive his right  
15 to be present for such a viewing.

16 And, Judge, unlike other circumstances where  
17 juries don't see or just see pieces of it through  
18 photographs, it is our contention that the very terrain  
19 that is mentioned in Jay Wilds, who is the only  
20 eyewitness to those alleged events, that the State's  
21 entire case rests on that issue.

22 And it is our belief that not only would it  
23 be of helpful assistance to the jury, but that it is  
24 critical to Mr. Syed's ability to present a defense  
25 challenging the credibility of Jay Wilds in light of

1 the terrain and the difficulty of traversing the  
2 terrain that Mr. Wilds has now described in three  
3 separate statements and one testimony in the first  
4 trial.

5 That cannot be adequately described without a  
6 violation of the presumption of innocence which Mr.  
7 Syed still has, since the only two persons alleged to  
8 have been there and carried part or all of Ms. --  
9 either together or separately, Ms. Lee's body on the  
10 13th of January would be, according to Jay Wilds,  
11 himself and Adnan Syed.

12 And the only dispute to what he says then  
13 would be extraneous evidence challenging his  
14 credibility as to events. The location is in the  
15 middle of Leakin Park. What we would propose, because  
16 of the difficulty of that terrain, we believe could be  
17 worked out, there is a witness who drew the maps -- Mr.  
18 Budenmyer is listed as to both -- both witness lists.  
19 We have subpoenaed him and expect to call him if the  
20 State does not.

21 We've been out to the scene with him and an  
22 investigator and believe what we need to demonstrate to  
23 the jury could be done without anyone else other than  
24 Mr. Budenmyer.

25 And he could easily do it without saying a

1 word by notating certain places where he generated his  
2 measurements that were made at the behest of State  
3 agents back on January 13th, '99, that would allow the  
4 jurors to just merely get off the bus and enter --  
5 well, it doesn't really have a name but at one point  
6 was a parking area off Franklinton Road; that all  
7 measurements were made that is alleged to be the place  
8 where Mr. Wilds and, if he's believable, Mr. Syed, and  
9 if he's not, either by himself or with someone else,  
10 entered the actual park itself and went 127 yards; and  
11 then in broad daylight -- this is a similar time and  
12 weather, although certainly not the snow as last  
13 January 13th.

14 There was a snow shortly before January 13th  
15 of just an inch and a half and there were snow days on  
16 the 14th and 15th of January, 1999; that it would be  
17 close in time that it could be accomplished readily and  
18 easily, there are no impediments to do so.

19 In addition the scene at Best Buy. Mr.  
20 Wilds, who gave several statements, first id -- did not  
21 identify Best Buy at all. That only came in his second  
22 written statement' and, in fact, prior to that not only  
23 did he give a -- a location of -- a different location  
24 then Best Buy as to where he allegedly met Mr. Syed and  
25 where he allegedly -- Mr. Syed allegedly popped the

1 trunk of the car enabling Mr. Wilds, according to him,  
2 to see the body of Ms. Lee, in the trunk.

3 He initially, not only stated in his  
4 statement that that location actually existed in a  
5 place down near the bottom of the park from the end  
6 where the burial took place physically located inside  
7 Baltimore City, but that he also physically took the  
8 police to that specific location;

9 And that it was only subsequently in varying  
10 degrees in different statements and his testimony that  
11 he identified Best Buy as presumably the location of  
12 the death and the location of the trunk pop that  
13 afternoon.

14 And we believe that the physical description  
15 of the actuality of Best Buy including the location of  
16 the phone booth at Best Buy, the entrance, the  
17 existence or nonexistence of security cameras, the  
18 openness of Best Buy to traffic on Ambassador Road and  
19 on Security Boulevard and the traffic that comes in is  
20 an integral part of, again, attacking the credibility  
21 of Jay Wilds, without whose testimony the State could  
22 not proceed against Adnan Syed.

23 We bring it to the Court's attention now. We  
24 brought it, and Judge Quarles had indicated that he was  
25 apparently willing to grant that but was concerned



1 about the time that it might take. I will note that  
2 the first trial took, in the absence of two witnesses,  
3 less than five days on the State side, which was far  
4 less than their estimate of trial.  
5 I believe this could be easily accomplished  
6 in the morning. And as I said, Mr. Syed is willing to  
7 waive his right to be present if his presence becomes,  
8 because of his incarceration, an impediment to making  
9 this happen.  
10 And again Mr. Syed is willing to bear the  
11 cost of such a viewing.  
12 Because it will take time to plan to reserve  
13 the bus and meet the Court's schedule, we would ask to  
14 try to do this as the very first piece of evidence  
15 presented by the defense following the conclusion of  
16 the State's case to the extent that that can be  
17 arranged.  
18 But we'd like a ruling on it so that we can  
19 begin, if that's possible, to make those arrangements.  
20 THE COURT: State's position on the motion  
21 for jury viewing of the crime scene?  
22 MR. URICK: We'd oppose it. There's nothing  
23 unique about this crime scene that requires a personal  
24 viewing by the jury. In fact, from the previous trial  
25 when the motion was made Judge Quarles said he would

1 considerate it, and later in the course of the trial he  
2 indicated he considered it, decided that there was  
3 nothing unique that could not be described by way of  
4 live testimony or videotape or pictures, if need be.  
5 So he denied the motion.  
6 This is a very burdensome and time consuming  
7 proposition to do something of this sort. And the  
8 distance from the street to the body was 127 feet. It  
9 was not 127 yards.  
10 The Court will later see some pictures come  
11 in. This is a very -- fairly open crime scene at this  
12 time of the year when there's no vegetation, no  
13 foliage. Pictures, videotapes are perfectly adequate  
14 for describing anything on the scene that needs to be -  
15 - due to the burdensome nature and the in-expediency of  
16 trying to have a day at the scene, the State opposes  
17 this motion.  
18 MS. GUTIERREZ: Judge, for the record, Judge  
19 Quarles made no such finding. Although he indicated  
20 that he may have changed his mind because of his  
21 upsetness with how long, those were in his words, how  
22 long the trial that had been expected to take three  
23 weeks although it was only concluded, the State's  
24 portion in less than five days, he was upset at the  
25 time and what he perceived to the length of the trial.

1 Those feelings ultimately resulted in the  
2 mistrial of this case which was unfortunate for all  
3 involved. But he made no such ruling, and, in fact,  
4 his earlier ruling is the only thing that stands on the  
5 record that he agreed that the issues of the terrain as  
6 outlined, were important issues and that he was  
7 prepared to grant such a motion.  
8 THE COURT: Well, counsel, what you're going  
9 to find during the course of this trial, is that, as  
10 you both know, there are abundance of issues that are  
11 discretionary. And like minds will differ.  
12 Judge Quarles may have granted motions or  
13 denied motions in his discretion that you may find that  
14 I decide that I'm going to grant something he denied or  
15 deny something that he granted. So it would probably  
16 be best if you just put forth your best argument --  
17 MS. GUTIERREZ: Well, that's what I did,  
18 Judge. But I'm not going through this trial having the  
19 State's Attorney lie about what occurred --  
20 THE COURT: Ms. Gutierrez?  
21 MS. GUTIERREZ: -- in the first trial.  
22 THE COURT: Ms. Gutierrez?  
23 MR. URICK: Objection.  
24 THE COURT: Ms. Gutierrez, and, Mr. Urick,  
25 that's why I'm suggesting to you that I'm not really

1 concerned about what Judge Quarles did in a case that  
2 ended up in a mistrial.  
3 MS. GUTIERREZ: That's why I didn't argue it  
4 first, Judge. But I will not allow the record to  
5 reflect a constant distortion of the truth by the State  
6 in this trial.  
7 THE COURT: Very well. So then why don't I  
8 make a suggestion. We will not refer to the mistrial  
9 and what Judge Quarles did unless it's absolutely  
10 necessary and requires some reference for some reason,  
11 and you first tell me what the reason is and then tell  
12 me what -- what occurred in the last trial.  
13 With regard to this motion, anything  
14 addition, Ms. Gutierrez?  
15 MS. GUTIERREZ: No, Your Honor.  
16 THE COURT: Mr. Urick?  
17 MR. URICK: No. Thank you, Your Honor.  
18 THE COURT: Okay. Unfortunately, at this  
19 moment, I'm going to reserve my ruling on this motion.  
20 I'm going to tell you, Ms. Gutierrez, I'm not  
21 inclined to grant your motion. That's where I'm  
22 leaning. So -- but to the extent that I feel  
23 differently after I've heard some of the evidence in  
24 the State's case, I may be inclined to grant the  
25 motion.

1 So at this juncture, I am not going to do so.  
 2 I understand that you have some concern. I must note  
 3 first with the advent of virtual reality and computer  
 4 technology, I'm sure there's some way that you could  
 5 have us see the scene by video rather than travel  
 6 there.  
 7 I would note that Governor Glendening put the  
 8 State -- in a state of emergency just as of yesterday  
 9 and the day before. And I would take it that the park  
 10 and areas near the park are probably icy and snow  
 11 covered. And I noted on the news, and I guess everyone  
 12 can note, for their own information, that we haven't  
 13 had two feet of snow since 1996.  
 14 MS. GUTIERREZ: And I will note, Judge, -- I  
 15 --  
 16 THE COURT: As a result I will say last year  
 17 --  
 18 MS. GUTIERREZ: -- my house is located at the  
 19 edge of the park and in my 12 years of owning that  
 20 house the park has never once been plowed.  
 21 THE COURT: So, in any event, for those  
 22 realistic weather-condition reasons, I'm not inclined  
 23 to send a jury panel out to that location for those  
 24 reasons, both for hazardous road conditions as well as  
 25 what in Baltimore City, strange things happen.

1 For all I know, it could be 75 degrees for  
 2 the next three days, the snow will melt and it will be  
 3 very safe and then I'll revisit for some other reason.  
 4 But at this juncture, I'm not inclined to  
 5 grant it but I'm going to leave that open in the event  
 6 that I see some need either as the case proceeds.  
 7 As I told you both, Ms. Gutierrez, and, Mr.  
 8 Urick, I intentionally did not talk to Judge Quarles  
 9 about this case. I intentionally don't know anything  
 10 about this case other than what you've presented me. I  
 11 am not one of those people that reads the newspaper a  
 12 lot or follows the media on television. I look at it  
 13 very rarely.  
 14 So if I hesitate in some way to make a  
 15 ruling, it's not because I'm being difficult but rather  
 16 I'm waiting to hear something that would assist me in  
 17 making that determination. And at this juncture I'm  
 18 not inclined to grant your motion.  
 19 I'm not saying I won't revisit it. I will  
 20 tell you that at this juncture I am not. But I will  
 21 keep in mind that you said that you do -- would need to  
 22 make arrangements --  
 23 MS. GUTIERREZ: Yes.  
 24 THE COURT: -- in the event that I do grant  
 25 it.

1 MS. GUTIERREZ: Yes. And we have inquired  
 2 and they've indicated there's -- the bus company needs  
 3 as much notice as possible --  
 4 THE COURT: Lead time.  
 5 MS. GUTIERREZ: to, you know --  
 6 THE COURT: All right. And I would indicate  
 7 for the purpose of you organizing your case and opening  
 8 --  
 9 --  
 10 MS. GUTIERREZ: Okay.  
 11 THE COURT: -- statements consider it that  
 12 the motion is not granted. So that you don't --  
 13 MS. GUTIERREZ: That's fine.  
 14 THE COURT: -- prematurely tell the jury  
 15 we're going to do something.  
 16 MS. GUTIERREZ: Judge, I noticed there's not  
 17 a television in here.  
 18 THE COURT: We can get one.  
 19 MS. GUTIERREZ: Is there a TV with a video  
 20 cause we have the video.  
 21 THE COURT: There is. There is. The sixth  
 22 floor attorney referral office has allowed us to use  
 23 that when needed. All you need is someone from your  
 24 staff to check in the morning of the day you want to  
 25 use it, calling the day before to advise them that

1 you're coming, they will have it available and you can  
 2 wheel it. It's on wheels.  
 3 MS. GUTIERREZ: Okay. That's fine.  
 4 THE COURT: And it can be wheeled onto an  
 5 elevator.  
 6 MS. GUTIERREZ: I think I've seen that  
 7 equipment.  
 8 Judge, my next motion, and I will pass to the  
 9 Court on you will see it's an amended State's  
 10 disclosure that is stamped at the top of it with my  
 11 office stamp that is was received on January 18th. And  
 12 I will tell you that is the day that we received it.  
 13 The arrangement in this case regarding  
 14 disclosure is that we received a call from Mr. Urick  
 15 and Ms. Murphy's office on any given time if they have  
 16 a package for us, which has been the reference  
 17 indicating any disclosure. And we go down to their  
 18 office and pick it up. So we did actually receive this  
 19 on the 18th.  
 20 Judge, if you recall, we had a hearing on the  
 21 14th, which was a Friday, in the morning for an hour or  
 22 so, and one of the issues was on our motion. What we  
 23 wanted was a Brady hearing which the Court actually  
 24 held.  
 25 And whatever it was, and that in response to



1 that, and we demanded that the State answer certain  
2 questions. The -- not the 17th was a Monday and was a  
3 designated Court holiday, being the designated day to  
4 celebrate Martin Luther King's birthday. So the 18th  
5 was the first available open court date following that  
6 hearing.

7 And so we received this disclosure, Number 2,  
8 indicates that in response to defense questions on  
9 Friday, January 14th, and to clarify previously  
10 released material the, State avers.

11 And then it goes into a paragraph relating  
12 what was precisely the argument on January 14th  
13 regarding a previous statement that was referred to in  
14 Jan Pusateri's February 27th statement that had already  
15 been provided by the State in the first trial because  
16 she was going to testify. She would have been the very  
17 next witness following, if the mistrial had not  
18 occurred.

19 THE COURT: Are you looking at Paragraph 2 --

20 MS. GUTIERREZ: Yes.

21 THE COURT: -- in the amended State's  
22 disclosure?

23 MS. GUTIERREZ: State's disclosure, yes.

24 THE COURT: All right.

25 MS. GUTIERREZ: And for the Court's

1 information, Jan Pusateri is a friend of Jay Wilds Who  
2 is being offered at -- at least on some level to  
3 attempt to buttress and corroborate Jay Wilds'  
4 description of events that are alleged to have occurred  
5 on January 12th, 13th, and possibly 14th.

6 And that's -- and we got her statement, not  
7 as a result of any other discovery or Brady obligation  
8 that the State recognized. We have, as we've already  
9 previously argued, believe that Jan Pusateri fell into  
10 any definition of Brady, including impeachment. In  
11 that

12 -- that statement should have been disclosed.

13 But in any event --

14 THE COURT: She HAD not testified and so  
15 therefore it wasn't out -- it was not Jinks material  
16 either. Is that right?

17 MS. GUTIERREZ: Well, it actually got  
18 disclosed that way because it was ordered that the  
19 State try to disclose --

20 THE COURT: In advance --

21 MS. GUTIERREZ: -- in advance of the  
22 testimony knowing when they were going to testify.  
23 And, in fact, Jan Pusateri was on the witness stand but  
24 had not yet -- she may well have been sworn, I don't  
25 remember, but had not yet testified --

1 THE COURT: At the time.

2 MS. GUTIERREZ: -- at the time the mistrial  
3 was declared. And that's why we had received from the  
4 State her statement literally the day before at the  
5 time that we also got Jay Wilds' statement and the late  
6 disclosure of Jay Wilds' statement actually  
7 necessitated an overnight recess for us to have an  
8 opportunity to review Jay Wilds'.

9 In any event, if the Court recalls from the  
10 14th, I -- I don't want to waste time if the Court  
11 does, but Jan -- Jan Pusateri's -- the statement that  
12 we received indicated that it occurred on January --

13 THE COURT: It?

14 MS. GUTIERREZ: The statement that -- that we  
15 got, that had occurred on January 20 -- I mean February  
16 27th at police headquarters. And in the statement  
17 itself, in Jay Wilds' statement that we have, the first  
18 statement occurred in the early morning hours of  
19 February 28th, so hours after the conclusion of Jan  
20 Pusateri.

21 According to the discovery, although it does  
22 not appear to be believable --

23 THE COURT: And that was --

24 MS. GUTIERREZ: -- for other --

25 THE COURT: No. It was the second statement

1 of Jay Wilds; correct?

2 MS. GUTIERREZ: No. That was the first. The  
3 28th -- well, that's the first that we know of.

4 THE COURT: All right.

5 MS. GUTIERREZ: It is inconceivable to us  
6 that they arrived at taking a statement from Jan  
7 Pusateri on particular details before having talked to  
8 Jay Wilds. However, the 28th of February -- of  
9 February statement is alleged by the State to be the  
10 first statement of Jay Wilds. The second statement is  
11 alleged to have occurred on March 15th.

12 In any event, in Jan Pusateri's statement on  
13 the 27th, she somehow, at least without any explanation  
14 of how, arrives at Police Headquarters in downtown  
15 Baltimore with her mother and a lawyer and proceeds to  
16 give a taped statement.

17 In that taped statement, she refers to a  
18 statement that she gave the night before. And if the  
19 Court recall on the 14th, although we repeatedly asked  
20 that question, the State did not answer.

21 We have received this package of an amended  
22 disclosure prior to receiving the Court's order based  
23 on the conduct and the answers of the State and the  
24 questions asked on the 14th, denying our motion for any  
25 further relief regarding Brady.

1 In this very amended disclosure, the State  
2 admits that there was a statement, but, you know, gives  
3 us what, in our experience with the State, is a  
4 paraphrase of what occurred and does not answer the  
5 fundamental questions that we believe make it Brady,  
6 et. al.; i.e., critical to the credibility of both this  
7 witness, and since this witness is the credibility  
8 buttress to Jay Wilds, you know, intrinsic absolutely  
9 to be able to attack the credibility of Jay Wilds  
10 through the witness that they are offering as being the  
11 only one who can buttress Jay Wilds' credibility.

12 And all we have is -- is a paragraph in which  
13 we don't have actual words. There are no notes  
14 identified. There is no explanation as to how Jan  
15 Pusateri miraculously comes down to the Police  
16 Department the day before her taped statement.

17 And in light of that, and in light -- and  
18 clearly these are the State's words that they gave this  
19 up not willingly, not in recognition of their duty, but  
20 as they say, in response to defense questions on  
21 Friday, January 14th.

22 That says to us, in light of the entire  
23 history of this case, that some question that we asked  
24 that this Court allowed to be has struck a nerve with  
25 the State. That having withheld information, having

1 withheld specifically this information, we're now past  
2 the first trial, decided that they better answer.

3 And yet they choose to answer by paraphrasing  
4 what occurred, not releasing the actual information.

5 Secondly, --

6 THE COURT: With regard to Paragraph 2 and  
7 your request?

8 MS. GUTIERREZ: Yes.

9 THE COURT: If you were given disclosure, and  
10 this is not a motion, what is your request?

11 MS. GUTIERREZ: My request, Judge, is to be  
12 allowed to take a deposition, in this Court, of  
13 Detective McGilivray regarding the circumstances of  
14 both the February 26th, 1999 statement, that is averred  
15 in this Paragraph 2 of Jan Pusateri and as to the  
16 circumstances of anything that occurred between the  
17 time, which we don't know, or the circumstances of the  
18 26th statement and how the 27th statement came about or  
19 was arranged.

20 That's our specific request regarding. And  
21 the others we would seek the production of any notes  
22 whatsoever taken by any State agent or in the control  
23 at any time of any State agent regarding the February  
24 26th statement, regarding the appearance of Ms.  
25 Pusateri at Police Headquarters on the 26th, as to the

1 27th statement, and as to the appearance of Ms.

2 Pusateri on the 27th together with lawyer and mother,  
3 which statement we -- well, we had something that  
4 purports to be the entire statement.

5 And so that would be our specific request as  
6 to statement -- Paragraph Number 2 in their disclosure.

7 Paragraph Number 3 in their disclosure -- and  
8 Judge, I will tell you, much to my surprise having  
9 already been through three separate motions to compel,  
10 six months of fighting over the most minimal of  
11 discovery, having already been through a trial that  
12 almost went to conclusion to now discover something  
13 that we repeatedly, specifically asked for, that there  
14 is a statement that they now decide to disclose made by  
15 Adnan Syed;

16 That what is revealed to us, if the Court  
17 will go it's -- the third page past -- second page  
18 past, is an alleged report not on any form of the  
19 Police Department, not dated anywhere near the time of  
20 the alleged statement, but dated on September 14th,  
21 1999, not a date with any significance to the Court or  
22 the Court case, or to Mr. Syed;

23 Obviously significant, not signed, by  
24 alleging -- appearing to be a memo regarding a February  
25 26th statement by Mr. Syed to Detective Ritz, who is

1 the secondary detective on this case along with  
2 Detective McGilivray, alleged to been done up by  
3 Detective McGilivray but not signed;

4 No indication of when it was made, other than  
5 the date September 14th, which is, I believe, eight  
6 months subsequent to the date, two days prior to the  
7 arrest; it allegedly conducted at his home in the  
8 presence of his father, but the State has repeatedly,  
9 since being -- started to be asked at the end of July,  
10 refused to answer a single question to indicate and, in  
11 fact, answered upon our inquiry upon what appeared to  
12 be in their discovery reference to that statement,  
13 indicated to us in writing that that was a never mind,  
14 that it didn't mean that.

15 There wasn't a statement. We received  
16 everything and has refused to answer any questions.  
17 And again, because of that, we're, you know, in a  
18 second trial and we've received more significant  
19 discovery.

20 I will note that that September 14th memo  
21 indicates that Mr. Syed readily answered questions that  
22 were put to him, acknowledged the relationship,  
23 acknowledged that it had ended, acknowledged already  
24 his embarrassment that his father was there and was  
25 hearing these questions about --

1 THE COURT: You -- you're referring -- you're  
2 not referring --  
3 MS. GUTIERREZ: To the September 14th --  
4 THE COURT: Okay.  
5 MS. GUTIERREZ: -- memo that -- that -- and  
6 that those are all essentially whether they may be  
7 characterized otherwise, are essentially exculpatory  
8 statements made by the defendant.  
9 Whether or not that was an issue, again  
10 Judge, something happened on the 14th that made these  
11 prosecutors give up that statement that had been under  
12 the law in their possession, or their agents, since  
13 September -- since February 26th, almost a year ago and  
14 they've never before given.  
15 THE COURT: What --  
16 MS. GUTIERREZ: So in light of that, what we  
17 would like to do is to take a deposition in Court of  
18 Detective Ritz regarding all the notes, all the  
19 circumstances, including any notes or circumstances  
20 regarding why this memo got to be dated on September  
21 14th.  
22 THE COURT: Are you --  
23 MS. GUTIERREZ: The first Brady hearing  
24 occurred on September the 8th.  
25 THE COURT: Are you seeking to suppress the

1 statement of Adnan Syed?  
2 MS. GUTIERREZ: I don't think so, Judge.  
3 Obviously we may at some point but I concede that there  
4 are issues. He was not in custody. It is exculpatory.  
5 Frankly, we intend to use it.  
6 And we would have been entitled to use it if  
7 we'd been given it, because it is exculpatory, at the  
8 first trial. So I really don't anticipate challenging  
9 the admissibility of the statement.  
10 I may well challenge, based on a discovery  
11 violation, any ability of the State to use the  
12 statement in its case in chief. But I'm not  
13 challenging on normal admissibility grounds or  
14 voluntariness grounds the statement itself at this  
15 juncture.  
16 THE COURT: Okay. The State doesn't want to  
17 be heard, do you?  
18 MR. URICK: No.  
19 THE COURT: With regard to the statement, I'm  
20 going to talk about that first, of your client. Ms.  
21 Gutierrez, one, you are free to use that statement in  
22 any way you would like. Two, you will have liberal  
23 ability to cross-examine the note taker, the statement  
24 taker, and any notes that he may have had, derived, or  
25 used to create this memo of 1999, September 14th.

1 I believe that this arguably is exculpatory  
2 information, but you do have it now, and I will allow  
3 you to use it in an fashion that you would like.  
4 Second, I think it's frankly irrelevant  
5 whether the State chooses to use it, because obviously  
6 if they use it, it helps your case. So they want to  
7 use it, I'm not going to preclude them from using it.  
8 However, they will have to use it by qualifying the  
9 manner in which it was taken, the circumstances, and  
10 the like. And I will allow you to voir dire that  
11 witness before the statement is admitted.  
12 MS. GUTIERREZ: Voir dire outside the  
13 presence of the jury?  
14 THE COURT: Outside the present jury.  
15 MS. GUTIERREZ: Thank you.  
16 THE COURT: In an abundance of caution, if  
17 they choose to use it in their state -- in their case  
18 in chief.  
19 Next. With regard to the paragraph involving  
20 Ms. Pusateri. I find that that perhaps, in an  
21 abundance of caution, the State has provided that  
22 information to you. And I thank them. Because as you  
23 may recall, I asked that if there was information  
24 regarding the taped statements of witnesses, that they  
25 not wait until the last minute.

1 And I find that they have, in fact, followed  
2 my instruction. And perhaps that's why the memo came  
3 January 18th; that maybe the change or different  
4 circumstances is that I'm very sincere about us working  
5 as professionals and insuring that this case is moved  
6 along in a expeditious fashion.  
7 And to the extent that there can be some  
8 assistance in providing information in advance of a  
9 witness testifying, in advance of the witness taking  
10 the stand that will allow the defense to be prepared  
11 and to be able to adequately provide their cross-  
12 examination without taking a break, I'd ask that both  
13 the counsel do that.  
14 Now, if it means that when the witness is  
15 finished testifying, Ms. Gutierrez, if you're not  
16 immediately prepared to proceed, let me know. We'll  
17 take a break and allow you to review whatever  
18 information has been provided to you at that moment,  
19 whether it's Jinx material or whatever, so that you can  
20 be prepared to proceed.  
21 But I do find that with regard to your second  
22 request to have a separate deposition of Ms. Pusateri,  
23 that request is denied as is a --  
24 MS. GUTIERREZ: We didn't want the deposition  
25 of Ms. Pusateri, just of the detective.



<p style="text-align: right;">Page 43</p> <p>1 THE COURT: Of the detective?</p> <p>2 MS. GUTIERREZ: Yes.</p> <p>3 THE COURT: Or of the detective. Well, I</p> <p>4 expanded it because obviously she would know when she</p> <p>5 went to visit with him and why and what generated it.</p> <p>6 And secondly, with regard to any detectives that may</p> <p>7 have asked her questions, the same reasons that I</p> <p>8 indicated in my order, I deny that.</p> <p>9 I do not believe that the State is entitled</p> <p>10 to every step along the investigative route. And I</p> <p>11 believe that perhaps what generated a need to make some</p> <p>12 notes with regard to an additional statement of Ms.</p> <p>13 Pusateri came as part of the investigative process.</p> <p>14 But in any event, you now have the</p> <p>15 information. And it's readily available to you. I</p> <p>16 thank the State for filing the amended disclosure and</p> <p>17 doing so in advance of the beginning of this trial</p> <p>18 whereby allowing the defense to be prepared to handle</p> <p>19 it.</p> <p>20 And on the questioning of the either</p> <p>21 Detective McGilivray or Ms. Pusateri or any other</p> <p>22 detective who may have taken a statement, again, I will</p> <p>23 allow you liberal cross-examination to inquire the</p> <p>24 circumstances under which that may have been prepared.</p> <p>25 MS. GUTIERREZ: Okay.</p>	<p style="text-align: right;">Page 44</p> <p>1 date of the letter to you and that's the date of the</p> <p>2 fax in which it was faxed to my office. I don't know</p> <p>3 whether -- what time the Court received it.</p> <p>4 But there's a series of letters all of which</p> <p>5 are dated January 18th to the Court regarding the State</p> <p>6 versus Adnan Syed, which they, on the body of the</p> <p>7 letter indicate they sent a copy to me, and I did</p> <p>8 receive the same on the 18th.</p> <p>9 The -- the gist of the letters are to bring</p> <p>10 to the Court's attention, and as I note not to</p> <p>11 counsel's, but to the Court's attention that two</p> <p>12 witnesses, the main detectives in this case, Detective</p> <p>13 McGilivray and Ritz, with whom I have not had an</p> <p>14 opportunity to speak, have not contacted my office in</p> <p>15 writing or by phone.</p> <p>16 I notice one of them is here today. I'm not</p> <p>17 sure where the other is. They have been subpoenaed as</p> <p>18 they were subpoenaed during the first trial. So they</p> <p>19 have known that they are witnesses. And they both</p> <p>20 indicate that they will be out of the Country -- one</p> <p>21 from February -- Detective Ritz from February 2nd to</p> <p>22 the 16th. And I believe there's a second</p> <p>23 letter that has attached a indication from Detective</p> <p>24 McGilivray. And again those indications are not</p> <p>25 directed from Detective McGilivray to the State that we</p>
<p style="text-align: right;">Page 44</p> <p>1 THE COURT:</p> <p>2 And so when we get to that point if there's</p> <p>3 an objection just, if you would, remind the Court that</p> <p>4 this is the area where you feel a need to inquire or go</p> <p>5 into a little more deeper and I will allow you to do</p> <p>6 that.</p> <p>7 MS. GUTIERREZ: I have a final --</p> <p>8 THE COURT: Okay.</p> <p>9 MS. GUTIERREZ: -- matter.</p> <p>10 THE COURT: Uh-huh.</p> <p>11 MS. GUTIERREZ: For the Court's attention.</p> <p>12 I'm not sure what to call it. On the very same day we</p> <p>13 received that fax -- that package, we received another</p> <p>14 fax from the State's Attorney's Office that was a copy</p> <p>15 of correspondence addressed to the Court regarding</p> <p>16 defense witnesses.</p> <p>17 Now, why it wasn't addressed to me or why</p> <p>18 I've never received a -- even so much as a call from</p> <p>19 witnesses who know me, have spoken to me, know how to</p> <p>20 get in touch with me, and one Mr. Urlick would not have</p> <p>21 simply told witnesses to call the person who subpoenaed</p> <p>22 you --</p> <p>23 THE COURT: What's the date? What's the</p> <p>24 date?</p> <p>25 MS. GUTIERREZ: January 18th. And that's the</p>	<p style="text-align: right;">Page 46</p> <p>1 can see. Obviously they got to them, but were</p> <p>2 addressed to each detective's superior officer</p> <p>3 indicating that he has set for a vacation from the 5th</p> <p>4 to the 12th.</p> <p>5 And, you know, obviously we didn't anticipate</p> <p>6 the snow days, and we're all aware that there's</p> <p>7 additional snow called for starting any day that may</p> <p>8 render other snow days. It is snow time, although the</p> <p>9 snow here --</p> <p>10 I will note voir dire took no longer than the</p> <p>11 first trial. Voir dire at the first trial took two</p> <p>12 days. It took two days here. I frankly don't expect</p> <p>13 the State's case to take longer, although, you know,</p> <p>14 certainly it could but -- if it could because of</p> <p>15 scheduling or the Court's availability.</p> <p>16 I really frankly don't expect it to take much</p> <p>17 longer, if at all. And it could very well take a</p> <p>18 shorter time. The presentation of our defense, if we</p> <p>19 get to that point, is certainly not going to take</p> <p>20 longer than what we did.</p> <p>21 But in any event, it appears that both of</p> <p>22 these witnesses, and particularly in light of the</p> <p>23 previous motions regarding disclosures and now all the</p> <p>24 new disclosures, Detective McGilivray and Ritz become</p> <p>25 critical defense witnesses as they have been since</p>



1 other disclosures that came about in the middle of the  
2 first trial.

3 And as I was said, I've not spoken to either  
4 of them. I've not even so much as gotten a call. And  
5 frankly Judge, since the first week of January, I've  
6 been under the weather with the flu, struggling to do  
7 that in between this schedule.

8 And I just got back into town on the 11th of  
9 January, three days before we began. And I frankly,  
10 have not spent any energy to track them down either.  
11 But I will note I find it odd that Mr. Urick saw fit to  
12 bring it to the Court's attention without first  
13 bringing it to ours or to indicate to those witnesses,  
14 who may well be joining witnesses, that they should  
15 contact us.

16 They are necessary witnesses. Their reports,  
17 although they may be helpful, would not suffice to  
18 bring in the information that we now need from  
19 Detectives McGilivray and Ritz regarding not only Jay  
20 Wilds and Jan -- Jan Pusateri, who will be the State's  
21 main witnesses against him, but as to other related,  
22 relevant items as well.

23 And that is to the issue of whether or not we  
24 put out any other substantive defense, I tell you, as  
25 an officer of the Court, that that's why I had both of

1 those detectives personally served with summonses  
2 during the first trial and for this trial, that I  
3 intend to put them on.

4 THE COURT: Perhaps -- perhaps I can make it  
5 a very easy task for both of you. The Court is going  
6 to say you may not excuse any of your witnesses who you  
7 have subpoenaed without getting permission from the  
8 Court.

9 MS. GUTIERREZ: Okay. Thank you.

10 THE COURT: Period. They are subpoenaed  
11 witnesses. They received a subpoena and the subpoena  
12 is issued by the Clerk of the Circuit Court for  
13 Baltimore City. And upon receipt of a summons, they're  
14 commanded to appear, and they may not be released until  
15 the Court releases them.

16 So as a result of that, it says granted leave  
17 to depart by the Court or an officer acting on behalf  
18 of the Court. And I'm advising you that unless you get  
19 my permission, you cannot act as my agent. So  
20 consequently, anyone that you've subpoenaed will remain  
21 under subpoena until the court releases them.

22 I think that should suffice. At this point  
23 we could figure out what our best laid plans are for  
24 the next couple of days. And it could snow another two  
25 feet tomorrow.

1 As a result, we won't be able to proceed as  
2 we haven't so far. So at this juncture, because I  
3 don't know what the weather will hold, no witnesses  
4 will be excused by anyone other than the Court. And we  
5 would ask that all witnesses be notified to -- to turn  
6 to WBAL television, Channel 11, which is where it is  
7 announced when this courthouse is closed.

8 And it does announce on Channel 11 that the  
9 courthouse is closed. When the courthouse is closed  
10 would mean that they do not have to appear but they are  
11 still under subpoena.

12 Any other questions? Or -- does that satisfy  
13 your quasi-motion.

14 MS. GUTIERREZ: That's fine, Judge.

15 THE COURT: Unnamed.

16 MS. GUTIERREZ: Without saying more, we'll  
17 just deal with it.

18 THE COURT: All right.

19 MS. GUTIERREZ: We certainly don't intend to  
20 inconvenience them but necessary witnesses and --

21 THE COURT: They're witnesses and under  
22 subpoena, and unless I have a request -- and I'll ask  
23 that that request be placed in writing. I do have  
24 McGilivray's request. I am not releasing him. He's  
25 talking about some dates in the future that have not

1 yet arrived, so I'm not even going to deal with that.

2 I do have the second January 18th memo  
3 talking about the chain of custody and other testimony  
4 involving the testimony of a brother of the victim who  
5 is an immediate relative. And under the rules would be  
6 permitted to remain in the courtroom during the course  
7 of the trial.

8 MS. GUTIERREZ: We don't object to that. We  
9 didn't object to it before.

10 THE COURT: All right. So that's no longer  
11 an issue.

12 MS. GUTIERREZ: Just that he be instructed  
13 not to discuss --

14 THE COURT: To discuss. Well I will do that  
15 as soon as we get to that point.

16 MS. GUTIERREZ: As I said, I'll just remind  
17 the Court, I did have some concerns about the tightness  
18 of the courtroom and the location of the family of the  
19 victim because of the proximity to the jury and the  
20 clear emotional impact and stress on them that became  
21 obvious to everyone. And we were fearful of its impact  
22 on the jurors, so we'd --

23 THE COURT: I don't think we're going to have  
24 that problem. I think we've arranged the courtroom in  
25 a way that I doubt very seriously that that problem

1 will arise. But if you note a problem, I'd ask that  
2 you bring it to my attention at the time you observe  
3 it.  
4 MS. GUTIERREZ: Thank you. And the only  
5 other motion is that we would, of course, be making a  
6 motion for sequestration of all witnesses.  
7 THE COURT: Absolutely.  
8 And I guess you would join with that request,  
9 Mr. Urick?  
10 MR. URICK: Yes. I'm not certain the Court  
11 addressed the State's concern here. We've gotten calls  
12 from five civilian witnesses who have been -- who are  
13 State's witnesses, that received duplicate summonses by  
14 the defense. Each one of them have complained because  
15 -- to us, because they called Ms. Gutierrez's office,  
16 they won't talk to them.  
17 They won't tell them when they're supposed to  
18 show up, if they're going to show up. They won't talk  
19 to them about availability. They won't talk to them.  
20 They ask me what can I do? I -- I tell them,  
21 as a State's Attorney, I can't tell them what they have  
22 to do in terms of the defense.  
23 THE COURT: Will you please tell them, if you  
24 receive any additional calls, that they're under  
25 subpoena, that they should remain on call and wait till

1 they hear from the Court or from you or the defense  
2 about when they should arrive. They are under  
3 subpoena, period.  
4 MR. URICK: Their concern is they're not  
5 hearing from the defense to -- to --  
6 THE COURT: Okay.  
7 MR. URICK: -- to find out, you know, how to  
8 be on call.  
9 THE COURT: I understand.  
10 MR. URICK: They don't know how to respond to  
11 the defense subpoenas because they're not getting any  
12 information from the defense. They're contacting us.  
13 So I've been telling them contact the Court if -- if  
14 the defense won't talk to them.  
15 THE COURT: They can contact the Court or  
16 they can remain on call at the phone number where they  
17 can be reached. And they are welcome to leave that  
18 phone number with the Court. But they are under  
19 subpoena and if they've received their subpoena, they  
20 are to remain under subpoena.  
21 If they would ask or need a -- to leave, they  
22 can send a letter to the Court or call the court and  
23 make an inquiry, or appear in Court and indicate their  
24 concern, any of those options.  
25 MR. URICK: Thank you.

1 THE COURT: But at this point if you speak to  
2 a witness, they are under subpoena until they're  
3 released by the Court.  
4 All right. Any other issues that need to be  
5 raised before we proceed?  
6 MS. GUTIERREZ: Not at this time, Judge.  
7 THE COURT: If Counsel, either the State or  
8 the defense, have any additional motions, I'd ask that  
9 you place those motions in writing. I'd ask that place  
10 those motions in writing and see that I get them as  
11 soon as possible.  
12 It is very helpful to the Court to have the  
13 motions as soon as possible so that I may rule on them  
14 in a timely fashion. I ask for scheduling of  
15 witnesses. And I'd ask again if you happen to know how  
16 your case is going to proceed and you can give me a  
17 better idea, I would ask that you do that.  
18 Mr. Urick, I find that your letters and  
19 information have been very helpful. And I appreciate  
20 them being sent to the Court. I would note that I also  
21 see that you've also numbered your exhibits, have you  
22 not?  
23 MR. URICK: Yes.  
24 THE COURT: All right. And that will -- I'd  
25 ask the defense to do the same if you have not already

1 done to them. I know, Ms. Gutierrez, you -- I'm sure  
2 you have as that is the practice in Federal Court, and  
3 -- and normally I do that. So I'd ask you to follow  
4 that.  
5 It makes for a case moving along little  
6 smoother and -- and certainly does allow us and -- the  
7 Clerk to know what exhibits to hand you at the time  
8 they are needed.  
9 All right. Any other matters that we need to  
10 discuss?  
11 MR. URICK: Your Honor, in several of the  
12 letters I've covered evidentiary issues of presenting  
13 document evidence. In that I've heard no objections  
14 from the defense, I'm going to assume that we may  
15 proceed in the manner --  
16 THE COURT: Why don't you -- why don't you  
17 specifically refer to the exhibit? I don't consider  
18 your notes or letters as motions. So if you have a  
19 legal motion that you want to make with regard to  
20 evidentiary issues, I suggest that you bring it to my  
21 attention.  
22 Your January 11th only indicates that there  
23 were stipulations as to the admission of the following  
24 items. And there's a list. And there again, you're  
25 talking about previous trial.

Page 55

1 Have you spoken to Ms. Gutierrez about the  
2 stipulations as to the admission of these items today?  
3 MR. URICK: No.  
4 THE COURT: In this case?  
5 MR. URICK: They're all stipulated evidence  
6 before. I've not heard any objection.  
7 THE COURT: Well, it doesn't work that way.  
8 As I said to you, I would really ask that you pretend  
9 that, as best as you can, that the trial didn't happen  
10 before. This is a new trial.  
11 MS. GUTIERREZ: Judge --  
12 THE COURT: It could be that she changes her  
13 entire theory and decides that she wants to challenge  
14 everything as opposed to allowing for stipulations.  
15 And that is her right.  
16 So to the extent that -- that you two can  
17 talk with one another, and ask a simple question, are  
18 you going to stipulate to the same items you stipulated  
19 the last trial? Yes, or no?  
20 MS. GUTIERREZ: I believe I've already sent a  
21 letter to that effect.  
22 THE COURT: Saying yes?  
23 MS. GUTIERREZ: Yes. Saying in fact offering  
24 to stipulate to other things.  
25 THE COURT: Great.

Page 56

1 MS. GUTIERREZ: I don't have it in front of  
2 me but --  
3 THE COURT: All right. So that's done. Your  
4 answer to your January 11th is yes. And your next  
5 question?  
6 MR. URICK: We have several documents. First  
7 we have the defendant's cell phone records for the  
8 11th, 12th, -- 12th, 13th, and 14th.  
9 THE COURT: Is that Exhibits 31? That is the  
10 business records?  
11 MR. URICK: Exhibit 31.  
12 THE COURT: Uh-huh.  
13 MR. URICK: And then we've got Exhibit 34.  
14 THE COURT: Which is the chart?  
15 MR. URICK: In -- yeah. It takes the  
16 defendant's cell phone records of the 13th, inserts the  
17 cell site addresses for the cell sites that are listed,  
18 and leaves space here for who received the call or who  
19 the phone is listed to that the call was made for.  
20 We got -- throughout the course of the --  
21 would you pass this back, please?  
22 We have numerous witnesses who can identify  
23 these numbers as being theirs. And as each one does,  
24 we fill the blank for that individual.  
25 THE COURT: Uh-huh.

Page 57

1 MR. URICK: And we would ask that we be  
2 allowed to provide jurors their own copy of this. We  
3 made a xerox of the smaller exhibits --  
4 THE COURT: To follow along?  
5 MR. URICK: To follow along.  
6 THE COURT: You don't have any objection to  
7 that?  
8 MS. GUTIERREZ: No, Your Honor.  
9 THE COURT: All right. And I would note for  
10 the record that the type and the numbers are very tiny.  
11 And even with -- with this courtroom it's difficult to  
12 see. That's a -- looks like Exhibit Number, is that  
13 35?  
14 THE CLERK: 34.  
15 THE COURT: 34. Okay.  
16 MR. URICK: Now, Exhibit 31, the cell phone  
17 information, is a business record being entered by way  
18 of stipulation. We would reserve the right to have one  
19 witness highlight one telephone number on that record  
20 after it's admitted.  
21 (Pause.)  
22 THE COURT: You mean write on an exhibit and  
23 highlight it.  
24 MR. URICK: Yeah. Use a highlight marker  
25 just to highlight that number.

Page 58

1 THE COURT: Ms. Gutierrez?  
2 MS. GUTIERREZ: I don't think so.  
3 THE COURT: Well, that's -- would probably be  
4 my response, but you're objecting to that? My response  
5 is, I don't think so. I have a procedure that if you  
6 admit a document into evidence, I don't care what it  
7 is, once it's admitted into evidence, you may not mark  
8 on it, alter it, write on it or change it in anyway.  
9 If you want to have that witness testify and  
10 highlight before it's admitted, you can do that. I'll  
11 let you highlight, you know, take a highlighter --  
12 MS. GUTIERREZ: Well, I would object to that  
13 and then I would withdraw my stipulation and then  
14 refuse to allow it to be admitted by stipulation.  
15 THE COURT: Well, that's -- there you go.  
16 MS. GUTIERREZ: And he can through what he  
17 wants.  
18 THE COURT: There you go.  
19 MS. GUTIERREZ: I'm not stipulating to any  
20 procedure that allows the witness out of the presence  
21 to highlight a document --  
22 THE COURT: Oh, no.  
23 MS. GUTIERREZ: -- that I've stipulated to.  
24 THE COURT: I don't want to -- I want -- I  
25 don't want miss -- anything to be misunderstood.



1 This procedure of highlighting an exhibit  
2 would not be out of the presence of the jury.

3 Were you suggesting it would be out of the  
4 presence of the jury?

5 MR. URICK: No. I was waiting -- I was  
6 suggesting we admit the exhibit with the first witness,  
7 as we did before. The some -- the last witness that we  
8 want to mark on -- would the Court give us the  
9 permission to do a 31-A, which is the one page as a --  
10 xerox a second copy of it and enter it as 31-A. And at  
11 the time that that witness testifies we mark on it?

12 THE COURT: You're welcome to do that or you  
13 can take a sticky that says -- with a little arrow, and  
14 place it where the mark is, but you're not to write on  
15 the exhibit once it's been admitted.

16 MR. URICK: And we have another exhibit that  
17 we were going to put stickys on throughout the course  
18 of the trial and then enter the exhibit at the end.  
19 Would that be admissible with the Court?

20 THE COURT: Are the stickys going to be  
21 evidentiary issues? Are they going to remain?

22 MR. URICK: They're going to remain on it.  
23 They're going -- we're -- they're going to be put at  
24 places that people identify as important sites.

25 THE COURT: Then I have no problem if you put

1 the stickys on there. But once you admit the item into  
2 evidence, you may not remove anything.

3 In other words, --

4 MS. GUTIERREZ: Judge, I would only ask that  
5 --

6 THE COURT: An item that's a piece of  
7 evidence is evidence because the record reflects what  
8 people did to that item. And then it's moved into  
9 evidence.

10 If you then alternate -- alter an exhibit,  
11 then it no longer is an exhibit for the purpose that it  
12 was offered initially. It has not become something  
13 different. And that's -- for that reason, I will not  
14 allow you to alter an exhibit.

15 An exhibit preserves an item for the record.  
16 If you then admit something and then alter -- alter it,  
17 it is no longer the exhibit that was initially offered  
18 in as at the time it was offered.

19 Now, if you want to not admit it and do all  
20 sorts of things to it at the time you would move it  
21 into admission, whatever it's viewed as, it now is an  
22 exhibit.

23 It could be that you have something that is  
24 an exhibit that is properly an exhibit at the time it's  
25 admitted and then you do something to that exhibit

1 later that now makes it inadmissible, now what do I do  
2 with the exhibit? It's in evidence but it's not in  
3 evidence because now you've done something to it.

4 I cannot allow you to alter an exhibit once  
5 it's moved in. So once it's in evidence, you can't  
6 change it, you can't draw on it, you can't mark it up,  
7 you can't tear it up. You will not be able to alter  
8 it.

9 However, if you want to take a sticky that  
10 has a little thing that can be removed to -- to draw  
11 someone's attention, that is an arrow, and then take it  
12 off, that's fine for the purposes of -- it would be  
13 like using a pointer. I have no problem with that.

14 But I do not want any permanent marks,  
15 fixtures or anything placed on that is permanent in  
16 nature on an exhibit that's moved into evidence, if  
17 that's understood. You can make copies of it  
18 and then mark up the copy, and then later move that in  
19 if you want to. But you're not to -- once the exhibit  
20 has been identified, and it is moved into evidence, you  
21 may not alter the exhibit, permanently alter the  
22 exhibit.

23 MS. GUTIERREZ: Judge, my concern is because  
24 of what I hear and what they've done before is, have an  
25 exhibit, and I'm not objecting to that. And they want

1 to have witnesses, you know, put stickys at pertinent  
2 places for them, I don't object to that one.

3 What I object to is that, as I agree with the  
4 Court, is that any exhibit has to be a permanent  
5 record, not just for the record. I'm concern as to the  
6 exhibit being the actual exhibit that the jury saw the  
7 witness do.

8 And stickys -- my experience with stickys is  
9 that, you know, it's different putting stickys in a  
10 transcript where it's bound, where there's pressure to  
11 keep the sticky in place as opposed to a larger exhibit  
12

13 -- and I believe this will be a map, where any movement  
14 of the exhibit, you know, if -- if the exhibit is  
15 marked before it's admitted, and it's admitted with the  
16 stickys on it;

17 That if it's going to be stickys that those  
18 be affixed permanently to the exhibit before anything  
19 else is done with it; that they just not be allowed to  
20 lay a stickys, which has some adhesive but the  
21 adhesive; one, doesn't last forever; number two, can be  
22 easily be pushed off in -- not intentionally, but the  
23 slightest of pressure in and of itself.

24 So I object to any procedure where stickys or  
25 items like that to mark. The last time it was tapped,



<p style="text-align: right;">Page 63</p> <p>1 you know, witnesses mark with a mark, you know the  2 specific location of a specific location that was  3 relevant to their case, I'd suggest is the better  4 procedure.  5 But if they choose stickys, then my request  6 would be that they be permanently fixed to the exhibit  7 at some point before it's actually admitted.  8 THE COURT: I will not require it to be  9 permanently affixed unless it's admitted into evidence.  10 So admit into evidence and whatever's on it at time  11 it's admitted into evidence, becomes permanent.  12 If it's not -- in other words, if you have a  13 map, and you want to use stickys to show where things  14 are, and then when the next witness gets up, you want  15 to take all the stickys off and let the next witness  16 use that same map, that's fine with me.  17 But if you move that map in with stickys on  18 it, no stickys will be removed from it and no stickys  19 will be added to it. And I -- I don't think that  20 that's difficult. I think I -- that's very clear.  21 And the reason I do that, as I've said, when  22 an item is offered in as exhibit into evidence, if it's  23 a map that's used and you can easily remove the  24 stickys, that's fine. But when you actually have  25 something that has been permanent in nature affixed to</p>	<p style="text-align: right;">Page 6</p> <p>1 MR. URICK: How much time do you anticipate?  2 THE COURT: I expect that we're going to go  3 to at least 5:00. So I don't know how long your  4 witnesses are. But I would -- why don't I put it this  5 way. We come back at two o'clock -- 12:30, 1:30, yeah  6 -- two o'clock testimony would be opening, hour, so we  7 have about almost three hours of testimony so -- three  8 hours of testimony. I don't know how many witnesses  9 that is.  10 But if you're -- in your mind you have three  11 hours of testimony with cross-examining --  12 examinations, err on the side of safety and have an  13 extra witness on hand in case Ms. Gutierrez does not  14 take very long on cross.  15 MR. URICK: Thank you.  16 THE COURT: All right. I'm going to ask you  17 to just give me -- why don't we have the jury just  18 excused from --  19 MS. GUTIERREZ: That's fine.  20 THE COURT: Do you all need to see the jury?  21 MR. URICK: No.  22 MS. GUTIERREZ: No, Judge.  23 THE COURT: Before lunch?  24 MS. GUTIERREZ: That's fine.  25 THE COURT: I'm just going to excuse them to</p>
<p style="text-align: right;">Page 64</p> <p>1 an exhibit that alters the exhibit, it no longer  2 appears the way it did at the time you moved it's  3 admission and is had become something totally  4 different.  5 All right. Any other preliminary issues?  6 MS. GUTIERREZ: No, Your Honor.  7 THE COURT: Hearing none, as we go along, if  8 any come up, please let me know.  9 I would note that it's now ten minutes after  10 12:00. How long does the State expect for opening?  11 (Pause.)  12 MR. URICK: I would say 15 minutes. I may  13 hit 10, I may hit 20.  14 THE COURT: Okay.  15 MR. URICK: 15 would be a reasonable.  16 THE COURT: Ms. Gutierrez?  17 MS. GUTIERREZ: 30 to 45.  18 THE COURT: All right. Then what I suggest  19 is that we send them to lunch and do opening when we  20 come back.  21 At this time if I could ask that you give me  22 five minutes and then bring the jury out please.  23 MR. URICK: How many witnesses would the  24 Court want the State then to have for this afternoon?  25 THE COURT: Well, --</p>	<p style="text-align: right;">Page 66</p> <p>1 lunch.  2 Deputy Sheriff, would you just tell our  3 jurors that we -- they're excused to lunch, they should  4 return by two o'clock. No later. Make it 1:45. 1:45.  5 They should be in that room by 1:45.  6 The Sheriff is going to excuse them to lunch  7 till 1:45. For the record, the jurors have not come  8 out and have not been seen by counsel this morning or  9 the Court, but I understand all are present and  10 accounted for.  11 We will take a recess then.  12 Counsel, I'd ask that you be back at 1:45 as  13 I really would like to start promptly at two o'clock.  14 So to the extent that we can all be present and  15 accounted for by 1:45?  16 MS. GUTIERREZ: Judge, is your courtroom  17 locked? I want to leave my bag here.  18 THE COURT: Do you -- do you wish to leave it  19 here?  20 MS. GUTIERREZ: Yes. I really rather not --  21 THE COURT: Then the courtroom will be  22 locked. Then the courtroom will be locked.  23 And, Officer Gilmore, if you can have the  24 defendant here by 1:45? Actually why don't you make it  25 two o'clock. The jurors will come back. So once we</p>

1 have confirmed that all the jurors are present then  
 2 I'll ask you to bring him up.  
 3 OFFICER GILMORE: Thank you.  
 4 THE COURT: All right. This Court stands in  
 5 recess then until 1:45.  
 6 (At 12:11 p.m. a luncheon recess was taken.)  
 7  
 8 AFTERNOON SESSION  
 9 (2:15 p.m.)  
 10 (The jury was not present upon reconvening.)  
 11 THE COURT: Before we broke, we had letters -  
 12 - if you could send them back -- from two of the  
 13 jurors. And I just wanted to bring them to the  
 14 attention of counsel.  
 15 It's not my practice to accept any, whether  
 16 it be oral or written communication from the jurors  
 17 without letting counsel know about it.  
 18 The first note was the one from Alternate  
 19 Number 1. It was left on my answering machine, and it  
 20 was basically found out this evening that she has a 2-  
 21 11 to 2-13 weekend trip that has already been paid for.  
 22 What can she do? That's Alternate Number 1's question.  
 23  
 24 And I understand Counsel both have seen that;  
 25 correct?

1 MS. GUTIERREZ: Yes.  
 2 THE COURT: And the second thing is, Juror  
 3 Number 6 is indicating he'd like to catch the course at  
 4  
 5 -- on Tues. at -- one, Tuesday at 5:00 p.m. and should  
 6 leave by 3:30. And they only make \$15 a day and goes  
 7 on talk about 12 to 500 odds, whatever.  
 8 I think the idea being -- in any event, I  
 9 hope you all have had an adequate time to review the  
 10 correspondence. And so I --  
 11 MS. GUTIERREZ: Well, Judge, --  
 12 THE COURT: -- will take up whichever issue.  
 13 Perhaps why don't we start with Juror -- Alternate  
 14 Number 1, first things first.  
 15 MR. URICK: When is the trip on the 11th,  
 16 when do they have to leave? Did they indicate?  
 17 MS. GUTIERREZ: 11th, 12th, and 13th?  
 18 THE COURT: Yeah. Doesn't say.  
 19 MR. URICK: They're backing up their --  
 20 that's Sunday. The 11th would be the only questionable  
 21 --  
 22 THE COURT: That's a Friday?  
 23 MR. URICK: Yeah.  
 24 THE COURT: What's my docket look like that  
 25 on that Friday, do you know? In the event that we're

1 not finished.  
 2 THE CLERK: Nothing that we know of.  
 3 THE COURT: Okay. We can find out from her  
 4 whether she's leaving on the 11th. Could be she's  
 5 leaving Friday.  
 6 MS. GUTIERREZ: Well Judge, that's a -- I  
 7 don't know how many more days. More days than what we  
 8 anticipate taking the trial so we may not even reach  
 9 it. I suggest we just wait until we get closer --  
 10 THE COURT: But you have to --  
 11 MS. GUTIERREZ: -- to that time, and if it's  
 12 an issue, then we can --  
 13 THE COURT: And you have to recall, I did ask  
 14 if they had a problem that they bring it to my  
 15 attention. So they're doing that.  
 16 And then the second issue is Juror Number 6?  
 17 MR. URICK: The State's all in favor of that  
 18 person furthering his education. I'd make a move to  
 19 strike that juror.  
 20 MS. GUTIERREZ: I join in on that motion.  
 21 THE COURT: Oh, really? Well, geez, and is  
 22 this not for the record, the very same juror that Ms.  
 23 Gutierrez --  
 24 MS. GUTIERREZ: Yes, Judge.  
 25 THE COURT: -- was concerned about.

1 MS. GUTIERREZ: Mr. Urick should have joined  
 2 my motion this morning.  
 3 THE COURT: Well, he did. It was the Court  
 4 that disagreed. And so how interesting that this would  
 5 occur. Funny how things happen.  
 6 So since there's a request by both the State  
 7 and the defense --  
 8 MS. GUTIERREZ: It's very rare.  
 9 THE COURT: And I must -- which is very rare,  
 10 particularly as I've come to know this case, we'll make  
 11 it unanimous.  
 12 MS. GUTIERREZ: Good.  
 13 THE COURT: And for the record I think this  
 14 would also solve Ms. Gutierrez's initial concern.  
 15 MS. GUTIERREZ: Initial concern, yes.  
 16 THE COURT: Because Alternate Number 1 will  
 17 now become Juror Number 6.  
 18 MS. GUTIERREZ: Well, I would renew my motion  
 19 to seat Alternate Seat Number 5, particularly in light  
 20 of potential problem with Alternate Number 1, with her  
 21 paid weekend. That would sort of solve both problems.  
 22 THE COURT: Well, I don't think we can skip  
 23 to Number 5, Ms. Gutierrez.  
 24 MS. GUTIERREZ: Well, on the theory, I'm not  
 25 jumping Number 5, but that Number 5 would have been the



1 first of all of those alternates to have sat, and  
2 therefore would have likely have sat in Seat Number 6  
3 and then by --

4 THE COURT: Following the Court's procedure?

5 MS. GUTIERREZ: Right. Right. It would have  
6 avoided this problem altogether.

7 THE COURT: Not necessarily.

8 MS. GUTIERREZ: And if the Court follows  
9 that, since there really shouldn't be seen any  
10 difference between Alternates 1, 2, 3, 4, and 5, you  
11 know, the Court makes sure that there is no potential  
12 appellate problem with any of this by merely reversing,  
13 as is in within the Court's discretionary power, the  
14 order of the alternates by seating Number 5.

15 THE COURT: Well, actually, I -- I don't  
16 think there would be in any error in any event because  
17 arguably, as I thought through the scenario, if I  
18 granted your motion initially, and seated Juror --  
19 Alternate Number 1 in Seat Number 6, --

20 MS. GUTIERREZ: Which wasn't my motion, just  
21 for the record.

22 THE COURT: But I'm saying. If -- if you had  
23 made that motion at the time on Friday, and we had put  
24 Alternate Number 1 in Seat Number 6, and then Alternate  
25 Number 2 became Number 1, in other words, everybody

1 moved up.

2 MS. GUTIERREZ: Right.

3 THE COURT: Query whether or not you would  
4 have been able to strike Juror Number -- Alternate  
5 Number 2?

6 MS. GUTIERREZ: With the other available?

7 THE COURT: Right.

8 MS. GUTIERREZ: Well, sure. Except that I  
9 planned to the Court that I was conscious that the  
10 jurors were not seated in the order they came up.

11 THE COURT: Right.

12 MS. GUTIERREZ: Then -- but in the rush of  
13 the lateness of the hour, the rush of it --

14 THE COURT: No. That's not true.

15 MS. GUTIERREZ: -- and certainly recognizing  
16 --

17 THE COURT: We did follow the order. No.  
18 No. No. We follow the order. We did not step outside  
19 the order in which the jurors appeared in the roster.

20 We stuck to the roster. In fact, --

21 MS. GUTIERREZ: No. No. No. But in terms  
22 of how the five alternates are seated is not following  
23 the appearance of the roster because one's strikes are  
24 limited to the seats. They don't accumulate.

25 You have three strikes per seat.

1 THE COURT: Correct. Correct.

2 MS. GUTIERREZ: So for instance, I believe  
3 that some of the alternates came up in the panel in  
4 different orders, meaning they were alternates who were  
5 seated past each other although in the venire that may  
6 not have well have been.

7 THE COURT: Oh, no. No. No.

8 MS. GUTIERREZ: They were called --

9 THE COURT: Ms. Gutierrez --

10 MS. GUTIERREZ: -- in the order of the  
11 venire.

12 THE COURT: No. And I -- in the order -- in  
13 the panel itself we have jurors that are higher up in  
14 the sequence number but appeared lower in number.

15 MS. GUTIERREZ: That's my point.

16 THE COURT: And that happens.

17 MS. GUTIERREZ: And I'm not saying -- that  
18 always happens.

19 THE COURT: That always happens.

20 MS. GUTIERREZ: But I -- I -- I guess my  
21 argument is that it happens in a particular way on the  
22 alternates. You don't have 15 strikes that you can use  
23 randomly against five seats however you want. You can  
24 only use three strikes per seat. And I --

25 THE COURT: Except when the Court gives you

1 six for the --

2 MS. GUTIERREZ: Well, I guess I -- I'd  
3 dispute that the Court gave us six.

4 THE COURT: Because we used it for a panel.

5 MS. GUTIERREZ: Because we had six --

6 THE COURT: That's right.

7 MS. GUTIERREZ: -- out of the panel seats and  
8 I'm not --

9 THE COURT: Now, you understand my logic.

10 MS. GUTIERREZ: Yes. And I -- I don't  
11 dispute that the Court was logical in trying to fashion  
12 a solution, you know, at the end of the day with an  
13 unexpected given questions that the Court had asked.

14 THE COURT: Well, at the end of the day  
15 didn't bother me because luckily enough, we hadn't  
16 excused the panel.

17 MS. GUTIERREZ: Everybody. Right.

18 THE COURT: And we had those individuals  
19 present, and luckily enough the juror spoke up. But I  
20 think we can go on and not -- and --

21 MS. GUTIERREZ: Well, my point only being,  
22 Judge --

23 THE COURT: Is moot at this point.

24 MS. GUTIERREZ: -- is that, you know there --  
25 there -- I don't think that the Court can foreclose

<p style="text-align: right;">Page 75</p> <p>1 what would have been our response to anything the Court  2 proposed doing if, in fact, the Court had on Friday  3 removed a juror and then opened it up, to assume that  4 the juror seated now in Alternate Number 1 would have  5 been the juror who then got moved up.  6 THE COURT: Well, --  7 MS. GUTIERREZ: Actually it was a predictable  8 argument.  9 THE COURT: But you would not have known  10 that. And I would note that I reviewed my notes and  11 there was no objection from either the State or the  12 defense as to the process that the Court elected to  13 use; that is, the Court -- when the Court said, "All  14 right. We're going to strike and we will use it as a  15 panel strike," there was no objection, not only to that  16 procedural or to your ability to use six strikes and to  17 the State's ability to use 10, so.  18 MS. GUTIERREZ: I agree with that. The  19 record will reveal that there was no objection. I  20 would suggest is that what the record doesn't reveal  21 because it doesn't, unlike a tape recorder, realizes  22 that the Court sent counsel back to counsel table with  23 the directions I note that the Court didn't ask for  24 input, didn't ask for objections. There was not an  25 opportunity to discuss it or object.</p>	<p style="text-align: right;">Page 77</p> <p>1 10, 11, 12. Then it looks like Alternate Number 1 and  2 Number 2.  3 MS. GUTIERREZ: 1 and 2.  4 THE COURT: 3, 4 and 5. And we have sat in  5 the chairs to ensure that you can see the witness' box  6 and counsel table from each of the chairs.  7 And at this moment Seat Number 5 will not be  8 taken.  9 Okay. Sir, I need you the step up here  10 please.  11 Sir, I understand that you Juror Number 6; is  12 that correct?  13 A JUROR: Yes, that's me.  14 THE COURT: And you sent a note to the Court  15 regarding a class at the University System?  16 A JUROR: Yes, indeed. Judge Heard, I was  17 supposed to take a graduate education course. It meets  18 on Tuesday nights and starts at 5:30. And I was trying  19 to be able to get off just kind of early on Tuesdays,  20 you know, so I could leave to go, you know, to that  21 course. You know, to catch it from the beginning, you  22 know, if that's possible.  23 THE COURT: All right. It -- it's going to  24 be possible. I've spoken to counsel and you are going  25 to be excused.</p>
<p style="text-align: right;">Page 76</p> <p>1 THE COURT: And I -- and that might be well  2 so. But I at this point find that that whole issue is  3 really moot.  4 MS. GUTIERREZ: I just want to remake my same  5 motion to seat Juror Number 5, who would have been the  6 first juror in Seat Number 6.  7 THE COURT: All right. At this juncture the  8 Court had reviewed in first finding that the defense  9 and the State are in agreement that Juror Number 6  10 should be stricken.  11 I'd ask that -- so that we don't have any  12 more confusion, if you could ask Juror Number 6 to come  13 in. Just have them come in at this juncture.  14 MS. GUTIERREZ: Judge, while we're waiting, I  15 see that you've made seats available to cover them, if  16 you could just explain how they're going to sit so that  17 we could keep them --  18 THE COURT: Yes. Juror Number 6? Ask Juror  19 Number 6 to come in.  20 Juror Number 1 seats -- sits on the back row.  21 MS. GUTIERREZ: Back row. Okay.  22 THE COURT: Closest to the spectators.  23 MS. GUTIERREZ: Okay.  24 THE COURT: 2, 3, 4, 5, 6 and I believe 7,  25 should be on the front row at the black chair. 8, 9,</p>	<p style="text-align: right;">Page 78</p> <p>1 A JUROR: Oh, wonderful.  2 THE COURT: From jury service at this time.  3 Counsel is both in agreement and the Court has agreed,  4 so therefore, you are no longer in need of having to  5 make any other arrangements. You are going to be  6 excused at this time, finding good cause for that.  7 I also would note. Do I -- can I -- may I  8 keep these notices?  9 A JUROR: Oh, definitely.  10 THE COURT: Very well. I will keep them and  11 place them in our file. And you're excused to go at  12 this time.  13 A JUROR: Thank you. It was a great pleasure  14 working with you. And I hope you -- yes, I'll get back  15 into the schools and it's -- because -- in other words,  16 I guess -- I guess I'll be excused --  17 THE COURT: You're finished. That's right.  18 You don't have to come back.  19 A JUROR: Because I guess with -- after me  20 knowing that the -- in case he turns out to be the  21 father of the defendant and I have seen him before in  22 the, you know, Veterans Hospital.  23 THE COURT: Well, as it turns out, that's a  24 good thing and so as I've indicated to you, you're free  25 to go at this time. Thank you very much.</p>



<p style="text-align: right;">Page 79</p> <p>1 A JUROR: Thank you very kindly.</p> <p>2 THE COURT: You've completed your juror</p> <p>3 service. If you need a letter from my staff, --</p> <p>4 A JUROR: That would be wonderful.</p> <p>5 THE COURT: We're going to give you this and</p> <p>6 you can give that to your employer indicating --</p> <p>7 A JUROR: Yes. Definitely.</p> <p>8 THE COURT: -- that you were, in fact, here.</p> <p>9 A JUROR: That's impressive. I'll send a</p> <p>10 photostat.</p> <p>11 THE COURT: Thank you very much.</p> <p>12 Deputy, do you -- I assume Juror Number 6 has</p> <p>13 a coat. Can you please escort him back and make sure</p> <p>14 that he gets his coat and have him leave. And I'd ask</p> <p>15 that -- that he not have discussions with any of the</p> <p>16 jurors. Okay?</p> <p>17 A JUROR: Thank you, Judge Heard.</p> <p>18 THE COURT: Thank you.</p> <p>19 And would you, once you have escorted him,</p> <p>20 have our jury come. Thank you.</p> <p>21 (The juror was excused.)</p> <p>22 THE COURT: We will have the jury panel come</p> <p>23 in and when they arrive, noting your objection, Ms.</p> <p>24 Gutierrez, to Alternate Number 1 taking Seat Number 1,</p> <p>25 any objection from the State? Any objection to</p>	<p style="text-align: right;">Page 81</p> <p>1 THE COURT: Okay.</p> <p>2 MS. GUTIERREZ: -- as opposed to limited</p> <p>3 excerpts come in. That would again be -- and it's our</p> <p>4 position, although I -- I don't know --</p> <p>5 THE COURT: Ms. -- Ms. Connolly, can you go</p> <p>6 around --</p> <p>7 MS. GUTIERREZ: Cause there is no outstanding</p> <p>8 motion in front of this Court, but that issue was</p> <p>9 resolved. Our position is the same, that we would not</p> <p>10 object to excerpts --</p> <p>11 THE COURT: Being admitted?</p> <p>12 MS. GUTIERREZ: Well, we'd object to</p> <p>13 excerpts. We would not object to the diary as a whole</p> <p>14 being admitted, and that's still our position.</p> <p>15 THE COURT: Ms. --</p> <p>16 MS. GUTIERREZ: The diary is the diary of the</p> <p>17 victim.</p> <p>18 (Pause.)</p> <p>19 MS. GUTIERREZ: Judge, I would note,</p> <p>20 particularly because the smallness and tightness of</p> <p>21 this court, that I would object to continuing if</p> <p>22 something is going to be published to the jury.</p> <p>23 Like if it's going to be published, and Mr.</p> <p>24 Urick feels that's important, then it should be</p> <p>25 published and nothing else should be going on.</p>
<p style="text-align: right;">Page 80</p> <p>1 Alternate 1 taking seat Number 6?</p> <p>2 MR. URICK: No objection.</p> <p>3 THE COURT: That will be what the Court will</p> <p>4 do.</p> <p>5 I've noted duly your objection, Ms.</p> <p>6 Gutierrez, to this procedure and let it be noted for</p> <p>7 the record.</p> <p>8 MR. URICK: Excuse me, Your Honor.</p> <p>9 THE COURT: I'll also incorporate in here by</p> <p>10 reference you're arguments that you made earlier this</p> <p>11 morning.</p> <p>12 MS. GUTIERREZ: Thank you, Judge.</p> <p>13 MR. URICK: Two minor requests from the</p> <p>14 State, Your Honor. We're going to introduce a diary</p> <p>15 with the first witness. We would ask the Court's</p> <p>16 permission to publish selections from this with a later</p> <p>17 witness.</p> <p>18 THE COURT: Are you introducing the entire</p> <p>19 diary?</p> <p>20 MR. URICK: Yeah.</p> <p>21 MS. GUTIERREZ: Yes, Judge. That's -- I</p> <p>22 guess we -- there was a previous motion.</p> <p>23 THE COURT: All right.</p> <p>24 MS. GUTIERREZ: And we withdrew any objection</p> <p>25 as long as the diary in its entirety --</p>	<p style="text-align: right;">Page 82</p> <p>1 THE COURT: That's my procedure.</p> <p>2 MS. GUTIERREZ: Okay.</p> <p>3 THE COURT: That's the procedure I use.</p> <p>4 MS. GUTIERREZ: That's fine.</p> <p>5 (The jury returned to the courtroom.)</p> <p>6 THE COURT: Ladies and Gentleman, please step</p> <p>7 in. Please come in.</p> <p>8 Juror Number 1, that's the seat on the front</p> <p>9 -- back row, farthest away from me. And then it goes</p> <p>10 1, 2, 3, 4, 5, 6, 7, 8, 9, 10. So please find your</p> <p>11 seat.</p> <p>12 You might want to remain standing so folks</p> <p>13 can get by. Juror Number 1 is on the back row in the</p> <p>14 seat closest to you. 2, 3, 4, 5 -- please come in.</p> <p>15 Take a step -- no, up in the jury box. Please walk up</p> <p>16 to the jury box. Find your juror number.</p> <p>17 There are pads of paper and there is a number</p> <p>18 on the back of the pad. It has your juror number on</p> <p>19 it. You are either 1 through 12, or 1 through 5. Find</p> <p>20 your number, please remain standing so that others can</p> <p>21 pass by you.</p> <p>22 Alternate Number 1 and Number 2 are here on</p> <p>23 the front row. 3, 4, and 5 are in the back.</p> <p>24 (Pause.)</p> <p>25 THE COURT: Please remain standing so that</p>

1 jurors can pass by you.

2 (Pause.)

3 THE COURT: Alternates Number 1 and 2 are on  
4 the front row. 3, 4, and 5 are behind. You should be  
5 sitting in the same seat you were in on Friday. So in  
6 the back row I should have 1, 2, 3, 4, 5, 6, 7, 8, 9,  
7 10, 11, 12. Alternate 1, Alternate 2, Alternate 3,  
8 Alternate 4, and Alternate 5.

9 All right. Before we sit down, we have lost  
10 one juror, Juror Number 6, there should be an empty  
11 chair at Juror Number 6's chair.

12 Alternate Number 1, will you please take Seat  
13 Number 6?

14 (Pause.)

15 THE COURT: All right. Now, will you all  
16 then be seated. For convenience sake, you are -- you  
17 were Alternate Number 2, you are now Alternate Number  
18 1. You may move up one. And you are Alternate Number  
19 2, you are welcome to stay where you are so that you  
20 can see or if you would like, you may take that seat.

21 In any event you are not Alternate 2.

22 And you are likewise Alternate Number 3.

23 And you are now Alternate Number 4.

24 Again, you may move up, take that other seat.

25 If you take that now, you'll be writing on the pad of

1 paper that should have your new number on it.

2 Very well. Ladies and Gentleman, I first  
3 want to welcome you back to the Circuit Court for  
4 Baltimore City. As you can see, my courtroom is quite  
5 a bit tinier than the one you had been part of the jury  
6 selection process.

7 And also you can note that there was -- there  
8 were a few snow days in there, so it was a good thing  
9 that that information was provided to you before we  
10 took our last recess.

11 At this time it is my duty and obligation to  
12 give you preliminary remarks. And that's for the  
13 purposes of continuing what I said to you when we were  
14 last together about what your responsibilities and  
15 obligations are.

16 This is a very, very small courtroom. We are  
17 not in a video courtroom. And we have Mr. Madden.  
18 Again, he's sitting to my left and he has a device. He  
19 speaks into the device and repeats everything that's  
20 being said in the courtroom. As a result, you will  
21 hear me stop people if there's an attempt to talk over  
22 one another; that is two people are trying to talk at  
23 the same time.

24 Because Mr. Madden obviously can only speak  
25 while one person is speaking because he is repeating

1 into the device for a record of everything is being  
2 said in the courtroom.

3 You also find that this courtroom is very  
4 small. And believe it or not, even in its size,  
5 sometimes people have difficulty hearing one another.  
6 The witness box is here. The witness will be facing  
7 you the jurors.

8 But if at any time during the course of the  
9 statements or the testimony, you cannot hear or make  
10 out what is being said, you need only raise your hand  
11 and I will have that person either repeat what they are  
12 saying or speak louder.

13 You will also find that I may on my own ask  
14 them to speak louder, to lean forward, to keep their  
15 voice up for the sole purposes of making sure that you  
16 the jurors understand everything that's being said in  
17 the courtroom.

18 You'll notice that I take notes on my laptop.  
19 They are my own personal notes, things for me to  
20 remember about this proceeding. Other judges handwrite  
21 their notes, I choose to take my notes on the laptop.  
22 I'm not the stenographer though. Mr. Madden is the  
23 stenographer.

24 My job, as the judge, is to insure that this  
25 is a fair trial. When I say a fair trial, the rules of

1 evidence and procedure that must be followed in any  
2 case. And those rules of procedure and evidence are  
3 followed for the purposes of following what we all know  
4 to be proper conduct in a courtroom

5 I say proper in that Ms. Gutierrez may make  
6 an objection or Mr. Urick may make an objection like  
7 you would see if it were a baseball game or football  
8 game and one side wanted to call one thing and another  
9 side said something else, and there's a referee who has  
10 to make a call, has to decide, in or out, yes or no.

11 That's my responsibility. And I explaining  
12 this to you because they are doing their job. If  
13 either of them or both of them make objections, that is  
14 their job and responsibility to do that when they see  
15 fit, and my job to make a call.

16 Nothing they say in this courtroom throughout  
17 this trial is evidence. Evidence will come from the  
18 witness box. And evidence will be those items that you  
19 see the blue and yellow sticky tabs or blue and red  
20 sticky tabs placed on, marked as exhibits and moved  
21 into evidence.

22 Anything that the attorneys say is not  
23 evidence. And I emphasize that because there will be  
24 time when counsel will make an objection, and I may  
25 have them come up to the bench, and we will whisper.

1 And you will say, "Oh, they're being rude."

2 Well, no. What we are trying to do is make a  
3 decision about the rules of evidence or issues that I  
4 must call up or down, in or out. And the reason that  
5 you cannot hear that is because I have to decide  
6 whether it is appropriate for you to consider or not.

7 If you hear us or see us doing that, you'll  
8 hear the white noise. That's supposed to keep you from  
9 hearing what we're saying. Sometimes you'll see me  
10 pick up a piece of paper so that you can't read my lips  
11 or in any way make an attempt to speak outside of your  
12 presence.

13 Every now and then you'll even -- hear me ask  
14 you to take a break. Stretch your legs. Walk around.  
15 It gives us an opportunity to discuss things outside of  
16 your presence.

17 Now, I'm explaining the procedure so that you  
18 understand what it is that we are doing at the time  
19 we're doing it. And also I must reiterate what they  
20 say is not evidence. Because you will also hear me ask  
21 the attorneys to tell me the reason where they stand.  
22 And again it's for the purpose of me understanding why  
23 they're making an objection and also for the purposes  
24 of me making a determination.

25 And at that time I will instruct you as the

1 jury as to whether or not you should consider an answer  
2 or not or any other instruction that I believe is  
3 appropriate at the given time to give to you.

4 Now, we're going to be hearing testimony in  
5 this case, and I need to make sure that you also  
6 understand that the way in which we proceed with a  
7 criminal trial is the following way.

8 The attorneys will speak to you, first the  
9 State, then the defense, the purpose is outlining what  
10 each party expects the evidence to show. The State  
11 will go first and they'll make their opening statement  
12 and then the defense attorney will make her opening  
13 statement, if she chooses to do so.

14 The State will then present evidence. And  
15 after the State's case has been presented, the defense  
16 will have an opportunity, if they choose to do so.

17 And after the conclusion of all the evidence,  
18 I will instruct you as to the law that's applicable.  
19 And you must follow the law as I explain it to you.  
20 After that there will be closing argument by the  
21 attorneys.

22 And they will argue for you what they contend  
23 the evidence and the inferences show and the evidence  
24 and conclusions they believe that you should find based  
25 or reached -- what you have heard.

1 The State's Attorney will make the first  
2 closing argument. Then the defense attorney will make  
3 a closing argument and then the State has an  
4 opportunity to do what we call "rebuttal," come back a  
5 second time.

6 And after closing arguments, you will retire  
7 to the jury room and begin your deliberations. It will  
8 be your function and responsibility to decide the facts  
9 in this case. And you must base your finding only upon  
10 the evidence that's presented during the trial And any  
11 conclusions which may be fairly drawn from that  
12 evidence.

13 You came into this courtroom this morning or  
14 this afternoon with your common sense. And I'm going  
15 to ask you, through the course of this trial, to keep  
16 your common sense with you.

17 You will hear evidence by live witnesses,  
18 there may be some video, there may be some written  
19 items. There may be stipulations where the attorneys  
20 together agree that certain items should come in.

21 What the lawyers say, again, what their  
22 objections are and emotions you may hear, are not  
23 evidence. They are not sworn witnesses.

24 They are advocates for their position. And  
25 if the attorneys say something during the course of

1 this trial regarding the facts that's different from  
2 your memory of the evidence or that you don't recall  
3 from the evidence that you have heard, you are required  
4 to rely on your own memory in making your decision at  
5 the end.

6 Now, you've been given a piece of notebook  
7 pad or little pad of paper and a pencil. That's for  
8 the purposes of your making notes during the course of  
9 the trial. Your seat number is on the back. And when  
10 you leave, each and every time before your  
11 deliberations, you must leave the notepad face down on  
12 your chair.

13 I can't allow you to take the notepad with  
14 you into the jury room because you are not supposed to  
15 talk about the case until the end. And if you've ever  
16 been to school and taken notes, and then called someone  
17 in your class and said, "Did you get that," or "Let me  
18 see your notes," or "Let me see if you forgot  
19 something," or, what it was the second thing they  
20 said," well that would be discussing the case.

21 And so to ensure that you don't do that, you  
22 must leave your notepads face down. When we take lunch  
23 recesses, Mr. White will lock them away. No one will  
24 read them. And when you return from lunch, he will  
25 place them back on your chair face down.



1 At the end of the day, he will lock them away  
2 with the evidence. And he will bring them back on the  
3 next day and put them back on your chair face down.

4 I've already told you what to do in the event  
5 that anyone tries to talk to you. But I must reiterate  
6 do not have any discussions with anyone during the  
7 course of this trial, anyone inside the courthouse,  
8 anyone outside the courthouse.

9 You should not discuss this case until the  
10 very end, until I instruct you to do so through your  
11 deliberations with your fellow jurors.

12 Likewise, if you were to go home and turn on  
13 the television or pick up the newspaper and see  
14 anything about this case, I must instruct you not to  
15 read it, not to look at it, not to observe it nor  
16 should you have any discussions with anyone whatsoever  
17 about this case.

18 We expect to move this case along in the next  
19 few weeks and we will do our best to accommodate each  
20 and everyone of you. I must note that it is my  
21 practice to let you know the lay of the land to the  
22 best I can each and every day.

23 As you see today, we did not get started  
24 until the afternoon. And that was because we had  
25 preliminary matters we were hopeful we were going to

1 handle on the days that turned out to be snow days, so  
2 we took care of those matters this morning.

3 Also I would note that each and every day I  
4 will try to tell you what my schedule looks like for  
5 the next day. For example, tomorrow I have no cases,  
6 so that means I can start this case at 9:30, which  
7 means you go over and be paid like you did today, but  
8 at 9:30, you won't be able to go down to the canteen  
9 for the last cup of coffee or cup of tea, like you may  
10 have done this morning because we will be able to start  
11 promptly at 9:30 since I have no docket other than this  
12 case. So that should work us well for the day in  
13 working on this case.

14 I will also direct you -- you've been told  
15 where this case took place, and I need to advise you  
16 either at recess, during lunch break, or at the end of  
17 the day, do not go to the scene. Do not try to visit  
18 the location that's talked about in this trial.

19 That would not be appropriate, would  
20 constitute investigation outside this courtroom. And  
21 that is not a proper -- appropriate procedure for any  
22 juror to follow. So I'm going to admonish you not to  
23 do that as well.

24 At this time I would also tell you one last  
25 thing. In a criminal case, the State has the burden of

1 proving its case beyond a reasonable doubt and to a  
2 moral certainty.

3 The defendant comes into this courtroom  
4 innocent, cloaked with that innocence. For in this  
5 Country and individual who is charged with a criminal  
6 offense is presumed innocent; that is, they do not have  
7 to say a word. They do not have to open their mouth  
8 because the State has the burden of proving its case  
9 beyond a reasonable doubt and to moral certainty.

10 That is the burden in a criminal case. So at  
11 this juncture I must advise you as the end of this  
12 trial I will advise you as to all law that will be  
13 applicable. But for now keep yourselves alert, pay  
14 attention, take notes, keep your common sense with you,  
15 and at this time give your undivided attention to first  
16 Mr. Urick, on behalf of the State and then Ms.  
17 Gutierrez, on behalf of the defense.

18 At your leisure, either one of you should  
19 know you're free to move about this courtroom. I have  
20 no restrictions on where you go. The only thing I ask  
21 is that before you approach a witness, you let me know  
22 that you're going to approach the witness. It also  
23 helps to signal to the witness that you're going to  
24 approach them.

25 But for opening you may go anywhere in this

1 courtroom. You may use the easels or the board over  
2 there, anything you would like. You may.

3  
4 OPENING STATEMENT BY MR. URICK  
5 MR. URICK: Thank you, Your Honor.  
6 May it please the Court, Counsel?  
7 THE COURT: You may.  
8 MR. URICK: Has the Court selected a  
9 foreperson yet?

10 THE COURT: Juror Number 1, in my procedure,  
11 is the foreperson. And she is the Forelady on the back  
12 row in the blue turtleneck.

13 (Pause.)

14 MR. URICK: Madam Forelady, Ladies and  
15 Gentleman of the jury, good afternoon.

16 A JUROR: Good afternoon.

17 MR. URICK: As you were told, what may seem  
18 like a long time ago, my name is Kevin Urick. My co-  
19 counsel's name is Kathleen Murphy. We're Assistant  
20 State's Attorneys.

21 We're hired by Mrs. Patricia Jessamy, the  
22 State's Attorney for Baltimore City, to prosecute cases  
23 in Baltimore City. Every day in each of the 20-some  
24 criminal courts in Baltimore City, one of the 140 plus  
25 attorneys in my office appears to prosecute criminal

1 cases.

2 On behalf of Mrs. Jessamy and the Office of  
3 the State's Attorney, Ms. Murphy and I would like to  
4 thank you for coming in to perform your jury duty  
5 service. This is a very important duty and we thank  
6 you in advance for coming in.

7 And we ask that you listen very patiently,  
8 because trials are not like movies. They don't have a  
9 neat beginning, middle and end that you can follow  
10 through.

11 You're given a lot of evidence that will make  
12 a picture but it's not a moving picture. It's a  
13 evidentiary picture created sort of like a quilt, a  
14 stew, by putting the pieces together.

15 What I'm trying to say is that sometimes it  
16 may be unclear, as you're listening to it, why this  
17 witness follows this one. Well, I'll be frank with  
18 you. sometimes we have to do that because that's the  
19 only time that witness is available so we have to take  
20 them out of what we would call their order.

21 Also it may not be that there's a clear line  
22 of testimony that we can present to you like a movie,  
23 so we have to present with you this piece here, this  
24 piece here, and then at the end we ask you to put it  
25 together to understand it. So bear with us as you're

1 listening to the testimony.

2 Listen to all of it. Try not to see what the  
3 overall picture is or decide what it is until you're  
4 heard everything at the end of the trial.

5 At this time I get to let you know in advance  
6 what the evidence you're going to hear is. Well,  
7 you're going to find out that on January 13th of 1999,  
8 somewhere about 7:09, 7:16, one Jennifer Pusateri was  
9 calling a friend of hers by the name of Jay Wilds.

10 The number that she dialed was this number  
11 here, 443 253-9023. That's the defendant's cell phone  
12 number. She was dialing that number because she got a  
13 voice mail -- a message left on her voice mail from Jay  
14 Wilds that was somewhat garbled. It was somewhere  
15 around in here. She got this call. She --

16 (Pause.)

17 MR. URICK: Actually the seven o'clock call,  
18 a message was left for her. It was garbled. She  
19 didn't understand it. She called back to find out  
20 what's going on. Well, the phone was answered. One of  
21 these calls, 7:09, 7:16, was her calling this number.

22 The phone was answered. The defendant in  
23 this case answered the phone. She said, "This Jen I'm  
24 calling for Jay." The defendant said, "He can't come  
25 to the phone right now, we're busy," and hung up.

1 At that moment the defendant, along with Jay  
2 Wilds, was in Leakin Park. The defendant was burying  
3 the body of one Hae Min Lee.

4 Hae Min Lee you're going to find out a lot  
5 about. She is a former girlfriend of the defendant.  
6 They were students together at Woodlawn High School.  
7 Woodlawn's in Baltimore County. It's where you have  
8 the magnet program for the bright and gifted. You also  
9 have non-magnet students who attend that school because  
10 they're local. But the magnet program is there.

11 The defendant and Hae Min Lee were two  
12 members of the bright and gifted track at Woodlawn High  
13 School. They started going together in their junior  
14 year.

15 This relationship caused problems. The  
16 defendant is of Pakistani background, he's a Muslim.  
17 In Islamic culture, people do not date before marriage  
18 and they definitely do not have premarital sex. Their  
19 family is a very structured event. They're not  
20 supposed to date. They're only supposed to marry and  
21 engage in activities after they marry.

22 So he was breaking the cultural expectations  
23 of his family and his religion to date Ms. Lee. Ms.  
24 Lee understood this. She was how it was causing  
25 problems for them.

1 And you're going to find -- hear about some  
2 of these problems. One time they were at the  
3 Homecoming Dance in that fall of their -- senior year.  
4 The defendant's parents came and practically dragged  
5 him out to say, "What's going on? What's going on?"

6 He tried to introduce the female to her, they  
7 were talking in a way that the principle of the high  
8 school thought was abusive. She went over took the  
9 female, Ms. Lee, away.

10 This, along with other incidents,  
11 precipitated a breakup. The two got together briefly.  
12 Then they broke up again. And you're going to find out  
13 that Ms. Lee truly loved this defendant but she loved  
14 him so much that she was ultimately willing to let him  
15 go because she saw that their relationship was bad for  
16 him.

17 You're going to get her diary. And you're  
18 going to hear and be able to read anything you want in  
19 it, but in her own words, you can tell she understood  
20 the problems. And she loved this individual so much  
21 that she was willing to let him up because she saw that  
22 their relationship was a problem.

23 This is an excerpt from her diary. "He  
24 called me on the 17th, twice, at 1:00 p.m. and 8:30  
25 p.m. with calling cards. Isn't he sweet. I keep

1 crying over the phone because I miss him so much.  
 2 "Then he went into the whole explanation of  
 3 the purpose of the trip to Dallas. He told me that his  
 4 religion means life to him and he hates it when he sees  
 5 someone purposely going against it. He tried to remain  
 6 a faithful Muslim all his life, but he fell in love  
 7 with me which is a great sin.  
 8 "But he told me that there is no way he'll  
 9 ever leave me because he can't imagine life without me.  
 10 Then he said that one day he would have to choose  
 11 between me and his religion.  
 12 "This was exactly what Savick was talking  
 13 about. I love him so much. And when it comes to  
 14 choosing, I'm going to let him go his way. If you have  
 15 to deny yourself a part of you for love, than that's  
 16 not good.  
 17 "I really couldn't care less since my  
 18 religion means shit to me. But to him his religious --  
 19 his religion guides his life. It's the world to him.  
 20 And I hate the fact that I'm the cause of his sin no  
 21 matter what he says.  
 22 "He said that I shouldn't feel like I'm  
 23 pulling him away from his religion but hello, that's  
 24 exactly what I'm doing. I don't know how we'll live  
 25 through all this. But this is bad.

1 "Now, I'm going to anticipate the day when  
 2 things will come to an end, gradually pulling me away,  
 3 protecting myself from the oncoming pain.  
 4 "Baby I love you with all my heart. Nothing,  
 5 no one, could ever -- ever come anywhere close to all  
 6 the smile, happy tears, laughter, and love you have  
 7 taught to me. I've never loved anyone as much as I  
 8 love you and I'll never be able to love anyone as much  
 9 as I love you.  
 10 "I think about you the moment I open my eyes  
 11 in the morning to I fall asleep -- well, longer,  
 12 because I think about you and dream about you in my  
 13 sleep. My day drags on as I wait to hear your voice or  
 14 see your face.  
 15 "The main point is that I love you, Adnan.  
 16 If I were to have my way we would be together forever.  
 17 But if something happens, my love is strong enough,  
 18 strong enough to let you go."  
 19 And let him go she did. "Who would have  
 20 thought that we would end like this? Who would have  
 21 imagined the amount of pain that comes with a broken  
 22 heart? I know I'm doing the right thing. Call me  
 23 selfish but this pain is way less than what it would be  
 24 if we stayed together.  
 25 "More hostility at his house. I loved you.

1 Oh screw it, I still love you. I would give anything  
 2 and anything to be in your arms but my heart's not that  
 3 strong."  
 4 She saw that the relationship was not good  
 5 for the defendant, and because she truly loved him, she  
 6 let him go.  
 7 The defendant, however, had a different  
 8 reaction. In order to have this relationship, he had  
 9 to live a lie. He'd had to lie to his parents. He'd  
 10 had to lie to his religious friends. He was living a  
 11 lie, denying to them that he was engaging in the  
 12 activities that was forbidden in their culture.  
 13 This is a great sacrifice. It was a double  
 14 life for him. He was leading a lie, and when it ended,  
 15 that's all he had left, was the lie that he'd been  
 16 leading. He became enraged. He felt betrayed that his  
 17 honor had been besmirched. And he became very angry.  
 18 And he set out to kill Hac Min Lee.  
 19 Now, you're going to hear a lot of evidence  
 20 how this happened. The more significant facts will be  
 21 among these. You're going to hear how on the evening  
 22 of the 12th of January, the defendant called Jay Wilds.  
 23 Now, Jay Wilds was a high school student at  
 24 Woodlawn, too. But he's not among the bright and  
 25 gifted. He lives in that area. He lives with his

1 mother, who's very poor. He's had to work most of his  
 2 own life.  
 3 And remember when you hear about Jay Wilds  
 4 and you hear him, remember this is the person the  
 5 defendant seated here, choose to use to put into effect  
 6 his murder of his girlfriend.  
 7 The State has to take -- take its witnesses  
 8 where it finds them. We don't get to pick and choose.  
 9 We can't go down and ask Bea Gatty to come in and  
 10 testify for us because we need a good witness. We have  
 11 to take the ones that the defendants leave us.  
 12 So you may not like Jay Wilds. There may be  
 13 things about him that you do not like, but remember,  
 14 ask yourself when you hear these things, what was it  
 15 about this individual that made him susceptible to  
 16 being used and manipulated by this defendant.  
 17 As I say, Jay Wilds had to work to support  
 18 himself. He wasn't from a wealthy family, a well-to-do  
 19 family. He doesn't have a lot of money for clothes to  
 20 dress well. He had to take the jobs that he could.  
 21 He worked in a porno shop at one time. He  
 22 sells marijuana on the side. He takes the jobs that he  
 23 can. But you'll hear that when he sells marijuana,  
 24 he's primarily doing it to try to please the people  
 25 around him.



1 He would buy marijuana for people. And  
2 you'll find out that Jay Wilds particular ethnic  
3 background made it safe for him to come into the city  
4 to buy marijuana, so the Woodlawn high schoolers found  
5 him a very convenient person.

6 "Hey, Jay can go in the city and buy  
7 marijuana for us. Let's do that." So Jay would go in.  
8 Often- times he didn't even charge the people. He just  
9 bought it for them and then smoked with them. He was  
10 trying to please them.

11 You may not like all of this, but every time  
12 you hear about this ask yourself, what is it about this  
13 individual that allowed this defendant to use him in  
14 such a crass and manipulative way.

15 Now, you'll hear that Jay Wilds' girlfriend  
16 was one Stephanie McPhearson. She was in the best and  
17 brightest -- bright and gifted track at Woodlawn along  
18 with the defendant and Hae Min Lee. They were friends.

19 So when Jay would go out with his girlfriend  
20 Stephanie, they'd go out with her friends which  
21 included Hae Lee, the defendant. They would socialize  
22 that way.

23 They'd known each other for some time on a social  
24 basis.

25 Well, on the evening of the 12th the

1 defendant calls Jay Wilds. You're going to see the  
2 defendant's cell phone records. You're going to see  
3 the telephone call to Jay Wilds' telephone on the  
4 evening of the 12th.

5 He says, "Hey, I'm going to skip out for a  
6 while tomorrow, let's go to the mall." So Jay says,  
7 "Okay."

8 Well, the next morning, and you'll see when  
9 you look at this, that these run backwards from a  
10 little bit after midnight until midnight of the next  
11 night so that the chronological order moves up 12:00  
12 a.m. and then the morning -- or 12:00 a.m. and then  
13 10:00 a.m.. It moves up into the p.m. and to the  
14 midnight of the next night. So the first call, just  
15 after midnight for the next day would be 34, and then  
16 number one is the last call of the day. This  
17 particular one took place at 10:37.

18 You'll see that the first two calls just  
19 after midnight, he called Hae Min Lee. That's her home  
20 address. Well the next morning he calls at 10:45 Jay  
21 Wilds, says, "I'm skipping out now, I'll pick you up."

22 In fact he did pick up Jay Wilds. They went  
23 to the mall. They're driving around. The defendant  
24 says, "You know what, I'm going to kill Hae today."  
25 Jay Wilds, "What's he talking about?"

1 The defendant says, "I want you to take my  
2 cell phone. I want you to take my car." Well, Jay  
3 Wilds who has no car is quite willing to take it. He  
4 takes the car. He takes the defendant's cell phone.  
5 He goes over to his friend's house -- well, first they  
6 go out to buy marijuana.

7 You'll see that they went into the downtown.  
8 We know that from one of the cell sites which was on  
9 714 Poplar Grove Street. He and the defendant went to  
10 buy marijuana, then he took the defendant back to  
11 school, dropped him off at school.

12 We know that that morning when he got to  
13 school, the defendant asked Hae Min Lee for a ride home  
14 after school. He told her that his car was in the  
15 shop, that he needed a ride to go get his car. We  
16 know that because he told friends of his that he had  
17 asked Hae for a ride for that reason.

18 Well, we know his car was not in the shop, he  
19 gave it to Jay Wilds. He returns to school. Jay Wilds  
20 goes over to his friend Jennifer Pusateri's house,  
21 starts playing video games with her brother Mark until  
22 she gets home.

23 At the end of the school day around 2:15,  
24 Aisha [REDACTED], who's a friend of the defendant, Ms.  
25 Lee, in all this, sees the defendant talking to Hae Lee

1 after the last class. She leaves.

2 One Inez Butler, who's a teacher there who  
3 runs a little concession stand for the athletic  
4 department, talks briefly to Hae Lee about 2:15, 2:20  
5 when she's leaving school. She picks up a soda and a  
6 bag of snacks. She's going to come back and pay for  
7 them. That's her usual practice.

8 She has a cousin who she picks up after  
9 school. She's leaving to pick up that relative who's a  
10 -- I think elementary student, take that person home  
11 then come back to school.

12 About 2:35, 2:36, Jay Wilds receives a call  
13 on the cell phone from the defendant saying, "Hey, come  
14 meet me at the BestBuy." This is the BestBuy off  
15 Security Boulevard just across from Security Square  
16 Mall. When he gets there, the defendant has Hae Lee's  
17 car.

18 Defendant says, "I've done it. I've done  
19 it." He pops open the trunk of the car. Jay Wilds see  
20 the body of Hae Min Lee in the trunk dead.

21 At that point the defendant says, "Help me.  
22 Follow me." He takes the victim's car to the I-70 Park  
23 and Ride, parks it there, gets in his car with Jay  
24 Wilds. The two of them alternately make various  
25 telephones. At 3:21, Jay Wilds calls Jennifer

1 Pusateri. At 3:32 the defendant calls a friend of his  
2 by the name of Neisha [REDACTED] and he -- Phil Mendez is  
3 called, a Phillip Furlough, who's a contact. After  
4 they drop off the car the defendant wants to get some  
5 marijuana, wants to get high. He and Jay are riding  
6 around. Jay has some contacts he trying to see who's  
7 home, who's got marijuana. He calls up Jay Furlough,  
8 that person's not home. He makes another phone call to  
9 Jen Pusateri.

10 Well, at that point the defendant says, "I've  
11 got to go back to school for awhile. I've got to stop,  
12 go to track practice."

13 So Jay takes his back, drops him off briefly  
14 at track practice, comes back, picks him up, they go  
15 over to a Christie Vincent's house. While they're  
16 there, they're three incoming phone calls. By this  
17 time the family of Hae Min Lee has realized that Hae is  
18 missing because she should have been home with the  
19 relative before 3:00, she's not.

20 Well, somewhere in there, a member of the  
21 family calls Aisha [REDACTED] Aisha [REDACTED] calls a  
22 friend of their's by the name of Christy [REDACTED] and  
23 says, "Hae is missing." Christy Myers [REDACTED] his call  
24 at work, she immediately calls the defendant. His cell  
25 phone doesn't answer, she leaves a message on the voice

1 mail.

2 And you'll see that there is a voice mail  
3 where the voice mail is checked at 5:14. Christy [REDACTED]  
4 will tell you that she called, left a message for the  
5 defendant to call her.

6 Well, the cell phone records indicate the  
7 voice mail was checked. And the very next call, which  
8 occurs at 5:38 is to Christy Myers. She's not home at  
9 that time. Her voice -- her answering machine comes  
10 on. You'll see it's a two second call, as soon as the  
11 answering machine comes on the person -- defendant  
12 hangs up.

13 They're at Christy Vincent's house. The  
14 family of Hae Lee has also called the police at this  
15 time. Officer Scott Adcock goes over there. They have  
16 found several numbers, one of which is this number, 443  
17 253-9023, it's in the diary.

18 The brother of Hae Lee, Young Lee, thinks  
19 it's a friend, a girlfriend of his sister, so he calls  
20 the number. The defendant answers the phone. Young  
21 Lee recognizes the voice, says, "Hae is missing do you  
22 know where she is?"

23 "No," very quick conversation.

24 Officer Adcock comes. He takes the  
25 information. He gets the number. He dials the number.

1 He gets the defendant. And we know that because the  
2 defendant later that night tells Christy [REDACTED] that the  
3 police had called him and were -- basically gave a  
4 verbatim description of the conversation that Officer  
5 Adcock had on the phone with this person who identified  
6 himself as the defendant.

7 Officer Adcock speaks for about four or five  
8 minutes, and there's an incoming call, four minutes, at  
9 6:24.

10 Well, Jay Wilds will tell you at that time  
11 the defendant became frantic. "What do we do? What do  
12 we do? We've got to get rid of the body." He says,  
13 "Come with me."

14 They go over to Jay Wilds' home. They get  
15 two shovels. They then head to Leakin Park.

16 And you'll see that at 6:59, there's a call  
17 made on the defendant's cell phone to one of the  
18 defendant's best friends, one Yasir Ali. Immediately  
19 after that, there's a call made to Jennifer Pusateri.  
20 And then there are the two incoming calls at 7:09, 7:16  
21 at Cell Site 7689B, which is located on a cell tower at  
22 2121 Windsor Garden Lane.

23 And you're going to see a map from the AT and  
24 T Wireless records showing 689C being this light brown  
25 area, that that cell site is the cell site that covers

1 Leakin Park, that those two calls at 7:09 and 7:16 come  
2 out of -- actually it's 689B, pardon me, covers the  
3 Leakin Park, that that cell site covers Leakin Park and  
4 not much else.

5 You're going to hear from Jay Wilds, who  
6 after -- after the defendant buries the body there,  
7 says, "We've got to ditch the car." They take it down  
8 off Edmonson Avenue. They leave it in an apartment  
9 complex there. They head back Edmonson Avenue towards  
10 Woodlawn.

11 And you're going to see the two calls that  
12 come afterwards come out of a cell site, 765A -- or  
13 7653A and then C, and you're going to see 653 which is  
14 on a tower on Athol Avenue, and how the "B" -- pardon  
15 me, the "A" site would be to the east of the "C" site  
16 and how you can almost track the car as it's coming  
17 down there from east to west moving through the cell  
18 sites first getting picked up in the "B" site and then  
19 afterwards getting picked up on the "C" site as they go  
20 along.

21 While they're heading back there, the two  
22 calls which are made are both made to Jennifer Pusateri  
23 where Jay Wilds is saying, "You got meet me, you got to  
24 pick me up." The defendant takes him to a mall. Jen  
25 Pusateri meets him there. Jay Wilds gets in the car



<p style="text-align: right;">Page 111</p> <p>1 with her. They drive off.</p> <p>2 She's thinking there's something really</p> <p>3 strange here. He's acting strange. She says, "What's</p> <p>4 wrong?" At that time Jay Wilds tells her about what</p> <p>5 happened that day.</p> <p>6 Now, you're going to hear that consistently</p> <p>7 the defendant has always given the same story about</p> <p>8 what the defendant did where -- as to the defendant's</p> <p>9 actions. Consistently he tells Jennifer a</p> <p>10 consistent story. He tells the police a consistent</p> <p>11 story about the defendant. He tells consistently the</p> <p>12 defendant's involvement, the defendant's actions on</p> <p>13 that day. He has never wavered on that point.</p> <p>14 And you're going to see how the cell phone</p> <p>15 records corroborate that activity, both by who is</p> <p>16 making the call or they're alternating it the cell</p> <p>17 sites verify the locations that they're at,</p> <p>18 corroborates that.</p> <p>19 You're going to see how Jay Wilds was able to</p> <p>20 lead the police to the victim's car and bring her back.</p> <p>21 You're going to hear that Jay Wilds has given several</p> <p>22 statements. And you're going to hear between the first</p> <p>23 statement and the second statement, he changed certain</p> <p>24 things. In fact he changed three things.</p> <p>25 You're going to hear first that he said that</p>	<p style="text-align: right;">Page 113</p> <p>1 back and I'm going to ask you to find this defendant</p> <p>2 guilty of the murder of Hae Min Lee.</p> <p>3 Thank you very much.</p> <p>4 THE COURT: Thank you very much.</p> <p>5 Again, Ms. Gutierrez, feel free to move about</p> <p>6 the courtroom.</p> <p>7 MS. GUTIERREZ: Thank you.</p> <p>8 THE COURT: And use the easel or whatever.</p> <p>9 (Pause.)</p> <p>10 OPENING STATEMENT BY MS. GUTIERREZ</p> <p>11 MS. GUTIERREZ: As the judge has already told</p> <p>12 you, Mr. Syed, as any citizen of this city or this</p> <p>13 country, has no duty whatsoever to bring you even an</p> <p>14 iota of evidence, no duty whatsoever.</p> <p>15 And the judge will tell you again at the end</p> <p>16 of the case and further elaborate on that law. But in</p> <p>17 spite of his lack of duty, Adnan Syed wants you to know</p> <p>18 certain things before you begin because he believes</p> <p>19 that they may be helpful to you in dealing with the</p> <p>20 case.</p> <p>21 Mr. Urick said that the thing is most</p> <p>22 important. He said that sometimes things are not</p> <p>23 clear. Sometimes things are not clear because they're</p> <p>24 not clear, because nobody knows.</p> <p>25 It is important that you understand who these</p>
<p style="text-align: right;">Page 112</p> <p>1 when the calls came in from Officer Adcock and Young</p> <p>2 Lee, they were at a McDonald's Restaurant. Then in the</p> <p>3 second statement he's honest, he says they were at</p> <p>4 Christy Vincent's. He's going to tell you he didn't</p> <p>5 want to get Christy Vincent involved in this. He was</p> <p>6 trying to keep her out of it, so he didn't want -- want</p> <p>7 to admit that they were at their house.</p> <p>8 Secondly he left out Jan Pusateri. And he'll</p> <p>9 tell you that he did so because he didn't want to get</p> <p>10 her involved.</p> <p>11 And the third thing that he's going to tell</p> <p>12 you is that he initially told the police that when he</p> <p>13 met the defendant, it was not at the BestBuy, he was at</p> <p>14 a place on Edmonson Avenue.</p> <p>15 So you're going to hear it. Yes, there were</p> <p>16 three things that he changed there. But you're going</p> <p>17 to hear that he's been completely accu -- consistent as</p> <p>18 to the defendant's activities throughout.</p> <p>19 And you're going to hear from him, and he's</p> <p>20 going to explain to you what he did any why. And when</p> <p>21 you do, when you watch him, all I ask is that you keep</p> <p>22 asking yourself what is there about this individual</p> <p>23 that made him capable of being manipulated and used by</p> <p>24 this individual seated here.</p> <p>25 And at the end of the case, I'm going to come</p>	<p style="text-align: right;">Page 114</p> <p>1 two young people were. Young, star-crossed lovers of</p> <p>2 different cultures, of different races, from different</p> <p>3 countries, from different families, from different</p> <p>4 religions, from one side of the street to the other,</p> <p>5 from one set of answers straight to another, throughout</p> <p>6 history populated our collective human history. The</p> <p>7 younger they are the more tragic it is.</p> <p>8 And no one denies that whatever happened to</p> <p>9 Hae Min Lee on whatever day -- because we suggest to</p> <p>10 you that you will not even have enough evidence to</p> <p>11 establish, not only what happened to her, other than</p> <p>12 what you will hear from the medical examiner, who will</p> <p>13 clearly establish that someone capable of performing a</p> <p>14 strangulation which takes a bare minimum of pressure,</p> <p>15 put their hands on her neck and with in 10 seconds,</p> <p>16 snuffed our her life, leaving not another mark on her</p> <p>17 body, and that her death is certainly consistent with</p> <p>18 having occurred on or about the 13th of January.</p> <p>19 But it's equally consistent with having</p> <p>20 occurred on the 14th of January, or the 15th, or the</p> <p>21 20th.</p> <p>22 Her body was not found until February 9th.</p> <p>23 And all the medical examiner can say and all the</p> <p>24 evidence will show you is that she was clearly murdered</p> <p>25 and had been dead for some period of time; more than a</p>



1 day, probably more than a week, likely more than two weeks.

3 But no one, not the medical examiner who  
4 exhumed her body from Leakin Park, or the medical  
5 examiner who examined it the next day, will dare to  
6 venture an opinion as to the exact time or  
7 circumstances other than what I've told you about her  
8 death.

9 The only other thing that you know is that  
10 she was seen by friends, and teachers, and students who  
11 participated with her in her joyful life as a scholar  
12 athlete at Woodlawn High in what is called the "Gifted  
13 and Talented Program," "GT," "Gifted and talented,"  
14 where she had matriculated as a scholar athlete,  
15 beautiful, bright, performing at the top in both  
16 athletics and in her chosen course of study.

17 She was among at least 25 other students,  
18 students who have been together for a number of years,  
19 attracted by the magnet program at Woodlawn, a school  
20 of enormous proportions, 1700 students in four grades.

22 You will find that this group of students of  
23 25 had matriculated in the Gifted and Talented Program  
24 was truly amazing to look at, to watch, to observe, to  
25 interact with.

1 They all generally considered each other  
2 friends. But like any other grouping of young people,  
3 they each had their little sets of who was who and who  
4 was best friends with whom. And most, not all of them,  
5 had been together since various junior highs.

6 And because high schools are fed by more than  
7 one junior high, some of them in groups had been  
8 together since the earliest of their junior high years  
9 as 6th graders. Some had been together since they were  
10 in elementary school kids.

11 And you will find that Hae Min Lee, although  
12 she had been gone about a year and a half because of  
13 her mother's move to California to pursue another  
14 relationship with a man who was originally identified  
15 as her father -- he's not -- but she recollected him  
16 and people referred to him as her father.

17 She went away after she got to Woodlawn and  
18 was gone a year and then came back. All the other  
19 names that you've heard mentioned in connected with  
20 Woodlawn fit in the very same category. They were all,  
21 other than Jay Wilds, and other than Jan Pusateri,  
22 children who had an incredibly bright future and who  
23 represented the very best of this whole community and  
24 of this country.

25 You will be amazed at the diversity among

1 this group of children. Some of them were Muslim who  
2 consider themselves Mideastern. Others were Indian,  
3 others were black of every hue, others were white of  
4 every ethnicity.

5 And it appeared at any juncture where you  
6 would stop and take a look at this group of children,  
7 that the differences among them mattered not to them at  
8 all. They chose their friends on what we as a people  
9 would say are the best of reasons; not what color they  
10 were, not what the shade of their skin was, not what  
11 their ethnicity was, not what their religion or their  
12 beliefs were.

13 Adnan Syed had been an identifiable scholar  
14 and athlete from his very earliest matriculation in the  
15 Baltimore County Public School system. He is an  
16 American.

17 His ancestry on both his mother's and  
18 father's side, whom you will get to know and identify,  
19 is of Pakistan. They are Pakistani. And they came to  
20 this country before he was born or thought of in hope  
21 of a better life from their native land, like  
22 generation after generation of immigrants, other than  
23 the first people in this country, with their hopes and  
24 dreams for new families, for new life.

25 But unlike all immigrants, over centuries

1 immigrants to this country as immigrants before this  
2 country was dreamed about by Europeans, some have  
3 sought to assimilate, to leave behind their native  
4 languages, their native customs, their native dress,  
5 their native culture, and their religions or any other  
6 thing.

7 Many waves and waves of immigrant have sought  
8 to assimilate into whatever was current in American  
9 culture then and to raise their children who learn far  
10 easier than their parents the ways of the new land.

11 Pakistan is, depending upon your viewpoint,  
12 an Arab country, a Mideastern country, a Near Eastern  
13 country, a Far Eastern Asian country. Pakistan was a  
14 country that was formed out of the bloodbath that was  
15 India right after India gained its independence from  
16 Great Britain. It was a bloody revolution.

17 And one of the distinctions between Pakistan  
18 and India were the deep divisions of culture. Pakistan  
19 is predominantly a Muslim country. Muslim is the  
20 common definition to term those who hold Islam as the  
21 core of their fundamental belief system.

22 It is not so very different if one studies  
23 it, from Christianity. Islam is the majority religion  
24 in that region of this earth. India is a predominately  
25 Hindu, not all, but predominately Hindu country. And

1 there was, literally, a bloodbath among those peoples  
 2 that rent that country into two.  
 3 And as a result of the bloodbath, whatever  
 4 one may think of it, the economies of both countries  
 5 was torn asunder. And may a young couple of a young  
 6 family sought refuge in the economic desolation --  
 7 many, many.  
 8 Among those who sought were the parents of  
 9 this young man. And they brought with them their  
 10 culture, their religion, their habits, their beliefs,  
 11 their way of life, they're own language.  
 12 And they, like many other waves of  
 13 immigrants, sought to sustain it by teaching their  
 14 children first their own language, by teaching their  
 15 children first their own beliefs that had survived  
 16 centuries before any of us can even begin to trace our  
 17 own ancestors.  
 18 And they sought to keep that in their home.  
 19 And they joined, just like other waves of immigrants;  
 20 German, Dutch, Finnish, Italians, in our own city, who  
 21 sought to stay close to each other so that they could  
 22 cling to those traditions better, so that they could  
 23 feel the comfort that comes when a people share a  
 24 common history and a common belief system.  
 25 And so they sought to assemble, just like

1 those of us who are Christian, assemble in church  
 2 communities.  
 3 They sought to assemble in a community of  
 4 each other. They identified and joined with a Mosque.  
 5 It's called the "Islamic Society of Baltimore."  
 6 It's located on Johnnycake Road. And on the  
 7 very edges of the property one can overlook onto 695,  
 8 out there on the western side of the county.  
 9 And they, like many parents, became concerned  
 10 about their children, Syed, and as you'll get to see,  
 11 his brother and others. They became concerned that for  
 12 six to eight hours a day their children went from their  
 13 own bosom, from their own language, from their own  
 14 religion, out into the world in the control of others  
 15 in the school system where they learned foreign things  
 16 to them.  
 17 They learned things that were not in line  
 18 with their religious or cultural beliefs at all. And  
 19 they became so concerned that ultimately they pooled  
 20 their money.  
 21 The Mosque involves a good thousand plus  
 22 families. And for Islam, it requires the adherence to  
 23 certain fundamental tenets, one of which is for the  
 24 faithful to face in a certain direction five times a  
 25 day on their knees and to assert -- to recite the words

1 of the faithful that had been repeated from millennia  
 2 after millennia.  
 3 And Muslims, those who practice Islam in this  
 4 country, although I will tell you there are under 10  
 5 million of them in this country, struggle to meet their  
 6 obligations whenever and wherever they can.  
 7 And in their worry about their children such  
 8 as Adnan -- and they knew that he excelled right from  
 9 the beginning, and that his friends whom they saw and  
 10 interacted with on at least a minimal level, seemed to  
 11 be decent people.  
 12 And they observed the diversity, and they  
 13 knew he was a scholar and an athlete. And they were  
 14 pleased in their hearts. They wanted acceptance in  
 15 this country. They came with the same dream and the  
 16 same belief that they could preserve what is important  
 17 to them as a people and not have to give it up; to have  
 18 their children conceived and born on this soil, no less  
 19 citizens than any of us, no less citizens than any  
 20 other group of the offspring of the immigrants who come  
 21 here with hope.  
 22 Over the years, their worries about their  
 23 children, that because of their belief system as  
 24 Muslims, would get diluted in the general discourse,  
 25 they ultimately started a school. That school exists

1 today and it keeps adding on year after year, so that  
 2 for the bulk of their days their children, their hopes  
 3 and their dreams can learn what they as parents decide  
 4 is essential.  
 5 But when Adnan was a young man, they didn't  
 6 have a school. And so he went out in the world. And  
 7 all the way up until the Spring of 1998, you will hear  
 8 that this wonderful group of diverse young people, they  
 9 accepted Adnan and they accepted him as who he was.  
 10 He was a Muslim. He wasn't like them. He  
 11 fasted when he was supposed to fast. He prayed when he  
 12 was supposed to pray. And notwithstanding that this  
 13 was generally a group of, at least in my generation, we  
 14 were called "geeks."  
 15 They were a little slow on the uptake of the  
 16 kind of development on a personal level. They were  
 17 great athletes. They were great scholars. But they  
 18 weren't really out there or with it.  
 19 They were slow to sex. They were slow to  
 20 drugs. They were slow to all the things that, in fact,  
 21 every other group of kids, but they finally caught on.  
 22 And at 17 most of them were beginning to date -- mostly  
 23 each other but not always -- and beginning to have sex  
 24 and to experiment -- mostly with not the worst drugs,  
 25 some marijuana, a little bit of designer drugs. And to

1 go and do things like drink that they surely would not  
2 have been proud of.

3 But generally for a group of kids they were  
4 pretty darn responsible in how they did it. And  
5 generally they kept within their own group.

6 Up until that point they respected Adnan and  
7 other Muslim other young men in their group as Muslims.  
8 And they didn't press the points about dating. "No.  
9 Adnan will come to dance and be with us, but he doesn't  
10 date. He doesn't have a girl. Doesn't have sex. He's  
11 a Muslim and that's his belief. And he fasts. And he  
12 prays. And he attends his mosque with his family every  
13 day." And they generally accepted that and just sort  
14 of whatever took each other as they came.

15 Another young woman in this group is a young  
16 woman by the name of Stephanie McPherson. Up until the  
17 Spring of 1998 she -- she's a young African-American  
18 scholar-athlete.

19 Up into the Spring of 1998, and perhaps for a  
20 long while afterwards she, and everyone else with  
21 Adnan, would have described the two of them as the best  
22 of friends, and that they had been the best of friends,  
23 not- withstanding their difference in gender, their in  
24 race, their difference in religion, their difference in  
25 culture, as best friends since the onset of middle

1 school, if not before. And everyone knew it. And  
2 everyone acknowledged that.

3 In the Spring of 1998, there was what we will  
4 refer to as sort of like the junior prom. Adnan and  
5 Hae Min Lee, who had returned from her hiatus in  
6 California only in the middle of that year, and  
7 Stephanie and the rest of their huge class, held a  
8 homecoming dance.

9 And they held a junior prom for the junior  
10 class in the late Spring of 1998. At that prom Adnan  
11 Syed was the king and Stephanie was the queen. They  
12 were crowned by their fellow students. They were  
13 selected.

14 But at that prom for the very first time, for  
15 reasons that are not hard to understand, Adnan had a  
16 date, a date that was suggested to him by others in  
17 this group that sort of sensed that Adnan was sort of  
18 ready to step out.

19 And you will hear that other Muslim young  
20 men, not all, but others certainly within that Mosque  
21 if not outward, had already made decisions -- and none  
22 of us have a right to judge -- to step outside of some  
23 of the strictures of their communities.

24 Some of those decisions were the fruit of  
25 what happens when you take a young Muslim kid and you

1 put him in an environment which the parents have no  
2 knowledge, no control and by choice, no interaction;  
3 were they are exposed to different thought than the  
4 thought of their own families and their church, their  
5 Mosque community over years and years and years of  
6 people they admire and trust and think highly of. And  
7 for whatever the reasons of those that suggested it, it  
8 ended up with Adnan Syed and Hae Lee going as a date.

9 And from that date grew a relationship, the  
10 first of any kind that Adnan ever had with a girl, with  
11 anyone, the first sex he had ever had -- and which  
12 truly was against his religion, against the vows,  
13 against his belief as a Muslim, which prohibits, like  
14 many other religions, premarital sex between men and  
15 women, for reasons that we as a group of people may or  
16 not agree on. It is not singular to Islam to preclude  
17 sex outside of marriage in a committed relationship.

18 When Adnan started this relationship, he,  
19 like any other young kid, certainly had no idea of how  
20 much of him it would take and draw and how it would  
21 alter him, and what fundamental conflict it would  
22 create. He's a 16-year old kid, and quickly fell in  
23 love.

24 You will see from Hae Min Lee's diary -- and  
25 I will tell you it is tragic to have to read the diary

1 of a young woman whose promise has been wiped out some  
2 -- under some circumstances afterwards. And you will  
3 see the track of their relationship.

4 Adnan Syed was not her first boy. She had  
5 had previous relationships. And one of the things you  
6 will see from the diary, that she had had a  
7 relationship in which a boy had betrayed her, betrayed  
8 her by being intimate with another girl while he had  
9 made a commitment to her.

10 Whatever you think of the wisdom of trying to  
11 tell kids that it's not the end of the world, that they  
12 can't know what the world of people is out there, you  
13 will, as you read her diary, understand this was a  
14 young girl of incredible passion, smart enough to think  
15 about things, to feel things so deeply.

16 She fell in love. She had previously been in  
17 love, and she was afraid right off from the beginning  
18 of this young boy whom she knew from the outset took  
19 her heart.

20 You'll see the ups and downs of the  
21 relationship. She talks about the continual  
22 declaration of what she calls "recesses," which me and  
23 you will see exactly what they sound like. She would  
24 declare a recess from the relationship.

25 And during that release -- that recess, not



1 speak to him, not talk to him, take a day here, take a  
2 day there and then come back in a rush of emotion. But  
3 remember the diary is what she felt and what she  
4 believed he felt.

5 What the diary will tell you is that,  
6 although she struggled with these feelings and  
7 struggled with her feeling like he had been a good  
8 Muslim, his Islam was his life until she came along,  
9 and who was she to force him to choose.

10 From her diary, you will see nothing from  
11 Adnan, no asking, no pushing her away, giving her  
12 space.

13 You will see from another piece of evidence,  
14 a piece of evidence written by a woman who would  
15 describe herself as Hae Lee's best friend, that she  
16 wrote, after Hae Min Lee's body was discovered, and  
17 after she was asked to record her recollections about  
18 the relationship of her best friend whom she loved, and  
19 the boy, Adnan Syed.

20 She was asked to describe and she wrote down  
21 Adnan's character. This is after the death of her best  
22 friend, after the ugly rumors that pointed the finger  
23 and said "Boyfriend, boyfriend, boyfriend." She  
24 described him as laid back, funny, always joking,  
25 completely understanding and compassionate, willing to

1 do anything for anyone, very good listener, gave advice  
2 when he could, faithful, loyal, protective of friends  
3 and loved ones, spiritual, very respectful of everyone,  
4 polite. Loving, supportive.

5 And when asked to describe the relationship  
6 of her best friend with the boy, she wrote, "They were  
7 both very loving. They were both very faithful and  
8 loved to tease each other and make jokes, publicly  
9 affectionate yet very respectful. Never fought around  
10 anyone. Had little disagreements sometimes but always  
11 worked them out by talking.

12 "Neither one ever tried to hurt the other.  
13 If one was hurt, they both were hurt. A lot of  
14 empathy. If one did something to upset -- upset the  
15 other, -- a rarity -- and apology was always made and  
16 the problem resolved.

17 "Both would do anything for the other. If  
18 Hae wanted space at a certain time, Adnan said, 'Okay,'  
19 no questions asked," and gives an example of a trip to  
20 Kings Dominion. "Both were happy but knew it wouldn't  
21 last forever."

22 And when asked, after the arrest of the boy,  
23 Adnan, to describe the breakup this best friend of Hae  
24 Lee described it as follows, "Not at all bitter.  
25 Probably originated from Hae." Her best friend didn't

1 even know. Knew of the breakup but both agreed on it.

2 And then described that Hae still paged the  
3 man she called her "soul mate" with, "I love you, I  
4 miss you" messages.

5 This is after her body was found. not a  
6 description of a single character trait or experience  
7 that would relate a young man filled with rage, not a  
8 single description from this victim's best friend that  
9 describes in anything but loving terms, a boy who loved  
10 a girl against his religion, against his culture.

11 Could they have made it notwithstanding her  
12 dreams expressed in her diary or his dreams? Were they  
13 soul mates? Who knows?

14 But in her diary, close to the last entry, as  
15 she's describing very conflicting feelings about the  
16 new boy, Don, with whom she began a relationship on  
17 January 1st, 1999, but by the 12th of January describes  
18 it as finding another soul mate. That's how she saw it  
19 in 12 days.

20 But as she wrote it, she describes at school  
21 seeing again the young man who still held her heart,  
22 and she writes in her own handwriting, "No more Don."

23 The second to the last page of her diary, she  
24 had a page filled with a teenage girl's handwriting  
25 writing over and over and over and over again the word,

1 "Don," her current two-week old soul mate. And at the  
2 very corner, she has the number that you will see from  
3 the evidence is the cell phone number assigned to this  
4 boy just the day before.

5 Who is that he calls to give his new cell  
6 number but his best friend and his lost love. And she  
7 writes it down as she's daydreaming of the new boy and  
8 the new soul mate in her life.

9 Out the group of kids at Woodlawn, Stephanie  
10 McPherson and Adnan had been friends for a very long  
11 time, best of friends, notwithstanding their  
12 differences. But somehow Stephanie became -- and I  
13 think that any of the witnesses that are called  
14 regrettably answered the question that if Adnan were  
15 not a Muslim and not a Muslim living up to Islam,  
16 Stephanie and Adnan might well been an item in the  
17 earliest time of their age group that they began to  
18 date. But it wasn't to be so.

19 But at that junior prom night Stephanie and  
20 Adnan were dancing, something else not allowed for a  
21 Muslim young man. And Adnan left her, the princess,  
22 the queen, the selected one, his best friend on the  
23 dance floor to go join the woman who sort of swept him  
24 off his commitment and his struggle to live up to his  
25 family's expectations.

Page 131	Page 133
<p>1 Stephanie had a relationship with a young man 2 who wasn't part of those gifted and talented young 3 people. He's not a scholar, not an athlete. He barely 4 passed. He was a year or so older.</p> <p>5 But he stuck on Stephanie from the beginning. 6 The rest of the crowd around which they hung, and they 7 generally hung around each other a lot, although 8 depending upon groupings and timings, that might vary.</p> <p>9 They accepted Jay because he came with 10 Stephanie -- you know lots of times the attitudes of 11 young people are, "Whatever," -- not because he brought 12 anything of himself.</p> <p>13 He wasn't college material. He didn't do the 14 same things they did. He didn't do the same things 15 Stephanie did but for whatever reason, they were 16 girlfriend and boyfriend.</p> <p>17 There are many others, and you'll hear some, 18 who tolerated Jay Wilds for other reasons. He was a 19 young man who recognized that this was a pretty geeky, 20 naive group of kids, who were late bloomers, and they 21 needed a source.</p> <p>22 Jay Wilds didn't supply marijuana to the 23 group because he wanted to please them. He did it for 24 money. He would get them things that perhaps they were 25 capable of getting themselves, but they weren't really</p>	<p>1 in very deep relationships very early in life rather 2 than awaiting their own maturation and the maturation 3 of others and the accumulation of life experiences is a 4 bane to this generation's parents as it has always 5 been.</p> <p>6 You will find that Jay Wilds approached Adnan 7 Syed on the 12th and the 13th, which is why he called 8 him to borrow his car for the alleged purpose of going 9 shopping and planning a birthday surprise for his 10 alleged loved one, Stephanie.</p> <p>11 And then Adnan -- and if his parents knew 12 they'd be appalled but he didn't ask them. Most kids 13 don't. "My friend wants to borrow the car, let him 14 have it," since he was in school.</p> <p>15 You'll seen in evidence documents that 16 establish that he was in school in testimony of 17 witnesses that day. He sometimes skipped class, but he 18 be in school. He was completing college education -- 19 college applications just like all other students in 20 that group of the 25 gifted and talented, expecting the 21 bright future that they had exhibited, to go to 22 college, to be chosen to be of the best of their 23 generation.</p> <p>24 And he completed some of those activities 25 that day. A little bit before, about a week before,</p>
Page 132	Page 134
<p>1 up on them. So he'd supply the marijuana, sometimes 2 the uppers or downers, or the designer drugs.</p> <p>3 He'd buy beer, liquor because he was older. 4 And he exposed them to things that maybe some of them 5 found exciting. He worked in a porn store. He had 6 porn videos, things they neither knew about from their 7 own experience or had the courage to go out and seek 8 whether it's right or wrong.</p> <p>9 He was never part of the group for himself. 10 And if Stephanie had dropped him, he never would have 11 been called by anybody. January 12th and 13th were 12 important days to Jay Wilds and Stephanie McPherson. 13 January 12th was his birthday. January 13th was hers.</p> <p>14 Now, there was speculation that Jay Wilds, 15 who didn't own a car himself, he was up at school all 16 the time. He'd borrow mainly Stephanie's car. But 17 sometimes he didn't. Sometimes he borrowed others 18 cars, because the purpose of his needing a car, which 19 he needed two or three times every week, related to his 20 activities, right or wrong, moral or not, of stepping 21 out on Stephanie McPherson with other women.</p> <p>22 Now, among young people today often one finds 23 young people clinging to a code of behavior that 24 sometimes appears more conservative even than some 25 adults. The tendency of young people to get involved</p>	<p>1 there had been an assembly, and at that assembly Jay 2 Wilds came up and again borrowed another student's car 3 -- not Stephanie's, not Adnan's, another students for 4 the purpose of keeping an assignation meeting with 5 another girl not Stephanie, his girlfriend, unbeknownst 6 to her.</p> <p>7 And as this particular day all the students 8 went to the assembly, Hae Lee with her particular, born 9 of her brand of loyalty and commitment, confronted her 10 soul mate who she saw as shielding the guy from being 11 caught by his girlfriend by persuading her, Stephanie, 12 to not go look for Jay because he knew that Jay would 13 have a women with him.</p> <p>14 And, yes, Hae Lee was upset with Jay Wilds, 15 whom she didn't like, she never choose to be with. Hae 16 Lee and Adnan never went out with Stephanie and Jay 17 Wilds. She didn't have to tolerate Jay Wilds because 18 she never chose to spend her precious available time 19 with her chosen one in the presence of others unless it 20 was an event.</p> <p>21 But she reserved most of her anger on that 22 day towards her boyfriend. How dare he hide another 23 man who was cheating and lying on his best friend. How 24 dare he protect him.</p> <p>25 Now, on January 13th, Hae Min was supposed to</p>

<p style="text-align: right;">Page 135</p> <p>1 pick up her cousin's niece, nephew on -- I can't quite  2 remember at the moment. Young children got out of  3 daycare about 5:00, and she generally picked them up.  4 She worked part time at LensCrafters in the Owings  5 Mills Mall. And that will give her enough time, and  6 she generally was every, very responsible.  7 She had struggled to get her license and then  8 got a car in the early fall upon her passing her  9 driving test which excited her and covers much of her  10 diary.  11 Within minutes of her failing to appear at  12 the appointed time, her family notified the police.  13 Within minutes of getting that report, within minutes,  14 the police of Baltimore County where all this was  15 located, began an investigation into her status as  16 being missing.  17 And they began, as they do -- although I'd  18 suggest to you in any other occasions certainly not as  19 quickly, they began to gather information. And Young  20 Lee, Hae Min Lee's brother, went up to her room, got  21 the diary -- got the diary thinking this was the new  22 soul mate's phone number, called then gave it to the  23 police.  24 He knew who Adnan Syed was. And in that day  25 and the next day, Adnan Syed told them everything he</p>	<p style="text-align: right;">Page 137</p> <p>1 histrionic in their descriptions of that, who had,  2 because they were so bright, understood that the  3 relationship could not continue.  4 In the diary which records many of Hae Min  5 Lee's thoughts throughout the year, there's not a  6 single mention of the Homecoming Dance which certainly  7 was the cause of what appears to be a recess or  8 breakup. But remarkably at that homecoming dance what  9 Adnan's parents came to and with whom he left, that  10 immediately upon leaving and going home, he got on his  11 bicycle and rode back to school to try to meet the  12 dueling, competing expectations of those he loved.  13 He was asked that very night, and he told  14 whoever asked him what he done that day. He went to  15 track practice. Even though his was a practicing  16 Muslim, because it was during Ramadan, the holy month,  17 where Muslims fast from sunup to sundown, that he was  18 not required to go to track practice. He could have  19 easily been excused.  20 But he was serious about what he did in track  21 in the same way he was serious about all other things.  22 He medaled in track shortly thereafter, certainly not  23 the mark of an athlete who would willy-nilly miss track  24 practice.  25 So he told -- and he was asked that very</p>
<p style="text-align: right;">Page 136</p> <p>1 knew as did others. Others saw her at school as late  2 as three o'clock. Others, teachers and students, know  3 that she was upset that day and asked her, inquired  4 what was wrong.  5 Others told right away, when first asked on  6 the 13th or the 14th or the 20th, their best  7 recollection. Some thought that Hae Lee had deep  8 problems with her mother and suggested that she would  9 go to California as she had said she would do so if  10 things at home got too bad.  11 The 14th and 15th were Thursday and Friday,  12 and were snow days in which the Baltimore County Public  13 Schools were closed. And the police covered a lot of  14 ground in those -- in the next days, talking to  15 teachers. All the teachers they spoke to, no one  16 suggested that the boyfriend, Adnan Syed, would have  17 harmed her.  18 Every teacher, every friend, every  19 acquaintance, every schoolmate, described them still  20 after her alleged disappearance, as then the best of  21 friends although everyone knew that they had just  22 recently broken up around Christmas time as a couple.  23 No one suggested him. No one suggested  24 anything but what they all knew to be the truth. These  25 were two young people, star-crossed in their love,</p>	<p style="text-align: right;">Page 138</p> <p>1 night, and he was asked several days later. And like  2 all of her other friends, no one believed that any harm  3 had come to Hae Min Lee. They all believed, because of  4 what she had said that whatever conditions existed  5 between her and her mother, over whatever issues, were  6 causing her enough pain that either she went out to  7 California to a man they believed was her father or  8 that she was off with her new boyfriend.  9 Because they as friends had already  10 experienced Hae, like all other young women, and like  11 Adnan himself, consistently lie to her family as to  12 where she was, to cover up activities that she knew  13 would offend them.  14 On February 26 -- well, before I get there,  15 on February 9th, Hae Min Lee's body was found buried in  16 a shallow grave in Leakin Park. There isn't much else  17 in Leakin Park but the park and the protected wildlife.  18 From whatever cell phone towers cover the  19 area of Leakin Park, anyone who drives through there  20 knows one cannot talk on the phone inside the park.  21 The signal doesn't hold.  22 It is a park of terrain that, although now  23 there is a pedestrian path on one side of the park from  24 down the end at the beginning of Rosemont all the way  25 up to where the county line descends at the foot of</p>



1 what is called "William/Division Street" at the county  
2 end of Franklinton Road, back then in February -- in  
3 January of 1999, it was not a place for hikers.

4 And although it's a year from now and the  
5 terrain is similar -- not the weather, but the terrain,  
6 Leakin Park is always a place known in this city to be  
7 a place to bury bodies. But it is a desolate and  
8 lonely place.

9 On February 9th, in broad daylight, a man by  
10 the name of Alonzo [REDACTED] who's prior involvement  
11 with the criminal justice system included at least  
12 three occasions in which he took off his clothes on a  
13 public street down to complete nudity, left his clothes  
14 and then struck through wherever he was, completely  
15 naked, completely naked.

16 On that day --

17 MR. URICK: Objection, Your Honor.

18 THE COURT: Overruled.

19 MR. URICK: May we approach?

20 THE COURT: No. It's opening statements.

21 The jury's been advised.

22 But, Counsel, I would just advise you that  
23 this opening, part of an overview of your case or what  
24 you expect the evidence to be.

25 MS. GUTIERREZ: Yes, Your Honor.

1 THE COURT: Please continue in this fashion.

2 MS. GUTIERREZ: I do expect the evidence to  
3 show that Mr. Sellers has been charged and convicted of  
4 those very offenses. But on this particular day he  
5 drove through Leakin Park -- during the day it's even  
6 desolate -- and pulled his truck off in the single  
7 place where it is left to park, a place with jersey  
8 walls mostly blocking the entrance, and got out of his  
9 vehicle and walked a 127 feet, a distance more than  
10 five times the distance between the walls at which he  
11 walked to urinate and hide himself from view.

12 And in doing so, he came across a tree that  
13 you'll see view pictures of. It's in excess of 50-feet  
14 long, had clearly been there for awhile. And on the  
15 far side of the tree and on a terrain that is lower  
16 than the near side of the tree, because that terrain is  
17 closest to the stream, the Gwynn Falls, that runs  
18 through Leakin Park, and so the ground is lower on the  
19 far side than on the near side.

20 And on that far side nestled up, he says he  
21 sees what appears to him to be a foot. Now, how he got  
22 there and what led him to pick that particular place,  
23 which is less than a couple of miles from where he  
24 lives -- and this day was a work day, I believe it's a  
25 Tuesday. I could be wrong. But he had signed into

1 work and there's no special sign out.

2 He says on that day after he calls the  
3 police, which is not right away, that he went home and  
4 went through Leakin Park which would be on his way, he  
5 lives up off Franklinton Road which becomes across the  
6 county line Dogwood Road, which is a road that if you  
7 follow it out in the county off of which runs Woodlawn  
8 Drive off of which sits Woodlawn School.

9 He has an explanation that runs essentially  
10 to saying, "I'm a maintenance worker at Coppin State  
11 University, and although a plane, a P-L-A-N-E, a tool  
12 with which you plane gently edges of wood to plane it  
13 down to size or to even roughness before you would  
14 sand." It's a fairly common tool for a maintenance  
15 shop.

16 And man of them are owned or maintained at  
17 Coppin State University Maintenance Department. But he  
18 says on that day, "Because I was assigned this work I  
19 had to leave my work, go home, while I was home I was  
20 got -- I got the plane," which you will not see in  
21 evidence. It was never seized or located or looked at  
22 that day. At least there's not a single report  
23 indicating that.

24 "And while I was at home I drank 22-ounce  
25 beer." He even lists the brand. "And though I was

1 home, I didn't urinate in my own bathroom. I got in my  
2 car and less than three miles after leaving on my way  
3 to return back to work the same way in which I had  
4 come, I was so overcome with the urgency to urinate I  
5 had to park my car in this place that one can barely  
6 fit and the jersey walls are set to discourage from  
7 doing so. And then I had to walk 127 feet."

8 The evidence will show you that this body,  
9 whenever it was buried, could not have easily been  
10 located and that the terrain leading from wherever one  
11 entered off Franklinton Road, from no direction, from  
12 any entry point, was not an easy terrain, much less a  
13 terrain one could easily locate. One certainly  
14 couldn't see from the road where it was. It was below  
15 a sight line.

16 On that day, on the 9th of February, the  
17 police reacted much like many of you are looking. "Ha,  
18 this couldn't be the truth. Let's treat this guy as a  
19 suspect." They marked him as a suspect. They treated  
20 him like one. They asked him questions. They took  
21 evidence from him and sought to test it from evidence  
22 that they had already gotten from the shallow grave.

23 What we're getting is they spoke to him, they  
24 treated him as a suspect. They had police forms in  
25 which they marked in big letters, "Suspect." They

<p style="text-align: right;">Page 143</p> <p>1 didn't believe what he said. They didn't believe his  2 story. It didn't match. It didn't make sense.  3 They gave him a polygraph which he flunked.  4 MR. URICK: Objection.  5 MS. GUTIERREZ: And they continued to treat  6 him like a suspect.  7 MR. URICK: May we approach?  8 THE COURT: One moment.  9 Ladies and Gentleman, at this point there's  10 an objection and I want to instruct you that polygraph  11 examinations are not admissible. They're not accepted  12 evidence in any court in the State of Maryland.  13 Therefore, I'll ask that you disregard any remark that  14 the Counsel's made.  15 It would not be evidence that would be  16 admitted in this case. And so I'd ask Counsel to try  17 to stick to those items that would be or you expect  18 would be evidence in this case.  19 I -- Counsel also to inquire as to how much  20 longer you expect to be in terms of an overview?  21 MS. GUTIERREZ: 15 minutes.  22 THE COURT: Very well.  23 MR. URICK: May counsel approach, Your Honor?  24 THE COURT: On some other matter?  25 MR. URICK: This matter.</p>	<p style="text-align: right;">Page 144</p> <p>1 from a non-Asian. And most of you should know that  2 Asians, the vast peoples, on the continent of Asia,  3 China, Japan, the Mideast, India, Pakistan, the most  4 populous countries on the face of the earth -- why  5 Asians, Chinese, comprise more than a quarter of the  6 world's population. Asians, all of those most populous  7 countries, certainly comprise close to half, and mostly  8 half of them are men.  9 How the Baltimore City Police Department  10 distinguishes between the accent of perhaps an American  11 of Asian descent and an American of non-Asian or  12 Japanese versus a Korean versus a Chinese versus an  13 Indian, all different languages, different cultures,  14 different sounds, is beyond me, but perhaps you will be  15 able to find that.  16 In any event, there's two anonymous phone  17 calls that for whatever reason their equipment can't  18 trace. And both phone calls say something about, "Look  19 at the former boyfriend." The last communication of  20 those phone calls is in the second to last week of  21 February.  22 And on February 28th, Adnan Syed was  23 arrested. On that Friday evening, Detective  24 McGilivray, the lead detective in this case, goes to  25 Adnan's home, and in front of his father, in a position</p>
<p style="text-align: right;">Page 144</p> <p>1 THE COURT: On this matter, no. But I will  2 allow you to note for the record at the conclusion of  3 counsel's remarks.  4 MR. URICK: I appreciate that. Thank you.  5 THE COURT: Very well.  6 You may continue.  7 MS. GUTIERREZ: Now, remember on February  8 9th, once the body of Ms. Lee was discovered, it became  9 a Baltimore City matter because all the information  10 that was known was that the body was recovered inside  11 Baltimore City limits.  12 And Baltimore County detectives transferred  13 all their information to Baltimore City. And they  14 continued to look, they continued to search. And they  15 continued to treat Alonzo Sellers, with this incredible  16 story, as a suspect.  17 Somewhere shortly before the 26th and on the  18 26th of February, they got a lot of calls. And among  19 the calls they got was what they, the Police  20 Department, identified that day in a memo as two calls  21 within minutes of each other as from a source that they  22 identified as a young Asian male.  23 And perhaps the Baltimore City Police  24 Department, you will hear, has special powers and  25 special training to distinguish the voice of an Asian</p>	<p style="text-align: right;">Page 146</p> <p>1 that even McGilivray recognizes and writes down that is  2 obviously painful to Adnan, he tries to whisper his  3 answers to questions about his breakup with Hae Lee.  4 Because he realizes it is painful for the  5 father he loves and respects to have to have this  6 shoved up again in his face; that his son had this  7 relationship with the girl, any girl, any color, any  8 religion, any girl at all.  9 And he again tells them what he's asked  10 freely and voluntarily.  11 On February the 26th, the State also meet --  12 investigators, Detectives McGilivray and Ritz, also  13 meet with Jan Pusateri. Jan Pusateri is another one  14 like Jay. She thought Hae Min Lee was uppity, looked  15 down on people like her. No love lost, she says that  16 right out. She was a friend who she says spoke and  17 saw every day her friend Jay Wilds.  18 Police say that on the 26th, the very day  19 they're asking Adnan about what other information does  20 he  21 have, and he talks to them, she walks into the police  22 station, Baltimore City downtown, right there on  23 Fayette Street and says, "I know Hae Min Lee. I know  24 she was strangled. I know Adnan. I don't know  25 anything else." And she leaves.</p>

1 On the 27th she walks to the police station  
2 and she gives a statement in the presence of the lawyer  
3 she brang, and her mother and the lawyer and the  
4 detectives. And in that statement she identifies a  
5 series of events. She saw nothing, according to her,  
6 except she says she saw Adnan right in front of Value  
7 City in Westview Mall when she went to pick up her best  
8 friend, Jay Wilds, but that all that she knows about it  
9 came from her best friend, Jay Wilds.

10 The following day, the 28th of February,  
11 shortly after midnight, the police bring downtown Jay  
12 Wilds presumably based on what she said or perhaps some  
13 other information that they may choose or not to bring  
14 in.

15 And in the middle of the night Jay Wilds  
16 gives the statement that says, "Ha, I wasn't there. I  
17 didn't do anything. I didn't touch anything. I didn't  
18 know anything. Adnan Syed decided that he was going to  
19 kill her because he was broke up because she ditched  
20 him." And Jay Wilds tells a story.

21 You will hear the evidence will show you that  
22 shortly thereafter, 15 days when confronted by  
23 Detective Ritz and McGilivray about what they politely  
24 called the inconsistencies in his statement, that he  
25 gives another statement on the 15th.

1 And in that, it's not that he changes three  
2 things, he changes the most fundamental of things. On  
3 March 15th they had already examined the body, done the  
4 autopsy, collected every piece of evidence they could  
5 find from her body.

6 On her body they found at least four hairs  
7 that were identified as being not hers and not Adnan's,  
8 someone else's. And they did nothing else with them.

9 Based on what Jay Wilds told them, they  
10 seized his car. They found her car because Jay Wilds  
11 took them to the car. He didn't just change his mind  
12 about where things are alleged to have occurred. He  
13 had taken them to a different place.

14 He not only lied to them, he acted on the  
15 lie, and he brought them along with it, took them to a  
16 place and he tells them that in the intervening time  
17 from the 13th to the 28th, he visited her car. He  
18 visited a car that he said he never drove, he never was  
19 in, he had no evidence about, and he had no interest  
20 in.

21 But he visited it four plus times in that  
22 intervening short period of time to check to see if it  
23 had been found.

24 The shovels that he describes -- and before  
25 you hear anything, remember that all Mr. Urlick laid out

1 to you comes out of Jay Wilds' mouth.

2 The cell phone contains mostly calls to and  
3 from only people who's numbers you never ever see  
4 except that day because they are to and from people who  
5 only have a connection to Jay Wilds, numbers that  
6 never, ever show up made to and from people who don't  
7 even know who Adnan Syed is; that all evidence seating  
8 this boy in this chair only comes out of Jay Wilds  
9 mouth and nothing else. There is no forensic evidence  
10 that conclusively establishes anything.

11 Adnan Syed, as all the group will tell you,  
12 was in Hae Min Lee's car almost every day from April.  
13 Even in January, her diary describes that in January  
14 when her car broke down, who does she call? Not Don  
15 Cliendist working at the place where she worked, but  
16 her best friend, her soul mate, Adnan Syed. He's the  
17 one who drove it around.

18 You would expect to find fingerprints as they  
19 found on a couple items in her car. But other than  
20 that not a single thing. There are hairs that are  
21 unidentified but capable of being compared.

22 There's a shirt, and they're other items that  
23 even up until a couple months ago, not February, not  
24 March, April, May, June, July, but September, October,  
25 November, December, they are still testing because they

1 know they cannot rely solely on Jay Wilds.

2 Jay Wilds is the one who describes, you have  
3 clear evidence of at least three statements if not  
4 more, each time changing something fundamental.

5 Why would he change the location from  
6 Edmonson Avenue to BestBuy? Well, you just got to go  
7 back and look at the statement of Jan Pusateri taken  
8 first. Who describes, "Aha," BestBuy, over looks  
9 Security Boulevard.

10 There's a gas station and then a McDonald's  
11 and you go around and BestBuy's like all other  
12 BestBuy's all over America, have the same building.  
13 They're built according to a plan. Their entrance is  
14 the same.

15 The entrance to BestBuy shows you a huge  
16 glass panel in the shape of what I call house and the  
17 building is the same. There's a guard there that  
18 loosely checks. There's a parking lot on the side.  
19 There's a single telephone right inside that entrance  
20 open to the public.

21 And you'll hear Jan Pusateri note, "Aha,"  
22 there are cameras on BestBuy.

23 You will hear that he lied on the first  
24 statement and admits lying because he says he did  
25 nothing. He just happened to be borrowing the car and,



1 oh my, this guy whom he knows that he cannot even begin  
2 to call anything more than an acquaintance, just shares  
3 with him this rage, this passion. And not a single  
4 other witness who saw and interacted with him over  
5 years ever, ever saw an iota of.

6 You'll hear that Jay Wilds acted exactly as  
7 he sounds. It was his shovel -- shovels. He is the  
8 one that goes to retrieve from the dumpster the shovel  
9 so he can wipe off fingerprints that he first lies and  
10 says he never handled.

11 It is he who says, and then ask Jan Pusateri  
12 to back him up, except she talked first and either she  
13 didn't get it straight or she just totally lied,  
14 because she doesn't say what he says she should be able  
15 to corroborate.

16 But it is Jay Wilds and only Jay Wilds who  
17 goes back to take his clothes off and dump in a  
18 dumpster; that on the first go around he says, no,  
19 could have been one of three dumpsters. Except one of  
20 the locations is a place where he worked at Petsmart up  
21 on Route 40, a specific location that if he went in the  
22 middle of the night, as he says, to hide evidence that  
23 might contain what heretofore had never and still has  
24 yet to be connected to Adnan.

25 No dirt in his car. No dirt on his boots.

1 They took everything from his house, from his car.  
2 They took out the carpet, not a single corroborative  
3 piece of trace evidence.

4 We think that these things are important,  
5 unusual for you to understand before you hear a bit of  
6 evidence. And we call you to the promises that you've  
7 made as jurors, understanding that you can never look  
8 on this side of the table for Adnan to answer.

9 He sits as any young man. The death of Hae  
10 Min Lee was a tragedy for all who loved her. And there  
11 were many. There is no dispute that someone killed  
12 her. And there is no dispute that that death could  
13 have occurred as quickly as 10 seconds, without  
14 warning, without planning.

15 But just like the judge told you, do not  
16 forget your common sense. Sometimes when it looks like  
17 a duck and it acts like a duck and it walks like a  
18 duck, it is a duck. Things aren't clear often because  
19 those with power to clarify seek to disguise the truth.

20 I give you Adnan Syed in your charge.  
21 THE COURT: Ladies and Gentleman, at this  
22 moment I'm going to ask the State to present its first  
23 witness, and I need to speak to counsel at the bench  
24 before I do that.

25 (Counsel and the defendant approached the

1 bench, and the following ensued:)

2 THE COURT: Would you come up. The mike is  
3 here. Speak in there. Mr. Madden will not have to  
4 come up.

5 MS. GUTIERREZ: Okay.

6 THE COURT: And obviously we're here in the  
7 position the jurors can see you now. I'm going to ask  
8 if you can keep your voices down.

9 MR. URICK: Your Honor --

10 MR. URICK: There's a motion I think.

11 MR. URICK: The State would move for mistrial  
12 at this point.

13 THE COURT: Basis?

14 MR. URICK: Polygraph evidence is absolutely  
15 inadmissible. No attorney could mistake that fact. To  
16 mention the polygraph test is so prejudicial and so  
17 contrary to law that it has made it impossible for the  
18 State now to get a fair trial.

19 The State moves for a mistrial because of the  
20 deliberate, prejudicial actions of counsel to try to  
21 get evidence before the jury that would be totally  
22 inadmissible.

23 THE COURT: Any response?

24 MS. GUTIERREZ: Well, Judge, I -- I think the  
25 law is clear that polygraph evidence; i.e., --

1 THE COURT: I need just need you to speak up.

2 MS. GUTIERREZ: The polygraph itself and the  
3 report of polygraph are generally inadmissible,  
4 although they may be admissible under certain  
5 circumstances under certain kind of proceedings.

6 This is a polygraph. Almost all about law  
7 though, so made under circumstances --

8 THE COURT: We need to do this out of the  
9 presence of the jury.

10 MS. GUTIERREZ: -- where what is sought to be  
11 in or kept out relates to a defendant and is  
12 challenged. Well, this is not. And the only reference  
13 was that he was given a polygraph, which is crucial to  
14 establish that others --

15 THE COURT: Actually --

16 MS. GUTIERREZ: -- under reasonable --

17 THE COURT: Actually, I think what you said  
18 was that the gentleman was -- not your defendant, was  
19 given and failed.

20 MS. GUTIERREZ: Yes.

21 THE COURT: Well, --

22 MS. GUTIERREZ: Right.

23 THE COURT: "Flunked," was the word.  
24 Whatever.

25 MS. GUTIERREZ: Right. And -- but that

1 number one, Mr. [REDACTED] is not a defendant whose due  
2 process rights have consideration here. We believe  
3 that on part of Mr. Syed's defense that he has a due  
4 process right to present, notwithstanding adherence to  
5 other rules of evidence, if, in fact, that comes in is  
6 to relate and to establish evidence, establishing that  
7 it was reasonable. That both Alonzo [REDACTED]  
8 -- I know, this argument that at least Alonzo [REDACTED]  
9 was seen as a suspect, treated as a suspect, all the  
10 behavior of the police was as a suspect and that he has  
11 a due process right to get that information in front of  
12 the jury as an alternate theory of who killed this  
13 girl.

14 THE COURT: And you will be making that  
15 argument at some other point.

16 MS. GUTIERREZ: Yes, I will. Yes.

17 THE COURT: And is the State's position that  
18 the curative instruction made by this Court to jury  
19 that polygraph examination and testimony is not  
20 admissible in the State of Maryland and therefore is  
21 not relevant to this proceeding is not sufficient?

22 MR. URICK: That is correct. That cannot  
23 overcome the prejudice of this. And there can be no  
24 good-faith basis for the defense counsel to say in  
25 opening comments. If she wanted to argue its

1 admissibility she should have made a motion to enter  
2 the -- its -- she should not have stood up in opening  
3 and said it.

4 She could not do that in good faith. It is  
5 done to really prejudice this panel. The State cannot,  
6 at this point, get a fair trial. There can be no  
7 curative instruction, Your Honor, to overcome the  
8 prejudice that this counsel has to the really created  
9 through her misconduct and deliberate misconduct.

10 And it's clear that it's professional  
11 misconduct under the rules. There can be no good faith  
12 basis for what we saw here.

13 THE COURT: I've heard your argument. I  
14 don't agree with you. I think that the argument that  
15 counsel's made both with the Court's curative  
16 instruction and preliminary instruction that nothing  
17 that you or Ms. Gutierrez says is evidence, regardless  
18 of what you say.

19 It's opening statement. You can say what you  
20 want. But I will instruct them again now as a reminder  
21 and at the conclusion of this case and throughout the  
22 case that what you all may say during the course of  
23 this trial, is not evidence.

24 We'll direct them to follow their oath as  
25 ordered by this Court. And that is to follow the law

1 as I instruct them and to consider only those items  
2 that are marked into evidence and the testimony that's  
3 given to them for their consideration as evidence in  
4 this case.

5 MR. URICK: That --

6 THE COURT: Your motion is denied.

7 MR. URICK: I would think under the doctrine  
8 of curative permissibility, I should be able to reopen  
9 my opening to say that the polygraph examiner who  
10 examined [REDACTED] came to the conclusion that it was his  
11 situational stress because he had to be elsewhere, gave  
12 him a second polygraph geared specifically to whether  
13 he had any knowledge as to how the victim died and he  
14 passed that.

15 THE COURT: I will take up the issue of what  
16 the State may or may not say with regard to the  
17 polygraph at which time during the course of your case  
18 you determine that that information would come in. Or  
19 on the alternative, if during the defense's case they  
20 take the course of asking questions to set out a  
21 factual scenario where a witness might say, "These are  
22 the things we do with a suspect, one of which to  
23 include giving a polygraph," and in some stretch of the  
24 imagination the results of any polygraph come in, I  
25 will allow in cross you to do that. But at this stage

1 the motion is denied to reopen your case.

2 I will give a curative instruction once again  
3 as I gave as a reminder that they should be reminded  
4 that what counsel says is not evidence; that the  
5 purpose of opening is an overview of what they expect  
6 the evidence to be; that they should be mindful of the  
7 evidence comes from the witness stand and those items  
8 that are marked into evidence and admitted by this  
9 Court as evidence.

10 Anything further? Would you wish to note  
11 your objection for the record?

12 MR. URICK: I think the objection -- I don't

13 think I need to note an objection to a motion that --

14 THE COURT: I feel in an abundance of caution  
15 you might want to.

16 MR. URICK: The State almost never gets an  
17 appeal on its -- never gets to address its -- its  
18 objections on appeal anyway.

19 THE COURT: It's up to you.

20 MR. URICK: But I would at this time make a  
21 motion in limine that defense counsel not broach that  
22 particular subject again. And I would second make a  
23 motion in limine that she not address charges, either  
24 arrest or convictions, that are not impeachable  
25 offenses.



1 MS. GUTIERREZ: Well, Judge, I think --  
2 THE COURT: Well, first of all, before you  
3 may respond, with regard to the argument as to -- and I  
4 -- I -- Counsel, I'm going to step on your toes a  
5 little bit.

6 If, in fact, there is a conviction of Mr.  
7 [REDACTED] of taking off his clothes in any of -- I will  
8 find that it is indeed relevant to the State -- to the  
9 defense's theory of the case that he may have been  
10 responsible for the murder of the victim. And I will  
11 allow that in.

12 I find that that is indeed, although it's not  
13 a crime of moral turpitude, it is indeed a question  
14 that may be asked and answered by this witness because  
15 of the particular facts and circumstances of this case.  
16 And to the extent that she would like to inquire, I  
17 will allow that.

18 So -- and if you were to make a motion or you  
19 are making a motion in limine, I will tell you if you  
20 bring in a certified copy, I will be happy to review  
21 those items that are on there that you believe are  
22 admissible. That may not necessarily be crimes of  
23 moral turpitude, but maybe indeed relevant on that  
24 issue of moral character.

25 MS. GUTIERREZ: There are two separate --

1 THE COURT: Well, --

2 MS. GUTIERREZ: And I believe a third that  
3 just happened.

4 THE COURT: But you will have to --

5 MS. GUTIERREZ: Convictions.

6 THE COURT: You -- you will have to address  
7 that before the witness --

8 MS. GUTIERREZ: Yes. That's right.

9 THE COURT: -- takes the stand. And you will  
10 have to address that by way of a certified copy. And  
11 until the Court has ruled which of those offenses are  
12 admissible, I will grant the State's motion.

13 MS. GUTIERREZ: I understand.

14 THE COURT: And you will not be able to  
15 discuss them. But I will entertain from you a motion  
16 with regard to your ability to question the witness on  
17 those specific allegations. And if you would at the  
18 time you make the motion, tie them to your theory of  
19 the case, I'd be happy to hear from you.

20 And I can tell the State that I would be  
21 inclined to allow that in light of the way in which the  
22 defense has indicated their theory of the case is.

23 With regard to -- between now and then, I'm  
24 admonishing you, Ms. Gutierrez, you're not to discuss --  
25 -

1 MS. GUTIERREZ: Fine, Judge. It wouldn't  
2 come up --

3 THE COURT: And secondly, with regard to the  
4 poly -- the polygrapher's testing of any other  
5 individuals, I'll admonish you that you should not  
6 mention that. Because again, if you believe it would  
7 be admissible, I'd like you to indicate --

8 MS. GUTIERREZ: It's the only one I've been  
9 told about is Mr. [REDACTED] I know of no one --

10 THE COURT: But at time you're going to make  
11 that inquiry, I want to know the circumstances under  
12 which it was given and all types of information you  
13 plan to bring out. And I'd ask that that have the pre  
14 -- previously been placed in question by your questions  
15 on cross of the detectives of any procedure they use  
16 for suspects, which may include giving them a poly --  
17 polygraph. But we'll discuss that at the time that  
18 particular witness is on the stand.

19 So granted in part, denied in part as to your  
20 motion in limine. In the interim you might want to do  
21 some research. So at the time that that -- Counsel  
22 raises the argument, since you know that's where she's  
23 going, you have cases to cite for the Court.

24 Anything else?

25 MR. URICK: How long does the Court plan on

1 sitting today?

2 THE COURT: Until 5:00.

3 MR. URICK: I think we can just take Sergeant  
4 Forrester cause he's not available for next couple of  
5 days so --

6 THE COURT: All right. We can go to 5:30 if  
7 you would like?

8 MS. MURPHY: We got Peter Saars.'

9 MR. URICK: I'm not going to that but were  
10 you planning on it?

11 MS. MURPHY: Yeah, I've already purchased a  
12 ticket.

13 MR. URICK: If we could do one short witness  
14 and then break for the day we'll --

15 THE COURT: That will be fine.

16 MR. URICK: May we have a brief five minutes  
17 without --

18 THE COURT: Yes.

19 MR. URICK: We have about five or six  
20 witnesses.

21 THE COURT: That will be fine.

22 (Counsel and the defendant returned to the  
23 trial tables, and the following ensued:)

24 THE COURT: Ladies and Gentleman, I would  
25 like to proceed with the witnesses for this afternoon.



<p style="text-align: right;">Page 163</p> <p>1 And when I say witnesses I actually mean a witness.  2 But I note we've been sitting for some time and I need  3 to know from a show of hands, whether or not the jurors  4 would like to stretch their legs, walk around to the  5 jury room to use the facilities, and then come right  6 back.  7 If you would like to do that, it will take  8 about five minutes to get the witness up to the  9 courtroom. Raise your hand if you would like to do  10 that.  11 All right.  12 Then, Deputy Church, if you would walk my  13 jurors around to the jury room, allow them to use the  14 facilities and bring them back.  15 Ladies and Gentleman, I must ask you to leave  16 your notepads stacked face down on your chairs. I must  17 ask you not to discuss this -- the testimony you've  18 heard -- you haven't heard any testimony. You've heard  19 opening statements.  20 And as you know, opening statements is not  21 evidence. You have not heard any testimony yet. You  22 haven't had any exhibits offered into evidence. All  23 you have heard is what the attorneys think will happen  24 during the course of the trial.  25 But what they say is not evidence. So</p>	<p style="text-align: right;">Page 164</p> <p>1 MS. GUTIERREZ: -- angling of the thing. And  2 that's why I sort of put his chair --  3 THE COURT: The other thing --  4 MS. GUTIERREZ: -- the maximum --  5 THE COURT: The other thing that you could  6 do, Mr. Syed, if you want, is that you could sit on the  7 front row behind your attorney.  8 Now, Ms. Gutierrez, I'm telling you you're  9 free to use the desk area behind you as well as --  10 MS. GUTIERREZ: That's what I've been doing,  11 Your Honor. Thanks.  12 THE COURT: And your welcome to also to push  13 your chair back so that you can see the witness clearly  14 and also be able to talk to your client.  15 MS. GUTIERREZ: Fine.  16 THE COURT: That just means that chair will  17 be empty.  18 MS. GUTIERREZ: Maybe we'll try a couple  19 different ways this afternoon and see what works for us  20 best.  21 THE COURT: Again, it's up to you. I've had  22 counsel have their clients sit on that bench. And I've  23 had also -- that bench moves.  24 MS. GUTIERREZ: Okay. Maybe we can move it  25 up.</p>
<p style="text-align: right;">Page 164</p> <p>1 therefore there's nothing to discuss. Please go with  2 the Deputy Church at this time. Use the facilities and  3 he will then bring you back.  4 (Pause.)  5 (The jury left the courtroom.)  6 THE COURT: Asking the -- the Baltimore City  7 officers if they would sit on the bench behind your  8 client rather than -- rather than tying up two benches,  9 since this courtroom is very small.  10 MS. GUTIERREZ: Yes, Judge.  11 THE COURT: Do you have any problem with  12 that?  13 MS. GUTIERREZ: No, Judge.  14 THE COURT: And I have no problem if you --  15 if the second officer does want to sit in a chair by  16 the Court. But if the other officers --  17 MS. GUTIERREZ: Since nobody else seems to be  18 sitting there, that's fine.  19 (Pause.)  20 THE COURT: During the trial, I'm going to  21 need you to move your chair around a little bit.  22 Right. That way --  23 MS. GUTIERREZ: The only problem, Judge, is  24 that my room is limited because of the --  25 THE COURT: I understand.</p>	<p style="text-align: right;">Page 166</p> <p>1 THE COURT: And we -- so there's some --  2 there's some flexibility.  3 MS. GUTIERREZ: Okay.  4 THE COURT: But I want to advise you that the  5 --  6 --  7 MS. GUTIERREZ: That's fine. I'll move that.  8 THE COURT: I want to make sure that Mr. Syed  9 is able to see the witnesses. But I also don't want  10 him to feel likes he's right in their lap or them feel  11 he's right in their lap.  12 THE DEFENDANT: Then if he sits there then  13 that keeps me from being able to sit there.  14 THE COURT: No. If you sit -- just walk  15 around if he needs to walk to the witness.  16 MS. GUTIERREZ: Right. Do you find, Judge,  17 is it better -- we can always move this up thereby  18 making it easier to pass.  19 THE COURT: Well I must add that normally  20 that table is not in -- in the position it's in. It's  21 usually extended.  22 MS. MURPHY: Right. We turned it to make  23 more room back here for -- for the jurors and everybody  24 walking back and forth.  25 THE COURT: Well, I'm just telling you in the</p>

Page 167	Page 168
<p>1 past the chair has been the other way. It has --</p> <p>2 MS. MURPHY: Right.</p> <p>3 THE COURT: I mean that table has been</p> <p>4 extended into the room. The jurors don't have any</p> <p>5 problem getting to the jury box. But with the table</p> <p>6 the way it is --</p> <p>7 MS. GUTIERREZ: Well they do now.</p> <p>8 THE COURT: Yes. With the table the way it</p> <p>9 is now they do.</p> <p>10 MS. GUTIERREZ: Yes.</p> <p>11 THE COURT: So if the table were placed back</p> <p>12 the way it was initially, two things would occur. You</p> <p>13 would have space to rest your things, Which means you</p> <p>14 wouldn't have to put so much on the table in front of</p> <p>15 you. And also it would leave room behind that table</p> <p>16 for the jurors to -- to go back and forth without any</p> <p>17 problem.</p> <p>18 It's just that's the way we've done it in the</p> <p>19 past. For you all this may be the first time you've</p> <p>20 had a trial in here.</p> <p>21 MS. MURPHY: Yes.</p> <p>22 THE COURT: But this is about the 60 or 70th</p> <p>23 trial I've had in here. And we've been able to manage</p> <p>24 without any difficulty. It -- for those that are not</p> <p>25 familiar with this courtroom, it's convenient to them -</p>	<p>1 MS. GUTIERREZ: For this stuff.</p> <p>2 THE COURT: Right. He even sat in -- in that</p> <p>3 table.</p> <p>4 MS. GUTIERREZ: Right.</p> <p>5 THE COURT: On that bench and used the table.</p> <p>6 MS. GUTIERREZ: Okay.</p> <p>7 THE COURT: And it worked out fine.</p> <p>8 Yes?</p> <p>9 THE DEFENDANT: I want to --</p> <p>10 THE COURT: If you want to talk -- ask her,</p> <p>11 she'll ask me. Because I don't know what you're going</p> <p>12 to say.</p> <p>13 THE DEFENDANT: I'm sorry.</p> <p>14 MS. MURPHY: I'm sorry, Your Honor. I was</p> <p>15 asking a question and was interrupted.</p> <p>16 Do you find that it makes it easier or makes</p> <p>17 a difference to the jurors in hearing the witnesses if</p> <p>18 we ask questions standing or seated or -- since we</p> <p>19 actually are in front of some of the jurors, I didn't</p> <p>20 know if they had difficulty --</p> <p>21 THE COURT: First of all, you do not have to</p> <p>22 stand when you're asking questions. What you might</p> <p>23 want to do is have a seat in the jury box. And you'll</p> <p>24 get my meaning, they can see over your head. They</p> <p>25 don't have any problems seeing.</p>
Page 168	Page 170
<p>1 - inconvenient to them. But it hasn't been</p> <p>2 inconvenient to the scores of trials I've had.</p> <p>3 As you can see, the jury box --</p> <p>4 MS. GUTIERREZ: So Judge, just to make sure I</p> <p>5 understand. I don't remember this table. Was it</p> <p>6 because it was that way?</p> <p>7 THE COURT: That's exactly correct.</p> <p>8 MS. GUTIERREZ: Okay. And that's --</p> <p>9 THE COURT: That's what's causing the</p> <p>10 problem.</p> <p>11 MS. GUTIERREZ: Judge, I'm using the space</p> <p>12 under the table for my files.</p> <p>13 THE COURT: That's right.</p> <p>14 MS. GUTIERREZ: So I hadn't counted on using</p> <p>15 the top, so if we turn --</p> <p>16 THE COURT: Well, if it were the other way --</p> <p>17 as a matter of fact --</p> <p>18 MS. GUTIERREZ: -- it would be more</p> <p>19 convenient.</p> <p>20 THE COURT: Warren Brown during a recent jury</p> <p>21 trial where there were two defense counselors actually</p> <p>22 had the defendant sit in the middle, between two</p> <p>23 counsel.</p> <p>24 MS. GUTIERREZ: Uh-huh.</p> <p>25 THE COURT: And he used the table --</p>	<p>1 MS. MURPHY: I -- I'm more concerned that</p> <p>2 they won't hear our questions. If we're in front of</p> <p>3 them and they can't see our mouths, you know, we're</p> <p>4 directing everything towards the witness --</p> <p>5 THE COURT: That's if your standing.</p> <p>6 MS. GUTIERREZ: No. If we're sitting here</p> <p>7 I'm actually in front of these jurors here.</p> <p>8 THE COURT: But that's why they're mikes.</p> <p>9 MS. GUTIERREZ: Okay.</p> <p>10 THE COURT: That's not been a problem.</p> <p>11 MS. GUTIERREZ: Okay.</p> <p>12 THE COURT: That's not been a problem. If</p> <p>13 you stand to ask your question where you're standing</p> <p>14 right now, yes, you're going to block the view of some</p> <p>15 of the jurors. If you sit where you're sitting right</p> <p>16 there, you will have no problem.</p> <p>17 If you take about three steps back and ask</p> <p>18 the questions -- stop Mr. Urick -- from right where Mr.</p> <p>19 Urick is standing --</p> <p>20 MS. MURPHY: Uh-huh.</p> <p>21 THE COURT: You have no problem with the</p> <p>22 jurors or with -- with the ability of the witness to</p> <p>23 see or hear you. So there are abundance -- and as --</p> <p>24 if you put that table back --</p> <p>25 MS. MURPHY: Right.</p>

1 THE COURT: -- where it was you actually can  
2 put your notes on the table.  
3 MS. MURPHY: While you're questioning.  
4 THE COURT: And stand by the table and  
5 everyone can see and hear you. That bulletin board  
6 works -- the easel works well, even with the table the  
7 long way. And where Mr. Urick again, is standing, is  
8 generally where the -- the bulletin -- the easel is  
9 placed.  
10 MS. MURPHY: And can all the jurors --  
11 THE COURT: And all the jurors can see when  
12 the -- and there's a stand at -- a lip at the bottom of  
13 the easel. You can put things on it and rest things  
14 and you can see.  
15 There are also clips at the top of each  
16 easel. So that if you don't want to rest it at the  
17 bottom you can pull it to the top. So it -- I mean,  
18 this courtroom is small but we've had trials in here  
19 without much difficulty.  
20 MS. MURPHY: Thank you, Your Honor.  
21 THE COURT: All right. And I -- and again,  
22 we're going to take a five minute recess and as soon as  
23 the jury comes back we will continue.  
24 And I -- the Baltimore City Correctional  
25 Officer, I appreciate your cooperation and assistance.

1 I've now learned a new rule that I did not know.  
2 And so I don't want to interfere in anyway  
3 with what you're doing. But you're welcome to sit on  
4 the front row. The defendant will not sit on that row  
5 with you. He will sit in a chair.  
6 MS. GUTIERREZ: Is there any need for the  
7 television now?  
8 MR. URICK: Yeah. We've got a -- that's --  
9 MS. GUTIERREZ: Judge, the reason I ask, I've  
10 already tripped it over this several times.  
11 THE COURT: Is it taped?  
12 MS. GUTIERREZ: It's not taped. If we could  
13 tape it to the floor it could be --  
14 THE COURT: Is there an electrical outlet  
15 under the trial table?  
16 MR. URICK: No. I've already checked.  
17 MS. GUTIERREZ: No.  
18 THE COURT: No? Very well. I'm going to  
19 stand in recess just for a few minutes. I'm going to  
20 ask that you bring the jury back.  
21 (Short recess.)  
22 (The jury was present upon reconvening.)  
23 THE COURT: Please be seated. Ladies and  
24 Gentleman, we're just going to continue until just  
25 about 5:30 and then we'll recess for the day. Tomorrow

1 you'll follow the same procedure you followed today and  
2 we'll resume at 9:30 or as close to that as we can.  
3 Your witness.  
4 MR. URICK: Thank you, Your Honor.  
5 (Pause.)  
6 THE COURT: Sir, please --  
7 MR. URICK: Your Honor, with the Court's  
8 permission in order to accommodate witness who are  
9 possibly unavailable after today after day I will be  
10 calling the first two witnesses out of the order that  
11 we normally would be called them in.  
12 State will call Emmanuel Obot of the Crime  
13 Lab at this time.  
14 THE COURT: Okay.  
15 Sir, please raise your right hand and be  
16 sworn.  
17 Whereupon,  
18 EMMANUEL OBOT,  
19 a witness produced on call of the State, having first  
20 been duly sworn, was examined and testified as follows:  
21 THE CLERK: You may lower your hand. Be  
22 seated.  
23 Please state your name and assignment for the  
24 record?  
25 THE WITNESS: My name is Emmanuel Obot, O-B-

1 O-T, Baltimore City Police Crime Lab.  
2 DIRECT EXAMINATION  
3 BY MR. URICK:  
4 Q. Good afternoon, Mr. Obot.  
5 A. Good afternoon.  
6 Q. What is the Mobile Unit?  
7 A. Our primary function is to respond to the  
8 crime scene, process the crime scene for any type of  
9 physical evidence that might be available.  
10 Q. And do you also seize evidence?  
11 A. Yes.  
12 Q. What is a criminal complaint number,  
13 sometimes called an offense number?  
14 A. We give a CC number or complaint number.  
15 Q. What is that?  
16 A. That's number assigned by the dispatcher when  
17 the officer requests for crime lab to respond to the  
18 scene.  
19 Q. And does that particular CC number follow  
20 every subsequent investigatory step that's takes for  
21 that incident?  
22 A. Yes.  
23 Q. And what is the Evidence Control Unit?  
24 A. That is a unit that after we recover the  
25 evidence and we submit for safekeeping until it's



Page 175	Page 177
<p>1 requested by the Assistant State Attorney for trial.</p> <p>2 Q. And what is a property control number?</p> <p>3 A. That is a number that we can easily identify</p> <p>4 the evidence that was submitted also.</p> <p>5 Q. Okay. Now, did there come a time when you</p> <p>6 took part in a search and seizure that occurred at 7034</p> <p>7 Johnnycake Road on March 20th of 1999, in the</p> <p>8 investigation of the murder of the victim Has Min Lee,</p> <p>9 CC Number 998B5801?</p> <p>10 A. Yes, I did.</p> <p>11 Q. And what was your function that day?</p> <p>12 A. My function there was to photograph and</p> <p>13 recover the evidence, process it and submit it to ECU,</p> <p>14 Evidence Control Section.</p> <p>15 Q. Okay. At this time I'm going to --</p> <p>16 MR. URICK: With the Court's permission to</p> <p>17 approach the witness?</p> <p>18 THE COURT: Yes, you may.</p> <p>19 BY MR. URICK:</p> <p>20 Q. Show you three items. Two of them have been</p> <p>21 marked for identification purposes as State's Exhibit</p> <p>22 36-A and 36-B. And then there's a larger bag as well.</p> <p>23 First I would like you to look at the two</p> <p>24 exhibits marked 36-A and 36-B.</p> <p>25 A. I took this photo -- this photographs.</p>	<p>1 you would rather do that in the morning?</p> <p>2 MR. URICK: I -- I think it can be done now</p> <p>3 before --</p> <p>4 THE COURT: Very well.</p> <p>5 MR. URICK: -- very, very quickly.</p> <p>6 THE COURT: Ladies and Gentleman, as you</p> <p>7 observe these photographs, just have them passed along</p> <p>8 to the next juror when you're done. And if you would</p> <p>9 split them up as you finish the first one then send it</p> <p>10 along the way, that would expedite.</p> <p>11 BY MR. URICK:</p> <p>12 Q. Now, if you would please examine the bag that</p> <p>13 I've put down beside you.</p> <p>14 THE COURT: I think there was a request that</p> <p>15 when items were published to the jury that we not ask</p> <p>16 any more questions. And so we will follow that</p> <p>17 procedure which is why I --</p> <p>18 MR. URICK: I -- I misunderstood what the</p> <p>19 Court was talking about.</p> <p>20 THE COURT: -- you perhaps you might want to</p> <p>21 hold off.</p> <p>22 MR. URICK: Can I just ask the witness to</p> <p>23 examine the -- the bag while they're --</p> <p>24 THE COURT: Sure. Certainly.</p> <p>25 BY MR. URICK:</p>
Page 176	Page 178
<p>1 Q. And can you identify what those are?</p> <p>2 A. This is -- down here is one of the detectives</p> <p>3 pulling out a book from the shelf. Look -- just</p> <p>4 looking through it for any type of physical evidence</p> <p>5 that he might find.</p> <p>6 This one here is the book spread open and</p> <p>7 some documents in it. And then I photograph it.</p> <p>8 Q. And do those fairly and accurately depict the</p> <p>9 state of the tenants -- the bookshelf in the</p> <p>10 defendant's bedroom on the day those were taken?</p> <p>11 A. Yes.</p> <p>12 MR. URICK: Would offer as State's 36-A and</p> <p>13 36-B, photographs.</p> <p>14 THE COURT: Any objection?</p> <p>15 MS. GUTIERREZ: No, Your Honor.</p> <p>16 THE COURT: All right. It will be admitted.</p> <p>17 (State's Exhibits No. 36-A</p> <p>18 and 36-B previously marked</p> <p>19 for</p> <p>20 identification were received</p> <p>21 in evidence.)</p> <p>22 MR. URICK: May I have the Court's permission</p> <p>23 to publish them to the jury at this time?</p> <p>24 THE COURT: In the concern for time, is that</p> <p>25 something that you can do or would you do that, or that</p>	<p>1 Q. Please examine that bag while they're looking</p> <p>2 at the photographs.</p> <p>3 MS. GUTIERREZ: While we're waiting can we</p> <p>4 come up to the bench on an items that's going to be</p> <p>5 subject --</p> <p>6 THE COURT: Certainly. Why don't we do that.</p> <p>7 Come up to the bench.</p> <p>8 (Counsel and the defendant approached the</p> <p>9 bench, and the following ensued:)</p> <p>10 THE COURT: Remember that the mike is here at</p> <p>11 the black square. Okay.</p> <p>12 MS. GUTIERREZ: Judge, I believe --</p> <p>13 THE COURT: Okay.</p> <p>14 MS. GUTIERREZ: Judge, I believe that this</p> <p>15 bag holds evidence of various numbers --</p> <p>16 THE COURT: Shh. Whisper.</p> <p>17 MS. GUTIERREZ: That were seized and</p> <p>18 processed during the search of my client's home. I</p> <p>19 certainly haven't objected to the pictures. And I</p> <p>20 won't object to other pictures, but I will issue an</p> <p>21 objection to the admission of some of these items.</p> <p>22 THE COURT: Can you keep your voice down?</p> <p>23 MS. GUTIERREZ: On relevance grounds.</p> <p>24 THE COURT: Okay.</p> <p>25 MS. GUTIERREZ: There's an awful lot --</p>

Page 179

1 THE COURT: Can you tell me what items there  
2 are?  
3 MS. GUTIERREZ: Well, as to the textbook, for  
4 instance, it shows a variety of paper things that are  
5 displayed in one Photograph B that -- displays items  
6 that were allegedly found inside the textbook. And I  
7 guess our -- my objection is based that some, if not  
8 all, of those items have no relevance whatsoever.  
9 THE COURT: Okay. Stop there.  
10 MS. GUTIERREZ: To -- to this.  
11 THE COURT: With regard to the textbook items  
12 is there some relevance issue?  
13 MR. URICK: The Court -- the State has pulled  
14 one specific item out as a separate exhibit, which is a  
15 letter that Hae Min Lee wrote to the defendant which  
16 the defendant afterwards was writing comments about  
17 with another person.  
18 And after that conversation was over, the  
19 defendant wrote, in his own handwriting at the top, "I  
20 will kill." We were able to -- we were able to  
21 identify the victim's handwriting, the defendant's  
22 handwriting, including the statement, "I will kill," in  
23 his handwriting.  
24 And we're also able to identify the person he  
25 was passing the note back and forth. And they were

Page 180

1 writing comments to each other.  
2 THE COURT: All right. With regard to that  
3 specific item, I'm not ruling on its admissibility yet  
4 because they obviously have to lay a foundation for its  
5 admissibility. However, I find that if they are able  
6 to do so, that would be relevant item.  
7 With regard to the other items in the  
8 textbook, which is the subject of her motion as well?  
9 MR. URICK: If the Court prefers, there's a  
10 big bag in which that is a smaller item. I will leave  
11 for identification purposes only the entire bag of  
12 evidence. And then I'll enter the specific --  
13 THE COURT: So you're not moving into  
14 evidence all of those items?  
15 MR. URICK: I don't need to.  
16 THE COURT: Okay.  
17 MS. GUTIERREZ: Well, again, Judge, I would  
18 renew, certainly subject to other evidence that they  
19 have, my objection based on relevance grounds. There's  
20 been no disclosure of any expert establishing the  
21 handwriting, and no disclosure of anyone who will  
22 establish so I don't know that they can establish that  
23 it's my client's writing.  
24 Or when or where -- when particularly, when,  
25 this alleged note was written either first by Hae Min

Page 181

1 Lee and secondly by whoever it is, we're not privy to,  
2 alleging to identify further still.  
3 THE COURT: Assuming that they're able to  
4 make the connection --  
5 MS. GUTIERREZ: Well then I'd have no  
6 objection.  
7 THE COURT: -- actually that would be  
8 relevant. But I will reserve your -- your objection on  
9 two basis; one on the relevancy issue and one on the  
10 authentication -- authentication of the document that  
11 they claim that purports to be something written by  
12 your client and by the victim.  
13 MS. GUTIERREZ: Okay.  
14 THE COURT: So the items that you're not able  
15 to tie -- you're not moving in so that --  
16 MR. URICK: I will leave the bag proper for  
17 identification.  
18 THE COURT: Okay. And you -- you're next  
19 item.  
20 MS. GUTIERREZ: That's it.  
21 THE COURT: Is there anything else in that  
22 bag?  
23 MS. GUTIERREZ: Not that I know of.  
24 THE COURT: Okay. Very well.  
25 MS. GUTIERREZ: But I don't know.

Page 182

1 THE COURT: Well as he pulls those items out  
2 --  
3 MS. GUTIERREZ: There all relevant.  
4 THE COURT: -- if there's anything else just  
5 bring it to my attention.  
6 MS. GUTIERREZ: Okay.  
7 THE COURT: All right. Thank you.  
8 (Counsel and the defendant returned to the  
9 trial tables, and the following ensued:)  
10 THE COURT: You may resume your questioning.  
11 What you can -- you've recovered both items. And I'd  
12 asked counsel if they're not going to use exhibits, if  
13 you just give them to the clerk only because I know  
14 there's not a lot of space there but that would be one  
15 less item that you'd have to worry about.  
16 Thank you. You may proceed.  
17 BY MR. URICK:  
18 Q. Mr. Obot, what was the significance of the  
19 address [REDACTED] Road?  
20 A. What -- excuse me. Could you repeat this  
21 question again?  
22 Q. What was the significance of that address?  
23 A. From the information I got it from the  
24 detective that that is the residence of the suspect.  
25 Q. Suspect in this case being the defendant

Page 183	Page 18
<p>1 here, Adnan Syed?</p> <p>2 A. Yes.</p> <p>3 Q. Now, have you had a chance to examine that</p> <p>4 large bag that I gave you?</p> <p>5 A. Yes.</p> <p>6 Q. Can you identify that bag?</p> <p>7 A. Those are the evidence I recovered from the</p> <p>8 residence, [REDACTED] Road.</p> <p>9 Q. And does the bag have on it a reference to</p> <p>10 the CC Number 998B5801?</p> <p>11 A. Yes. This my handwriting here.</p> <p>12 Q. And does it have, in your handwriting, the</p> <p>13 property number that was assigned to that particular</p> <p>14 bag?</p> <p>15 A. Yes.</p> <p>16 Q. And what was that property control number?</p> <p>17 A. This was MB5031. Or 50 -- 5801.</p> <p>18 Q. Now, have you had a chance to look at the</p> <p>19 items inside the bag?</p> <p>20 A. I can see -- then again some of the bags that</p> <p>21 I opened, you know, the pair of shoes that was</p> <p>22 recovered. Some of this are still sealed. This is</p> <p>23 pair of shoes also recovered from the basement.</p> <p>24 Q. Now, other than opening the bag for various</p> <p>25 required discovery purposes and courtroom preparation,</p>	<p>1 MS. GUTIERREZ: Can I see that?</p> <p>2 (Pause.)</p> <p>3 THE COURT: No. I don't need to see it.</p> <p>4 What is the exhibit that you're examining,</p> <p>5 Ms. Gutierrez?</p> <p>6 MS. GUTIERREZ: Judge, I don't know. It's</p> <p>7 not marked in and of itself. There's a single letter</p> <p>8 that's marked.</p> <p>9 THE COURT: Were you going to call it</p> <p>10 something?</p> <p>11 MR. URICK: Yes. First the bag proper is for</p> <p>12 identification, State's 37.</p> <p>13 THE COURT: 37.</p> <p>14 MR. URICK: And within it there's one item</p> <p>15 which is marked for identification as State's 38.</p> <p>16 THE COURT: All right. And that -- that item</p> <p>17 is the bag itself or an individual item?</p> <p>18 MR. URICK: That's an individual -- 38 is an</p> <p>19 individual item within the bag proper.</p> <p>20 THE COURT: All right.</p> <p>21 BY MR. URICK:</p> <p>22 Q. Mr. Obot, having had a chance to examine both</p> <p>23 the overall collection of items and specifically what's</p> <p>24 been marked for identification as State's 38, are these</p> <p>25 in substantially the same shape and form as when you</p>
Page 184	Page 186
<p>1 are the items in substantially the same shape as you</p> <p>2 packed them?</p> <p>3 A. Yes.</p> <p>4 MR. URICK: At this time, out of that bag,</p> <p>5 pursuant to stipulation, we would offer into evidence</p> <p>6 State's Exhibit 30, which is the defendant's cell phone</p> <p>7 proper.</p> <p>8 THE COURT: And there's no objection,</p> <p>9 Counsel?</p> <p>10 MS. GUTIERREZ: No, Your Honor.</p> <p>11 THE COURT: Very well. Let it be admitted.</p> <p>12 (State's Exhibit No. 30</p> <p>13 previously marked for</p> <p>14 identification was received</p> <p>15 in evidence.)</p> <p>16 BY MR. URICK:</p> <p>17 Q. Now I show you this bag which has been marked</p> <p>18 for identification as State's Exhibit 37, I'd ask you</p> <p>19 to open it up and look inside it? Don't -- do not</p> <p>20 describe anything that you see.</p> <p>21 (Pause.)</p> <p>22 BY MR. URICK:</p> <p>23 Q. Don't describe anything that's in there.</p> <p>24 A. Okay.</p> <p>25 Q. Please open it up again.</p>	<p>1 seized them from the defendant's bedroom?</p> <p>2 A. Yes.</p> <p>3 MR. URICK: Would now -- these exhibits for</p> <p>4 identification only at this point in time but put them</p> <p>5 into the custody of the courtroom clerk.</p> <p>6 THE COURT: Very well.</p> <p>7 Any objection to that process?</p> <p>8 MS. GUTIERREZ: No, Your Honor.</p> <p>9 THE COURT: They're not being moved into</p> <p>10 evidence at this time. But they have been marked and</p> <p>11 properly identified as State's Exhibit's 37 and 38.</p> <p>12 MR. URICK: I'd ask the witness at this time</p> <p>13 to replace the remaining items back in the large bag</p> <p>14 which I'm not going to do anything further with it at</p> <p>15 this time.</p> <p>16 Witness with the defense.</p> <p>17 THE COURT: Very well.</p> <p>18 CROSS-EXAMINATION</p> <p>19 BY MS. GUTIERREZ:</p> <p>20 Q. Mr. Obot, you identified --</p> <p>21 MS. GUTIERREZ: Can I see those two pictures.</p> <p>22 I think it's 36-A and B?</p> <p>23 Thank you.</p> <p>24 BY MS. GUTIERREZ:</p> <p>25 Q. You identified State's Exhibit 36-A and B, do</p>



Page 187	Page 18
<p>1 you recall? Sir?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Now I'm going to try to -- if you</p> <p>4 would look at the one that you described as 36-A, which</p> <p>5 shows the hands of someone else in the picture?</p> <p>6 A. Yes.</p> <p>7 Q. And that's on a bookshelf?</p> <p>8 A. Yes.</p> <p>9 Q. And that location of the hands on the</p> <p>10 picture, did they belong to the detective?</p> <p>11 A. Likely, it's one of the detective. There</p> <p>12 were three detectives at the scene.</p> <p>13 Q. At the scene? And there's nothing unusual</p> <p>14 about that is there?</p> <p>15 A. They just doing a search and seizure, but</p> <p>16 that's normal thing that we're doing.</p> <p>17 Q. Well, sir, you were called to the scene by</p> <p>18 the detectives, were you not?</p> <p>19 A. Yes.</p> <p>20 Q. And you understood that what you were</p> <p>21 processing was a scene, the search of which had been</p> <p>22 allowed pursuant to a search warrant?</p> <p>23 A. That is what I'm -- I don't really question</p> <p>24 what I'm --</p> <p>25 Q. You're just --</p>	<p>1 A. From the onset of the case?</p> <p>2 Q. At any time, sir, prior to that day, had you</p> <p>3 been involved in the investigation of the crime to</p> <p>4 which this CC Number was designated, yes or no?</p> <p>5 A. No.</p> <p>6 Q. Okay. And that's not unusual, is it?</p> <p>7 A. Well, it's not unusual.</p> <p>8 Q. Well, you're not a police officer, are you?</p> <p>9 A. I'm from the crime lab mobile unit.</p> <p>10 Q. And you're not a detective, are you?</p> <p>11 A. No.</p> <p>12 Q. You would not ordinarily be involved in the</p> <p>13 investigation of the case that led you to the scene</p> <p>14 which you were called to process evidence; correct?</p> <p>15 A. I -- I have to respond to the scene if -- if</p> <p>16 I'm requested.</p> <p>17 Q. I understand that. And you always respond</p> <p>18 when you're requested; right?</p> <p>19 A. Yes.</p> <p>20 Q. But you don't investigate the crime that's</p> <p>21 the basis of why you're at any particular location?</p> <p>22 A. My primary function is to respond, process a</p> <p>23 crime scene, recover evidence.</p> <p>24 Q. All right.</p> <p>25 A. I don't -- I don't, you know, investigate the</p>
Page 188	Page 190
<p>1 A. -- requested at the scene. I just respond to</p> <p>2 the scene.</p> <p>3 Q. Okay. And when you respond to a scene</p> <p>4 regardless of how it is, the lawful authority be there</p> <p>5 as obtained, sir, you process evidence, do you not?</p> <p>6 A. Yes.</p> <p>7 Q. And it is not unusual at a crime scene that</p> <p>8 you are called to have the detectives who are the</p> <p>9 primary detectives for that crime to be there at the</p> <p>10 scene, is it?</p> <p>11 A. The primary detective -- we always respond --</p> <p>12 respond to who is there as far as our request is --</p> <p>13 Q. I'm not asking that, sir. I'm just asking</p> <p>14 you it's not unusual for the primary detective in a</p> <p>15 crime to be there at a scene you are called to process?</p> <p>16 A. Depending.</p> <p>17 Q. Okay. So it's not unusual is it?</p> <p>18 A. Indeed it depends on what the situation is.</p> <p>19 Q. Okay. Now, sir, prior to that day -- and the</p> <p>20 date of you took these pictures is when?</p> <p>21 A. I responded down there on the 3-20-99.</p> <p>22 Q. 3-20, that's March the 20th, 1999?</p> <p>23 A. Yes.</p> <p>24 Q. And, sir, you had not been involved in the</p> <p>25 investigation of the case, had you?</p>	<p>1 crime scene.</p> <p>2 Q. And you don't do any investigative process;</p> <p>3 correct?</p> <p>4 A. No.</p> <p>5 Q. Now it's not unusual --</p> <p>6 THE COURT: Can counsel slow down just a</p> <p>7 little bit?</p> <p>8 MS. GUTIERREZ: Yes.</p> <p>9 THE COURT: Ms. Gutierrez, I understand</p> <p>10 you're trying to move along. But I got to ask you not</p> <p>11 to answer while the witness --</p> <p>12 MS. GUTIERREZ: Judge, I'm sorry.</p> <p>13 THE COURT: Because Mr. Madden, remember,</p> <p>14 this is not recorded.</p> <p>15 MS. GUTIERREZ: All right. Yes.</p> <p>16 THE COURT: And it's not video so if two</p> <p>17 people talk at the same time, I don't know how he</p> <p>18 manages to get that down. But --</p> <p>19 MS. GUTIERREZ: I'll try to remember that,</p> <p>20 Judge.</p> <p>21 THE COURT: Thank you. You may continue.</p> <p>22 BY MS. GUTIERREZ:</p> <p>23 Q. In the picture that I'm having you look at,</p> <p>24 the picture clearly shows the textbook that you were</p> <p>25 asked to look at on the shelf; is that correct?</p>

1 A. Yes.

2 Q. You, of course, had no idea the significance  
3 of that textbook, did you?

4 A. I -- I do not, you know, investigate, you  
5 know, at the crime scene. I -- I'm just there to  
6 process the crime scene, recover the evidence and turn  
7 it in. I don't investigate what, you know, the  
8 detectives -- that's the job of the detectives.

9 Q. Sir, just listen to my questions. They're  
10 very simple and they really only call for yes or no.

11 MR. URICK: Objection.

12 THE COURT: Sustained.

13 Ms. Gutierrez, I understand you're  
14 indication. The -- officer or technician, what  
15 we need you to do is just listen to her -- her  
16 question. And if you can answer, yes or no, yes or no  
17 is fine.

18 Just listen to her question. As she's  
19 indicated and just indicate yes or no. And that will  
20 be very helpful to us.

21 THE WITNESS: Okay.

22 THE COURT: And if you would not direct the  
23 witness but if the witness has a problem answering your  
24 question, I'll be happy to assist you.

25 MS. GUTIERREZ: Thank you, Judge.

1 THE COURT: Very well.

2 BY MS. GUTIERREZ:

3 Q. Technician Obot, the photographs shows a  
4 textbook with the name of "Perceptions" on it in 36-A,  
5 does it not?

6 A. Yes.

7 Q. And, sir, you didn't determine that that  
8 textbook had some significance to the crime that had  
9 the CC Number assigned that you've indicated, did you?

10 A. No.

11 Q. You didn't determine yourself from anything  
12 you did on that scene that gave significance to this  
13 textbook, did you?

14 A. No.

15 Q. And, in fact, the detectives were already at  
16 the scene when you arrived, were they not?

17 A. No.

18 Q. You waited for them?

19 A. No. We all drove, you know, up there to the  
20 scene.

21 Q. With the detectives?

22 A. Yes.

23 Q. So you all arrived at one time; is that  
24 correct?

25 A. Yes.

1 Q. And, in fact, it was the detectives that  
2 directed your energy to recover certain pieces of  
3 evidence, was it not?

4 A. yes.

5 Q. And in -- other pieces of evidence that  
6 you've identified from this bag, were, for instance,  
7 shoes, do you recall that?

8 A. Yes.

9 Q. And those shoes, you said, were taken from  
10 the basement; isn't that correct?

11 A. Yes.

12 Q. Did you go search for the shoes or were the  
13 shoes existence brought to your attention by one of the  
14 detectives?

15 A. By the detective.

16 Q. Okay. And you, of course, because you had  
17 not been involved in the investigation, had no idea as  
18 to the significance of the shoes; is that correct?

19 A. Yes.

20 Q. Just like you had no idea of any significance  
21 of the textbook; correct?

22 A. Yes.

23 Q. Which you then recovered at their direction;  
24 correct?

25 A. Yes.

1 Q. And you photographed it at their direction  
2 because they thought it was significant; correct?

3 A. Yes.

4 Q. Not because you independently wanted a  
5 picture of it?

6 A. At their own direction.

7 Q. Okay. And not because you yourself decided  
8 that this textbook in this bookcase had some  
9 significant bearing to the crime to which that CC  
10 Number was assigned --

11 A. Yes.

12 Q. Correct? And you, sir, photographed the  
13 inside papers inside the textbook again at the  
14 direction of one of the detectives?

15 A. Yes.

16 Q. And do you recall which detective it was that  
17 brought that to your attention?

18 A. I couldn't tell. This been over a year.

19 Q. Okay. And that's why you make a report of  
20 what you did and saw and what you processed; correct?

21 A. Yes.

22 Q. Now, one of the questions you were asked  
23 Technician Obot was the stuff in the bag in  
24 substantially the same condition as when you packaged  
25 it that way, do you recall that?

<p style="text-align: right;">Page 195</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And you answered yes; correct? And</p> <p>3 you had an opportunity to look at all that evidence;</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. Now, sir, after you handled it you are aware</p> <p>7 that evidence, based on your handwritten notes and</p> <p>8 assignment goes into the control of the Evidence</p> <p>9 Control Unit, does it not?</p> <p>10 A. Yes.</p> <p>11 Q. ECU. And that's part of the Baltimore City</p> <p>12 Police Department; is it not?</p> <p>13 A. Yes.</p> <p>14 Q. And it is kept in a locked facility inside</p> <p>15 the Baltimore City Police Department; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And there are various proscribed forms to</p> <p>18 make sure that the same evidence that you marked from a</p> <p>19 place that you were designated to see to a scene</p> <p>20 remains intact; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. In order to get something in Evidence</p> <p>23 Control, the person, a designated person, has to fill</p> <p>24 out certain designated forms; correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. And from looking at what you looked at as you</p> <p>2 were instructed to do by Mr. Urick, you, of course,</p> <p>3 can't tell us to what analysis any of those items of</p> <p>4 evidence have been subjected, can you?</p> <p>5 A. I couldn't tell you that.</p> <p>6 Q. No. Because that's not what you do; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And nobody checks with you before they touch</p> <p>9 a piece of evidence that's been designated to you as</p> <p>10 having some significance in the investigation of a</p> <p>11 crime --</p> <p>12 A. Yes.</p> <p>13 Q. Is that correct?</p> <p>14 MS. GUTIERREZ: I have nothing further,</p> <p>15 Judge.</p> <p>16 THE COURT: Thank you.</p> <p>17 Any redirect?</p> <p>18 REDIRECT EXAMINATION</p> <p>19 BY MR. URICK:</p> <p>20 Q. And that evidence is over in Evidence Control</p> <p>21 where it's available should any defense count --</p> <p>22 defense counsel wish to request any analysis to be done</p> <p>23 --</p> <p>24 MS. GUTIERREZ: Objection.</p> <p>25 THE COURT: Sustained.</p>
<p style="text-align: right;">Page 196</p> <p>1 Q. And in order to get something out of Evidence</p> <p>2 Control, other forms have to be completed by the person</p> <p>3 who's entitled to get out that evidence; correct?</p> <p>4 A. Yes.</p> <p>5 Q. You don't have any control over that;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you have no knowledge of whether or not a</p> <p>9 piece of evidence that you gathered up on the 20th of</p> <p>10 March was, in fact, taken out of Evidence Control by</p> <p>11 any other person?</p> <p>12 A. I don't have the knowledge of it.</p> <p>13 Q. Nobody would have to consult with you;</p> <p>14 correct?</p> <p>15 A. No.</p> <p>16 Q. But to your general knowledge, as a member of</p> <p>17 doing crime scene processing, you are aware that often</p> <p>18 pieces of evidence that you procure and process at a</p> <p>19 scene where you are designated to go is often pulled</p> <p>20 out of Evidence Control to be analyzed by people</p> <p>21 empowered to analyze it, are you not?</p> <p>22 A. Yes.</p> <p>23 Q. And that's in the ordinary course of</p> <p>24 business; isn't that correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 198</p> <p>1 MS. GUTIERREZ: Request a curative</p> <p>2 instruction regarding the burden.</p> <p>3 THE COURT: Not necessary.</p> <p>4 Anything further?</p> <p>5 MR. URICK: No. Thank you.</p> <p>6 THE COURT: Very well.</p> <p>7 You are --</p> <p>8 Can this witness be excuse?</p> <p>9 MR. URICK: Yes.</p> <p>10 THE COURT: Is this one of those witnesses</p> <p>11 you'd like to hold onto?</p> <p>12 MS. GUTIERREZ: No, Judge.</p> <p>13 THE COURT: Very well.</p> <p>14 You are excused, sir.</p> <p>15 (The witness was excused.)</p> <p>16 MR. URICK: With the Court's permission, I'd</p> <p>17 like to get one more witness in.</p> <p>18 THE COURT: Yes. I think there's --</p> <p>19 MR. URICK: This witness is unavailable for</p> <p>20 the next two days that's why I wanted to put him on</p> <p>21 now.</p> <p>22 THE COURT: Why didn't you put him on first?</p> <p>23 How long do you think this will be?</p> <p>24 MR. URICK: He should be fairly short.</p> <p>25 THE COURT: When you say fairly short, how</p>



<p style="text-align: right;">Page 199</p> <p>1 long will that be?</p> <p>2 MR. URICK: I think the State's side --</p> <p>3 MS. GUTIERREZ: Your Honor --</p> <p>4 THE COURT: One moment, Ms. Gutierrez.</p> <p>5 MR. URICK: -- shouldn't be more than 10</p> <p>6 minutes.</p> <p>7 THE COURT: Who is the witness?</p> <p>8 MR. URICK: Sergeant Kevin Forrester.</p> <p>9 THE COURT: And, Ms. Gutierrez, how long do</p> <p>10 you think you would be with be with --</p> <p>11 MS. GUTIERREZ: Judge, I don't frankly</p> <p>12 remember how long.</p> <p>13 THE COURT: Can you just take a look at --</p> <p>14 MS. GUTIERREZ: I may be a --</p> <p>15 THE COURT: Just give me an idea and I won't</p> <p>16 hold you to it but I just want to --</p> <p>17 MS. GUTIERREZ: What do you have on -- I</p> <p>18 don't think I'll be long.</p> <p>19 THE COURT: Okay. Can you have him come in?</p> <p>20 MR. URICK: Thank you, Your Honor.</p> <p>21 THE COURT: And we will not do this again.</p> <p>22 At 5:30 we will not be going after 5:30. So I just</p> <p>23 want to give you a heads up. This is not going to be a</p> <p>24 regular thing. One more witness, one more witness,</p> <p>25 we're not going to do that.</p>	<p style="text-align: right;">Page 20</p> <p>1 at this time to show him what's been marked for</p> <p>2 identification as --</p> <p>3 THE COURT: Are you going to show that video</p> <p>4 today?</p> <p>5 MR. URICK: Yes.</p> <p>6 THE COURT: How long is the video.</p> <p>7 MR. URICK: About a minute or two.</p> <p>8 THE COURT: Very well. You may proceed.</p> <p>9 (Pause.)</p> <p>10 THE COURT: Before you begin, the end of the</p> <p>11 jury panel, can you see the video machine from where</p> <p>12 you're sitting? You can?</p> <p>13 Very well. You may proceed.</p> <p>14 DIRECT EXAMINATION</p> <p>15 BY MR. URICK:</p> <p>16 Q. Have you had a chance to examine the item?</p> <p>17 A. Yes, I have.</p> <p>18 Q. And can you identify it?</p> <p>19 A. Yes. It's a video tape that I took of Hae</p> <p>20 Lee's vehicle on 3-16-99 at approximately 1245 hours.</p> <p>21 Q. Okay. Now, drawing your attention to</p> <p>22 February 28th of 1999, did you park the -- well, first</p> <p>23 of all, what are you assigned duties?</p> <p>24 A. At that time I was supervisor of a Homicide</p> <p>25 squad. It consisted of seven detectives.</p>
<p style="text-align: right;">Page 200</p> <p>1 (Pause.)</p> <p>2 THE COURT: I am mindful of the weather and I</p> <p>3 am mindful of the temperature dropping at the late</p> <p>4 hour. And so for that reason I am not going to try to</p> <p>5 keep you here later than 5:30.</p> <p>6 As the days go, we try to move along. This</p> <p>7 Court normally ends at 5:00 -- at 4:30. So when I keep</p> <p>8 staff this late it's unusual that we go beyond 4:30.</p> <p>9 Can you have the witness step up and raise</p> <p>10 their right hand?</p> <p>11 Whereupon,</p> <p>12 KEVIN FORRESTER,</p> <p>13 a witness produced on call of the State, having first</p> <p>14 been duly sworn, was examined and testified as follows:</p> <p>15 THE CLERK: You may lower your hand. Be</p> <p>16 seated.</p> <p>17 Please state your name and assignment for the</p> <p>18 record?</p> <p>19 THE WITNESS: Detective Sergeant Kevin</p> <p>20 Forrester, currently assigned to Cease Fire. But at</p> <p>21 the time of this case I was a homicide sergeant.</p> <p>22 THE COURT: Witness with you, Mr. Urick.</p> <p>23 MR. URICK: Thank you, Your Honor.</p> <p>24 (Pause.)</p> <p>25 MR. URICK: I'd like to approach the witness</p>	<p style="text-align: right;">Page 202</p> <p>1 Q. And on February 28th of 1999, were you part</p> <p>2 of a detail that responded to about the 300 block of</p> <p>3 Edgewood -- yeah, 300 block of Edgewood, off Edmonson</p> <p>4 Avenue?</p> <p>5 A. Yes, I was.</p> <p>6 Q. And what was your -- what were you doing on</p> <p>7 that date?</p> <p>8 A. At that time it was Detective McGilvary,</p> <p>9 Detective Serio, myself, and Jay proceeded to that</p> <p>10 location.</p> <p>11 Q. When you say Jay, are you referring to one</p> <p>12 Jay Wilds?</p> <p>13 A. Yes. Jay Wilds.</p> <p>14 Q. Who was directing you to that location?</p> <p>15 A. Jay was.</p> <p>16 Q. And when you got to that location what, if</p> <p>17 anything, did you find?</p> <p>18 A. At this time we discovered Hae Lee's vehicle</p> <p>19 that had been missing for -- since recovery of her</p> <p>20 body.</p> <p>21 Q. And did you have a chance to examine that</p> <p>22 vehicle on that date?</p> <p>23 A. Yes, I did.</p> <p>24 Q. And why did you come to make a videotape of</p> <p>25 it short time -- a few days later?</p>

1 A. At the time we recovered the car it was --  
 2 Crime Lab came out took photos of it which time we had  
 3 a roll back take it down to our crime lab where they  
 4 processed it later that morning.  
 5 During that process we discovered that the  
 6 selector switch, if you sat on the driver's seat which  
 7 would be on the left side of the steering column was  
 8 broken.  
 9 Once we got the photographs back from Crime  
 10 Lab, which were still photos, it really didn't show  
 11 that the selector switch was broken. It just showed  
 12 that it was a downward angle toward the floor. So at  
 13 this time I determined that a video tape would better  
 14 show that the selector switch was broken.  
 15 Q. And does it fairly and accurately describe  
 16 the condition of the vehicle as you saw it on that  
 17 date?  
 18 A. Yes, it does.  
 19 MR. URICK: We'd offer into evidence at this  
 20 time State's Exhibit Number 6, the videotape of the  
 21 victim's car.  
 22 THE COURT: Any objection?  
 23 MS. GUTIERREZ: No, Your Honor.  
 24 THE COURT: Let it be admitted as State's  
 25 Exhibit Number 6.

1 (State's Exhibit No. 6  
 2 previously marked for  
 3 identification was received  
 4 in evidence.)  
 5 MR. URICK: We'd ask that to show it at this  
 6 time?  
 7 THE COURT: Yes, you may.  
 8 MR. URICK: May the witness step down to come  
 9 over near the jury to explain what they're seeing?  
 10 THE COURT: Yes, you may.  
 11 MR. URICK: Sergeant, if you'd come around  
 12 the backside.  
 13 THE COURT: Mr. Urick, I'm going to ask that  
 14 you -- yes, step back so that the defendant can see the  
 15 video as well and counsel.  
 16 If you cannot see? You cannot see.  
 17 Counsel is it -- Ms. Murphy? Ms. Murphy, I'm  
 18 going to ask you to step back to the front row there.  
 19 There's room on that front bench behind the detective.  
 20 And you'll be able to -- is that all right now? Very  
 21 well.  
 22 (A video was shown.)  
 23 THE WITNESS: This Hae Lee's car that was  
 24 recovered on 300 Edgewood. Assisting me was Detective  
 25 Hastings who was also on the squad.

1 (Pause.)  
 2 THE WITNESS: That's Detective Hastings  
 3 showing the lever which I believe was for the  
 4 windshield wipers was broken.  
 5 (Pause.)  
 6 THE COURT: Very well.  
 7 (Pause.)  
 8 (The videotape ended.)  
 9 MR. URICK: With the Court's permission if I  
 10 may approach the witness again to show what's been  
 11 marked for identification as State's Exhibits 8 and 12.  
 12 (Pause.)  
 13 BY MR. URICK:  
 14 Q. Now the damage that was done to the  
 15 windshield wiper control, did you see that on the day  
 16 that the car was seized?  
 17 A. Yes, I did.  
 18 Q. And again why was the tape recorded some days  
 19 later?  
 20 A. It was an afterthought. We were looking --  
 21 once looking at the photographs, you can see as in this  
 22 one which was done by Crime Lab just shows it down.  
 23 Without it actually physically showing it be raised and  
 24 lowered you determine that it may not be broken, that  
 25 it was just punched in.

1 THE COURT: Detective, what number is that?  
 2 THE WITNESS: That is State Exhibit Number 8,  
 3 ma'am.  
 4 THE COURT: State's 8 then has been shown.  
 5 BY MR. URICK:  
 6 Q. And insofar as a photograph 10, does that  
 7 particular exhibit fairly and accurately show the  
 8 damage as you found it on the day the car was seized?  
 9 A. Yes, it does.  
 10 MR. URICK: Would offer into evidence State's  
 11 Exhibit 8 at this time.  
 12 THE COURT: No objections, Ms. Gutierrez?  
 13 MS. GUTIERREZ: No, Your Honor.  
 14 THE COURT: Let it be admitted.  
 15 (State's Exhibit No. 8  
 16 previously marked for  
 17 identification was received  
 18 in evidence.)  
 19 BY MR. URICK:  
 20 Q. Now can you identify what's been marked for  
 21 identification as State's Exhibit 12?  
 22 A. Yes. These are photographs that were taken  
 23 by the Crime Lab technician approximately half hour  
 24 after we were out at the scene and located Hae Lee's  
 25 vehicle.

<p style="text-align: right;">Page 207</p> <p>1 It was, I believe 3:00 -- if I recall, 3:00</p> <p>2 or four o'clock in the morning. We were working</p> <p>3 midnight shift that particular week.</p> <p>4 Q. And which car is hers?</p> <p>5 A. Hers, if it was there, would be this one</p> <p>6 right up in here almost like behind the car here in the</p> <p>7 cover. Same thing with this one. It would be up</p> <p>8 behind.</p> <p>9 Basically what it is, it's a common area</p> <p>10 behind a row homes, half asphalt, half grass. And</p> <p>11 there's numerous cars parked in there.</p> <p>12 It was sitting right here. This is just a</p> <p>13 close up of it. We see other cars that it was parked</p> <p>14 along with.</p> <p>15 Q. And did those fairly and accurately show the</p> <p>16 place where the car as you found it on that lot of</p> <p>17 Edgewood Street?</p> <p>18 A. Yes, it does.</p> <p>19 MR. URICK: Would offer State's Exhibit 12,</p> <p>20 the crime -- the exhibit at this time.</p> <p>21 THE COURT: Exhibit with the four composite</p> <p>22 photos?</p> <p>23 MR. URICK: Yes.</p> <p>24 THE COURT: Any objection from Ms. Gutierrez?</p> <p>25 MS. GUTIERREZ: No, Your Honor.</p>	<p style="text-align: right;">Page 208</p> <p>1 points were this is Edmonson Avenue, Edgewood Street</p> <p>2 this is Hilton Parkway. It was approximately two</p> <p>3 blocks westbound from Hilton Parkway.</p> <p>4 Another identifier would be if you're</p> <p>5 familiar with St. Bernardine's Church on Edmonson</p> <p>6 Avenue. It's a tall church with the gold on top of it.</p> <p>7 Edgewood Street is right here, goes down approximately</p> <p>8 three -- three blocks and then breaks into a southeast</p> <p>9 direction.</p> <p>10 The lot is right back there, which is almost</p> <p>11 below Mulberry Street.</p> <p>12 MR. URICK: With the Court's permission I'm</p> <p>13 going to put some scotch tape over this sticker to</p> <p>14 affix it to the exhibit as a permanent --</p> <p>15 THE COURT: A permanent affixion --</p> <p>16 MR. URICK: Yes.</p> <p>17 THE COURT: -- fixture to my -- my exhibit.</p> <p>18 All right.</p> <p>19 MR. URICK: Thank you, Your Honor.</p> <p>20 Sergeant, you may sit down again.</p> <p>21 (The witness returned to the stand.)</p> <p>22 (Pause.)</p> <p>23 MR. URICK: Witness with the defense.</p> <p>24 CROSS-EXAMINATION</p> <p>25 BY MS. GUTIERREZ:</p>
<p style="text-align: right;">Page 208</p> <p>1 THE COURT: That exhibit number again for the</p> <p>2 record?</p> <p>3 MR. URICK: 12.</p> <p>4 THE COURT: 12. Let it be admitted.</p> <p>5 (State's Exhibit No. 12</p> <p>6 previously marked for</p> <p>7 identification was received</p> <p>8 in evidence.)</p> <p>9 MR. URICK: With the Court's permission I'll</p> <p>10 give these to the Clerk to be marked as evidence at</p> <p>11 this time.</p> <p>12 BY MR. URICK:</p> <p>13 Q. I'll show you what's been marked for</p> <p>14 identification purposes as State's Exhibit 33. Which</p> <p>15 contains a map of a portion of East Baltimore -- West</p> <p>16 Baltimore rather. If you take a few seconds and look</p> <p>17 at that.</p> <p>18 Have you had a chance to examine the exhibit?</p> <p>19 A. Yes, I have.</p> <p>20 Q. And do see on there the location where the</p> <p>21 car was found?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Could you please point it out please by</p> <p>24 pointing this sticker that has "C" on it for car?</p> <p>25 A. Okay. Well, my best thing for reference</p>	<p style="text-align: right;">Page 210</p> <p>1 Q. Detective Sergeant, you said you were there</p> <p>2 was about three or four o'clock in the morning?</p> <p>3 A. If I recall right, yes, ma'am.</p> <p>4 Q. Okay. And that day -- and the pictures show</p> <p>5 that, do they not?</p> <p>6 A. Yes. It was nighttime.</p> <p>7 Q. That date was February the 28th, was it not?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. And you were asked to go along with the whole</p> <p>10 team that went down, were you not?</p> <p>11 A. Yes, I was.</p> <p>12 Q. Even though you were not assigned as the</p> <p>13 primary or the secondary of this particular case?</p> <p>14 A. No, I was --</p> <p>15 Q. You were supervising; is that correct?</p> <p>16 A. I was the supervisor.</p> <p>17 Q. And there's nothing unusual about your going</p> <p>18 along with the other detectives to --</p> <p>19 A. No. Because a lot of times in a situation</p> <p>20 like that I may make the determination that we're going</p> <p>21 to do a search and seizure warrant right there, --</p> <p>22 Q. Right there --</p> <p>23 A. -- and you have to have a supervisor for</p> <p>24 that.</p> <p>25 Q. Okay. Now, sir, you mentioned that the</p>



1 person that directed you to this location was a person  
2 by the name of Jay Wilds; isn't that correct?  
3 A. Yes, ma'am.  
4 Q. And you knew then who Jay Wilds was, did you  
5 not?  
6 A. Yes.  
7 Q. And you knew that Jay Wilds had just  
8 completed a statement to the police; isn't that  
9 correct?  
10 A. Yes.  
11 Q. The location that you've listed as being with  
12 a "C" on the map, sir, is a location as the pictures  
13 reveal were there were more than just Ms. Hae Lin Mee -  
14 - Hae Lee Min's car; correct?  
15 A. Yes, ma'am.  
16 Q. There were lots of other vehicles, were there  
17 not?  
18 A. Yes, there is.  
19 Q. It's not really a parking lot but it's an  
20 area in which cars are parked behind a series of blocks  
21 of row houses; is it not?  
22 A. Yes, ma'am.  
23 Q. Okay. And out of all of the cars on the  
24 parking lot it was Jay Wilds that directed you and the  
25 other members of the group to the specific location of

1 that particular car, was it not?  
2 A. Yes, ma'am.  
3 Q. Okay. It wasn't like Jay just sort of said,  
4 "Well, the car's in among all of those cars on that  
5 lot"; correct?  
6 A. Correct.  
7 Q. He went right to that car, didn't he?  
8 A. Yes.  
9 Q. And, sir, that wasn't the only location that  
10 Jay Wilds took you and the crew in those early morning  
11 hours, was it?  
12 A. That was the only location.  
13 Q. Okay. Well, sir, were you aware that Jay  
14 took other detectives to another location, again right  
15 off of Edmonson Avenue near to Hilton Parkway either  
16 right before he located the car or right after?  
17 A. No. My recollection of that is Detective  
18 McGilivray and Ritz was also with Jay. They came and  
19 got me and said, "We believe we located Hae Lee's car."  
20 Q. Okay.  
21 A. At which time I responded.  
22 Q. And that's why you were involved?  
23 A. Yes.  
24 Q. Okay. And, sir, were you aware that after  
25 locating the car that Jay Wilds directed members of

1 your department to another location allegedly relevant  
2 to the murder or burial of Hae Min Lee close in  
3 proximity to Edmonson Avenue and Hilton Parkway?  
4 A. No. I don't have knowledge of that.  
5 Q. Okay. And you weren't involved in that;  
6 correct?  
7 A. No. I was not.  
8 Q. Regarding the video, Detective, the -- the  
9 car, when it was found that night, was transported on a  
10 Police Department vehicle down to headquarters, was it  
11 not?  
12 A. Yes, it was.  
13 Q. That's ordinarily the normal procedure for a  
14 car, is it not?  
15 A. Yes, it is.  
16 Q. It is then completely processed my the Mobile  
17 -- or by the Crime Unit, is it not?  
18 A. Yes, ma'am.  
19 Q. It's processed for any evidence of trace  
20 analysis, is it not?  
21 A. Yes, it is.  
22 Q. For soil?  
23 A. Yes.  
24 Q. For fingerprints?

1 A. Yes.  
2 Q. For anything else identifying in the car that  
3 might be relevant to the investigation of this  
4 particular crime?  
5 A. Yes.  
6 Q. Correct?  
7 A. Yes.  
8 Q. And it's not released from the crime lab  
9 until they're done; is that correct?  
10 A. Actually when the detectives to make that  
11 decision but normally yeah. When the crime lab says  
12 they're --  
13 Q. They wait --  
14 A. -- finished with it --  
15 Q. -- until the crime lab;s --  
16 A. Yes.  
17 Q. -- done; right?  
18 A. That's correct.  
19 Q. And the crime lab does whatever it is that it  
20 thinks is necessary to adequately process that  
21 particular car; correct?  
22 A. Correct.  
23 Q. And then, as long as the detective okays it,  
24 the vehicle is released back to the custody of the  
25 rightful owners, unless there's a reason not to, is it

1 not?

2 A. Yes.

3 Q. And this vehicle was, in fact, released back  
4 to the family of Hae Min Lee prior to your taking the  
5 video on 3-16-99; correct?

6 A. Yes, it was.

7 Q. And in order for that to be done, one of the  
8 detectives who was the primary or secondary detective  
9 on the investigation had to have made that decision to  
10 do that, had they not?

11 A. Yes.

12 Q. And the location where the video was made  
13 was at a location you had nothing to do with the car  
14 being present, did you?

15 A. No.

16 Q. That was just a location that you were given  
17 by the family of Hae Min Lee as to where the car was?

18 A. Yeah. It was --

19 Q. Is that correct?

20 A. Yes. It was a relative.

21 Q. And you went because that's where they told  
22 that's where the car is; right?

23 A. Correct.

24 Q. You had nothing to do with the car getting to  
25 that location; correct?

1 A. No. We did not.

2 Q. And you made no decision as to when it got to  
3 that location?

4 A. No.

5 Q. Correct? Or whether or not it was  
6 transported or by whom it was transported; correct?

7 A. Correct.

8 Q. Once the car was released, the car was out of  
9 Police Department control; correct?

10 A. Correct. Correct.

11 Q. And you, sir, don't know the day that it was  
12 release, do you?

13 A. No, not --

14 Q. And back on the 16th you didn't know the day  
15 that it was released; correct?

16 A. Correct.

17 Q. So it could have been out of Police  
18 Department control and custody as early as the 29th or  
19 the 1st of March; correct?

20 A. Correct.

21 Q. And therefore been totally out of police  
22 control and under the control of others for at least 14  
23 to 15 days?

24 A. Correct.

25 Q. On the 16th you didn't make any inquiry as to

1 that, did you?

2 A. No.

3 Q. And that really didn't concern you, did you?

4 A. No, it did not.

5 Q. So you don't know if it was driven on any  
6 particular day from Police Department headquarters to  
7 that location; correct?

8 A. Correct.

9 Q. And what the condition of the car was;  
10 correct?

11 A. Correct.

12 Q. You didn't attempt to drive it?

13 A. No, I did not.

14 Q. And you didn't attempt to determine whether  
15 or not it was drivable at any time, did you?

16 A. No.

17 Q. And no one else under your command did that,  
18 did they?

19 A. Not to my knowledge.

20 Q. Okay. And -- at the time that Jay Wilds,  
21 this person that you knew had just given a statement to  
22 the police, was he identified to you as a suspect in  
23 the case?

24 A. Not at that time. Just a witness.

25 Q. Just a witness. And you were made aware of

1 that by other members of the Police Department?

2 A. Yes.

3 Q. And you accepted that because they were told  
4 to you by members of the Police Department, did you  
5 not?

6 A. Yes.

7 Q. You didn't make any inquiry as to Mr. Wilds  
8 did you?

9 A. Not that particular day, no.

10 Q. And you didn't direct any questioning of him,  
11 did you?

12 A. No, I did not.

13 Q. And he didn't give a statement while he was  
14 out there at the scene at three or four o'clock in the  
15 morning; correct?

16 A. No. He remained in the car.

17 Q. He just remained in the car and pointed out  
18 the car, and it turned out to be Hae Min Lee's car, did  
19 it not?

20 A. Yes.

21 MS. GUTIERREZ: I have nothing further

22 THE COURT: Any redirect?

23 MR. URICK: No, thank you, Your Honor.

24 THE COURT: May this witness be excused?

25 MR. URICK: Yes, please.

1 THE COURT: Ms. Gutierrez?  
 2 MS. GUTIERREZ: Yes, Your Honor.  
 3 THE COURT: And this is again, a witness that  
 4 may be have been subpoenaed by both the State and the  
 5 defense, and I'm asking if this person is excused?  
 6 MS. GUTIERREZ: Yes.  
 7 THE COURT: Very well. You may go. You are  
 8 excused.  
 9 (The witness was excused.)  
 10 THE COURT: Ladies and Gentleman, we're going  
 11 to break for today. And we would ask that you go home  
 12 safely. I'll also remind you not to discuss this case  
 13 either amongst yourselves or anyone else and not to  
 14 read the newspaper, media or any other place.  
 15 If anyone tries to talk to you about this  
 16 case, you're to advise my staff or make a contact with  
 17 Ms. Chambers, you have my number, to let me know that  
 18 someone's tried to talk to you, and I will approach you  
 19 and talk to you about that at some other time.  
 20 Also admonish you that tomorrow morning when  
 21 you come into the building across the street, the  
 22 Clarence Mitchell, Jr., there is an entrance on the  
 23 right-hand side, the Lexington Street entrance. Go in  
 24 that door and when you pass by either them show them  
 25 your -- your letter from me or if you can save your

1 juror badge, sometimes they let you cut to the front of  
 2 the line to get into the building.  
 3 I can't guarantee you, but sometimes they do  
 4 that. When you get inside you go to be paid. You tell  
 5 them you are coming back to Judge Heard on a continuing  
 6 case; that you're not a new juror, but you are coming  
 7 back on a continuing case.  
 8 They have a separate line for those  
 9 individuals coming back and you will be paid. And then  
 10 I'd ask you to report to my jury room no later than  
 11 9:30.  
 12 The weather is inclement. If by chance  
 13 you're running late, come here first and let us know  
 14 that you did not get a chance to get paid, we will make  
 15 sure that there's someone available at the luncheon  
 16 recess to pay you at that time.  
 17 My priority is to try to get started as close  
 18 to 9:30 as possible. So given a choice and it's 9:25  
 19 and you're late, come here first. Just let us know.  
 20 You can check in with the clerk. And they will call  
 21 over and make it a time when you can go over and be  
 22 paid.  
 23 I have no cases on my docket in the morning,  
 24 which is why I would like to try to get started at 9:30  
 25 if at all possible.

1 For your information, your loved ones, your  
 2 scheduling, your parking, we will stop tomorrow at  
 3 4:30. We will not go this late tomorrow. We will stop  
 4 at 4:30, for counsel.  
 5 We will take a very strict lunch break from  
 6 12:30 to 1:30. And we will come back at 1:30. If you  
 7 want to bring your lunch, you're welcome to do that.  
 8 If you want to go downstairs tomorrow because it's  
 9 faster and closer and get a sandwich and bring it back  
 10 to the jury room tomorrow, you're welcome to do that.  
 11 Or you may go out and weather the elements,  
 12 but tomorrow you will only have an hour for lunch. We  
 13 will break at 12:30 and continue at 1:30.  
 14 With that said, please have a safe journey  
 15 home. Leave your notepads face down. We will lock  
 16 them away. No one will read them. And they will be  
 17 returned to your chair in the morning.  
 18 MS. GUTIERREZ: Judge, I'd like to leave my  
 19 bag here overnight.  
 20 THE COURT: Yes. The courtroom will be  
 21 locked. And you're welcome to leave your bag. In  
 22 fact, if you like to give it to me?  
 23 MS. GUTIERREZ: It's right under the table.  
 24 THE COURT: Very well. That's fine. The  
 25 courtroom will be locked.

1 (The jury was excused.)  
 2 THE COURT: Back on the record and as the  
 3 last jury -- juror files out, the Court has some  
 4 direction.  
 5 Ladies and Gentleman, I have absolutely --  
 6 close the door. I have absolutely no problem with  
 7 anyone being present in this courtroom to view any  
 8 portion of this trial, all or some of it.  
 9 I know that this testimony and evidence and  
 10 exhibits may be emotionally charging and upsetting to  
 11 you, but, I must advise you that if you are emotional --  
 12 - I made some observation both from the victim's family  
 13 and the from the defense -- I must advise you, if you  
 14 find yourself getting up -- upset, you're welcome to go  
 15 step out in the hall, get yourself together, and then  
 16 come back.  
 17 But in an abundance of caution, with the  
 18 victim's family and the defense family present, I must  
 19 advise you that if you are upsetting, and I can see  
 20 that, my law clerk may ask you to step out in the  
 21 hallway until you're able to pull yourself together.  
 22 We are going to have this trial. We are not  
 23 going to have a mistrial. And if you are upsetting and  
 24 you're crying or you're upset -- we had someone who  
 25 looked like during opening he was smiling -- you will



1 be asked to leave the courtroom.

2 And if it continues, you will be barred from  
3 the courtroom. Now, I know that may be harsh but my  
4 goal is to see that Mr. Sy --

5 THE DEFENDANT: Syed.

6 THE COURT: -- Syed, has a fair trial and the  
7 State as well. And to that end, that's my  
8 responsibility. Your responsibility is to be here if  
9 you would like to observe. And you are welcome to be  
10 here every single day.

11 But I have competing interests, and those  
12 must be a priority of me to run this Court as I have  
13 taken an oath to do. And so I'm telling you this to  
14 advise you and to let you know you are welcome to get  
15 up, go to the Ladies room or the Mens room, get  
16 yourself together, and come back.

17 You are welcome to talk to the attorneys and  
18 ask them if there's evidence they're going to be  
19 presenting that may be upsetting. I'm sure that they  
20 will let you know. But during the course of the trial,  
21 if I find that I can observe anything, then I may ask  
22 you to leave.

23 I would note for the record the jury is not  
24 facing the audience, they are facing to my left. And I  
25 would ask that Counsel be advised that if they observe

1 anything that they believe is inappropriate, that they  
2 bring it to my attention, and I'd be happy to handle  
3 and deal with it.

4 I know that this is a murder trial. The  
5 victim's family is very upset. But I would also note  
6 that the defense family has had individuals here, and I  
7 noticed some grinning and laughing and smiling during  
8 Mr. Urick's opening.

9 Not -- neither of that is appropriate. And I  
10 say so because the defense is entitled to serious  
11 consideration as is the State.

12 And so to that end I want to make sure that  
13 both the State and the defense receive a fair trial. I  
14 would note that I don't believe any of the jurors made  
15 these observations because they weren't looking.

16 I looked to see, and they were not looking  
17 where I was looking. And so I'm asking that Counsel be  
18 mindful of that.

19 And the rules state that the family of the  
20 victim is entitled to be present in this courtroom.  
21 And to the extent those rights are victim's rights I  
22 will make sure you are here and present. But I must  
23 also tell you that I have that competing interest to  
24 make sure that the jury is not influenced by anything  
25 other than the testimony of the witnesses and the

1 evidence, closing argument, and the law.

2           And so I recess Court now until 9:30 tomorrow  
3 morning.

4           (The trial was recessed at 5:55 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



REPORTER'S CERTIFICATE

I, Charles F. Madden, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that I stenographically recorded the proceedings in the matter of State of Maryland versus Adnan Syed, Indictment Numbers 199103042-46, in the Circuit Court for Baltimore City, on January 27, 2001, before the Honorable Wanda Keys Heard, Associate Judge (and a jury.).

I further certify that the page numbers 1 through 225 constitute the official transcript of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this 23rd day of March, 2001.

---

Charles F. Madden  
Official Court Reporter