

**Excerpt: Post-Conviction Hearing  
Testimony from William Kanwisher  
(2/3/2016) (Pages 84-157)**

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 testimony --

2 MR. DANTE: Thank you, Your Honor.

3 THE COURT: -- until after this matter's  
4 concluded. Nice seeing you.

5 MR. DANTE: Good seeing you.

6 (Witness excused)

7 THE COURT: And, Mr. Brown, your next witness?

8 MR. BROWN: Next witness is Bill Kanwisher.

9 (Witness summoned)

10 MADAM CLERK: Is that him?

11 MR. BROWN: Yes.

12 MADAM CLERK: Remain standing, please. Raise  
13 your right hand.

14 WILLIAM KANWISHER

15 called as a witness on behalf of the Petitioner, first  
16 duly sworn according to law, was examined and testified as  
17 follows:

18 MADAM CLERK: You may be seated. And could you  
19 please state your full name for the record?

20 MR. KANWISHER. My name is William Kanwisher.

21 MADAM CLERK: Please spell your last name for  
22 the record.

23 MR. KANWISHER: K-a-n as in Nancy w-I-s as in  
24 Sam h-e-r.

25 MADAM CLERK: Thank you.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Thank you. Mr. Brown?

MR. NIETO: Actually, Your Honor, if I may?

THE COURT: Oh. Mr. Nieto.

DIRECT EXAMINATION

BY MR. NIETO:

Q Good morning, Your -- Mr. Kanwisher.

A Morning.

Q Where is it that you currently work?

A I work at the Office of the Federal Public  
Defender.

Q And how long have you been there?

A Ten years.

Q What is it that you do at that office?

A I'm a staff investigator at that office.

Q All right. In addition to being a federal  
defense investigator, are you also an attorney?

A I am.

Q All right. Had you worked -- strike that.  
Where had you worked as an attorney?

A I had been first employed at the Office of the  
State Public Defender. From there I worked at the law  
firm of Redmond, Bergin and Gutierrez (ph.). From there I  
had my own practice for about seven years and since 2006  
I've been working for the Office of the Federal Public  
Defender's Office.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 Q All right. So when you worked for the Office of  
2 the Public Defender, what was your position there?

3 A I was an attorney and I was there from '84 until  
4 '97. Started as a law clerk, worked as an investigator,  
5 and did most of the lawyering in felony trial in Baltimore  
6 City.

7 Q All right. And when you said you worked for --  
8 what was the name of the firm again?

9 A It is Redmond, Bergin and Gutierrez (ph.).

10 Q All right. And was that with Cristina  
11 Gutierrez?

12 A That's correct.

13 Q All right. What was -- did you work side by  
14 side with her, or what was your position within that firm?

15 A I was hired in July of 1997 to be her associate.

16 Q And what did that mean?

17 A I worked directly under her. I took cases from  
18 her and tried cases with her.

19 Q In addition to working with her as an associate  
20 did you have an opportunity to work with her when you were  
21 in the Public Defender's Office?

22 A I did.

23 Q When was that?

24 A That was in, I want to say, '94 and '95. I was  
25 appointed to represent John Merzbacher. Tina had been

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 privately retained by Merzbacher and then subsequently  
2 some new cases came in which were taken up by the Public  
3 Defender's Office and I was assigned to those cases.

4 Q And you two worked together, then, on the case  
5 in its entirety?

6 A We decided that we would split the load and we  
7 worked together on that case.

8 Q Now, prior to the Merzbacher case did you know  
9 Cristina Gutierrez?

10 A I knew of her. She had been a state public  
11 defender and she was quite a legendary state public  
12 defender. I had probably met with her a few times and  
13 she -- when she left the state public defender she was a  
14 very well-reputed defense attorney working with Billy  
15 Murphy.

16 Q All right. Did -- was -- in addition to your  
17 relationship being professional were you friends with her  
18 or did you see her outside of work?

19 A Through the Merzbacher case we became very close  
20 friends.

21 Q All right. So the -- in the Merzbacher case  
22 what did you observe regarding Ms. Gutierrez's performance  
23 during that trial?

24 A As I said before, I knew her reputation from the  
25 state public defender's and also when she was in private

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 practice with Billy Murphy. And I knew that she was a  
2 very accomplished, fierce and dogged advocate. Through  
3 the Merzbacher case --

4 MR. VIGNARAJAH: Objection, Your Honor.

5 THE COURT: Same objection? Duly noted, but you  
6 may answer.

7 MR. KANWISHER: Through the Merzbacher case I  
8 became aware that she was having some physical issues.  
9 She wouldn't talk about it, but she -- it was clear that  
10 she had some physical issues and she was in some pain.

11 MR. VIGNARAJAH: Objection.

12 THE COURT: Sustained.

13 BY MR. NIETO:

14 Q When you say you made these observations, can  
15 you explain a little bit more about that?

16 A Well, I observed her on certain occasions  
17 wincing and grabbing her abdomen.

18 MR. VIGNARAJAH: Objection once again, Your  
19 Honor.

20 THE COURT: Sustained.

21 BY MR. NIETO:

22 Q And her performance during this trial, was that  
23 consistent with her legendary status as you had described  
24 it?

25 A No. It was not.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 MR. VIGNARAJAH: Objection, Your Honor.

2 THE COURT: Sustained.

3 MR. NIETO: Okay.

4 BY MR. NIETO:

5 Q Now, having worked with her, if you could, talk  
6 a little bit about that trial and your experiences with it  
7 with regards to Ms. Gutierrez.

8 A Well, the one thing that stands out about that  
9 trial was that this was a trial in front of Judge  
10 Hammerman and Judge Hammerman, his policy was to, for  
11 closing arguments, he would have the lawyers say how much  
12 time that they required to finish. It was true in this  
13 case. I can't recall what Cristina said but she was given  
14 a time period and it was Judge Hammerman's practice to  
15 hold the attorneys to that time period. Cristina and I  
16 had actually worked together on the closing argument so I  
17 knew what it contained. And during her closing argument  
18 as she was giving it at some point Judge Hammerman made an  
19 announcement that there were only 10 minutes left and  
20 since I knew what it contained I realized that she had  
21 only gotten through probably less than half of the  
22 material and now only had 10 minutes to cover a great deal  
23 of material. You could tell by her reaction when Judge  
24 Hammerman said 10 minutes that she was a little anxious  
25 and flustered and she attempted to try and cover the

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 remaining material in the close but it was very disjointed  
2 and she -- when she came to sit down at table afterward  
3 she was quite upset. She realized that she had not done  
4 what she needed to do.

5 MR. VIGNARAJAH: In the spirit of courtesy, Your  
6 Honor, I'm waiting for the witness to finish his answer  
7 but I would like to object and ask that the entire answer  
8 be stricken.

9 MR. NIETO: Your Honor, I don't know if Your  
10 Honor prefers for us to approach or if you want me to  
11 explain.

12 THE COURT: No, you can make your --

13 MR. NIETO: Your Honor, Mr. Kanwisher is in a  
14 unique position based on his professional and personal  
15 contacts with Ms. Gutierrez in the time frame during which  
16 we're addressing here, sort of the downward decline of her  
17 legal skills, which I think is precisely the argument that  
18 the State has postured as the reasons why our motion  
19 should be denied. As I think he had -- as I think Brother  
20 Counsel had suggested, that the interest here is to put  
21 the Court in as close a position as Ms. Gutierrez was  
22 around this time, we are simply providing the Court with a  
23 road map to not only corroborate what Mr. Dantes had said  
24 during his direct testimony, but also provide the Court  
25 some additional insight as to some of the issues Ms.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 Gutierrez was having from people who were in a unique  
2 position to be able to articulate that.

3 THE COURT: I understand. The Court will still  
4 sustain the objection.

5 DIRECT EXAMINATION - RESUMED

6 BY MR. NIETO:

7 Q All right. So after your time at the Public  
8 Defender you said you went to then work with Ms.  
9 Gutierrez, right?

10 A Yes.

11 Q Okay. And so what was the time frame, again, in  
12 which the two of you worked?

13 A I began working there in July of 1997 until  
14 January of 1999.

15 Q You said '99, sir?

16 A '99, sir.

17 Q All right. So when you worked with her, you  
18 worked for her and with her, right?

19 A That's correct.

20 Q And so you became familiar with her practice  
21 methods; is that fair to say?

22 A It's fair to say.

23 Q And with regards to motions and perhaps  
24 responses to motions, you were familiar with that?

25 A Yes.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 Q All right. And you had direct contact not only  
2 with her but also as her associate working in that  
3 capacity.

4 A That's correct.

5 Q All right. Now, would a notice of alibi witness  
6 fall underneath that umbrella in your opinion?

7 A As a pretrial motion, yes, it would.

8 Q All right. Now, during the time that you worked  
9 with her, that being '97 to '99, how was her health?

10 A Over that approximately 20-month period it -- I  
11 saw her energy decrease, her focus decrease. I saw her  
12 again in pain, the same gestures, the same grimacing and  
13 holding of the abdomen and again her extreme reluctance to  
14 acknowledge it.

15 Q That was actually my next question. Was she  
16 forthcoming about some of these issues she was having?

17 A Absolutely --

18 MR. VIGNARAJAH: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MR. NIETO:

21 Q What specifically did you see with regards to  
22 her health concerns?

23 MR. VIGNARAJAH: Objection, Your Honor.

24 THE COURT: Sustained.

25 BY MR. NIETO:

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 Q So per your observations were these issues  
2 affecting her practice?

3 A I thought so.

4 MR. VIGNARAJAH: Objection, Your Honor.

5 THE COURT: Sustained.

6 BY MR. NIETO:

7 Q Were these issues affecting your practice?

8 A Yes.

9 Q And specifically in what way?

10 A I had to do more of her cases.

11 Q So she had trouble managing her cases during  
12 this time?

13 A I'm sorry?

14 Q She had trouble managing her cases during this  
15 time?

16 MR. VIGNARAJAH: Objection, Your Honor.

17 THE COURT: Sustained as to form.

18 BY MR. NIETO:

19 Q When you say you had to do more of her cases,  
20 what do you mean by that?

21 A She would pass them off. They were her cases  
22 and there would come a point where she'd say, you need to  
23 do this case for me. I already had a certain complement  
24 of cases and she would add to that and to be --

25 Q Did she explain --

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A -- to be honest, I mean, some of the times they  
2 were given to me right up on deadline.

3 Q What do you mean by that, sir?

4 A Well, if there was a motion due or there was a  
5 trial date coming up she occasionally would give me the  
6 case just, you know, sometimes, I can recall one days or a  
7 long weekend before and, you know, once a week before it  
8 was getting ready to be tried.

9 Q Within this firm do you remember how the  
10 finances were?

11 A You're going to have to ask something else.

12 Q Were there any problems with money or finances?

13 A Yes, there were.

14 MR. VIGNARAJAH: Objection, Your Honor. May we  
15 approach?

16 THE COURT: Approach.

17 BENCH CONFERENCE

18 (Bench conference begins - 11:44:29 a.m.)

19 (All Counsel approach the bench where the following  
20 ensues:)

21 MR. NIETO: Yeah, go ahead.

22 MR. BROWN: Sorry.

23 MR. VIGNARAJAH: If I may, Your Honor.

24 MR. BROWN: (Inaudible), Your Honor.

25 MR. VIGNARAJAH: The State expressed its

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 objections and concerns about the first witness. The  
2 State wishes to renew that same set of objections with  
3 respect to the second witness and add an additional point  
4 which is that Mr. Kanwisher supplied an affidavit in  
5 support of the petition that Mr. Brown and Mr. Nieto  
6 submitted to the Court. The --

7 THE COURT: Quiet, please.

8 DEPUTY SHERIFF: You need to quiet down for the  
9 Court in the courtroom.

10 MR. VIGNARAJAH: The proffered scope of that  
11 testimony had to do with Ms. Gutierrez's practice of using  
12 alibi notice as a red herring. It had nothing to do with  
13 financial mismanagement and health problems, any of those  
14 matters. The State didn't object to Mr. Kanwisher when he  
15 was called, not that this isn't necessarily relevant, but  
16 the State understood there was a different purpose.

17 Now we are in a posture where Mr. Kanwisher, who  
18 was initially proffered as a witness for the purposes of  
19 talking about an alibi witness, which I understand why  
20 that would be relevant here, is now being a vehicle to  
21 reiterate and reinforce the impression about her health  
22 and her financial problems and State respectfully objects  
23 against, Your Honor. We've tried to be patient. We're  
24 trying to allow in the spirit of these proceedings of --  
25 answers to come out but I think Counsel's made their point

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 and Counsel's made their record and the State continues to  
2 believe that this exact conduct -- and I just want to add  
3 one point -- the Rules of Evidence are relaxed. They are  
4 up to your discretion. But there are reasons why these  
5 rules are in place and one of the reasons is that the  
6 individual should not be permitted to suggest that a  
7 person acted on one particular occasion because of how  
8 they acted on other occasions. That is exactly the  
9 argument that we have here. They want to call the witness  
10 and then they imagine they -- they're available to talk  
11 about how she performed in this case I would understand.

12 THE COURT: All right. Mr. Nieto? (Inaudible)?

13 MR. NIETO: (Inaudible) Mr. Brown would want to

14 --

15 MR. BROWN: Well, globally speaking, Your Honor,  
16 her physical condition and her ability to manage her cases  
17 right at the time of this case, how can it not be  
18 relevant, Your Honor? We need to make a record. If this  
19 woman couldn't manage her cases, and she could not perform  
20 in the courtroom, that matters to this. We are trying to  
21 get to the truth. We're not trying to obstruct anyone.  
22 We want to get to the truth, Your Honor.

23 THE COURT: I understand. I understand.

24 MR. BROWN: And these witnesses help us.

25 THE COURT: I understand. Again, the Court's

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 focused on the standard for ineffective assistance of  
2 counsel. I mean, this whole issue of her health, which  
3 I've let in, which I think just for the sake of this let's  
4 just get this done and let it in and I'll give it the  
5 weight it deserves, I'm not aware of any cases where  
6 ineffective assistance of counsel is necessarily based  
7 upon someone's health as raising constitutional --

8 MR. BROWN: It -- there --

9 THE COURT: -- but I sustained the objection  
10 because now we're getting into finances, I assume. So if  
11 you want to proffer, though, Mr. Nieto, what --

12 MR. NIETO: You know and of course, Your Honor,  
13 as I think Mr. Dantes had alluded, Mr. Kanwisher, and I  
14 can tell Your Honor if -- make sure the record's clear,  
15 Mr. Kanwisher had left after 20 months because Ms.  
16 Gutierrez ceased to pay him. He -- she could not keep up  
17 with the financial obligations within her firm. So it --  
18 well, Your Honor, it dovetails into the health concerns.  
19 And, like I said, I don't think we're suggesting that  
20 because her health was faulty, therefore, an IAC should be  
21 granted. We're simply showing a greater landscape --

22 THE COURT: I understand.

23 MR. NIETO: -- and we're trying to provide Your  
24 Honor with as much information as possible. The extent to  
25 which Your Honor view it. And I apologize if we're

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 relying on the affidavit as the sole proffer. That was  
2 based on his opinion -- his personal opinion as to what  
3 this alibi notice was, but he also has additional  
4 information that we think is relevant and wasn't --  
5 necessarily be included in the affidavit.

6 MR. VIGNARAJAH: If I could just add one thing,  
7 Your Honor? Defense Counsel does not need to apologize.  
8 I appreciate the zeal with which they're making argument.  
9 I just want to add one fact to the Court's consideration  
10 which may assist in easing this decision. Apparently Mr.  
11 Kanwisher worked with Ms. Gutierrez from July 1997 to  
12 February 1999, before she was retained in this case. And  
13 I understand what they're -- what Defense Counsel is  
14 attempting to do, which is to suggest that because of  
15 decline she could not have possibly performed starting  
16 when she -- but this is -- we're looking for witnesses  
17 that could talk about how she did in this particular  
18 trial, not before, not after. And in light of the broad  
19 scope that Defense Counsel's already been permitted, the  
20 State would again object.

21 THE COURT: All right. I'll note the objection,  
22 but -- and I'm not going to give you a whole lot of rope  
23 on the whole financial issue. And, again, I think it goes  
24 to the weight. It doesn't -- it could be any number of  
25 reasons why she didn't pay it. Maybe --

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 MR. NIETO: Of course. Of course.

2 THE COURT: -- he didn't do the work.

3 MR. NIETO: And, Your Honor, and that's why I  
4 love these adversarial proceedings because Mr. Vignarajah  
5 will have the opportunity to delve into that on cross.

6 THE COURT: And I understand. I understand.

7 MR. NIETO: So --

8 MR. VIGNARAJAH: I don't think I'm going to  
9 delve into cross. I think what I'm going to do, Your  
10 Honor, is allow Mr. Nieto a few questions and I will  
11 likely object again. I apologize for the interruptions.

12 THE COURT: All right.

13 MR. VIGNARAJAH: Thank you.

14 MR. NIETO: Thank you so much, Your Honor.

15 THE COURT: But I guess you're going to get back  
16 to the alibi witness issue, right?

17 MR. NIETO: Yeah. We'll -- we will be moving  
18 seamlessly into the alibi issue.

19 (Bench Conference concluded - 11:49:39 a.m.)

20 (All Counsel return to the trial tables where the  
21 following ensues:)

22 THE COURT: Objection overruled.

23 MR. NIETO: All right. And if I may, Your  
24 Honor?

25 DIRECT EXAMINATION - RESUMED

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 BY MR. NIETO:

2 Q Now, and I guess I'll ask some questions, just  
3 keep the -- keep things moving along. When you left Ms.  
4 Gutierrez's firm did that have to do with her -- the  
5 issues she was having with her practice?

6 A Yes.

7 Q Could you please explain that? Actually, before  
8 you answer that, sir, I understand you were friendly and a  
9 colleague of Ms. Gutierrez; is that right?

10 A Yes.

11 Q And you are here because you were subpoenaed,  
12 correct?

13 A Only because I was subpoenaed.

14 Q All right. But you understand that pursuant to  
15 the subpoena you are required to testify truthfully and  
16 answer the questions posed by Counsel, right?

17 A I wouldn't do anything else.

18 Q All right. So then if you could please explain  
19 the issues that led to your departure from the firm?

20 A Well, she was hard to work for.

21 THE COURT: I'm sorry. I didn't hear you, Mr.  
22 Kanwisher.

23 MR. KANWISHER: I'm sorry, Your Honor. She was  
24 hard to work for. She was -- during that period of time  
25 she got -- she was harder to deal with. As I said before,

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 cases were handed off late in the process to be litigated.  
2 And there were significant money issues within the firm  
3 itself. And there was at one point very close to the time  
4 of my leaving there was a pay -- sorry -- I recall we were  
5 paid every two weeks. There was a pay period where we did  
6 not get paid. She ultimately did make up that pay but it  
7 was -- created some difficulty. And it's fair to say that  
8 the general finances of her practice and the firm in toto  
9 were extremely problematic.

10 MR. VIGNARAJAH: Just for the record, Your  
11 Honor, objection.

12 THE COURT: Duly noted.

13 BY MR. NIETO:

14 Q When you say that Ms. Gutierrez was hard to -- I  
15 think you said hard to deal with.

16 A Uh-huh.

17 Q What did you mean by that?

18 A Well, she was always a demanding person, but she  
19 became more erratic and her demands became more difficult  
20 to accomplish.

21 MR. VIGNARAJAH: The State is going to object  
22 once again, Your Honor, to avoid the need to approach, the  
23 same arguments.

24 THE COURT: Duly noted.

25 BY MR. NIETO:

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 Q Is there anything in -- any specific instance or  
2 any particular recollection you have? An example, as it  
3 were?

4 A Well, I mean, she was a yeller. So, you know,  
5 you got used to being occasionally yelled for or at and,  
6 you know, that's, I mean, up to a certain point that's  
7 okay, but --

8 Q All right.

9 A -- at a certain point it's not, you know? So.  
10 MR. NIETO: And, Your Honor, may I approach the  
11 witness?

12 THE COURT: You may.

13 MR. NIETO: All right.

14 BY MR. NIETO:

15 Q Sir, I'd like to approach you with what's been  
16 marked as I guess PC2-10.

17 MR. NIETO: Mr. Vignarajah, did you have --

18 MR. VIGNARAJAH: One moment.

19 (Pause)

20 MR. NIETO: If I may approach?

21 BY MR. NIETO:

22 Q Mr. Kanwisher, I'd like to show you what's been  
23 marked for identification purposes a PC2-10. Do you see  
24 that, sir?

25 A I do.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 Q All right. Now, do you recognize this document?

2 A I do.

3 Q And what is it, sir?

4 A This is an affidavit that I executed on October  
5 13th, 2015.

6 (Petitioner's Exhibit No. PC2-10, Affidavit, marked  
7 for identification)

8 BY MR. NIETO:

9 Q All right. And that's your signature at the  
10 bottom?

11 A It is.

12 Q And you remember signing that affidavit?

13 A I do.

14 MR. NIETO: Your Honor, I ask that it be  
15 introduced as PC2-10.

16 THE COURT: Any objection, Mr. Vignarajah?

17 MR. VIGNARAJAH: No, Your Honor.

18 THE COURT: So admitted, then, as Petitioner's  
19 Exhibit PC2-10.

20 (Petitioner's Exhibit No. PC2-10, previously marked  
21 and identified, received in evidence)

22 MR. NIETO: Okay.

23 BY MR. NIETO:

24 Q Mr. Kanwisher, for your convenience we've put  
25 it up on the screen there. Can you see that?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A I can.

2 Q All right. If it's easier I can give you just a  
3 straight hard copy. Yeah.

4 A Actually, that would be fine too, but -- yeah.

5 Q Here you go.

6 A Thanks.

7 Q All right, sir. So I draw your attention to  
8 paragraph no. 6.

9 A Yes, sir.

10 Q Okay. Now, you stated that the alibi notice  
11 does not lock the defense attorney into a particular  
12 strategy; do you remember writing that?

13 A Yep.

14 Q Now, with regards to Ms. Gutierrez's practice,  
15 per your experiences and observations, what did you mean  
16 by that?

17 A Cristina's philosophy was always to try and keep  
18 as many doors open as she possibly could. In answering  
19 any kind of pretrial motion or demand she would try to  
20 craft it so that she didn't in fact pin herself down to  
21 any case theory, if she could. So for something like an  
22 alibi notice, she would have treated it the same way.  
23 Tina would have likely tried to put as much information  
24 and as many names into an alibi notice as she possibly  
25 could. This is so the State would not be able to focus in

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 on the one or two alibi witnesses that she may have  
2 planned to call. That was one of her tactics. Also she  
3 would have done that so that the State would expend  
4 resources and time and energy possibly going and either  
5 interviewing or re-interviewing the witnesses that she  
6 named as alibi witnesses.

7 Q All right. So if I may draw your attention  
8 additionally to paragraph 7 or 8, and I think you've  
9 addressed some of that. In this affidavit you speak to  
10 her tactics and the use of this necessary alibi notice,  
11 right?

12 A Uh-huh.

13 Q And so if I understand your testimony, then, the  
14 idea is to put as many witnesses on the list so as to  
15 potentially confuse the State; is that fair to say?

16 A That's correct.

17 Q And also to keep her or your options open.

18 A Correct.

19 Q Now, if a witness were not put on the alibi  
20 notice, what would that mean for purposes of trial?

21 A Well, Tina understood the rules and she would  
22 have understood that if she had an alibi witness that she  
23 had actually either was planning or maybe just considering  
24 using that her failure to put it on the list could  
25 preclude her from actually presenting that at trial.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 Q And you'd also said that part of Ms. Gutierrez's  
2 tactics were to put essentially as many witness names on  
3 the list as possible? Is that fair to say, or not?

4 A I mean, within reason, yeah.

5 Q Within reason. Would that be hinged upon her  
6 expectation to call them as witnesses, or no?

7 A No. Not necessarily. She would have -- and in  
8 an abundance of caution if she had even the slightest  
9 inkling that she might call them she would have included  
10 them. She might have included some people that she had no  
11 intention whatsoever of calling just to basically get the  
12 State to, as I said, spend resources interviewing and  
13 re-interviewing these witnesses.

14 Q All right. So, Mr. Kanwisher, I'd like to show  
15 you what's --

16 MR. NIETO: I believe, Your Honor, already been  
17 introduced as Exhibit 11. I don't know if it's PC2-11.  
18 Do you have that?

19 MR. BROWN: Your Honor, this is an exhibit that  
20 was introduced and admitted at the previous  
21 post-conviction proceeding. We have it listed as PC2-11.

22 MR. VIGNARAJAH: I presume this is the notice  
23 about alibi witnesses.

24 MR. BROWN: That's right.

25 MR. VIGNARAJAH: State has no objection.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 THE COURT: All right. So admitted.

2 (Petitioner's Exhibit No. PC2-11, Notice of Alibi  
3 Witnesses, marked for identification and received in  
4 evidence)

5 MR. NIETO: (Inaudible). May I approach, Your  
6 Honor?

7 THE COURT: You may.

8 MR. NIETO: All right.

9 BY MR. NIETO:

10 Q In the interest of your eyesight, Mr. Kanwisher.

11 A Thank you.

12 Q And that's also on the screen up there.

13 A Yes. I can see.

14 Q Would you -- this has already been introduced  
15 into evidence as a notice of alibi witnesses that had been  
16 provided to the State by Ms. Gutierrez in the case that  
17 we're here for today. Do you see that?

18 A Yes.

19 Q All right. Have you had an opportunity to  
20 review it?

21 A Yes.

22 Q Okay. So based on your experiences with Ms.  
23 Gutierrez, how do you interpret this particular alibi  
24 notice?

25 A Well, the first thing of note is that there are

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 many names on it. And so it does not surprise me that she  
2 would have included this many names on a notice of alibi.  
3 This is something that, given the parameters of the case  
4 does not surprise me that she would have done it this way.

5 THE COURT: I'm sorry --

6 BY MR. NIETO:

7 Q This, as you just said --

8 THE COURT: I'm sorry. I didn't hear that last  
9 response, Mr. Kanwisher. Would not what?

10 MR. KANWISHER: The -- given the parameters of  
11 whatever the facts of the case would be it does not  
12 surprise me that she would include this many names on an  
13 alibi notice.

14 BY MR. NIETO:

15 Q All right. And you had suggested earlier that  
16 the idea is to be as -- to be overly inclusive rather than  
17 exclusive, correct?

18 A Yes. That's absolutely right.

19 Q Okay. Now, if you could take a moment to review  
20 that exhibit in a little bit more detail. Do you see the  
21 name, Asia McClain, listed? Take your time. I know  
22 there's a lot of names.

23 (Pause)

24 MR. VIGNARAJAH: If it's helpful, Your Honor,  
25 the State does not dispute --

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 MR. KANWISHER: I don't --

2 MR. VIGNARAJAH: -- that Asia McClain's name is  
3 not on there.

4 MR. KANWISHER: I don't see it.

5 MR. NIETO: All right.

6 THE COURT: Duly noted.

7 MR. NIETO: All right. May I approach then  
8 again, Your Honor?

9 THE COURT: You may.

10 MR. KANWISHER: Thank you, Brother Counsel.

11 BY MR. NIETO:

12 Q Mr. Kanwisher, if I can show you what's already  
13 been introduced at the previous proceeding? We have it  
14 listed as PC2-2. All right? That had been introduced as  
15 a note that had been located within Ms. Gutierrez's  
16 defense file. Do you see that, sir?

17 A I do. I see it.

18 Q All right. Now, if you -- and we can highlight  
19 it on the screen if it makes it a little bit easier, but  
20 you'll see a part where Ms. Asia McClain's name is  
21 actually listed.

22 A Right. I see that.

23 Q And a suggestion that she had seen him at the  
24 library at 3:00.

25 A I see that.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 Q And that Asia's boyfriend saw him too. Do you  
2 see that?

3 A I see that.

4 Q Okay. So this exhibit establishes that Ms.  
5 Gutierrez was aware of a Ms. McClain as a potential alibi  
6 witness; do you understand that, sir?

7 A Is this her work?

8 Q Yeah. Well, as I said, it's already been  
9 introduced as paperwork that had been in her defense file.

10 A Then I would agree with it.

11 Q Okay. So --

12 MR. NIETO: Court's indulgence.

13 (Pause)

14 BY MR. NIETO:

15 Q And if you could, Mr. Kanwisher, I know we're  
16 (inaudible) but if you could make sure you speak into the  
17 microphone?

18 A Oh, sure. I'm sorry. Did you hear me, Judge?

19 THE COURT: No, I didn't.

20 MR. KANWISHER: Okay. I had asked if this was  
21 her work product and it apparently is. And then I would  
22 say that it seems clear if it is her work product that she  
23 knew about Asia McClain at some point in time.

24 BY MR. NIETO:

25 Q All right. So based on your experiences with

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 her, based on your time that you spent with her as an  
2 associate and additionally how would you be able to, in  
3 your observations, how would you be able to reconcile the  
4 fact that Ms. McClain, as a potential alibi witness, would  
5 be absent from the notice of alibi witnesses in this case?

6 MR. VIGNARAJAH: Objection.

7 THE COURT: Can you repeat the question?

8 MR. NIETO: Of course.

9 BY MR. NIETO:

10 Q Do you know --

11 THE COURT: And don't answer, Mr. Kanwisher.

12 BY MR. NIETO:

13 Q -- why, then, based on your experiences with Ms.  
14 Gutierrez, why Ms. McClain would not -- is not listed on  
15 the notice of alibi witnesses?

16 THE COURT: Sustained.

17 MR. NIETO: Court's indulgence.

18 (Pause)

19 BY MR. NIETO:

20 Q Mr. Kanwisher, sir, as we have established with  
21 your working history with Ms. Gutierrez, do you have an  
22 opinion, then, pursuant to the affidavit that you had  
23 submitted, as to the absence of Asia McClain's name from  
24 that list?

25 MR. VIGNARAJAH: Objection.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Approach.

BENCH CONFERENCE

(Bench conference begins - 12:03:59 p.m.)

(All Counsel approach the bench where the following ensues:)

MR. VIGNARAJAH: Your Honor, this is the type of an opinion that an expert perhaps could (inaudible) and I know that they had called an expert at the previous proceeding and are -- intend as I understand to call two experts here. I don't know that this is a proper witness to submit an opinion as to why a witness was done based on their lay experience.

MR. NIETO: And, Your Honor, and separate from the expert opinion that will be -- or will be provided later on, we're attempting to submit this under 5-701, which is the opinion of a lay person and it's admissible when the testimony is based rationally on, for example, Mr. Kanwisher's perceptions, which I think we've established there was working experiences with Ms. Gutierrez, and is helpful in providing the Court a clearer understanding of this precise issue which is, and, like I said, the weight will go to whatever Your Honor wishes to do with it, and it will be subject to cross, but -- and my understanding was that at the previous post-conviction hearing there was a lot of surmising and interpretations

Find links to evidence described above and many more original documents from this case at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 of the strategic value in not calling Ms. McClain. We're  
2 suggesting that not only did she -- was she not called but  
3 she wasn't even put on the notice and I would shudder to  
4 think that the State would try to suggest there was some  
5 strategic value to that without actually having someone  
6 who would know strategies with Ms. Gutierrez to be able to  
7 weigh in on that. And I think he provides some clarity.  
8 And there's few people on the face of the earth that can  
9 do that and Mr. Kanwisher happens to be one of them.

10 MR. VIGNARAJAH: The State will go ahead and  
11 withdraw its objection if Mr. Nieto understands that I  
12 will be crossing vigorously this.

13 THE COURT: Okay. All right.

14 MR. NIETO: That's fine.

15 (Bench Conference concluded - 12:05:34 p.m.)

16 (All Counsel return to the trial tables where the  
17 following ensues:)

18 MR. NIETO: Your Honor, the State withdraws its  
19 objection.

20 DIRECT EXAMINATION - RESUMED

21 BY MR. NIETO:

22 Q Mr. Kanwisher, sir, please answer the question.

23 THE COURT: And repeat the question, though, if  
24 you would, Mr. Nieto.

25 MR. NIETO: That's fair enough, Your Honor.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 BY MR. NIETO:

2 Q All right. So, Mr. Kanwisher, then, based on  
3 your observations and experience with Ms. Gutierrez and  
4 your affidavit in which you detail out your experiences  
5 with the alibi notice, do you -- would you be able to give  
6 an opinion as to why Ms. McClain is not on that notice for  
7 alibi witnesses?

8 A If in fact this document was generated before  
9 October 4th, 1999 then I can say that if Cristina had not  
10 included Asia McClain on this list she was running the  
11 risk of not being able to call her at trial. I don't see  
12 a tactical reason why she would have done that and run  
13 that risk. So the possibility exists that she somehow  
14 forgot or never contacted Asia McClain or Asia McClain was  
15 not on her radar. That is a possibility. But Tina was a  
16 good enough practitioner that she would have known that if  
17 she actually had a bona fide alibi witness that to not  
18 include it in the notice was running the risk of not being  
19 able to call that witness at the trial.

20 Q All right.

21 MR. NIETO: Nothing further, Your Honor.

22 THE COURT: And any cross examination, Mr.  
23 Vignarajah?

24 MR. VIGNARAJAH: Yes, Your Honor. Your Honor,  
25 if I may, at this time the State would ask for Binders A

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 and B, for the purposes of ease of reference to be moved  
2 into evidence at this time.

3 THE COURT: And they'll be State's Exhibits  
4 generally.

5 MR. VIGNARAJAH: State's Exhibit 1 and 2.

6 THE COURT: And any objection, Mr. Brown and Mr.  
7 Nieto?

8 MR. BROWN: Yes, Your Honor. We haven't had a  
9 chance to review either of those binders.

10 MR. VIGNARAJAH: Your Honor, if --

11 MR. BROWN: They were given to us this morning.

12 MR. VIGNARAJAH: Forgive me, Your Honor. Binder  
13 A is a compilation of documents in Defense' file and  
14 Binder B are documents that Defense file -- Defense  
15 Counsel had an opportunity to review just a couple of  
16 weeks ago and had an opportunity to obtain through an MPIA  
17 request. The State is prepared to proffer that these  
18 materials are indistinguishable from the materials or a  
19 subset of the materials that were provided by Mr. Brown  
20 himself and by the materials that Mr. Brown had an  
21 opportunity to inspect himself either through the MPI  
22 request or his recent personal review of the State's file  
23 a couple of weeks ago.

24 MR. BROWN: Your Honor, if there are specific  
25 documents that are relevant to what -- to this witness and

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 to this question, we probably would not have an objection.  
2 But we have no idea what documents are relevant to this.

3 MR. VIGNARAJAH: Your Honor --

4 THE COURT: All right.

5 MR. BROWN: If he can be more specific, this is  
6 over --

7 THE COURT: All right.

8 MR. BROWN: -- 1500 --

9 THE COURT: All right.

10 MR. BROWN: -- pages, I believe.

11 MR. VIGNARAJAH: If I may start, Your Honor, I  
12 wanted to start by pointing -- and asking Mr. Kanwisher  
13 whether or not he's had an opportunity to review any of  
14 the documents in the Defense' file in making his opinion  
15 about whether Ms. Gutierrez considered an alibi and  
16 accordingly I'm going to likely ask Mr. Kanwisher about a  
17 lot of the documents that are in the Defense file that  
18 make reference to those two alibis.

19 THE COURT: I'd like to finish Mr. Kanwisher  
20 before lunch. Unless Counsel can otherwise agree, I'm  
21 inclined to hold a ruling sub curia on your motion to  
22 admit State's binders A and B but let's see if we can't  
23 get through his cross and if you have to show him specific  
24 exhibits --

25 MR. VIGNARAJAH: Very good, Your Honor.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 THE COURT: But I ask Counsel during the lunch  
2 recess that we try to resolve this issue.

3 MR. BROWN: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. VIGNARAJAH:

6 Q Good afternoon, Mr. Kanwisher.

7 A Good afternoon, sir.

8 Q Mr. Kanwisher, it's your opinion on direct  
9 examination that Ms. Gutierrez did not make a tactical  
10 decision to put Ms. McClain on the long list of alibi  
11 witnesses because she would have foregone the opportunity  
12 to call her at trial; is that right?

13 A I don't see a tactical reason why she wouldn't  
14 have.

15 Q And it's your opinion that the reason she listed  
16 all of these other witnesses was as a red herring; is that  
17 right?

18 A Well, not entirely. I mean, I don't know enough  
19 about the case -- well, that's not true. I know a little  
20 bit about the case. But what I do know about the case is  
21 that there's a fairly prolonged time frame and so there's  
22 a possibility, I suppose, that she may have called some of  
23 these witnesses depending on what the State's evidence was  
24 at trial but, you know, so I don't know if she did it all  
25 as a red herring. I mean, it's possible she did. But she

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 may have had the intention or she may have been  
2 considering calling some of them. I have no way of  
3 knowing that.

4 Q And one of the reasons you have no way of  
5 knowing is because you've not had an opportunity to look  
6 at Ms. Gutierrez's defense file; is that right?

7 A That's true.

8 Q Is it your view that she just, in your  
9 experience with her, found a bunch of names and threw them  
10 at the State to distract them without any investigation of  
11 those witnesses?

12 A Well, depends, I guess, is the right answer.  
13 She would not have put witnesses on the list that she  
14 believed might draw the attention of the State that she  
15 felt was counter to the interests of her defendant. So  
16 she was a good enough practitioner to try and avoid  
17 basically flagging the State's attention to witnesses that  
18 may be problematic.

19 Q I'm not sure I understand. Could you explain?  
20 Could you elaborate on why an --

21 A Well, you --

22 Q -- attorney might do that?

23 A Well, if there's a witness that could say  
24 something that might be counter to the defense or the  
25 Defendant's interest they may not put that person on.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 Q Let's go back there in just a minute.

2 A Sure.

3 Q Mr. Kanwisher, I'm going to show you what I'd  
4 like to mark for identification purposes as State's  
5 Exhibit 1. And I'm going to ask for it to be 1A, it's a  
6 subset --

7 THE COURT: So why don't we do 1A.

8 MR. VIGNARAJAH: And for ease of reference, Your  
9 Honor, these are pages A1095 through A202 in the binder.

10 THE COURT: 2002 or 2 --

11 (Pause)

12 THE COURT: So it's A-1095?

13 MR. VIGNARAJAH: Through A-202.

14 MR. BROWN: One moment, Your Honor. We're  
15 having a little trouble flipping through here.

16 THE COURT: I'm getting there.

17 MR. VIGNARAJAH: And while the parties are  
18 locating the document the State would ask that we move  
19 this into evidence as one of the items that was provided  
20 from Defense from their defense file.

21 THE COURT: And do you have it, Mr. Brown and  
22 Mr. Nieto?

23 MR. NIETO: Yes, Your Honor. We're reviewing it  
24 now. You know, and I apologize for the delay. As we had  
25 talked about earlier, we had asked Brother Counsel to

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 provide us with some specificity which exhibits he wished  
2 to introduce. The logic at that time was that there was  
3 no way of knowing yet he's been able to pick out what I  
4 think was maybe seven to 10 pages fairly quickly without  
5 previous notification. So we're not looking to try to  
6 delay this any further. We're just trying to get a better  
7 sense of exactly what they are referencing.

8 MR. VIGNARAJAH: The State does apologize. The  
9 State only obtained Defense's thousands of pages a couple  
10 of weeks ago and has had an opportunity to review a number  
11 of them and have culled down the list to the ones that the  
12 State submits may be relevant to these proceedings.

13 THE COURT: All right. Just so I'm clear,  
14 though --

15 MR. VIGNARAJAH: Depending on the testimony.

16 THE COURT: -- it's A-1095 through A?

17 MR. VIGNARAJAH: 202. I believe, Your Honor,  
18 it's 1 -- 0195. A-0195.

19 THE COURT: Not A-1. So it's --

20 MR. VIGNARAJAH: No. A-0195. In the upper  
21 right-hand corner, Your Honor, they appear. Mr. Nieto,  
22 would you like me to show you?

23 MR. NIETO: Yeah, could you -- I'll come to you.

24 THE COURT: It's a memo? It starts with a --  
25 it's a memo?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 MR. VIGNARAJAH: Yes. And to expedite matters,  
2 Your Honor, I'm also going to mark for identification  
3 State's Exhibit 1B which are pages A-0326 through 0340 and  
4 give that to Defendant's Counsel for an opportunity to  
5 review while we're proceeding.

6 THE COURT: And we'll mark that as 1B?

7 MR. VIGNARAJAH: 1B. That's right.

8 THE COURT: So at this point we're just marking  
9 them for identification purposes only.

10 MR. VIGNARAJAH: Yes. But 1A is into evidence,  
11 Your Honor; is that right?

12 THE COURT: Well, is there any objection? Mr.  
13 Nieto?

14 MR. VIGNARAJAH: To 1A?

15 THE COURT: To 1A?

16 (Pause)

17 MR. BROWN: No objection, Your Honor.

18 THE COURT: So admitted, then, as State's  
19 Exhibit 1A, is admitted.

20 (Respondent's Exhibit No. 1A, marked for  
21 identification and received in evidence)

22 THE COURT: And then --

23 MR. VIGNARAJAH: May I approach the witness,  
24 Your Honor?

25 THE COURT: You may.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 BY MR. VIGNARAJAH:

2 Q Mr. Kanwisher, I'm showing you what's been  
3 marked for identification -- excuse me -- what's been  
4 entered into evidence as State's Exhibit 1A. Could you  
5 take a look at this for a moment? In the course of your  
6 work with Ms. Gutierrez, were you familiar with the  
7 practice of having her law clerks memorialize conduct that  
8 they had taken and steps that they had taken?

9 A Yes.

10 Q And in the course of your work with her do you  
11 recall the practice of her oftentimes writing notes to the  
12 law clerks on how to follow up?

13 A Yes. She would do that from time to time.

14 Q And the law clerks would then proceed to act  
15 accordingly; is that your experience with her?

16 A Yes.

17 Q And then she would have follow up after that.  
18 Was that your experience?

19 A Yes.

20 Q Now, the memo that I've directed you to, before  
21 you gave your opinion on direct examination you had not  
22 seen that memo; is that right?

23 A No.

24 Q That was part of the defense file as agreed by  
25 Defense Counsel as entered into evidence; do you

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 understand that?

2 A If you say so.

3 Q Do you see the names of individuals, eight of  
4 them, on this particular memo that are also listed on the  
5 alibi notice?

6 A Well, I don't have the alibi notice in front of  
7 me, but --

8 MR. VIGNARAJAH: If I could ask Mr. Nieto to  
9 perhaps --

10 MR. NIETO: Yes.

11 MR. VIGNARAJAH: -- put that up on the screen?

12 MR. NIETO: That's PC2-11.

13 MR. KANWISHER: And what's your question? I'm  
14 sorry. What do you want me to do?

15 BY MR. VIGNARAJAH:

16 Q Are some of the names that are on that memo that  
17 you're looking for that was within the defense file on the  
18 alibi notice that Ms. Gutierrez provided in this case?

19 A Well, I see the first name is on there.

20 Q What about the second name?

21 A Ataloiah (ph.), I believe.

22 Q What about the second name?

23 A I see --

24 Q And the third name and the -- through the eighth  
25 names?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A I see the second name is on here, I believe.

2 Q And do you see notations next to each of those  
3 names as with the other six individuals on those internal  
4 memos?

5 A I'm sorry. Can you repeat that?

6 Q Do you see notations on the memos next to those  
7 names, both the first two that you identified were on the  
8 alibi notice, as well as the other six?

9 A You're just referring to the first two names?

10 Q For starters.

11 A Do I see notes? I see notes on -- yes, I do.

12 Q You going to take a minute to check the other  
13 six names or are you prepared to take our word for it that  
14 they're all listed as well?

15 A I mean, I'll take your word for it if --

16 MR. VIGNARAJAH: Defense Counsel, any --

17 MR. KANWISHER: It's your pleasure --

18 MR. VIGNARAJAH: -- objection?

19 MR. KANWISHER: -- whatever you want to do.

20 MR. BROWN: That's fine.

21 MR. VIGNARAJAH: Thank you.

22 THE COURT: Okay.

23 BY MR. VIGNARAJAH:

24 Q So we all agree, all those names are listed on  
25 the alibi notice, right?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A If you say so, I'll believe you.

2 Q And do you see phone numbers listed next to some  
3 of those names?

4 A Yes.

5 Q And do you see notations about leaving messages  
6 next to some of those other memos?

7 A Yes, I do.

8 Q And do you see within those memos that some of  
9 those individuals were specifically served, but others  
10 were not?

11 A I'm sorry, were served?

12 Q Served with a subpoena, that there's a notation  
13 about a subpoena being served?

14 A Yes. I do.

15 Q So this wasn't just an errant list of eight  
16 witnesses. These were witnesses, based on your experience  
17 with Ms. Gutierrez, that she had people call, that she  
18 herself called, that she had conversations with, that she  
19 selected from as to who to subpoena and who not to  
20 subpoena. Is that a fair inference from your experience  
21 with her and your review of those eight copies of internal  
22 memos with respect to just these eight witnesses?

23 A It seems that -- I don't know exactly whose  
24 notes these are. I don't know if these are the law clerks  
25 who were saying, served or left messages or whatever, but

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 there are notations that indicate that that happened. I  
2 don't know who did that.

3 Q Do you recognize Ms. Gutierrez's handwriting?  
4 Would you?

5 A I don't feel confident that I could do that now.

6 Q Okay. So we'd have to find someone else to  
7 confirm that some of those notes are her notes; is that  
8 right?

9 A I couldn't tell you right now if they are her  
10 notes or not.

11 Q Okay. But there are a number of notes in a  
12 number of different scripts on those internal memos; is  
13 that right?

14 A It looks like it.

15 MR. VIGNARAJAH: If I could approach, Your  
16 Honor?

17 THE COURT: You may.

18 MR. KANWISHER: Yes, that there are -- yes.  
19 There's different handwriting on these.

20 BY MR. VIGNARAJAH:

21 Q Mr. Kanwisher, you serve now as an investigator;  
22 is that right?

23 A That's correct.

24 Q You sometimes work as an investigator for  
25 attorneys that are in the defense practice, correct?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A With the Office of the Federal Public Defender.

2 Q So you were not just a lawyer in your career but  
3 you've also gone and talked to witnesses, you've  
4 documented the conversations you may or may not have had  
5 with those witnesses. Is that fair to assume?

6 A That's true.

7 Q In the course of investigating -- in the course  
8 of your experience as an investigator have you attempted  
9 to assess the credibility of witnesses that are out there  
10 in the world that might support your client's story?

11 A Yes.

12 Q Is the only way to investigate one of those  
13 witnesses to actually talk to the witness?

14 A Is that the only way?

15 Q Yeah.

16 A No.

17 Q You could, for example, try to learn if there  
18 was anything to corroborate what that witness would  
19 purport to say, correct?

20 A That's correct.

21 Q You could try to ask other witnesses around that  
22 witness if the account that that witness purports to  
23 provide is plausible or reliable or not.

24 A That's done.

25 Q You could look into email records to see whether

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 or not the witness might be might be presenting a story  
2 that's unreliable or affirmatively false, correct?

3 A That's correct.

4 Q And in your experience as a defense attorney and  
5 as an investigator have you encountered witnesses that  
6 have come forward and offered an alibi?

7 A Yes.

8 Q And have you had any of those witnesses later  
9 turn around and say, I was just doing that to help, I  
10 didn't actually see it.

11 A I don't think I've ever had that happen before  
12 to me.

13 Q You've never had a recanting alibi witness?

14 A I'm sitting here trying to think of one and I  
15 can't remember a recanting alibi witness, no.

16 Q And what about as a defense attorney? Did you  
17 have a witness that was a girlfriend of a defendant that  
18 said, oh, I was with him, and then before trial the  
19 relationship soured and the witness said, oh, I just made  
20 that up?

21 MR. BROWN: Objection, Your Honor.

22 THE COURT: Overruled. It's cross.

23 MR. KANWISHER: Well, I've had recanting  
24 witnesses before. That's happened. That specific alibi  
25 situation, I can't recall a specific instance of that

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 happening. I've had domestic cases where the spouse would  
2 change their testimony either before trial or right before  
3 trial. That happens commonly. I'm having a hard time  
4 remembering an alibi context, though, for that to happen.

5 BY MR. VIGNARAJAH:

6 Q And --

7 A But I'll acknowledge that it probably happens,  
8 but it -- I just -- it hasn't happened to me.

9 Q I understand. I appreciate that. Now, Mr.  
10 Kanwisher, have you had witnesses that have offered to  
11 provide an alibi and later found out that someone was  
12 behind them to try to get that alibi put forward?

13 MR. BROWN: Objection, Your Honor.

14 THE COURT: Overruled. You will have an  
15 opportunity on redirect.

16 MR. KANWISHER: Where someone has put somebody  
17 up to offer an alibi?

18 BY MR. VIGNARAJAH:

19 Q Yeah. A false alibi.

20 A A false alibi.

21 Q You work here in Baltimore City, right, Mr.  
22 Kanwisher?

23 A I'm trying to think of a specific -- I'm trying  
24 to answer your question the best way I can, which I'm  
25 trying to think of a specific case where that happened in

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 my experience. And I'm quite sure it's probably happened,  
2 but I can't recall one specifically. But again, I'll  
3 acknowledge that I'm -- it happens every day. I can't sit  
4 here - if your next question was, what case was that, I  
5 couldn't give you a case. But I think it happens in  
6 practice.

7 Q And in developing an alibi witness as a defense  
8 attorney, did you sometimes pursue alibi witnesses that  
9 corroborated the account of your client?

10 A Yes.

11 Q Would you avoid witnesses or notify the State of  
12 witnesses that were inconsistent with your client's  
13 account?

14 A I'm sorry, say that again.

15 Q Would you, either as an investigator or as a  
16 defense attorney avoid notifying the State of witnesses  
17 that might contradict your client's account?

18 A Would I avoid notifying the State of their  
19 existence?

20 Q Yeah.

21 A Yes.

22 Q Because if the State found out that might be a  
23 witness that the State could use to undermine your  
24 client's own story, right?

25 A That's correct.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 Q And if you had a witness that would undermine  
2 the testimony of other witnesses that you thought were  
3 helpful to your case you might avoid alerting the State to  
4 that witness as well, correct?

5 A Here's the best answer I can give you. In a  
6 fact pattern in a case where there is a long, extended  
7 time period where events need to be accounted for --

8 THE COURT: I'm sorry, where events need to be  
9 what?

10 MR. KANWISHER: Need to be accounted for. I'm  
11 sorry, Your Honor. Let me try and address this to you.  
12 Over hours or days the State is going to attempt to put  
13 together a coherent theory of the case and account for a  
14 time period. That's generally what they do in their case.  
15 It happens fairly frequently that their proof will shift  
16 on cross examination or change. So there are times when  
17 even with conflicting -- when you're investigating for  
18 example and there might be some small discrepancies in  
19 time and you don't have any other way of judging who's  
20 right and who's wrong because people's sense of time is  
21 sometimes fluid, you're not going to make a judgment that  
22 this person is right and this other person is wrong, ergo,  
23 I'm not going to call this person. The practitioner will  
24 generally try and keep his options open as much as  
25 possible because what happens at trial, and I'm not

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 telling the Court anything it doesn't know, is that  
2 there's failure of proof a lot of times, particularly when  
3 it comes to chronologies and time frames.

4 So as a prudent practitioner, defense  
5 practitioner, you don't know which way that's going to cut  
6 until it happens. And so you're not going to rule out  
7 witnesses based on a contradiction of one other witness  
8 because time being such a fluid and at certain points  
9 subjective and inaccurate constant with people's memories,  
10 it's just -- it would be bad practice to, before you had  
11 heard the State's proof, to say, I'm definitely not  
12 calling that witness, right? When you're talking about  
13 where were you at certain places, points in time. Now, if  
14 it's one point in time, for example, if the crime takes  
15 place or let's just say there's an event that takes place,  
16 let's use the example of a shooting which happens very  
17 quickly and it happens in an instant and in a place, but  
18 it's a short and compressed time period. Well, then you  
19 might have some problems with time frame. But when  
20 there's a long and extended time frame where a crime takes  
21 place over hours, you're going to be very circumspect to  
22 ever rule out an alibi witness because you just don't  
23 really know.

24 BY MR. VIGNARAJAH:

25 Q Well, Mr. Kanwisher, let me ask you a slightly

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 different question.

2 A Sure.

3 Q What if you had a witness that was good for your  
4 case --

5 A Uh-huh.

6 Q -- that puts your client in one location and you  
7 had another witness that you know of that the State  
8 doesn't know of that puts your witness -- your client in  
9 another location which is potentially bad for your  
10 witness, would you tell the State about that witness?  
11 Well, do you have an obligation to tell the State? Do you  
12 have to tell the State all -- about all the things that  
13 you've uncovered that might hurt your client?

14 A No. You're not under that obligation, no.

15 Q You can keep that to yourself. Now, on that  
16 note that -- is that right?

17 A Yeah.

18 Q On that note that Mr. Nieto showed you there was  
19 an email address above the purported reference to Asia  
20 McClain. Did you see that?

21 A Can I see it again?

22 MR. VIGNARAJAH: Mr. Nieto, could we put that  
23 back up? I believe it's PC Exhibit -- PC2-2.

24 BY MR. VIGNARAJAH:

25 Q See that?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A I'm going to have to see a --

2 MR. NIETO: Your Honor, if I may?

3 MR. KANWISHER: Sorry. There we go. Okay. All  
4 right. Yeah. I see it.

5 BY MR. VIGNARAJAH:

6 Q You ever gotten an email address and a password  
7 from one of your clients either as a defense attorney or  
8 as a investigator?

9 A I'm sorry. Say that again?

10 Q Have you ever, as a defense attorney or as a  
11 investigator --

12 A Yes.

13 Q -- asked for your client's email account and  
14 password?

15 A Yes.

16 Q And have you then taken the step of logging in  
17 under them to see what emails they might have sent at a  
18 particular time?

19 A Yes.

20 Q And if you found that there were no emails for a  
21 particular period of significance would you want to  
22 necessarily tell the State about that possibility?

23 A I don't -- I can't make that judgment in a  
24 vacuum. What would be the inference from not having email  
25 traffic during a period of time? Does that mean --

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 Q So let's say your client -- your alibi is that  
2 the person's at a library checking his email. Could you  
3 perhaps investigate by logging in and finding that there's  
4 nothing to corroborate that there's emails?

5 A You could do that.

6 MR. VIGNARAJAH: And if we could blow it back up  
7 for a moment?

8 BY MR. VIGNARAJAH:

9 Q If you knew or believed that there might be  
10 cameras at the location and you found out that there were  
11 cameras or weren't cameras that showed that your client  
12 wasn't at the location that your alibi would cover, would  
13 you perhaps want to not tell the State about that?

14 A Tell the State about the nonexistence?

15 Q About the fact that there are surveillance  
16 cameras showing that your client's not there or the lack  
17 of surveillance cameras at all. Would you want to not  
18 tell the State about that?

19 A Probably.

20 Q And, Mr. Kanwisher, what is the reason Defense  
21 Counsel has to tell the State about alibi notice witnesses  
22 in advance of trial?

23 A Well there's --

24 Q If you know.

25 A -- I think there's a Maryland Rule of Procedure

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 that requires it.

2 Q And do you understand that that rule is in place  
3 and that the State can then investigate that alibi  
4 witness?

5 A Yes.

6 MR. BROWN: Objection, Your Honor.

7 THE COURT: Overruled.

8 MR. KANWISHER: I'm sorry, say it again?

9 BY MR. VIGNARAJAH:

10 Q You understand that the reason that rule is in  
11 place is so that the State can investigate that potential  
12 alibi witness in advance.

13 A I always assume that.

14 Q Now, as an investigator, do you sometimes go out  
15 and do your own investigation and then pass that  
16 information on to the attorney that is working with you at  
17 that time?

18 A Almost always.

19 Q And you expect that attorney to then pass on  
20 that information to a subsequent attorney if that attorney  
21 was replaced at some point. Is that fair to assume as  
22 well? That's what you would expect.

23 A I think so. If I understand your question,  
24 yeah, I think so.

25 Q An attorney gets some information from his or

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnancyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 her investigator. They get replaced. You would expect  
2 them to pass that information on to their successor.

3 A I would think.

4 Q Have you had an opportunity to review the  
5 second -- the State's Exhibit 2B?

6 THE COURT: That was --

7 MR. VIGNARAJAH: The one that we handed over --  
8 can you (inaudible)? Any objection to that?

9 THE COURT: 032 through 034?

10 MR. BROWN: No objection.

11 THE COURT: All right. So admitted, then, as  
12 State's Exhibit No. 1B, correct?

13 (Respondent's Exhibit No. 1B, Witness List, marked  
14 for identification and received in evidence)

15 MR. VIGNARAJAH: May I approach the witness,  
16 Your Honor?

17 THE COURT: You may. And let me find it as  
18 well.

19 (Pause)

20 MR. VIGNARAJAH: If I could show the exhibit to  
21 the witness while we're waiting?

22 THE COURT: It's in Volume B, correct?

23 MR. VIGNARAJAH: Pardon me?

24 THE COURT: Volume B, correct?

25 MR. VIGNARAJAH: No, no, I'm sorry. No, Your

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 Honor. Forgive me. These are all from Defense file.  
2 They're all in Volume A.

3 THE COURT: But it's 032?

4 MR. VIGNARAJAH: A-0326. Is that right? Yes.

5 (Pause)

6 THE COURT: But just so I'm clear, Mr.  
7 Vignarajah, it's -- 026 is a chart, correct?

8 MR. VIGNARAJAH: That's right, Your Honor.

9 THE COURT: All right.

10 MR. VIGNARAJAH: Horizontal chart.

11 BY MR. VIGNARAJAH:

12 Q Mr. Kanwisher, do you see that exhibit?

13 A I do.

14 Q Now, in your experience with Ms. Gutierrez, did  
15 she sometimes maintain catalogs of all the names that had  
16 come up in an investigation?

17 A She did. I don't recall it being in this  
18 format, but yes, she would do that.

19 Q Okay. And she would include pieces of  
20 information about those individuals?

21 A Yes. Uh-huh.

22 Q And how many pages of names do we have on that  
23 particular table?

24 A These pages?

25 Q How many pages?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A Well, it goes up to page 24.

2 Q Twenty-four?

3 A Yes.

4 Q And did you know of Ms. Gutierrez's practice of  
5 keeping task lists or to-do lists over the course of her  
6 representation of a client?

7 A Yes.

8 Q Extensive ones, correct?

9 A Sometimes.

10 Q With to-dos and people assigned to those  
11 responsibilities, correct?

12 A Yes.

13 Q And notes about whether or not they were  
14 completed or not?

15 A Yes.

16 MR. VIGNARAJAH: Just going to show Defense  
17 Counsel what we'd like to mark for identification as  
18 State's Exhibit 1C. These are lines -- pages A-261 to -  
19 266. Mr. Nieto?

20 (Pause)

21 MR. VIGNARAJAH: Any objection?

22 THE COURT: And, I'm sorry, it's A --

23 MR. BROWN: No objection, Your Honor.

24 THE COURT: -- -0261 to?

25 MR. VIGNARAJAH: To -0266.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 THE COURT: So admitted, then, as State's  
2 Exhibit 1C.

3 (Respondent's Exhibit No. 1., Task List, marked for  
4 identification and received in evidence)

5 MR. VIGNARAJAH: Thank you, Your Honor. May I  
6 approach the witness?

7 THE COURT: You may.

8 MR. VIGNARAJAH: Your Honor, would you like me  
9 to ask permission each time I approach?

10 THE COURT: No. It's not necessary.

11 MR. VIGNARAJAH: Thank you, Your Honor.

12 BY MR. VIGNARAJAH:

13 Q Mr. Kanwisher, the parties agree this is part of  
14 the Defense file. Does this resemble the kind of task  
15 list that you sometimes encountered?

16 A Yes.

17 Q And do you see notations in multiple people's  
18 handwriting on that particular task list or to-do list?

19 A There appear to be different handwritings, yes.

20 Q And there are people assigned to --

21 A Yes.

22 Q -- assume responsibility for those tasks?

23 A Correct.

24 Q If you could flip a few pages in, do you see any  
25 references to determining alibi? To determining an alibi

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 is one of the tasks on this list.

2 (Pause)

3 MR. VIGNARAJAH: With the Court and the  
4 witness's permission -- Defense Counsel's permission, if I  
5 could direct the witness to a particular page?

6 THE COURT: If there's no objection.

7 MR. NIETO: No.

8 THE COURT: You may.

9 MR. VIGNARAJAH: Thank you, Your Honor.

10 BY MR. VIGNARAJAH:

11 Q To page 4 of this six-page document. Do you see  
12 about halfway down in the left column a particular task  
13 relating to an alibi?

14 A Oh, okay. Yeah. I see it.

15 Q What does it say?

16 A It says, make determination regarding alibi.

17 Q And is there a middle column that indicates who  
18 should be assigned to that particular task?

19 A Yes.

20 Q What does that column indicate?

21 A It says, MCG and ML.

22 Q Do you know who ML is?

23 A I think it's Michael Lewis.

24 Q He was a law clerk at the time during the course  
25 of this case; is that right?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A I know he worked there when I was there.

2 Q And who's the other set of initials?

3 A It's Cristina.

4 Q It says, MCG; is that right?

5 A Yes.

6 Q And in the far right column there's a note  
7 section. Do you see that?

8 A Yep.

9 Q If I could see that for a moment?

10 A Sure.

11 Q Do you see a reference to three separate lines  
12 in that particular note?

13 A You mean lines of writing?

14 Q Lines of writing. Exactly.

15 Q I do.

16 Q And do you see that in the first line there's a  
17 reference to list of students at school who saw the  
18 Defendant at school?

19 A That's what it appears to say.

20 Q And that second handwritten line, do you see the  
21 ditto marks that is, list of --

22 A Yeah.

23 Q -- people who saw him at the what?

24 A Mosque.

25 Q And what about that third handwritten line?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A Track practice.

2 MR. BROWN: I -- my apologies, Your Honor. May  
3 I approach the -- are we still referencing the make  
4 determination regarding alibi line?

5 BY MR. VIGNARAJAH:

6 Q Are we, Mr. Kanwisher?

7 A I'm sorry?

8 MR. NIETO: No, I -- I'm trying to determine  
9 where --

10 THE COURT: Yeah.

11 MR. NIETO: -- in this -- where he's reading  
12 from.

13 MR. VIGNARAJAH: Forgive me.

14 MR. KANWISHER: Page 4.

15 MR. VIGNARAJAH: So this is in -- on --

16 THE COURT: If you could just show Mr. Nieto so  
17 he's --

18 MR. VIGNARAJAH: Yeah, sure.

19 THE COURT: -- aware.

20 (Pause)

21 MR. NIETO: Thank you. Thank you, Your Honor.

22 BY MR. VIGNARAJAH:

23 Q So just to confirm the record, those handwritten  
24 notes are next to MCG and ML about making determination  
25 regarding alibi; is that right?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A Yes.

2 Q Okay. Would it surprise you to learn, Mr.  
3 Kanwisher, that that alibi strategy was consistent with  
4 what Mr. Syed had told police?

5 MR. NIETO: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. VIGNARAJAH:

8 Q Would it surprise you to learn based on Ms.  
9 Gutierrez's trial tactics, her investigative tactics, that  
10 she selected an alibi that fit with what her client had  
11 told police? Would that surprise you that Ms. Gutierrez  
12 tried to pick a strategy -- tried to pursue a strategy  
13 that fit what the client had said --

14 MR. BROWN: Objection, Your Honor.

15 BY MR. VIGNARAJAH:

16 Q -- to the police?

17 THE COURT: Overruled.

18 MR. KANWISHER: Would she have investigated the  
19 client's alibi? Was that your question?

20 BY MR. VIGNARAJAH:

21 Q Would she have tried to select an alibi  
22 strategy --

23 A Right.

24 Q -- that fit with what her client had told  
25 police?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A If I understand what you mean by strategy --

2 Q Forgive me, Mr. Kanwisher. Let me make it  
3 easier. If your client had told the police --

4 A Right.

5 Q -- that he was at the school and then at track  
6 practice and then the mosque --

7 A Yeah.

8 Q -- and if that was the statement by your client  
9 to the police, whom the State could call, would it  
10 surprise you that Ms. Gutierrez selected a strategy that  
11 wouldn't deviate from that?

12 MR. BROWN: Your Honor, I'm going to object  
13 right here because the way that the statement to the  
14 police is being characterized by the State to the witness  
15 is not true. It's not true. We've got the testimony  
16 right here and it's simply not true. This is misleading  
17 to the Court and misleading to the witness.

18 THE COURT: All right. I understand. But  
19 let's -- I will certainly give you free reign on redirect.

20 BY MR. VIGNARAJAH:

21 Q Mr. Kanwisher?

22 A I'm sorry.

23 Q Would it surprise you to learn that if a client  
24 said, I was in school and then track practice and then the  
25 mosque that Ms. Gutierrez, in your experience, would

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 pursue a strategy about placing her client at the school  
2 and then track practice and then the mosque?

3 A She -- well, let me answer it this way. She  
4 would have tried to investigate it. Whether it's a  
5 strategy or not, I don't know, but she would have tried to  
6 investigate it, yes.

7 Q And if a witness suggested that the client was  
8 somewhere else than where the Defendant had told police he  
9 would (sic) would that be the kind of witness that Ms.  
10 Gutierrez might not notify the State of?

11 A Not necessarily.

12 Q She might want to tell the State that the client  
13 was somewhere else than where he said, but she might not.  
14 Is that right?

15 A Well, this presumes that -- again, people get  
16 things wrong about where they are and what time they're  
17 there, including clients. So -- and lots of times clients  
18 get all kinds of stuff wrong. So the answer is no. You  
19 don't know. You just --

20 Q And witnesses get stuff wrong too, don't they?

21 A People get things wrong. All the time.

22 Q And witnesses's stories change, correct?

23 A Sometimes that happens.

24 Q Sometimes those stories get worse and sometimes  
25 those stories get better; is that right?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A Everything is gauged, from a defense  
2 perspective, by what the State ultimately is going to  
3 prove, right? We're defense attorneys, investigators. We  
4 have no way of recreating and knowing exactly where people  
5 are and when, right? Our only measurement actually has to  
6 be what does the State prove and then what other  
7 information do we have about that. So, no. We -- at --  
8 the ultimate final arbiter of choice for a defense  
9 attorney, frankly, is what has the State ultimately  
10 proven. And because we can't always predict that, we're  
11 always trying to make the options as big as we can make  
12 them. Right? Because we just don't -- particularly when  
13 it comes to alibis, as I explained to the Judge before,  
14 people are getting stuff wrong all the time, including  
15 your defendant. Your defendant gets things wrong an  
16 amazing percentage of the time.

17 Q So, Mr. Kanwisher, I think I get it. Before  
18 trial you don't know where the State's going to postulate  
19 that a particular thing happened; is that right?

20 A You don't know what the State's case is going to  
21 look like. You can make some kind of guess, but you never  
22 really know until it actually happens.

23 Q And you want to be able to account for all those  
24 possibilities because you can then put on a witness that  
25 covers a particular spot; is that right? Is that right,

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 Mr. Kanwisher?

2 A Right. If the State's case changes or is not --  
3 let's put it this way. You always have an anticipation of  
4 what the State or government's case will be. But a lot of  
5 times that changes. In the trial. So in abundance of  
6 caution and good practice you always want to try and keep  
7 every option open, including potential alibi witnesses.

8 Q Unless of course, Mr. Kanwisher, as you said  
9 before, notifying the State of that witness might hurt  
10 your case, right?

11 A But it's hard to know if it's going to hurt it  
12 or not. That's the thing. You just don't know.

13 Q And that's why defense attorneys and  
14 investigators have to make those hard decisions, right?

15 A Well, they try not to make them until they have  
16 to. Because you -- we don't live in a world of certitude  
17 and we can't tell, honestly, we make our best judgments,  
18 as you know, you put on cases. You don't know. You just  
19 don't know. And the only thing that really matters at the  
20 end of the day is what shows up in court and what's proven  
21 and what's said and what the evidence becomes. And since  
22 that event hasn't happened, you're not going to try and  
23 foreclose possible evidence that may help your client.  
24 That would be just bad practice.

25 Q But eventually a defense attorney, at some point

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 before trial, has to make those hard judgments and decide  
2 which strategy to pursue and which strategy to abandon.  
3 Which strategy is prudent and which strategy is risky.  
4 Fair to say?

5 A Honestly I don't think so. I think there are --  
6 there's a continuum of choices and sometimes some choices  
7 are worse than others. But you never really know until  
8 the State puts its case up and you get to see it in its  
9 totality with all the inferences that you can draw from  
10 whatever it is that they come up with. So we are  
11 constantly deferring judgments. That is what we want to  
12 do. We don't want to rush into a theory of a case too  
13 fast. Just like police investigators. The mistakes they  
14 generally make, as you well know, is they get focused in  
15 one place too fast and all the other options fade away.  
16 And this is how tragic human mistakes get made. So for --

17 Q Mr. Kanwisher, I --

18 A -- from a defense perspective, I'm sorry, sir --

19 Q That's all right.

20 A -- one -- just one more thing.

21 Q Okay.

22 A Defined judgment is currency of the realm with  
23 defense counsel. Just try to keep everything open as long  
24 as you can.

25 Q And I understand you are testifying here pro

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 bono; is that right?

2 A Yeah.

3 Q Not --

4 A Definitely pro bono.

5 Q Not getting paid anything.

6 A No. And I said before, I'd really rather not be  
7 here.

8 Q Thank you, Mr. Kanwisher, and I apologize if I  
9 had any part of that.

10 A No, you were actually better than I thought you  
11 would be so that's fine.

12 THE COURT: Thank you. Any --

13 MR. VIGNARAJAH: I don't know what that means,  
14 Your Honor.

15 (Laughter)

16 MR. VIGNARAJAH: No further questions.

17 THE COURT: Thank you. Any limited --

18 MR. NIETO: Yes --

19 THE COURT: -- redirect?

20 MR. NIETO: Yes, Your Honor, if I may.

21 REDIRECT EXAMINATION

22 BY MR. NIETO:

23 Q In order to assess the credibility of a witness  
24 or assess the value of a witness there is a duty to  
25 investigate; would you agree?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A Yep.

2 Q And there is an obligation when you are working  
3 on alibi witnesses to be able to investigate and determine  
4 the legitimacy of that witness.

5 A Yes.

6 Q And if -- to make a determination, for example,  
7 that an alibi is in fact false or does not stand up to the  
8 rest of the evidence an investigation must happen.

9 A Correct.

10 Q And if a -- an alibi -- if the client provides  
11 an account of what happened, you're not pigeon-holed by  
12 that defense, are you?

13 A No.

14 Q In fact, often times clients will give you a  
15 version of events that may be accurate or not and the  
16 defense may go in a different direction.

17 A Correct.

18 Q And Ms. Gutierrez would know all these things,  
19 correct?

20 A Yes.

21 Q And she --

22 MR. NIETO: Court's indulgence.

23 BY MR. NIETO:

24 Q She would not be the type of attorney that would  
25 foreclose presenting a potential alibi simply because it

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 did not comport with one potential defense theory,  
2 correct?

3 A Correct.

4 Q And that she understood the duty to investigate.

5 A Yes.

6 Q In fact, they had -- government's exhibits had  
7 explained and the documents that you had reviewed to make  
8 the determination regarding an alibi, right? You saw  
9 that?

10 A I saw that.

11 Q And all the names and all the lists that you  
12 saw, you never saw the name, Asia McClain, did you?

13 A The only time I saw Asia McClain is the paper  
14 that you showed me from, I assume, Cristina's file.

15 Q So you're required to make a determination about  
16 your defense when, Mr. Kanwisher?

17 A Say it one more time.

18 Q When, in your understanding, when is your --  
19 when is the time to make a definitive decision as to your  
20 defense?

21 A At the close of the State's case.

22 Q Not months before, correct?

23 A That's what I just said.

24 Q Not just because you have to provide  
25 notification as to what some witnesses may be?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 A Absolutely not.

2 Q In fact, as you said on your direct, there is  
3 subterfuge involved in making these lists.

4 A You play within the rules, but you use the rules  
5 to help yourself, yeah.

6 Q All right. And the theory potentially being,  
7 sir, that if the list is 80 names long or three pages  
8 long, perhaps the State will not have the opportunity to  
9 investigate each and every one.

10 A That's correct.

11 Q So you could, for lack of a better phrase, just  
12 sort of bury it in the midst of all the other names just  
13 so you keep your options open for trial.

14 A Yes.

15 Q And Ms. Gutierrez is the type of attorney who  
16 understood that.

17 A Yes.

18 Q And you understood that when you worked with  
19 her.

20 A Yes.

21 MR. VIGNARAJAH: I don't mind Mr. Nieto cross  
22 examining his own witness, but at some point I'll object  
23 to the leading questions.

24 THE COURT: Let's try to lead less.

25 MR. NIETO: Court's indulgence, if I may?

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 THE COURT: Certainly.

2 (Pause)

3 BY MR. NIETO:

4 Q What would you think, Mr. Kanwisher, if the  
5 Defense had the name and the address, a phone number,  
6 contact information for an alibi witness and did not  
7 contact that witness?

8 A What inference would I take?

9 Q What would you say to that? Yeah. What would  
10 you take from that?

11 A I wouldn't understand it.

12 Q Why would you not understand it?

13 A Because zealous advocacy requires investigation.  
14 There's no reason not to do that.

15 Q Can you --

16 A Or -- no, let me say it better. There's no  
17 tactical reason.

18 Q Can you make a determination about an potential  
19 alibi without investigating a potential alibi witness?

20 A No.

21 MR. NIETO: Nothing further, Your Honor.

22 THE COURT: Any limited, limited recross?

23 MR. VIGNARAJAH: No, Your Honor. Thank you.

24 Thank you, Mr. Kanwisher.

25 THE COURT: Mr. Kanwisher, you may step down. I

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 do remind you you've been sequestered. You're not to  
2 discuss your testimony with anyone until after you know  
3 the case is completed.

4 MR. KANWISHER: Thank you, Your Honor.

5 (Witness excused)

6 THE COURT: Can I see Counsel quickly at the  
7 bench just on scheduling? And with you, as well, Madam  
8 Clerk.

9 BENCH CONFERENCE

10 (Bench conference begins - 12:58:30 p.m.)

11 (All Counsel approach the bench where the following  
12 ensues:)

13 THE COURT: We're rolling. So what time would  
14 you suggest we come back? I'm open.

15 MR. BROWN: Two o'clock, Your Honor? Does that  
16 work?

17 MADAM CLERK: Works for me.

18 MR. BROWN: We --

19 THE COURT: Two o'clock?

20 MR. BROWN: -- just want to move as fast as --

21 MR. VIGNARAJAH: I wouldn't mind an extended  
22 break, but that's fine.

23 MR. BROWN: -- possible.

24 THE COURT: I want to give you all unlimited --  
25 but, I mean, am I pushing too much? It -- it's 10 of,

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 but, maybe 2:15?

2 MADAM CLERK: 2:15's fine.

3 THE COURT: Does that help?

4 MR. VIGNARAJAH: Thank you, Your Honor.

5 MR. BROWN: 2:15?

6 THE COURT: Okay.

7 MR. NIETO: What does the court clerk have to  
8 say? Is that all right?

9 MADAM CLERK: 2:15. Thank you.

10 THE COURT: Well, that (inaudible) Madam Clerk.

11 MR. NIETO: Just want to weigh you in.

12 MADAM CLERK: Much appreciated.

13 THE COURT: Okay.

14 MALE VOICE: I know.

15 MR. BROWN: Thank you, Your Honor.

16 MR. VIGNARAJAH: The Judge has spoken.

17 (Bench Conference concluded - 12:59:06 p.m.)

18 (All Counsel return to the trial tables where the  
19 following ensues:)

20 THE COURT: Thank you. The Court will take its  
21 luncheon recess. We'll reconvene at 2:15. Thank you.

22 MADAM CLERK: All rise.

23 (Court takes luncheon recess 12:59:27 p.m. to 2:20:04  
24 p.m.)

25 DEPUTY SHERIFF: All rise.

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>

ADNAN SYED v. STATE OF MARYLAND  
February 3, 2016 BEFORE MARTIN P. WELCH, JUDGE

1 MADAM CLERK: Circuit Court for Baltimore City,  
2 Part 97, is back in session, the Honorable Martin P. Welch  
3 presiding.

4 THE COURT: Good afternoon, everyone. You may  
5 be seated. And, Mr. Brown, is Petitioner prepared to call  
6 its next witness?

7 MR. BROWN: Yes, Your Honor. We have one very,  
8 very minor matter that Mr. Nieto's going to raise.

9 MR. NIETO: And I'm sorry, Your Honor, I --

10 THE COURT: That's all right.

11 MR. NIETO: -- based on Your Honor's ruling with  
12 regards to the sequestration for Ms. Chaudry this morning  
13 I had an opportunity over lunch to do a little bit of  
14 looking into it and we would obviously ask the Court to  
15 reconsider that order of sequestration on her. When she  
16 was removed from our witness list she is -- by definition  
17 she becomes just a normal member of the public and I don't  
18 believe that the State has been -- has provided a  
19 sufficient enough proffer as to the reasons why she should  
20 be sequestered. I think they had -- might have mentioned  
21 that she could be a potential rebuttal witness but the --  
22 without any additional findings it sounds like that was a  
23 little bit vague and inappropriate. I had provided to  
24 Your Honor the Tharp v. State case which seemed to address  
25 that to a tee. I provided a copy to Opposing Counsel as

Find links to evidence described above and many more original documents from this case  
at The Undisclosed Wiki <https://www.adnansyedwiki.com/PCR2016>