

1 THURSDAY, FEBRUARY 3RD, 2000

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

3 (Jury not present in courtroom).

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

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

11 (The court took up an unrelated
12 matter).

13 THE COURT: You could technically call your case.

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

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

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

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

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

1 and possibly an hour and a half.

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

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

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

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

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

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

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

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

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

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

5 THE CLERK: Oh, I have it right here.

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

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

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

19 MR. URICK: Well, he was in the nursing area from
20 8:00 till 1:00. Sometime after 8:00, shortly after 8:00,
21 she actually took him into her room, and met with him
22 individually for somewhere between an hour and an hour and
23 a half. He stayed in the nursing area till 1:00 o'clock,
24 when he finally left school for the day. But she was alone
25 with him, seeing him in her office for at least an hour,

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

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

16 THE COURT: Okay.

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

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

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

22 THE COURT: Okay.

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

<p style="text-align: right;">Page 5</p> <p>1 focus regarding what the court raised both at the hearing 2 and in its opinion concerned as to the, you know, not the 3 status of the witness, but the training and experience of 4 the witness. The court went into fairly great detail 5 regarding from the DSM the existence of catatonia as a 6 medical disorder with specific features, and a specific, 7 according to the DSM and according to practical experience, 8 a specific assessment that was required in order to 9 diagnose it.</p> <p>10 Of course, the difficulty here is that the faking 11 it opinion is really an opinion that there wasn't 12 catatonia, and there is no evidence at all from which to 13 infer that anyone made a diagnosis of catatonia that 14 existed prior to this witness, who would then be issuing a 15 negative opinion.</p> <p>16 My recollection of the court's leaving it open 17 would be to leave it open for additional evidence to 18 establish that this witness would be qualified, not 19 necessarily by licensing but, you know, I don't think that 20 it's enough to say that, well, somebody has familiarity 21 with the DSM. Anybody could have familiarity with the DSM 22 by reading it. That doesn't make them expert enough to 23 make a diagnosis, much less to make a negative diagnosis as 24 to a specific mental disorder, which would be catatonia.</p> <p>25 And then my recollection again is that the</p>	<p style="text-align: right;">Page 7</p> <p>1 in a forensic setting.</p> <p>2 And nothing that has been presented, I believe, 3 even comes near to allowing the State to re-open the matter 4 based on what they're saying their witness says. The notes 5 of the conversation between M's [REDACTED] and Mr. Urlick, taking 6 place at 11:00 p.m. sort of list five out of the six 7 criteria listed in the DSM, and just saying whether or not, 8 in regard to catatonia, whether or not he displayed 9 anything relative to any of those five. And then a list of 10 what she calls inappropriate affect, and that was to 11 include that he started talking, that he started crying, 12 that he started making eye contact, that he started moving, 13 and he started questioning, in a wrong way.</p> <p>14 THE COURT: M's Gutierrez, what I suggest -- 15 MS. GUTIERREZ: So, in sum, I'm saying, I guess, 16 I'm objecting to even opening up the door on the issues 17 that the court decided already. This motion left open the 18 possibility that the State could revisit it if, in fact, 19 they were prepared to answer the court's questions as 20 raised in the court's memoranda outlining the questions 21 that the court had in regard to the ability of a person to 22 diagnose either catatonia or the absence thereof, or 23 malingering or the absence thereof. And that nothing so 24 far that is in the record begins to address the only avenue 25 that the court left open to revisit it.</p>
<p style="text-align: right;">Page 6</p> <p>1 limitation on the State to revisit this issue was to 2 address those specific concerns about the ability to 3 diagnose under all circumstances. And so far what I've 4 read is that M's Watts' CV indicates nothing more other 5 than what we've been told, that she holds a BS in nursing, 6 what she did. It relates specifically in each case, each 7 placement, that she worked in school-based clinics and at 8 the various hospitals. Nothing with any specific, as 9 someone who diagnosed mental illnesses accepted under any 10 format, following any format, accepted for any purpose, and 11 certainly does not articulate any reason based under that.</p> <p>12 And specifically in regard to catatonia and as to 13 malingering, which I will note, and in the court's opinion 14 to my recollection was noted, was also a listed, while not 15 a mental disorder, but was listed in the DSM, described as 16 a specific medical forensic condition that relates to the 17 forensic use of psychiatric disorders, i.e., faking 18 symptoms of a disease connected with the forensic 19 assessment. And such forensic assessments, of course, 20 would be limited to issues of competency or criminal 21 responsibility, perhaps custody, related issues where the 22 defendant has put his mental state at issue.</p> <p>23 And malingering is listed as an affect designed 24 to mimic the existence of recognized disorders that might 25 be, that would be relevant to any of those considerations</p>	<p style="text-align: right;">Page 8</p> <p>1 So, I would move -- I'm not sure how to phrase 2 it. I guess their motion is to re-open the motion in 3 limine, which they already lost, and which the court 4 granted. So, I guess my motion is to not allow for the re- 5 opening --</p> <p>6 THE COURT: Of the motion. 7 MS. GUTIERREZ: -- of the motion in limine, I 8 guess.</p> <p>9 THE COURT: The consideration of the motion in 10 limine. First of all, I will tell you that the court's 11 concern and direction was fueled by your motion in limine. 12 You specifically said malingering, faking catatonic state 13 in your motion.</p> <p>14 MS. GUTIERREZ: Uh-huh. 15 THE COURT: And you got that from the summary 16 that the State provided of what the witness would say, and 17 they used --</p> <p>18 MS. GUTIERREZ: Well, no, Judge. What I got that 19 from was the witness' testimony, which I objected to at the 20 first trial.</p> <p>21 THE COURT: Well, I apologize. 22 MS. GUTIERREZ: There was no other information 23 ever provided on this witness.</p> <p>24 THE COURT: I apologize. There was attached to 25 your motion the State's amended discovery, where they</p>

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

1 diagnosing individuals under the Maryland Rules 5-703 and
 2 5-704, her testimony must be limited to those personal
 3 observations of the defendant.
 4 And I used 5-703 and 5-704 because the abundance
 5 of case law provides that type of qualification that would
 6 enable a person to make the type of opinions. And it also
 7 talked about the gravity of why those types of opinions are
 8 such that certain qualifications must be present with an
 9 individual who is offering an opinion.
 10 And so to the extent that that motion did allow,
 11 I mean that order did allow for the court to be able to
 12 hear or revisit this issue, I do not believe that it is
 13 contrary to my order to open the further inquiry at this
 14 time, and allow the State to call M's Watts for the
 15 purposes of satisfying the court that she does in some way
 16 hold the required expertise that the court is looking for.
 17 I first would indicate that I'd like to have that
 18 voir dire done. I then will, at the conclusion of which,
 19 indicate to you whether I think she is qualified to render
 20 the opinion that the State seeks to have admitted, and then
 21 I'll indicate to you whether or not she should, in fact, be
 22 permitted to testify, because at that point there will be
 23 another issue, and that's the issue that we raised at the
 24 end of the day. Does the prejudicial effect, and I'm
 25 assuming that it's going to be prejudicial, what she is

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

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

1 given what's been raised, and I guess these are my concerns
2 and I will tell you where we're coming from. I am not sure
3 and my questions may be answered by the direct of this
4 witness, but they may not. Because the issue of whether or
5 not she was qualified to make such an assessment, which
6 involves making an assessment of a recognized, in both
7 medical, for medical purposes and for forensic purposes,
8 the diagnoses of recognized mental disorders including
9 catatonia, and an assessment of, while it may not be a --
10 it is not a medical disorder, but it is a recognized
11 medical mental state, i.e., malingering. That is discussed
12 in the DSM, that whether or not there are qualifications
13 necessary to make that. Judge, my thinking and our
14 argument is going to be, is that very question is and
15 should be the subject of the ability of the opposer of a
16 person trying to make that, of expert testimony in and of
17 itself. And I've contacted experts to be available.
18 There's no way until after I hear her that I can
19 go down that path and arrange to have an expert. So, I
20 will tell the court I may well not be prepared to go
21 forward even after her direct voir dire or even after my
22 voir dire, even on the first issue of whether or not she's
23 qualified before we get to relevancy issues or prejudicial
24 impact.
25 THE COURT: Which is why, M's Gutierrez, I

1 indicated yesterday that they should have another witness
2 available.
3 MS. GUTIERREZ: Okay. I just wanted to --
4 THE COURT: Even if I say that she can testify, I
5 would allow you to have an expert witness present in the
6 courtroom to listen to her testimony, because I would think
7 if you would choose --
8 MS. GUTIERREZ: I haven't even thought that far,
9 Judge. I'm suggesting that I have an expert --
10 THE COURT: Well, I would think that you would
11 have the opportunity to have that expert present in the
12 courtroom when his expert testifies, so that if you chose
13 in rebuttal to offer another witness to combat, because
14 then you will have the battle of the experts, as to whether
15 he was faking or as to whether he was not faking. And you
16 would be entitled to have that expert sit in the courtroom,
17 observe the testimony, hear it, and if you chose, call that
18 expert as an witness in the defense case, if you chose to
19 do so. So, which is why I said, have another witness
20 available because if it turns out that the expert witness
21 is, if I determine that she can testify, then I would
22 afford you that opportunity to have someone present.
23 MS. GUTIERREZ: I appreciate that, Judge. I just
24 wanted to make sure that we were on the same page.
25 Secondly, I would renew the motion to deny any attempt

1 to re-open this motion in limine on grounds of due process
2 and fundamental fairness.
3 The history of this case has been myriad and
4 complex, but from the defense point of view it has been
5 non-stop surprises at the last minute, non-stop withholding
6 of evidence thereby chaffing to the very core the notion of
7 a defendant's due process right to be on notice, to know
8 what the field is; what's going to come against him; where
9 he needs to marshal his resources, spend his defense team's
10 energy and his money to best prepare for trial. As I said,
11 I did and I don't, I have a copy of my motion in limine,
12 which I know was filed. I believe it was filed the first
13 week of January. It was filed subsequent to the first
14 trial, and the only notice we had in the first trial was, I
15 believe it's less than a paragraph regarding M's [REDACTED] that
16 I attached that to the initial motion and then her
17 testimony.
18 We had a hearing on this. We had a hearing, I
19 believe, on the 14th of January. It is now the -- well,
20 yesterday when this was first brought up at 4:30 in the
21 afternoon with no prior notice to us, no attempt to, for
22 instance, provide her CV. This is a case that is the only
23 time in my experience where witnesses have refused to speak
24 to me or my investigator, naming by name prosecutors and
25 detectives who have told them not to speak to us, no prior

1 disclosures of anything, any circumstances of this
2 interview, and as I said, I don't have the court's order.
3 I don't remember exactly when it came out, but it certainly
4 came out. And they were on notice that they lost this
5 issue, but that maybe the court would hear other evidence
6 --
7 THE COURT: Did M's [REDACTED] testify in the first
8 trial?
9 MS. GUTIERREZ: M's [REDACTED], yes.
10 THE COURT: Yes. Okay.
11 MS. GUTIERREZ: Yes, and she testified
12 essentially to that, you know, that he was pretending to be
13 something and he wasn't; that it was faked.
14 THE COURT: And you had an opportunity to cross
15 her at that time?
16 MS. GUTIERREZ: Well, I did cross her, yes.
17 THE COURT: Okay.
18 MS. GUTIERREZ: Yes.
19 THE COURT: I just wanted to know. I didn't know
20 what the circumstances were.
21 MS. GUTIERREZ: Yes, and that's what I based the
22 motion in limine on. I don't think that --
23 THE COURT: In expectation that she would be
24 called once again?
25 MS. GUTIERREZ: For the same thing, and I

1 thought it was wrong then, but it came in and I crossed
2 her, you know. And on this argument, Judge, and I make
3 this in all seriousness. It is not a simple matter --
4 THE COURT: I take all of your motions seriously,
5 M's Gutierrez.
6 MS. GUTIERREZ: It is not a simple matter to be
7 in a complex trial where a young man's life is on the line,
8 and at 4:30, in the middle of the trial, they have new
9 information. Judge, I'm still reeling from the fact that
10 I've already been through one trial and four separate
11 hearings about statements from my client, and I get them on
12 the eve of a second trial. But to be in the middle of
13 trial, and be forced to spend my energy, his money, my law
14 clerk's time, all of our energy to figure out is something
15 bad, that we already won the issue of, where they have
16 already had an opportunity to challenge it and they did
17 nothing before trial till now, in the -- isn't this the
18 third week of trial, at 4:30 on an afternoon say, oh, by
19 the way, we're still going to try to get in M's Watts'
20 testimony. Yes, we've had at least three weeks to deal
21 with it. We didn't.
22 We didn't file a motion to reconsider. We didn't
23 bring to your attention before we even raised it the CV of
24 a person they're trying to call as an expert. Judge,
25 that's not the way the rules were designed. That's not the

1 notion of a defendant, who is supposed to be able to start
2 trial knowing what he faces. There shouldn't be surprises
3 unless they're lawful. And, Judge, I suggest that most of
4 the law says no surprises should be lawful. The prosecutor
5 has a duty to do justice. That means to do due process.
6 So, on due process grounds, I would move to strike any
7 attempt to bring a new surprise in here in the middle of
8 the trial.
9 The only reason they want her is to create an
10 inference that is bad in their view, to be able to argue to
11 the jury at a date subsequent to her disappearance, at a
12 time before he was charged or mentioned with a crime, that
13 he pretended to be upset. Although their motive is that he
14 was so upset about this woman that he loved, that he killed
15 her, but that he wasn't upset, and he was just pretending
16 to be upset, and therefore he was malingering. Therefore,
17 it's bad. You know, unless it wasn't bad in their view,
18 they wouldn't be attempting to do it now. Unless it was to
19 their advantage to try to bring in something as a surprise,
20 they wouldn't have hid it. If it was that important, they
21 had all the time in the world, consistent with due process,
22 to try to convince the court that you were wrong, or that
23 they had other things that they could bring that could
24 challenge your ruling.
25 They chose not to do so. And they should not be

1 allowed to change their minds in the middle of the game for
2 the life of Adnan Syed.
3 THE COURT: Well, Counsel, I appreciate your
4 remarks, and I will at a later time also incorporate that
5 in if I reach that point on the issue of whether or not the
6 statement is unduly prejudicial, and therefore the
7 probative value is sort of dissipated by its prejudicial
8 effect, that it prejudices the defendant in such a way that
9 it violates his due process rights, but also at this
10 particular stage has presented really an unclear way for
11 you to present your defense.
12 At this time, though, I would like to hear M's
13 [REDACTED], if you would call her as the witness, and have her
14 step in. And I would note to you, M's Gutierrez, with
15 regard to your most recent argument and, M's Murphy, you
16 might want to note this for Mr. Urick since he's away from
17 his desk, Maryland Rule 4-263(b)(4).
18 MS. MURPHY: 263(b)(4)?
19 THE COURT: Right. Reports and statements of
20 experts to be produced before trial, which includes the sum
21 and substance of any expert witness testimony, and also we
22 could talk about that at some later time in any event.
23 I need you to raise your right hand, please.
24 Listen to Mr. White as he provides you the oath.
25 SHARON [REDACTED]

1 a witness produced on call of the State, after having been
2 first duly sworn was examined and testified as follows:
3 THE CLERK: You may be seated. Please keep your
4 voice up. State your name and your business address for
5 the record.
6 THE WITNESS: My name is Sharon [REDACTED] My
7 address is [REDACTED], Ellicott City, Maryland 21042.
8 VOIR DIRE EXAMINATION
9 BY MR. URICK:
10 Q Good morning, M's [REDACTED]
11 A Good morning.
12 Q Would it be an accurate statement of your
13 expertise to describe it as in the identification and
14 symptomatology of medical deviation or medical abnormality?
15 MS. GUTIERREZ: Objection to the question. There
16 has been no expertise established.
17 THE COURT: Sustained. The purposes of your
18 being called at this time, M's [REDACTED], is to familiarize
19 this court with your background and you expertise. Both
20 the State, and the defense and the court may ask you some
21 questions because we're trying to get at, one, what your
22 background and expertise entails and, two, as it
23 specifically relates to the defendant, Mr. Syed what, if
24 anything, you did in making any evaluation as to a mental
25 state he may or may not have possessed at a given time, on

1 a given date.
2 So, as we ask you the questions, you notice that
3 the jury is not here. It is for the court to decide with
4 regard to a motion that's been filed, and that's why we're
5 asking.

6 THE WITNESS: Thank you.

7 THE COURT: So, if you would note that the
8 objections or whatever we're trying to do here, is for me
9 at the bottom line. And if counsel would then, with my
10 clarification, focus your questions in that fashion, I
11 would appreciate it.

12 BY MR. URICK:

13 Q Let me first ask you about your education. What
14 is your educational background?

15 A I have a bachelor of science degree in nursing
16 from the University of Maryland at Baltimore in 1974, and
17 then I have a master's in education from Loyola College in
18 1993. I'm a registered, professional nurse in the State of
19 Maryland, and also a certified guidance counselor of
20 elementary, middle and high school in the State of
21 Maryland.

22 Q Now, going back to your bachelor's degree from
23 the University of Maryland, what program or what training
24 did that consist of or require.

25 A Well, we had to spend two years in academia, and

1 then we spent two years dividing areas of experience
2 according to the system. So, I would go into an OB/GYN
3 area for two months. I would go into pediatrics for two or
4 three months. I would go into Public Health for two or
5 three months. I would go into psychiatric nursing for two
6 or three months, and then we would rotate through all the
7 systems until we were competent to pass State Boards and go
8 be registered.

9 Q And based on that training, what professional
10 title were you required to use?

11 THE COURT: One moment. M's Connolly, will you
12 step in the hallway and see what that State's Attorney
13 wants, please. Thank you. You may continue.

14 BY MR. URICK:

15 Q Based on that degree, what professional title
16 were you entitled to use?

17 A As I've passed my State Boards in Maryland, I was
18 a Professional Registered Nurse.

19 Q And what does that mean?

20 A That means I am allowed in the State of Maryland
21 to do nursing assessments and nursing diagnoses, do nursing
22 treatments, do nursing evaluations and do referral.

23 Q Will you give a brief explanation for each of
24 those terms?

25 A Okay. A nursing assessment is taking a client,

1 or they used to be called patients, and doing an evaluation
2 according to the systems. We do an evaluation for their
3 mental health. You do an evaluation for their respiratory
4 health, cardiovascular health, orthopedic health, and go
5 down the systems in the hope of finding a well client, but
6 if you find a deviation in the normal behavior of the
7 patterns, then you note the abnormality and continue from
8 there and focus on that. That's the assessment.

9 The referral process, if I would find a well
10 client, nothing has to be done past that point. A
11 professional registered nurse in the State of Maryland is
12 allowed to do a nursing assessment and continue the process
13 no further. If I find a deviation in the wellness of a
14 client, then it's my legal responsibility and my ethical
15 responsibility to refer them on to someone with more
16 training. So, if I found someone with a suspected
17 fracture, I would have to refer them to an orthopedic. If
18 I found someone that was possibly pregnant, I would send
19 them to a gynecologist or an obstetrician. If I found
20 someone that was depressed or suicidal, I would send them
21 immediately for psychiatric intervention.

22 So, I would do my assessment, and depending on
23 what I found in my assessment, then I would do the referral
24 process.

25 Q And what is a nursing treatment?

1 A A nursing treatment is a scope of practice that's
2 very defined in the State of Maryland, that allows me to do
3 something to improve the wellness of a client. I can do a
4 pustural drainage. I can do endotracheal suctioning. I
5 can start IV's. I can do anything that is a medical
6 nursing function that is very, very specifically described
7 by the State Board of Maryland Nursing. I can do
8 catheterizations, anything medical. I cannot do surgery.
9 I cannot put in stitches, but I -- it's a big question to
10 answer. Nurses can do many things. If you would be more
11 specific, maybe I could address that. Maybe I don't know
12 what you're asking.

13 Q I was just asking for a, you know, description of
14 what that meant at this time.

15 THE COURT: Can I ask just for a clarification,
16 and these things that you're describing that you do, are
17 you doing them at the direction of a physician or are you
18 doing them sua sponte, on your own? That is, when you say
19 you put in a catheter or you put in an IV, are you doing so
20 because a physician has made a diagnosis and said to you,
21 put in a catheter, put in an IV, or do you make an
22 assessment and then put the IV in yourself without the
23 necessity of having a physician make a direction or join or
24 concur with your decision?

25 THE WITNESS: I understand that question. Thank

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

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

13 THE WITNESS: No.

14 THE COURT: -- in advance?

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

1 between a professional and a non-professional nurse.

2 BY MR. URICK:

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

5 A Yes. I was certified in 1974.

6 Q What does that mean, to be certified?

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

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

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

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

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

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

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

7 (Brief pause).

8 THE COURT: You may go ahead.

9 BY MR. URICK:

10 Q Before I go on, let me backtrack for a minute.

11 You had mentioned nursing assessments, nursing treatments.
12 What is a nursing diagnosis?

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

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

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

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

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

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

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

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

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

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

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

1 Howard County and getting helicopters, and flying sick
2 children in and out.
3 And then after 15 years of nursing, I went with
4 the Board of Education for a lot of reasons, but --
5 Q Now, during that period, prior to going with the
6 Board of Education, were you working in a clinical setting?
7 A Well, they called it the Pediatric Out-Patient
8 Clinic at St. Agnes. It was a clinic. It was dealing with
9 emergencies, though, depending on the shift you worked, and
10 I would work the 3:30 to midnight shift or the midnight to
11 8:00 a.m. shift. And that dealt with emergencies, where in
12 the daytime hours, it was just a clinic. So, the answer is
13 yes, it was a clinic.
14 Q And during that time, if you can estimate, how
15 much actual experience would you have had making clinical
16 observations of clients or patients?
17 A Again, Mr. Urick, that's what a nurse does.
18 Every patient that I took upon as my charge, I did an
19 evaluation on that client, and then additionally in the
20 emergency room setting, because of the nature of the beast,
21 I would do an assessment on the primary care provider or
22 the parent that came in. If the child was brought in as a
23 DOA, then, of course, I'm not doing the nursing on the
24 child. I'm doing the nursing on the parent, because I'm
25 dealing with somebody that --

1 Q About how many times would you have run into that
2 particular situation?
3 A Well, it was an emergency room, so it was always
4 a crisis. It was always a crisis going on. How many died?
5 When I worked at St. Agnes, less than ten percent. When I
6 went to Howard County, and was the coordinator of the
7 Maternal Child Health Development Program, where they
8 brought me in because so many babies were dying in the
9 delivery room, there had been seven or nine deaths in the
10 year before I came to work. They had no resuscitation
11 model or no way to transport these sick babies. So, I was
12 dealing with that on a monthly basis. Or when a baby died,
13 then I would do grief counseling with the parents, and
14 finally established the program where they would transport
15 babies out to University of Maryland or to St. Agnes, and
16 then I left Howard County and went back to the Emergency
17 Room.
18 THE COURT: M's [REDACTED], the problem is, is that
19 when you say, I did it ten percent, ten percent of a
20 thousand, ten percent of a million, ten percent of --
21 THE WITNESS: I'm sorry.
22 THE COURT: -- ten, we have no way of knowing how
23 many people. When you said that there were more babies
24 that died, and then less babies, because you changed the
25 systems at the hospital, more or less of what? How many

1 families did you involve in or were you part of, you know,
2 bereavement or grief counseling? How many? How many means
3 I need a number. If I've done it ten percent of ten, you
4 can see how I might not have done it as many as ten percent
5 of a thousand. So --
6 THE WITNESS: I see, the number. In a year's
7 time, starting in '74 when I was in Neonatal Intensive Care
8 and babies died frequently, probably 30 a year, in '74 and
9 '75, 30, 40.
10 THE COURT: A year, and how many years were you
11 there?
12 THE WITNESS: Well, that was two years there.
13 And then the emergency room for ten years, approximately
14 maybe 50 a year, so 500.
15 THE COURT: Okay.
16 BY MR. URICK:
17 Q And over that time, how many total patients would
18 you have been seeing every year?
19 THE COURT: Approximately.
20 A 52 weeks -- not including the Board of Education,
21 is that correct? You're asking in the hospital?
22 Q Yes.
23 A I would venture to say if there are 52 weeks in a
24 year, and I worked 50 weeks, 3000.
25 Q Per year? Thank you.

1 A Mr. Urick, that's a long time ago. I didn't
2 track numbers. I mean, you're asking me for a good guess.
3 Q Now, how did you become involved with the
4 Baltimore County School system?
5 A I had a friend in the county school system, in a
6 different county, but I was very unhappy with what was
7 going on in the school system, and I was working at St.
8 Agnes, and I thought that I would have an impact on
9 children in a pro-active setting versus a setting where I
10 was always dealing with something happening after the fact,
11 after a crisis. So, I thought I could be a pro-active
12 person, and I applied with the Baltimore County Board of
13 Education, and they offered me a lucrative position as a --
14 I'm sorry. Go ahead.
15 Q Please finish your question, I mean, answer.
16 A In retrospect, I wasn't really -- in retrospect I
17 can see why I was hired now. I have a lot of pediatric
18 experience and emergency room experience, but I asked for a
19 salary when I went with the Board of Education that was
20 first denied, and that was in April or May, and then the
21 day before the school started, at Kenwood High School, I
22 was called by the head of the Health Services in Baltimore
23 County and offered the salary I commanded and began the
24 next day, and found a clientele of very, very needy kids.
25 And then was the one responsible the following year of

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

3 Q How did you get that started?

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

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

17 A I was the manager of the school based clinic.

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

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

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

4 Q And who supervised these professionals in your
5 clinic?

6 A I did. I was the manager.

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

9 A Oh, I know, because we have to keep statistics.
10 I started out seeing well over 10,000. Last year I saw
11 13,000. Where I am this year, I'm already up to almost
12 9,000, and it's only January. We have to turn in monthly
13 reports. So, I saw anywhere -- the smallest number would
14 probably be 10,000 and the greatest number would be 15 in a
15 ten-month period, a six-hour day.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 THE WITNESS: Did that clear it?

2 THE COURT: Yes, it did. Thank you.

3 BY MR. URICK:

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

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

14 Q What is the Diagnostic Statistical Manual?

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

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

23 A Yes, it does.

24 Q Would you please read it for the court?

25 MS. GUTIERREZ: Would you identify specifically

1 where she's reading from?

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

4 BY MR. URICK:

5 Q Is that the most recent edition?

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

13 Q What is the purpose of those DSM's?

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

1 Q Are you legally entitled or legally allowed to

2 make an assessment under the DSM and then bill according to
3 the schedules?

4 A Yes, and --

5 MS. GUTIERREZ: Objection.

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

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

17 BY MR. URICK:

18 Q What is catatonia?

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

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

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

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

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

24 A Always.

25 Q What is schizophrenic catatonia?

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

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

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

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

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

25 A Over my 25 years of nursing?

1 Q Yes.

2 A A half dozen.

3 Q Now, what is situational catatonia?

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

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

16 MR. URICK: No.

17 MS. GUTIERREZ: No.

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

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

25 THE COURT: We're going to stop.

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

2 THE COURT: We're going to stop.

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

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

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

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

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

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

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

25 Any other preliminary things before I go?

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<p>1 MS. GUTIERREZ: No, Your Honor.</p> <p>2 MR. URICK: No, I don't think so, Your Honor.</p> <p>3 THE COURT: All right. Just so you know, I did</p> <p>4 get a letter this morning from Alternate Number 4, who said</p> <p>5 --</p> <p>6 MS. GUTIERREZ: From 4?</p> <p>7 THE COURT: Alternate 4, who says, "Yesterday I</p> <p>8 asked myself if the surname of a potential witness was</p> <p>9 common or not. I know superficially, but friendly, a Tony</p> <p>10 Wilds. I know of no relation to Jay Wilds," and it's</p> <p>11 spelled two different ways, W-i-l-d-s, and W-i-l-d-e-s.</p> <p>12 "But it occurred to me that the name might not be common."</p> <p>13 So, I guess what she's saying or he's saying is</p> <p>14 that she's trying to determine whether Jay Wilds is related</p> <p>15 to a Tony Wilds, who she happens to know.</p> <p>16 MS. GUTIERREZ: That he is Alternate Number 4?</p> <p>17 THE COURT: Number 4, Alternate Number 4. It</p> <p>18 says Alternate Number 4 on this letter. I'm going to put</p> <p>19 both of the juror notes, the one from yesterday about</p> <p>20 Number 6 and --</p> <p>21 MS. GUTIERREZ: In light of that question, Judge,</p> <p>22 I would make a request that we determine --</p> <p>23 THE COURT: We will have to voir dire.</p> <p>24 MS. GUTIERREZ: That the State's Attorney --</p> <p>25 well, so that we don't ruin the juror if we don't have to,</p>	<p>1 THE COURT: Please be seated. Yes, you may</p> <p>2 return to the witness stand.</p> <p>3 (The witness, SHARON █████ resumed the</p> <p>4 witness stand).</p> <p>5 MS. GUTIERREZ: Judge, I apologize for being</p> <p>6 late, but I did call.</p> <p>7 THE COURT: It's quite all right. And I called,</p> <p>8 and that's all I needed, was a head's up.</p> <p>9 MS. GUTIERREZ: Thank you, Judge.</p> <p>10 THE COURT: I want to remind you, M's █████, that</p> <p>11 you are still under oath.</p> <p>12 MS. GUTIERREZ: Judge before we continue with the</p> <p>13 testimony, I would at this time raise what I believe to be</p> <p>14 my client's privilege under 9-109.1, in light of the fact</p> <p>15 that the State is attempting to qualify this witness as an</p> <p>16 expert, although she hasn't defined herself as such, as</p> <p>17 someone treating --</p> <p>18 THE COURT: I'm sorry. 9 dash?</p> <p>19 MS. GUTIERREZ: I think it's 9-109.1 or 9.10.</p> <p>20 THE COURT: Of the Maryland Rules?</p> <p>21 MS. GUTIERREZ: No.</p> <p>22 THE COURT: Or Courts and Judicial Proceedings</p> <p>23 or --</p> <p>24 MS. GUTIERREZ: It would be in Courts and</p> <p>25 Judicial Proceedings, and it is, I believe it's only been</p>
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<p>1 it's fairly easy to determine by the State asking its</p> <p>2 witness, or determining does he have a family member,</p> <p>3 brother, father, whatever, anybody named Tony Wilds,</p> <p>4 because it just may --</p> <p>5 THE COURT: Yes, and that's actually what my</p> <p>6 suggestion was going to be.</p> <p>7 MS. GUTIERREZ: Thank you, Judge.</p> <p>8 MR. URICK: I will do my best to obtain that</p> <p>9 information.</p> <p>10 THE COURT: Would you do that, and then if that</p> <p>11 doesn't work, we'll do it the other way around and ask the</p> <p>12 witness. We don't know if the person is related, but if</p> <p>13 they are related, would that in any way interfere with your</p> <p>14 ability to be fair and impartial. And, as I said, it's</p> <p>15 Alternate Number 4, so it's not like it's a member of the</p> <p>16 panel.</p> <p>17 MS. GUTIERREZ: Right.</p> <p>18 THE COURT: All right. M's Watts, you're excused</p> <p>19 to go to lunch, and ask that you come back at 2:00 o'clock.</p> <p>20 The court stands in recess until 2:00 o'clock.</p> <p>21 THE CLERK: All rise.</p> <p>22 (LUNCHEON RECESS).</p> <p>23 <u>AFTERNOON SESSION</u></p> <p>24 (Jury not present upon resuming).</p> <p>25 THE CLERK: All rise.</p>	<p>1 enacted -- I only have 9-109. It's only been enacted maybe</p> <p>2 two years. But it now recognizes in the same manner that</p> <p>3 it recognizes, you know, privileges between psychologists</p> <p>4 and defines patients, it now recognizes privileges in</p> <p>5 regard to mental health, other mental health professionals</p> <p>6 and nurses, who are acting in that capacity. That's</p> <p>7 exactly why I was on the phone with my expert.</p> <p>8 Based on the testimony that we've heard, he was,</p> <p>9 and I believe that the basis of the privilege was the</p> <p>10 recognition of an existent common law privilege for medical</p> <p>11 care providers, that I believe should include nurses, who</p> <p>12 are rendering medical treatment.</p> <p>13 She has defined that she has seen him. He was</p> <p>14 brought to her attention in regard to what other medical</p> <p>15 personnel described to her as symptoms needing her</p> <p>16 immediate attention. She was the school nurse. She was in</p> <p>17 charge that day. Whatever it is she did that day was in</p> <p>18 that capacity and in no other. And, therefore, her</p> <p>19 relationship with him absent circumstances where he,</p> <p>20 himself, has put his mental or physical condition at issue</p> <p>21 in this case, which he has not, there exists a privilege</p> <p>22 based on her testimony. And I would assert that privilege</p> <p>23 on Adnan Syed's behalf now to prevent any relinquishment of</p> <p>24 that privilege, any violation, any testimony regarding</p> <p>25 anything that she learned from him, from his words or his</p>

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

6 THE COURT: I'll hear from the State, and I have
7 in front of me Courts and Judicial Proceedings Article 9-
8 109.1, which is communications between client and
9 psychiatric mental health nurse specialist. And it defines
10 psychiatric mental health nurse specialist as a registered
11 nurse, who has a master's degree in psychiatric mental
12 health nursing or has a bachelor's degree in nursing and a
13 master's degree in a mental health field, or is certified
14 as a clinical specialist in psychiatric and mental health
15 nursing by the American Nurses Association or by a body
16 approved by the Board of Nursing.

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

23 So, I'll hear from the State.

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

25 THE COURT: Certainly. And at this time, since

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

3 (The witness was excused and left the
4 courtroom).

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

12 (Brief pause).

13 THE COURT: It's 109.1, right?

14 MS. GUTIERREZ: Right.

15 (Brief pause).

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

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

20 THE COURT: Certainly.

21 (Brief pause).

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

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

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

6 What you're seeing there would be --

7 THE COURT: What about as a professional
8 counselor?

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

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

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

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

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

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

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

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

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

11 MS. MURPHY: Can we see that, please?

12 MR. URICK: I've got a copy.

13 MS. GUTIERREZ: You faxed that to me.

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

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

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

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

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

<p style="text-align: right;">Page 57</p> <p>1 Health Gen. I do actually need Health Occupations. Sorry.</p> <p>2 I did say Health Gen. This is 16. 17 will be -- the</p> <p>3 Health Occupations Article 17-101 defines certified</p> <p>4 professional counselor, and it has the certificate</p> <p>5 definition basically outlining the definition as someone</p> <p>6 who receives a certificate, which M's Watts clearly has.</p> <p>7 Counseling means to assist in any family, individual or</p> <p>8 group counseling, to understand intra-personal and intra-</p> <p>9 professional problems, to define goals, decisions, plan a</p> <p>10 course reflecting needs, interests, abilities, personal,</p> <p>11 social and emotional educational and vocational</p> <p>12 development, encouraging family therapy. It includes the</p> <p>13 certificate that she talked about she had for drug and</p> <p>14 alcohol counseling.</p> <p>15 It appears that she, based on what I heard just</p> <p>16 is direct, she falls squarely under the Health Occupations</p> <p>17 Article where her position of professional counselor is</p> <p>18 defined. And it would appear also that the definition</p> <p>19 section has not changed very much, although there is a</p> <p>20 supplement section.</p> <p>21 Give this to the State's Attorney, and share that</p> <p>22 also with M's Gutierrez, who may have already seen it. But</p> <p>23 it appears that she falls squarely under this section.</p> <p>24 What it does is offer to her in that particular profession</p> <p>25 a requirement that she be licensed or receive a</p>	<p style="text-align: right;">Page 59</p> <p>1 certification by the Board of Ed.</p> <p>2 THE COURT: There's an exemption for certain</p> <p>3 individuals.</p> <p>4 MS. GUTIERREZ: Yes.</p> <p>5 THE COURT: Why don't we inquire.</p> <p>6 (The witness, SHARON [REDACTED], resumed the</p> <p>7 witness stand).</p> <p>8 THE COURT: M's [REDACTED], the court has a couple of</p> <p>9 questions for you, and when I'm done, if counsel needs to</p> <p>10 ask additional questions, I encourage you to feel free to</p> <p>11 do so.</p> <p>12 Under your description of your profession, are</p> <p>13 you classified as a professional counselor?</p> <p>14 THE WITNESS: I am a professional counselor. I'm</p> <p>15 not sitting in that position at this time. I have that</p> <p>16 classification.</p> <p>17 THE COURT: You do have that classification</p> <p>18 through the State of Maryland?</p> <p>19 THE WITNESS: Through the State. It should be in</p> <p>20 with my resume.</p> <p>21 THE COURT: You are licensed by --</p> <p>22 THE WITNESS: I'm certified by.</p> <p>23 THE COURT: You're certified by the State Board</p> <p>24 of Examiners of Professional Counselors?</p> <p>25 THE WITNESS: Yes, I am.</p>
<p style="text-align: right;">Page 58</p> <p>1 certificate. And in doing so, it entitles her to some</p> <p>2 privilege as would be extended to a psychiatrist or</p> <p>3 psychologist.</p> <p>4 MR. URICK: However, I would point the court to</p> <p>5 Subsection (d). Board means the State Board of Examiners</p> <p>6 of Professional Counselors. I do not believe that she's</p> <p>7 certified by that Board. She's certified by the Department</p> <p>8 of Education, which is a different agency. And under this</p> <p>9 certificate means a certificate issued by the Board, that</p> <p>10 is the State Board of Examiners of Professional Counselors.</p> <p>11 This is issued by the State of Maryland, Department of</p> <p>12 Education. She's a certified guidance counselor in the</p> <p>13 educational system. It's a different board that issued</p> <p>14 this.</p> <p>15 THE COURT: Do you know whether she holds a</p> <p>16 certificate by the State Board of Examiners of Professional</p> <p>17 Counselors?</p> <p>18 MR. URICK: If I could step in the hall, I could</p> <p>19 find out.</p> <p>20 THE COURT: Why don't we have her step in?</p> <p>21 MS. GUTIERREZ: Judge, I would also urge that</p> <p>22 under this title and under the reference under the</p> <p>23 privileges, that this witness also falls into a counselor.</p> <p>24 She is not required to be licensed or certified as that</p> <p>25 last catch-all given what she does and given her</p>	<p style="text-align: right;">Page 60</p> <p>1 THE COURT: As well as the Maryland State</p> <p>2 Department of Education?</p> <p>3 THE WITNESS: That's correct.</p> <p>4 THE COURT: Two different certificates or</p> <p>5 licensing, or one and the same, or do you know?</p> <p>6 THE WITNESS: I know that what I handed today is</p> <p>7 my certification with the State of Maryland.</p> <p>8 THE COURT: Okay. And do you know if you hold</p> <p>9 any other certification?</p> <p>10 THE WITNESS: With Guidance and Counseling? No,</p> <p>11 not with Guidance and Counseling.</p> <p>12 THE COURT: Are you familiar with any privilege</p> <p>13 that you're entitled to assert in your role as a counselor?</p> <p>14 THE WITNESS: I do not have any privilege, to my</p> <p>15 knowledge, as a counselor or as a professional registered</p> <p>16 nurse. I'm not --</p> <p>17 THE COURT: Privileged communication.</p> <p>18 THE WITNESS: Yes.</p> <p>19 THE COURT: I mean, if a young person were to</p> <p>20 tell you something, do you have a privilege that you can</p> <p>21 assert and not disclose that information?</p> <p>22 THE WITNESS: The only privilege I'm allowed by</p> <p>23 Maryland State law has to deal with child abuse, has to</p> <p>24 deal with someone going to hurt themselves or if they're</p> <p>25 going to hurt someone else.</p>

<p style="text-align: right;">Page 61</p> <p>1 THE COURT: It's your understanding that you have</p> <p>2 some privilege that you can assert in child abuse</p> <p>3 situations?</p> <p>4 THE WITNESS: When I -- I'm sorry. I</p> <p>5 misunderstood your question. When I speak to a student, I</p> <p>6 will tell them that I can keep everything confidential</p> <p>7 except for child abuse, except for if they're going to hurt</p> <p>8 someone else or if they're going to hurt themselves. I'm</p> <p>9 sorry. I misunderstood.</p> <p>10 THE COURT: So, you believe you do have this</p> <p>11 privilege that you can keep privileged communications to</p> <p>12 yourself with the exception of child abuse and where the</p> <p>13 child may hurt herself, him or herself.</p> <p>14 THE WITNESS: I offer the client that privilege.</p> <p>15 I don't think I'm bound by that privilege. I conferred</p> <p>16 with the Board of Education's attorney before taking this</p> <p>17 stand, and I did not have nurse/student privilege.</p> <p>18 THE COURT: I understand.</p> <p>19 MS. GUTIERREZ: Object and move to strike that</p> <p>20 last remark.</p> <p>21 THE COURT: Well, it's just me.</p> <p>22 MS. GUTIERREZ: I understand, but for --</p> <p>23 THE COURT: And I'm not really paying attention</p> <p>24 to the witness' interpretation of the law.</p> <p>25 MS. GUTIERREZ: Right.</p>	<p style="text-align: right;">Page 63</p> <p>1 haven't applied for any counseling certification because I</p> <p>2 don't have the role as a school counselor. So, the answer</p> <p>3 is no.</p> <p>4 Q In January of 1999 --</p> <p>5 A Yes.</p> <p>6 Q -- and February of 1999, were you acting as a</p> <p>7 professional counselor?</p> <p>8 A My job in February or January of 1999 was the</p> <p>9 manager of a wellness center. In that job I did counseling</p> <p>10 and guidance. That was not my title. That was not on my</p> <p>11 name badge. That was not on my door. The name on my door</p> <p>12 and on my name badge, my job description, was the Manager</p> <p>13 of the wellness center.</p> <p>14 THE COURT: M's Watts --</p> <p>15 THE WITNESS: I don't know what he's --</p> <p>16 THE COURT: I understand that. Why don't I just</p> <p>17 ask you a straight question. On the day that Adnan Syed</p> <p>18 presented himself at your nurse's office --</p> <p>19 THE WITNESS: Right.</p> <p>20 THE COURT: -- you were doing bereavement</p> <p>21 counseling, weren't you?</p> <p>22 THE WITNESS: Yes. I was part of the crisis</p> <p>23 team.</p> <p>24 THE COURT: And you were using your skills as a</p> <p>25 professional counselor to assist --</p>
<p style="text-align: right;">Page 62</p> <p>1 THE COURT: Nor am I interested in her</p> <p>2 understanding as to what her privilege extends to.</p> <p>3 MS. GUTIERREZ: Okay.</p> <p>4 THE COURT: But I'm on a fact-finding mission --</p> <p>5 MS. GUTIERREZ: I understand.</p> <p>6 THE COURT: -- as to what it is she does, what</p> <p>7 position she holds, what degrees and certifications she</p> <p>8 has, and where she factually falls. And I am not in any</p> <p>9 way inferring that any lawyer for the Department of</p> <p>10 Education or otherwise, that their opinion as to what she</p> <p>11 is, is binding on this court. I'm more interested in</p> <p>12 understanding her qualifications and her background and</p> <p>13 training as it relates to the defense's position at this</p> <p>14 juncture.</p> <p>15 With that said, does the State have any questions</p> <p>16 of the witness merely on the 9-109.1 issue?</p> <p>17 MR. URICK: Yes. Thank you, Your Honor.</p> <p>18 <u>CONTINUED VOIR DIRE EXAMINATION</u></p> <p>19 <u>BY MR. URICK:</u></p> <p>20 Q Are you familiar with the State Board of</p> <p>21 Examiners of Professional Counselors?</p> <p>22 A I know it's a body that exists.</p> <p>23 Q Have you ever applied to them for certification?</p> <p>24 A I applied for certification from the Maryland</p> <p>25 State Department of Education in '93, and since then I</p>	<p style="text-align: right;">Page 64</p> <p>1 THE WITNESS: That's right.</p> <p>2 THE COURT: -- any of the kids, young people --</p> <p>3 THE WITNESS: Yes.</p> <p>4 THE COURT: -- teachers, whomever, that presented</p> <p>5 themselves at your nurse's office.</p> <p>6 THE WITNESS: Yes. That's correct.</p> <p>7 THE COURT: And you were using all of the</p> <p>8 background training at your disposal for that?</p> <p>9 THE WITNESS: Yes.</p> <p>10 THE COURT: Specifically your master's degree in</p> <p>11 counseling.</p> <p>12 THE WITNESS: Yes.</p> <p>13 THE COURT: Right?</p> <p>14 THE WITNESS: Specifically, yes.</p> <p>15 THE COURT: All right. Any questions from the</p> <p>16 State with regard to my specific response or concern to the</p> <p>17 defense's issue under the 9-109.1 issue?</p> <p>18 <u>BY MR. URICK:</u></p> <p>19 Q And in doing that counseling, were you doing so</p> <p>20 pursuant to the authority conferred by this certification?</p> <p>21 MS. GUTIERREZ: Objection.</p> <p>22 THE COURT: You can answer the question. It's</p> <p>23 overruled.</p> <p>24 THE WITNESS: Yes.</p> <p>25 MR. URICK: Okay. Thank you. I have no further</p>

1 questions of the witness.

2 THE COURT: Do you have any questions? Do you,
3 M's Gutierrez?

4 MS. GUTIERREZ: No, I do not.

5 THE COURT: Thank you very much. I need you to
6 step out in the hallway for one moment.

7 (The witness left the courtroom).

8 THE COURT: Unless you can tell me how suddenly
9 on one hand she has the qualifications to do a psychiatric
10 assessment and therefore she would have a -- he would, he,
11 the defendant, would have a privilege under the mental
12 health issue of 9-109.1, or in the alternative that she
13 wasn't acting as a mental health or in any relationship
14 mental health type position, but rather was a professional
15 counselor, I think under any stretch of the imagination the
16 defendant has a privilege, which he is asserting at this
17 time.

18 And so if you could tell me how you can get past
19 that, I'd love to hear it.

20 MR. URICK: I would refer the court back to the
21 statute. And statutory construction generally you start
22 with the plain interpretation of the language. The plain
23 thrust here is a privilege for someone who has been
24 diagnosed and is seeking treatment from a specialized
25 professional. And it defines what a specialized

1 professional is. That is, a mental health counselor is
2 someone who can actually give mental health treatment as
3 defined under Health Occupation, certified by the Board of
4 Professional Counselors.

5 This particular witness is not that type of
6 professional. She has an expertise. She is a
7 professional. She does not, is not one of those
8 specialized providers under that statute allowed to give
9 treatment to someone who has been diagnosed with that
10 condition.

11 The statute sets up a confidential situation for
12 someone who has been diagnosed with a mental condition to
13 actually seek treatment with a privilege, to be able to
14 provide the information necessary for that treatment. That
15 is not the case here. This defendant was not diagnosed
16 with a mental health condition. In fact, her preliminary
17 assessment, which she makes and then would refer him to
18 someone who is the specialist that would fall within that,
19 who could give that type of treatment, was that there was
20 no such condition here. It stopped there. He has no
21 condition. Therefore, there was no --

22 THE COURT: But the statute says the client means
23 an individual who communicates to or receives services from
24 a professional counselor regarding the diagnosis or
25 treatment of the individual's mental or emotional disorder.

1 So, he presents himself. She does an assessment using her
2 professional ability, and decides in her diagnosis that,
3 let's say in the best case scenario, that he's faking. She
4 has seen him, because he has gone to her. She has used her
5 professional counseling, and she has made a diagnosis.

6 Now, the statute says, unless otherwise provided
7 in any judicial, legislative or administrative proceeding,
8 a client or a client's authorized representative has a
9 privilege to refuse to disclose, and to prevent a witness
10 from disclosing communications related to diagnosis or
11 treatment of the client's mental or emotional disorder.

12 MR. URICK: If I may address that, that language
13 presumes that the disorder is present, and the client is
14 seeking treatment for it, and it is designed to protect
15 communications within that.

16 THE COURT: It's talking about a diagnosis and
17 assessment. A diagnosis under the DSM-4 of malingering is
18 a diagnosis. A diagnosis of faking, malingering is a
19 diagnosis that she's making, and you're asking her to
20 render an opinion that he was faking based on some
21 diagnosis assessment evaluation that she is making, and you
22 are saying that it requires her specific training and
23 expertise to be able to tell the court and the jury this.

24 So, on one hand you can't say she has the
25 specific training, and then in the next instance say she

1 doesn't have the training. You can't have your cake and
2 eat it, too. She either has the training and expertise,
3 and if she does, then there's a right to a privilege that
4 she and Mr. Syed can assert, or she doesn't have the
5 training and expertise, and then we're back to the point of
6 whether or not I let her testify because she doesn't have
7 the training. But you can't say she does, and then shift
8 gears and say she doesn't.

9 MR. URICK: However, this statute sets up only a
10 very limited situation. It specifically defines which
11 persons that privilege applies to. She does not fit that
12 definition. And it just struck me as well. It does not
13 protect -- there's no privilege for her observations of
14 behavior. There's no protection from her opinion. It only
15 protects communications, things that the client may have
16 said.

17 I believe she can testify fully to observed
18 symptoms as long as she doesn't get into communications.
19 And I believe that she can give or render an opinion based
20 on those observed behavioral manifestations. The statute
21 only protects, presents a privilege for communications
22 between the client and the healthcare provider. It does not
23 give any privilege for non-disclosure of observed behavior
24 and an opinion based on that behavior.

25 THE COURT: Before the defense responds, first,

1 I'm inclined to disallow any testimony from this witness
2 based on your assertion of a privilege under 9-109.1, for
3 any conversations and communications made by Mr. Syed,
4 between M's [REDACTED], during the one and a half hours that he
5 was in her office. However, any observations made outside
6 of her office, like in the hallway or in the waiting room
7 where other people were present, I find that that would not
8 be privileged in that other individuals were present, and
9 could see and hear anything he would have said. But
10 anything that he said to her once he entered that office
11 for the one and a half hours, this court is going to
12 disallow.
13 MS. GUTIERREZ: And observations during --
14 THE COURT: And observations.
15 MS. GUTIERREZ: Okay. Then I have --
16 THE COURT: I don't care what happened in that
17 room.
18 MS. GUTIERREZ: Then I have nothing else.
19 THE COURT: Whether he stood there, cried,
20 shouted, jumped up and down, screamed, pulled his hair out,
21 I don't care what happened in that room. It's privileged.
22 You asserted the privilege, and this court is finding that
23 under the statute and my understanding of her background
24 and training that even if she doesn't arguably have that
25 privilege, that Mr. Syed could have believed that she did.

1 I often tell them I will keep your confidence on everything
2 but child abuse.
3 Well, you can't keep a confidence unless you have
4 a privilege to claim, and she obviously is under some
5 belief that she may have, has this privilege. But
6 regardless of what she believes, my interpretation of her
7 background and my understanding of her background causes me
8 to believe that she falls squarely under that section.
9 MR. URICK: If I may ask a question to get
10 clarification?
11 THE COURT: Uh-huh.
12 MR. URICK: Is it the court's ruling that she can
13 describe any observation of any behavior or statement that
14 was made in the presence, when there was some other person
15 besides herself present?
16 THE COURT: I don't want to get into a game of
17 semantics with the State, so let me make it clear. If he
18 was in a room with her for an hour and a half being
19 counseled and there happened to be another healthcare
20 provider present, I include that counseling session as
21 privileged communications. If you're talking about
22 something that may have occurred in a lobby area or an
23 outer office where other individuals were present, she may
24 talk about her observations in that setting.
25 MR. URICK: If there is a sufficient basis of

1 And for that reason, anything she said, he said to her in
2 that room could have been believed by him to be in
3 confidence, and for that reason, I will not allow it.
4 If the witness will testify as to her
5 observations before he entered that room, I will allow any
6 of those observations. Now, do you want to be heard, M's
7 Gutierrez?
8 MS. GUTIERREZ: No, Your Honor. I don't think I
9 need to be.
10 THE COURT: Very well. Anything further with
11 regard to this witness? I'd like to get down to hearing
12 some testimony before the day actually gets completely past
13 us.
14 I understand the State doesn't agree with me. I
15 note your objection for the record, but I think that under
16 Defense Exhibit Number 1, and all the information I've
17 heard so far just in the direct voir dire of this witness,
18 I am satisfied that this statute would apply to her, and
19 her privilege and her training. And I would also note for
20 the record there were things that were discussed, for
21 example, the privilege in privacy that a child might have
22 at a certain age that wanted an abortion, and there are a
23 number of other entities. In fact, she took great caution
24 to say that the only exception that she has is an incidence
25 of child abuse, which is legislated by law. But she said,

1 facts from those sorts of observations, would you consider
2 whether or not she can state an opinion based on those
3 observations?
4 THE COURT: I would have to have her voir dire
5 on that issue, because I don't know what she's going to say
6 she saw or what observations she had. She has already told
7 us she did not make a formal assessment. She had already
8 told us that she has not written down anything. So, in an
9 abundance of caution, I would be concerned with any
10 opportunity that she may have to observe the defendant, and
11 that's why I initially asked you how long did she have to
12 observe him and under what circumstances.
13 Do you know the answer to the question as to how
14 long other than the hour and a half in her office?
15 MR. URICK: No. I would have to inquire of the
16 witness as to that. So, in order to proceed with the
17 trial, I will call some other witness. And perhaps if
18 there's anything there, that we revisit it in the morning.
19 THE COURT: Why don't we do this. I have another
20 matter that I wish to take, and I'm going to allow you to
21 take a break, and you can go out and talk to her. I'm
22 going to give you permission to speak to the witness. We
23 have not taken testimony from her.
24 Counsel, I'm directing that either, M's Gutierrez
25 or Mr. Urick, if you choose to speak to M's [REDACTED] during

1 the break, you're welcome to do so. If M's [REDACTED] does not
2 want to speak to you, M's Gutierrez, obviously I can't
3 force her to.

4 MS. GUTIERREZ: I understand.

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

12 (Brief pause).

13 (The jurors returned to the courtroom).

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

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

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

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

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

24 THE JURORS: Thank you.

25 (The jurors were excused from the

1 courtroom).

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

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

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

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

13 THE COURT: Yes, 3:30. Give yourself a stretch.

14 Talk to M's [REDACTED]

15 (The court took up an unrelated
16 matter).

17 (Jury not present in courtroom upon
18 resuming).

19 THE CLERK: All rise.

20 THE DEPUTY: Do you need the jury?

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

25 MR. URICK: Calling a new witness.

1 THE COURT: A new witness?

2 MR. URICK: Yes.

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

5 MR. URICK: Yaser [REDACTED]

6 THE COURT: Can you have Mr. Yaser [REDACTED] come in,
7 and also Deputy Church, if you could go around and get our
8 jurors.

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

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

15 Do you want to tell me?

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

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

20 MR. URICK: Yes.

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

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

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