

Transcript of Undisclosed Podcast
Adnan's PCR Hearing: Day 1
February 3, 2016

[0:00] Rabia Chaudry: Hi, and welcome to a little live update of Undisclosed. We are at the Baltimore City Circuit Court. Um, I'm here with Susan Simpson and Bob Ruff. Colin Miller is not with us. Adnan's family, his mother, brother, my brother, um, uh a lot of people who have come out to support Adnan...

And I was sequestered after, um, Adnan's attorney gave his opening remarks, so I haven't been able to see the other witnesses. But I've been just kind of, uh, waiting to see what the outcome is and, um, Justin might—our attorney might renew the, uh, objection. Colin is amazing. We reached out to Colin. He immediately found some case law that should help me get back into court because nobody's going to call me as a witness, um, but the prosecutor just used it as an excuse to get me out of the courtroom just to demoralize us. So, you know, Justin's going to try to get me back into the courtroom and let's see what happens.

[0:57] Susan Simpson: Hi, this is Susan Simpson. I am sitting at the Royal Plaza... Royal Carryout... Royal Some-kind-of-fried-food-place outside the Baltimore City Circuit Court. It's about, I don't know, one... 1:15 p.m.? We had, um, got to court house this morning. Um, good crowd. The courthouse is not full, um, but it's pretty crowded. Um, so Sarah was here, Sarah Koenig, um... and Rabia was, like, was talking how long it's been and how we wouldn't be here if someone hadn't taken interest. I mean, of course, none of us would be here if Rabia hadn't been insane for 17 years and pushing a losing cause against all odds, um, but Sarah Koenig and her team got this ball rolling and we would not be here today.

Justin gave a very strong, simple, straightforward opening, exactly what it needed to be. His opening was just, there's two issues here: we've got Asia, and we've got the cell site evidence. Both of them on their own independently are enough, and they prove by themselves that Adnan did not get a fair trial and entitle him to a new trial, one that's fair and has the evidence fairly considered.

The State's theme has been that CG was an awesome attorney, that he has been harping the whole time about how confident and how capable and how awesome Gutierrez was as an attorney. Like, that was his theme. He was like: 'She was so diligent. I've seen the files, the defense files. She was a monster in the court. She was, she was a pit bull on the pant leg of justice, and she did amazing things for Adnan's case. She just couldn't help it because he was guilty, guilty, guilty.'

Um, but then he goes and starts objecting, literally, every single question about Gutierrez's decline, her health, her failures. Um, he didn't even want any evidence in about the fact she was disbarred. Um... and nah-ah, it's a good strategy if you hadn't shot yourself in the foot by making your whole [inaudible] case that Gutierrez was so competent.

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They also pretty—I think that by, they were a little cagey about it earlier, but by the second witness, they were pretty much saying: ‘Asia’s lying. She constructed this in order to, um, help out a friend.’ Um, they weren’t being subtle about it. They didn’t say it in those many words, but the questions strongly implied that was what was going on.

So, we had two witnesses. Um, our, uh... the first one was Phillip Dantes. He was the attorney that represented Gutierrez both, um, at the start of her career when she was trying to get into the Bar—um, because she had lied in some, like, her law form, law school application and on her bailiff application. He also represented her at the end of her career when she was disbarred for her, um, epic number of violat—[laughs] like her, she had I think 36—at last count—clients who filed complaints against her. So he, um, represented her in that. And she, ultimately, did not contest the disbarment.

Um, so he knew about how she started, and he said that she was, she was great. She was hardworking, she was diligent, she was strong. And he watched her decline. Um, not all of that—most of it, probably—didn’t even get into the, into the record because, um, the State objected to any evidence about her decline and the Court sustained most of those objections.

And so, yeah, okay, and then we had, um, Bill Kanwisher, who worked with Gutierrez, um, up until ‘97 and was friends with her at a certain point. But he talks about how it was, the reason he left the law firm where we worked with Gutierrez was ultimately because of Gutierrez because she was—oh, how did he put it? She was very hard to work with. She was very hard to deal with. There were massive financial issues. He often, at least on one occasion, he just didn’t get paid. Like, she just missed the paycheck.

But then he went and talked about the alibi notice, and he talked about how the fact that, basically, the fact that Asia was not on the list of alibis in the alibi notice and the fact that Asia shows up in her notes, he could not reconcile that. And he wasn’t sure... um, to him it was inexplicable.

Yeah, I was just realizing, I still haven’t actually seen Adnan yet because there’s a, uh, computer monitor sort of set up in the middle of the court. Like, so I’ve seen the back of his head, but I have yet to actually see Adnan’s face. So... I mean, he’s the defendant in the case. He’s just going to sit there. He’s a bump on a log for the next three days, but... yeah.

[5:27] Saad Chaudry: My name is Saad Chaudry. I’m best friends with Adnan Syed, and I’ve been, um, following this case for the last 17 years. So, when I saw Adnan, it’s emotional ‘cause, you know, he’s escorted out in handcuffs, and he even sat down wearing handcuffs. And, you know, as a free man, where I can cross my legs and I can lean back and I can lean forward, he has to really sit stiff as a board. And as friend, I was watching him, and that kind of like... kills you. You know, it makes you really upset, but... as the hearing itself, I’ve never been to hearing that I’ve felt as positive or I’ve felt as [at] peace with what’s going on and that the truth will come out and things will be favorable for Adnan.

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The courtroom, you know, the mood of the courtroom was definitely a lot of excitement. You could feel a lot of energy in the air. Um, on the left side was media, through the middle was Hae's family and her loved ones, and on the right side was Adnan's family and Adnan's loved ones. I actually leaned over to Adnan's mom, and I was like, "Remember the last PCR hearing?" It was just Adnan's family in the first two rows—first two rows of those bleachers, and the rest of the place was empty. So, it was a big difference from last time, which was cool.

[6:49] Susan Simpson: Oh my gosh... We are now in one of the nicest Starbucks I've ever seen, actually. It's uh, it's a few blocks from the courthouse. Um, it's raining still, so when we left the court, we were, like, kind of scrambling to find somewhere to sit where it was dry and where they—could not get wet. And, um, it's been a long day. It's been a good day, but... I'm a little bit tired now. [laughs] Um, but it was a really good day. We had a lot of, uh, we got through three—well, two and-a-half witnesses.

Um, so, Asia McClain testified after lunch. She, um, is I think, like, five months pregnant, which is actually kind of why this, this hearing was scheduled now because other available dates were later on past her, like, no-fly... no-fly time, whenever that is. So, that's why they were like, 'Whelp, got to get it in now.' Um, and she was good. She was, she was nervous as hell. And she was, um... I mean, she got better as it went on. She was, she started off like, really, you could hear her voice about to break just trying to act normal. But she was very sincere and very genuine, and... I know the prosecution is trying to press for a "She's lying" theory and that "Oh, she's doing this as a favor for a friend" or something, but they may back away from that now and go more towards a "She's wrong" angle 'cause, I mean, they're going to have a hard sell calling her a liar. They can call her wrong and call her mistaken and mixed up, for sure, but they were making some, to me, what sounded like some very strong indication that they were going for a "She's lying" theme, and I'd be a little bit surprised if they kept going for that because she, she was very sympathetic. Just on paper, like, you don't want to be seen as bullying the, um, nervous, friendly, sincere pregnant lady. Um, it just doesn't look good [inaudible].

Um, but she didn't ever know that she was important. She made that very clear. She's like, 'I had no idea until Serial that whatever I was saying was actually that important.'

So Kevin Urick was the prosecutor at the original trial—at both original trials. Um, and when Ju—Adnan was going through his first PCR, Justin sent out an investigator to go talk to Asia out in Washington, the state, and uh, and she immediately goes online to try and find out what's what. And she manages to find one old Baltimore Sun article, um, that says Kevin Urick was the prosecutor. So she googled his number and called him that same day, and she took notes about what Kevin Urick told her.

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And, uh, he basically said: 'Oh, he's guilty with all this proof. We have all this evidence. Everything's ironclad. Don't get involved in something that's, like, just them trying to manipulate the court system.'

And she was like, 'Well, yeah. I mean, there's no point if he's that guilty. Why get involved?' So, when she then learned that Kevin Urick said that he had a conversation with her and that everything Asia McClain said wasn't true, um, and it was only because she had somehow been pestered into doing, or pressured into doing it, by the Syed family, she was—and my notes say very, all caps, "EMOTIONAL", nearly crying. And she said that she was, quote: "In shock."

Quote: "Angry at myself for letting my thoughts and opinions be represented by a third party. I was fairly bothered by it, and I don't like it when people put words in my mouth. I did not believe that time I spoke to Urick that I was of any importance, or that my testimony was of any importance. After Serial, like Sarah said, maybe it was important what I knew. It placed a weight in my heart, and I felt like for justice and for... both sides needed to have the evidence and have the evidence be evaluated."

She seemed so truthful, like, she... that was her memory. So, of course, that doesn't mean that she's... right. It just means she's not lying.

From the testimony in the first half of the day, I was thinking they were going for a "Asia is a knowing liar", um, defense and I think after hearing her, they are going to tactfully back away from that and go with a "Asia is mistaken argument" instead.

Most excited about for tomorrow? Um, I mean, hearing the rest of what Asia has to say. And then, of course, because it's me, I'm excited to hear the, uh, cell phone evidence part and get into that. Um, that'll be good. And... and then, well, it's probably day three, I'm curious to see what the State's going to come back with.

[11:18] Colin Miller: Hi, this is Colin Miller. Obviously, I'm not up in Baltimore watching the proceedings, so with the caveat that my impressions are based upon second- and sometimes third-hand information, here are my takeaways from the first day of the re-opened PCR proceedings:

Number one, precedent across the country holds that an attorney cannot make a strategic decision against calling an alibi witness at trial without someone from the defense team first contacting that alibi witness. It seems to me that the Deputy Attorney General is trying to argue against that precedent in two ways: the first is to claim that the Asia library alibi story conflicts with what Adnan told the police. The problem with that is, it's not a new argument, and it's not an argument supported by the documentary evidence in the record. If you look at all the State's briefs, they cite to the testimony by Detective O'Shea. Problem is, Detective O'Shea's testimony does not support the notion that Adnan told a contradictory story. Here's the testimony:

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Question: And what, if anything, did the defendant say at that time?

Answer: We basically discussed his friendship with Hae Lee and the fact that they had dated at one time. I also asked him about whether or not he had seen Hae Lee the day of the 13th, the last day she was seen. He said he was in class with her that day from, I believe, it was 12:50 p.m. to 2:15 p.m. He did not see her after school because he had gone to track practice and, basically, that school was closed the rest of that week—would've been Thursday and Friday—due to bad weather.

So, basically, the State's claim is Adnan told police he had remained at Woodlawn High School after school, which conflicts with the story that he went to the Woodlawn Public Library between the end of school and the start of track. Well, as you can see from the testimony, Adnan never said that. He simply said he went to track after school. He never said he remained on the school campus.

And that's even taking it for granted that the two are distinct locations, the high school and the library. We know that Krista has submitted an affidavit in this case, and that affidavit says Woodlawn students consider the public library part of the campus.

Putting that aside, though, the key in this case, in these proceedings, to me would be: can the Deputy Attorney General produce any documentary evidence or testimony indicating that Adnan's story to the police was in any way inconsistent with seeing Asia at the library on January 13th?

The second argument the Deputy AG seemed to try to make against the alibi argument is that, he said recently he was able to see the defense files. In there, there was a document showing Adnan's email address and password. Adnan's story is that he saw Asia at the library while he was checking his email, and so the Deputy AG is trying to claim, basically: well, she had the password, she had the email. She could've checked it, and if there were no activity that would contradict the alibi story.

Couple of responses: first, despite the claim by the Deputy AG, this is not a new document. This was included all the way back in 2010 in the initial post-conviction review petition by Adnan's attorney. The notes being referenced are those notes taken on July 13th by Gutierrez's law clerk-slash-student when he visited Adnan in jail, and... sure, it's possible that Gutierrez checked the email and saw no activity. That said, I have questions about whether she actually ever saw the clerk's notes. If she did, based on the nature of her investigation, or lack thereof, in this case, including witnesses like track teammate Will never being contacted, serious doubts about whether she checked the email.

Even if she did, though, the lack of activity on the email account, that certainly would not be evidence enough to obviate the need to have someone on the defense team contact Asia McClain. And that's a big part of what happened in the testimony this morning. There were a couple of witnesses who were called. William Kanwisher, he worked for Gutierrez and left the law firm in early 1999. He basically testified consistent with what we said in the "Tina" episode of Undisclosed, that Gutierrez's performance started declining in the mid-to-late 90's. She was dropping a lot of balls. She was late on a lot of work.

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And, according to Kanwisher, the fact that Asia McClain was not on the alibi notice means that Gutierrez didn't investigate her. And, according to Kanwisher as well, consistent with case law, it couldn't have been a strategic decision for Gutierrez to fail to contact Asia McClain. You can't make that decision not to call an alibi witness without first having someone on the defense team contact that alibi witness.

[16:12] Rabia Chaudry: Hi, it's Rabia again. So, I spent much of my day just kind of wandering around the halls of the circuit court because I was sequestered and spending some time at Dunkin' Donuts. Um, but I was on social media, as many of you could see, so I kind of got to follow what was happening in a way because of, um, the media that was, uh, being able to tweet and share stories of the different witnesses that were testifying.

So I do kind of know what happened, and obviously, um, you know, I'm with family and friends, and without particulars, they're kind of telling me that things seemed to go well and Asia McClain is... did very well on direct, but on—and now she's being crossed, but they're going to pick it up tomorrow morning. Um, I'm just very happy. I cried a lot of happy tears to know that she did do very well. She was solid. And, you know, all these years we waited for her to take the stand has been worth it, I hope, because people can see, um, how credible she is and how she's stood by her story.

So, um, we look for—I look for—I'm still going to be here for the next couple of days, and apparently, what happened was, Justin raised, um, an objection to having me sequestered. Uh, the judge did not rule on it. He tabled it, so it's still possible that maybe after Asia testifies, the judge will allow me back into the courtroom. That will be great. If not, I am still going to be here. I'm not going anywhere. Um, and we're going to continue to update you live every single day... uh, on this special little broadcast of Undisclosed. Thanks for joining us.