

Episode 10: The Best Defense is a Good Defense

-SquareSpace Ad-

-MailChimp Ad-

Ira Glass

Previously, on Serial...

Summer

There's no way that she was at Best Buy at 2:36.

Detective

Did anybody else use the phone?

Jay

Yeah, Adnan. I remember he was talking to a girl. He put me on the phone with her for like three minutes. I said hello to her.

Adnan Syed

To be a seventeen-year-old kid with no experience with the system, with no experience with any of this stuff, it's very difficult to believe in the early stages that this is actually what's happening. This must be just some huge mistake.

Automated voice

This is a Global-Tel link prepaid call from Adnan Syed an inmate at a Maryland Correctional facility. This call will be recorded and monitored...

Sarah Koenig

From This American Life and WBEZ Chicago it's Serial. One story told week by week. I'm Sarah Koenig.

Today's episode is mostly going to take place in the courtroom and before we get into the arguments at trial I just want to play you this thing from Adnan's jury selection. I used to be a reporter for the Baltimore Sun and I covered some trials and if I happened to be in the courtroom for jury selection it was always such a good reminder of what living in Baltimore was like for so many people.

Here's what I'm talking about. December 8, 1999. Jury selection for Adnan's first trial. Judge William Quarles asks a standard question of the jury pool.

Judge William Quarles

Have you or any close family member ever been the victim of a crime, convicted of a crime, served time for a crime, or have pending criminal charges?

Sarah Koenig

A lot of people rise from their seats and then line up to talk to the judge. I can't tell exactly what proportion of the jury pool but it looks to be at least half.

Judge William Quarles

What did you come up to tell me?

Potential Juror

Uh, my husband's son was convicted of murder.

Judge William Quarles

Good morning (muffled) what did you come up to tell me?

Potential Juror

My house was broken into and we were robbed in the middle of the night, about six years ago.

Judge William Quarles

Good morning thirty-seven.

Potential Juror 37

Good morning your honour.

Judge William Quarles

What did you come up to tell me?

Potential Juror 37

My husband was shot.

Potential Random Juror #1

I have a brother that's wanted. He's 17.

Potential Random Juror #2

In May my parents and I were victims of an assault and in October my aunt was shot in the head.

Potential Random Juror #3

Uh, my husband was convicted - handgun violation.

Potential Random Juror #4

My brother was commit-- convicted of attempted murder.

Potential Random Juror #5

My partner is a rape victim.

Potential Random Juror #6

I was robbed of a small amount of money on the street.

Judge William Quarles

Next.

Court Official

207.

Judge William Quarles

Good morning 207. What did you come up to tell me?

Potential Juror 207

That I have two uncles who are serving time for murder.

Sarah Koenig

One guy says, “We moved from a very peaceful town in Oregon to a violent community,” and Judge Quarles says, “Welcome to Baltimore.” Quarles asks all these people whether they think they could still be impartial jurors on Adnan’s case. Some say no and they get dismissed. Some say yes and he sends them back to their seats. He was on the lookout for prejudice, all kind of prejudice. Against cops, against prosecutors, against Koreans and against Muslims. One guy tells them he doesn’t think he can be impartial because he’s got a friend of the Muslim faith and he’s seen him and also his son mistreat their families.

Potential Juror

A friend of mine that was Muslim faith and I seen him mistreat his family, his wife and everything. I've seen this go on between him and his son, he got mad and he did the same thing that father did, so I just couldn't you know, to be honest with you.

Judge Quarles

Okay, I appreciate your honesty.

Sarah Koenig

This brings me to something Shamim told me when I first interviewed her, Shamim Rahman, Adnan's mother. Shamim and her husband Syed Rahman, they believe Adnan is innocent. There's no question about it for them. Adnan's father said to me, "we've had no happiness in our family since Adnan was arrested. It's been continuous torture."

Shamim Rahman

I don't know what to say, believe me it's like my-- I mean my whole body is like numb you know. I cannot think, nothing we know more. But all I know he didn't do it.

Sarah Koenig

What-- how do you guys make sense of what happened? How do you explain what-- to yourselves I mean, not to the outside world, to yourselves-- how do you understand "why?" You must think about this.

Shamim Rahman

Believe me that's the only thing you know. I still believe because he was raised a Muslim. Discrimination. And everybody feel, the whole community, because he was a Muslim child that's why they took him. It was easy for them to take him, then other people. This was so--

Sarah Koenig

And do you believe that?

Shamim Rahman

Of course, yes, I believe too, yes. Because it was easy to target, you know. For them to come and pick him up. We still don't know why they're doing it, but again it's discrimination. Because we are Muslim, and we are minor in this country. So, that's why they took Adnan.

Sarah Koenig

I don't know, I mean--

You can hear me not believing her, right? The notion that the cops and prosecutors in this case were driven by anti-Muslim feeling, by racism, and by racism alone. That I found very hard to believe. And I still don't believe that by the way. But I didn't wanna write off what Shamim was saying either, because maybe anti-Muslimness crept in, contributed in some way to how the investigation and the prosecution operated. Advertently or inadvertently.

Shamim said she hadn't personally felt discrimination, just out in the world in Baltimore, before the trial. And she didn't feel it after, not even after 9/11. But at a hearing on Adnan's bail status on March 31, 1999, she felt it. The courthouse that day was packed with people from Adnan's mosque, The Islamic Society of Baltimore. They'd raised tens of thousands of dollars for his defence, they offered to put up their own houses and other properties to secure his bail. Adnan's attorneys during the bail phase of his case were two guys name Chris Flohr and Doug Colbert, the family would hire Christina Gutierrez soon after, for trial. Chris Flohr remembers the bus loads of people who came to Adnan's bail proceedings, filling the courtroom and hallways. He said he'd never seen anything like it, before or since.

Chris Flohr

I remember almost every inch of the available standing space in the courthouse at the Wabash district court where the bail review happened, being full up with people. So, a lot of beards and a lot of traditional garb.

Doug Colbert

Many of the people here are people who you would almost say they're extended family, they care for each other's children, it's one of the old fashioned sense of community.

Sarah Koenig

That's Doug Colbert, who did the talking during this hearing.

Doug Colbert

--and so the people who are here in this courtroom represent the doctors and the teachers and the lawyers and the accountants and the correction officers as well as three religious leaders, imams, who are from different mosques here in Baltimore. So the community here Judge, is here to say first of all, that they commit themselves to promise to vow that they will not only supervise Adnan should he be released should bail be set. But at the same time they will also accompany him to court as well.

Sarah Koenig

After he finished, the prosecutor, Vicki Wash, took that same crowd, the people Doug Colbert describes as "solid respectable folk, who make sure Adnan does the right thing," Wash cast them as a room full of aiders and abettors. The same people who are likely to help Adnan run away to Pakistan, and that's why he shouldn't get bail.

Vicki Wash

Your honor, the fact that the defendant has strong support from the community, that *is* what makes him unique in this case. He is unique because he has limitless resources, he has the resources of this entire community here. Investigation reveals that he can tag resources from Pakistan as well. It's our position your honour that if you issue a bail, then you are issuing him a passport under these circumstances to flee the country. We do not want another Sheinbein situation your honor. We are asking you-

Judge David Mitchell

(gavel) I told you I wasn't gonna take it.

Sarah Koenig

That's judge David Mitchell telling the big crowd to settle down. Sheinbein is Samuel Sheinbein, a kid who was accused of brutally killing another Maryland teenager in 1997 and then absconded to

Israel. Ms. Wash said she talked to a Mr. Harry Marshall, a senior legal advisor for international affairs with the justice department, and Mr. Marshall had explained to her that the U.S. had tried unsuccessfully to extradite certain criminals from Pakistan.

Vicki Wash

--and he cited that there is a pattern in the United States of America where young Pakistani males have been jilted, have committed murder, and have fled to Pakistan and we have been unable to extradite them back. He gave me a specific instance that's occurring now, that's pending in Chicago, where the factual pattern is frighteningly similar. Again it's a young Pakistani male who was jilted by his girlfriend who fled the country and they have had no success and he indicated it would be a dim situation indeed if the defendant would flee to Pakistan. We have information from our investigation that the defendant *has* an uncle in Pakistan, and he has indicated that he can make people disappear.

Sarah Koenig

That information about the badass uncle? I think they got that from Adnan's science teacher. I'm not kidding. The cops talked to this teacher on March 24 and in their notes it says the teacher, Mr. Nicholson had had Adnan as a student the year before, the word "brooding" is in there, then it says suspect "had an uncle in Pakistan who can make people disappear." Under that it says, they drained blood from cows at the mosque one day, he was pumped. So that odd tidbit from Mr. Nicholson ends up as an argument at Adnan's bail hearing. I couldn't find any other source for it in the detective's or State's attorney's files I looked at. Adnan's attorney made a stab at fact checking Wash's information. One thing led to another and three weeks after that hearing, Ms. Wash writes a letter to Judge Mitchell apologizing if she misled the court. She says she'd misconstrued information from Mr. Harry Marshall of the Justice Department. She talked to him again and he made it clear that there was not a pattern of young Pakistani men committing murder after they'd been jilted and then running off to Pakistan. And that other case she mentioned the frighteningly similar one out of Chicago "that case parallels Syed's case only that it involves a Pakistani male charged with murder where the victim was known to the defendant," Wash wrote. Even in her apology, there's an error. Adnan is not Pakistani. He's American with Pakistani heritage. Maybe this seems like I'm parsing, I don't mean to. I'm only pointing all this out because to me it shows how easy it is to stir stereotypes in with facts all of which then gets baked into a story. Something like: those Muslim men, they can't control their pride, their passions, they kill their lovers and flee

the consequences with the full support of their families and communities. That's what shocked Shamim.

Obviously the State never said and was careful not say "Adnan did this because he's a Muslim," but they did skirt this idea a few time at trial. They wanted to show that this wasn't a normal high school romance, that this young couple was under an unusual amount of scrutiny and pressure from their families, and because Adnan's culture forbid the very thing he wanted, that's why he reacted the way he did to the breakup. They had various witnesses talking about what happened at the homecoming dance or how the relationship was secret. Prosecutor Casey Murphy tells the jury, "The crime was not about love, it was about pride." And in his opening argument, you've heard this language before in an earlier episode but it bears repeating, prosecutor Kevin Urick talks about how Adnan reacted when Hae broke up with him. "He became enraged, he felt betrayed that his honor had been besmirched and he became very angry and he set out to kill Hae Min Lee". Besmirched. That's not a word you're accused of by accident. It's not a word you usually hear applied to a seventeen-year-old kid at Woodlawn High School. It's a word from the old country where honor killings come from. This word "honor," it comes up a lot too. For instance, one day I was looking through a huge set of documents from the detective's investigations and I came upon a confidential report.

In late August of '99, so six months after Adnan's arrest, a woman who runs a consulting group that among its services helps law enforcement understand other cultures, wrote a report for Detectives Ritz and McGillivray, it's titled *Report on Islamic Fad and Culture with Emphasis on Pakistan, a Comparative Study relevant to the Upcoming Trial of Adnan Syed*. The report is eight pages long. I'm gonna skip to the money shot, *Summary As It Relates to Mr. Syed*.

"For her to have another man dishonored both Adnan Syed and his belief structure, it acceptable for a Muslim man to control the actions of a woman by completely eliminating her." It goes on, "within this harsh culture he has not violating any code he has defended his honor." Finally, "For many ethnic Pakistani men incidence like this are commonplace and in Pakistan this would not have been a crime but probably a question of honor." I have no idea what the cops made of this report, whether they looked at it and thought "oh dear" and stuffed it in a file never to be considered again or whether they thought "huh interesting" but they were, at the very least, in regular communication with this consultant especially during the early stages of the investigation.

Finally, I noticed that Jay also gives a shout out to Islam. It's during the second trial. He's testifying about what happened after he picked Adnan up at Best Buy as they're driving back to

school. Jay says, “this is when we started to talk a little bit. I don’t know. He said to me it kinda hurt him, but not really, and when someone treats him like that they deserve to die. How can you treat somebody like that, that you’re supposed to love?” and then, “All knowing is Allah.” Urick asks him “did he explain what he meant by that?” “No.” Jay says. It’s a detail that Jay mentioned neither to the detectives in his taped statements nor during the first trial, so why now? Allah only knows.

Reporting this story, I found plenty of examples of casual prejudice against Muslims. One of Adnan’s teachers for example, “think about what he would have been taught about women and women’s rights.” Another teacher I talked to told me she was terrified at the time that Adnan’s relatives were going to come after her for talking to the detectives. She told me she assumed his parents were evil. On that website that lists all the bodies found in Leakin Park, the author’s commentary about Hae Min Lee’s case is “maybe my prejudice is showing through, but who in their right mind lets their daughter date a man named Adnan Musud Syed?”

The jurors we spoke to said Adnan’s religion didn’t affect their view of the case. Lisa Flynn said maybe at first it interested her, but then she pretty quickly realised that more to the point, Adnan was a teenager in America doing American teenager things. She said once they all understood that, whatever stereotypes they had went right out the window. Which is exactly what you’d want in a jury. But when we pressed them a little more, it seems stereotypes about Adnan’s culture were there lurking in the background.

William Owens

I don’t feel religion was why he did what he did. It may have been culture, but I don’t think it was religion. I’m not sure how the culture is over there, how they treat their women. But I know in some cultures women are second class citizens and maybe that’s what it was, I don’t know. He just wanted control and she wouldn’t give it to him.

Sarah Koenig

That’s juror William Owens. Here’s Stella Armstrong.

Stella Armstrong

They were trying to talk about his culture, and [in] Arabic culture men rule, not women. I remembered hearing that.

Sarah Koenig

You mean when you were deliberating, one of the jurors said that?

Stella Armstrong

Yes when we were deliberating. So he had put his whole life on the line for her and she didn't want no part of it anymore.

Sarah Koenig

The first thing Christina Gutierrez, Adnan's trial lawyer, said in her opening statement about her client, this is in the first trial, was, "Adnan Musud Syed is an American citizen. He was born in this country like most American citizens." She obviously knew, despite what happened at jury selection, that the jurors might be prone to anti-Muslim, anti-foreigner sentiment which probably explains why she spent to what seemed to me a *nutty* amount of time during her opening talking about what an immigrant is, what a mosque is, what Pakistan is. "A country formed in the Arab world in the tip of the land mass called Asia." She talks and talks about how Adnan was raised, about young romance, the judge interrupts her four times. "How much long will you be Miss Gutierrez? Five minutes Miss Gutierrez. One minute Miss Gutierrez," she's rushing at the end when she rather quickly throws suspicion onto Jay and then finally onto Mr. S. I know I've talked about Christina Gutierrez in earlier episodes, about whether she should have talked to Asia McClain or whether her style might have grated on jurors. But now I'm going to address this question head on. Did she blow it?

You might be surprised to hear that Adnan's only beef with Christina, in terms of what happened at trial is that she never contacted Asia McClain. He thinks it wasn't deliberate on her part, he just thinks she made a mistake, like a surgeon's slip of the scalpel. Personally, she was nothing but compassionate to him he said, always asking him how he was going, she made sure he got the skin medication he needed, the glasses he needed. She was his protector.

Adnan Syed

I mean I loved her, I still-- I just have a great deal of affection for her. I just really felt like she really really had my back. You understand? So--

Sarah Koenig

You trusted her like she knew what she was doing?

Adnan Syed

Completely. I mean completely. Honestly I couldn't-- no one could understand it unless they were in that situation. The closest thing I can think of is if you combine a doctor, a nurse, a school teacher, a coach and your parents. If you combine all of that then you may have an idea of how much I trusted Miss Gutierrez in that situation.

Sarah Koenig

Your life is really in her hands.

Adnan Syed

Literally, literally, literally. She never really mentioned what her plan would be, I never really knew what it would be.

Sarah Koenig

Christina died in January of 2004 so obviously I can't ask her what her strategy was for conjuring reasonable doubt. I have to go by what we've seen in her notes and in the courtroom. Based on all that I can summarise her defence theory in four words: someone else did it. Such as Jay or the new boyfriend Don, or Mr. S the guy who found the body. After all, she argued, we don't even know for sure when Hae died, what day. It could have been the 13th or 14th or 15th. Christina wanted to show that once the cops zeroed in on Adnan they ignored other viable suspects. So rather than pinning down an alibi for Adnan, she dumped as much suspicion as she could onto these other players.

I mentioned before that Adnan's first trial ended in a mistrial. Here's what happened. Christina was what Chris Flohr described as a fighting person. Generally a good quality in an attorney. The

scratchy part of Christina though, sometimes it could illicit a response, shall we say, in the court room. Obviously it's an adversarial situation, both sides in Adnan's case were suspicious that the other was playing fast and loose when they could and it could get bristly. Here's prosecutor Casey Murphy during a bench conference at the first trial before Judge Quarles.

Casey Murphy

I'm going to object to defence counsel calling my co-counsel an asshole at the trial table which she did just a moment ago.

Judge Quarles

I did not hear that.

Sarah Koenig

I wish I could complain to a judge every time someone called me an asshole. Anyway, Quarles says he knows Christina to be a "pitbull on the pant leg of justice" but an otherwise courteous person and about everybody just behaves themselves ok? But, five days later, Quarles loses his patience with Christina. It's over something small. Kevin Urick asks if he can show exhibit thirty-one to the jurors. It's the AT&T call records from Adnan's phone showing calls from January 12, 13 and 14. Christina says she hasn't seen it before. Urick says that's not true, she has, they'd already stipulated to the call record. She says, "yeah but I hadn't actually looked at it before, I haven't physically seen this exhibit."

Quarles calls them up to the bench. "Miss Gutierrez" he says, "if you're going to stand there and lie to the jury about something that you agreed could come in, I'm not going to permit you to do that." Christina says, "Judge, the fact that I agreed--" But he cuts her off. "That was a lie. You told a lie. I'm not going to permit you to do that." "That's not a lie Judge, I resent the implication." Christina starts getting heated now. Quarles says "Please be quiet, please be quiet." She says "It's very hard to be quiet when a court is accusing me of lying."

I don't want to overdo it here, but it's possible that had this bench conference not happened, Adnan's whole life could have been different. That first trial according to Adnan, to Christina's colleagues, to people who were watching it, seemed to be going well for Adnan's side. It was moving fast and Jay seemed to be more on the defensive, and then this happened. Of course jurors overheard it despite the white noise they turn on during bench conferences to muffle the sound.

After a break, Christina asks for a mistrial. Quarles says he's gotten a note from Alternate Number 4. "In view of the fact that you've determined that Miss Gutierrez is a liar, will she be removed? Will we start over?" Quarles says to Christina, "your motion for mistrial is granted."

Julie Remy was a law clerk for Christina at this time and she said moving into trial number two, Christina was confident.

Julie Remy

I mean look, the jury's polled after the first, at the end of the State's case and they're giving the indication that they're going to acquit and then you turn around and try it in front of a different jury and it come out complete the opposite.

Sarah Koenig

Wait, so you guys polled the jury after the mistrial?

Julie Remy

I wasn't part of it but I know the jury was polled after the mistrial.

Sarah Koenig

By her?

Julie Remy

By her and I believe the law clerks on it, meaning Mike was involved, I'm not sure but the jury was polled and it was at the end of the State's case, and they interviewed the jurors and they gave every indication that they were heading toward an acquittal.

Sarah Koenig

In fact it wasn't quite at the end of the State's case. The AT&T expert hadn't testified about the cell tower technology and Jen hadn't taken the stand either which is significant. But it's true the jury had heard the bulk of the State's case.

Julie Remy

To have that information, you've got to feel pretty good about that as the defense attorney, I would expect being a trial attorney myself that you would want to stay the course and keep doing the same thing and hope to get the same kind of result but you just never know with these juries.

Sarah Koenig

True, different jury but also different judge, slightly different arguments, different weather, for all we know, winds blowing slightly more this way or that. There are so many factors, including chance, which no one wants to think about in a first degree murder case, but of course luck is part of it too.

About a month later, they start all over again with trial two. Christina's strategy is the same. Try to show that someone else killed Hae. She did a lot of research in hopes of linking Mr. S to the crime, or at least trying to link him to Jay. Did he patronise the video store where Jay worked for instance, but she never succeeded. During that second trial it takes some doing, but she finally gets Mr. S on the stand. He so desperately didn't want to be there, the courthouse staff basically had to prevent him from leaving the building. So, even though he's her witness, he's a hostile witness. Here's Christina trying to get him to explain how work orders at his job got filled.

Mr. S

If we could get to that specific job we'd do it at the time, if we can't do it at the time we'd do it when we could get to it. That's my answer.

Christina Gutierrez

Which might be the next day.

Mr. S

Whenever.

Christina Gutierrez

When your work day would end, you would then leave?

Mr. S

I guess so.

Christina Gutierrez

Well sir, is that a yes or a no? I'm not asking you to guess.

Mr. S

It's a yes. When you work days, don't you leave?

Christina Gutierrez

OK.

Sarah Koenig

Of course, Mr. S was more of a side dish. Christina's main prey was Jay. She tells the Judge:

Christina Gutierrez

Judge, I'd just like to be heard it is our entire defense we are to make, Jay was the person who committed this crime. With all the ways in which he acted guilty in describing the ways in fact in which he acted with consciousness of guilt by concealing evidence. His clothes, his boots, his outer coat, his shovels, wiping shovels, to conceal evidence as he said, both in his statement and on cross, to conceal evidence of *his* involvement.

Sarah Koenig

Christina cross examined Jay on five different days. She was exhaustive and exhausting. Her questions are detailed and deliberate but somehow the way she questioned him, and maybe it was the half speed pacing or the sing-songy aggression, somehow to me it added up to something less than effective. Her punches, and there were many, many punches don't always appear to land.

Adnan Syed

The prosecution did a masterful job of presenting the facts.

Sarah Koenig

Adnan says Christina, actually he calls her Miss Gutierrez, that Miss Gutierrez *did* do some great things for him. She was successful in barring the school nurse from testifying at the second trial for instance, that was the woman who said she thought Adnan was faking his reaction after Hae's death. But, he says he wishes some of her arguments had been clearer. The State's argument, flawed as it might have been, it was at least linear.

Adnan Syed

It seemed like Christina, I mean Miss Gutierrez, I don't want to say she was confusing things but she was just saying-- it wasn't like a clear outline, like the prosecution had. It just seemed like everything was jumbled like she took so long to question Jay, she took so long to cross-examine people it was almost like I don't even remember what we started talking about.

Sarah Koenig

Right, you kind of lose the thread of what is this even about, yeah.

Adnan Syed

Right, right, right.

Sarah Koenig

To give you an idea, in Jay's first and second taped statements to detectives, he tells them different stories about when Adnan first told him he was going to kill Hae. In the first statement he says Adnan mentions it that same day, January 13, while they're driving Adnan back to school at lunchtime. In the second taped statement he says Adnan told him the night before and also that Adnan had been talking about it for four or five days already. When he testifies at trial though, he goes back to the first version that he first heard about it from Adnan on the thirteenth. So

obviously Christina questions Jay about all this, it's fertile territory for her side. Listen to how she does it. This tape goes on for a while by the way, but I want you to get the full effect.

Christina Gutierrez

On another occasion you told them "well the conversations I had with Adnan Syed, they occurred four or five days earlier," right?

Jay

Yes ma'am.

Christina Gutierrez

And let me make sure because now there are numerous versions. The first, your very first interview occurred at a time when there was no tape recording right?

Jay

Yes ma'am.

Christina Gutierrez

And on that occasion did you tell them it occurred on the thirteenth?

Jay

No.

Christina Gutierrez

Then on your second interview after the tape recorder got turned on, did you tell them it occurred on the thirteenth?

Jay

No ma'am.

Christina Gutierrez

On the fifteenth of March did you tell them it occurred on the thirteenth?

Jay

I believe so.

Christina Gutierrez

So, sir, do you recall that actually on the fifteenth of March, you told them that Adnan told you that he was going to kill *that* bitch?

Jay

Yes I remember.

Christina Gutierrez

So on the fifteenth, you actually told them that you knew a whole day ahead of time that Adnan was gonna kill his girlfriend. Right?

Jay

(garbled. Sounds like: "He deceived me.") Yes.

Christina Gutierrez

Pardon?

Jay

(garbled. Sounds like: "He deceived me when" or "It was evening when") he spoke to me.

Christina Gutierrez

I can't hear you sir.

Jay

No.

Sarah Koenig

So, something just happened. Jay just admitted something, or didn't admit something, but I honestly can't tell if it's a point for the defense, or for the prosecution, or if it's a draw. There are lots of stretches like this where it seemed as if her cross-examination went so far into the weeds it was hard, even for me reading it years later, to hack back to the main trail. A juror that Dana interviewed, a guy named Theodore Wojtas, said Christina's strategy was a little lost on them too.

Theodore Wojtas

That defense attorney-- it's been a long time ago, but everybody seemed to think that they're talking but they're not saying nothing, (chuckles) you know what I mean? They're not making a point.

Dana Chivvis

So there just was like a lot of words?

Theodore Wojtas

Right. They talked and talked and didn't prove anything. You know what I mean?

Sarah Koenig

I think there is a good chance, though, that Christina leaves these threads hanging for a reason. As another defense attorney explained to me, during cross-examination, you don't want to tie each point up in a bow, in the moment. You don't want to tip your hand, because then the other side might come back with questions on redirect examination that could undo what you've just laid out. So you save all the threads and then tie them up in a nice, fat, unassailable bow at closing, after all the testifying is over. And indeed, Christina does revisit Jay's testimony at her closing, the gist of which is: the detectives arrested Adnan because of what Jay told them, and what Jay told them wasn't true. "And he lied to them about many, many things. It wasn't just that things didn't match

up, they were lies. They called them lies. Jay called them lies. On the fifteenth of March, on the eighteenth of March, on the thirteenth of April, every single time, lies.” Clearly Christina put a ton of time and effort into discrediting Jay, but the fact is, the jurors believed him. They didn’t think he’d be sitting there talking about this if it weren’t true.

She was less rigorous on other aspects of the case. The cell phone records, for instance. Her main argument there was that the way the State’s expert, Abe Waranowitz, tested the sites wasn’t valid because he used an Ericsson phone to make the calls, a different brand than Adnan’s, which turned out to be a bad bet on her part. The brand of the phone doesn’t matter. But what she didn’t do with the cell phone evidence was attack the State’s timeline. Call by call, tower by tower, or point out with clarity that a significant swath of the day, the hours between noon and six p.m. on the call log, do not match Jay’s testimony. There did come a moment in the second trial, though, when Christina really came to life, and just kicked ass. She teased some information out of Jay she hoped would change the course of the proceedings. It had to do with Jay’s plea agreement with the State, and specifically the attorney who was representing Jay. According to Adnan, when she figured this one thing out about Jay’s lawyer, she told Adnan, this was their big chance.

Adnan Syed

I remember those few days getting excited about that. Like this was a huge thing.

Sarah Koenig

Jay had been charged with a felony. Accessory after the fact to first degree murder. He plead guilty and had an agreement with the State that if he cooperated, basically showed up in court and told the truth, his sentence would reflect that. In the end, he got no jail time. For that plea, he had his own lawyer, a woman named Anne Benaroya. She was representing him pro bono. She wasn’t a public defender, she was a private defense attorney. Now, Christina had been complaining to the court that the prosecution hadn’t been totally forthcoming about Jay’s plea, and how it came about, which isn’t unusual in a trial like this one. But in the middle of the second trial, Jay says something. Something that Christina would later call, “the magic information”. It happened on the stand when she was asking Jay how Benaroya came to represent him. She asked, did anyone help provide you a lawyer?

Christina Gutierrez

Did anyone help provide you a lawyer?

Kevin Urick

Objection.

Judge Wanda Heard

Overruled.

Jay

Yes ma'am.

Christina Gutierrez

Who?

Jay

Mr. Urick.

Christina Gutierrez

Mr. Urick?! The prosecutor in this case helped provide you a lawyer?!

Jay

Yes ma'am.

Sarah Koenig

What?! Gutierrez freaks out! This is the magic information. Jay testifies that after his last interview with detectives, in April of '99, he had no contact with the cops or the prosecutors until September 6. So a long stretch where he doesn't know what's going on. He says he called the office of the public defender to try to see if he could get himself a lawyer, and they told him that unless you've been charged, we can't help you. Which is true. So Jay says the next thing that happens is the cops come to see him, on September 6, and tell him he's about to be charged with accessory after the

fact and that he'll be able to get a lawyer. The next day, September 7, they come pick him up, they book him, and they take him to the State Attorney's office. He meets Kevin Urick, the prosecutor. Jay says he's never met Urick before and then he says Urick introduces him to Anne Benaroya, who can represent him for free. Jay and Benaroya talk privately for a while, and then they sign a plea agreement. Then, that same day, they all go across the street to the courthouse and present the signed plea to a judge. If you or a loved one is an attorney, your jaw is hanging open right now, correct? Prosecutors do not find attorneys for witnesses they are prosecuting. That is not a thing. A former prosecutor that worked in the Baltimore office at the time said she's never heard of anything like that happening before. It sounded very strange to her, hence Gutierrez's freak out.

Christina Gutierrez

There is no jurisdiction in America that affords a prosecutor the right to pick counsel for its witnesses! Nowhere!

Sarah Koenig

If Jay got a free lawyer thanks to the State, Christina argues, that's what's called a benefit. It's worth money, and it could look like Jay is being paid by the State for his testimony, or else maybe Jay felt beholden to the State for giving him this benefit, and therefore might lie to please them. If it could look like that, she says, then the defense was entitled to know about it before the second trial, or the first trial began. And here she was learning about it at this late date. That, she said, was a violation of the rules of discovery. She sounds so mad, the jury is not present for this ranting, by the way. But probably, she was also giddy with gotcha excitement. She told the judge, this is so patently improper.

Christina Gutierrez

To have a witness who has this benefit and may feel indebted in a way that may affect what he testifies to, to the man who provided him the lawyer! To the man who selected the lawyer!

Sarah Koenig

Once she'd bitten into this, Christina did not let go. She wanted to wrest from it everything she could- maybe a mistrial, maybe some other relief. They spent hours on this issue, over several days of the trial. Sometimes in front of the jury, sometimes not. I called Benaroya about this, to find out

if it was true that Urick sought her out and that the first time she met Jay was in Urick's office, on the same day they signed the plea agreement. She said, "No it could not have happened that way. Absolutely not." At trial though, Urick doesn't dispute it. At Jay's sentencing in 2000, Benaroya says to the judge, "when Mr. Urick first asked me, uh, first mentioned this case to me and asked me if I would consider speaking to Jay..."

The Judge, Wanda Heard, agreed with Christina. That this arrangement looked fishy at best. She was not happy about it. But she also said "the witness in question, that is, Jay, he doesn't seem to be aware that it's messed up. He doesn't appear to think that he's getting a benefit, or being paid in some way for his testimony, or that anything untoward went on." So, it would seem his testimony isn't tainted by any of this and that's the main thing. So, 'A' for effort, Judge Heard tells Christina, but overruled. And that, more or less, was that.

In terms of defense witnesses, the case Christina brought was swift. It took about two and a half days for her to rest. Aside from the cops, a private detective, and the guy who surveyed the burial site at Leakin Park, the other witnesses Christina put on the stand were mostly character witnesses who had either neutral or nice things to say about Adnan.

Betty Stuckey

Whatever his assignment, Adnan strives for excellence at all times. His teachers remark that he's a bright, conscientious, and hard-working student who approaches his studies with sobriety...

Sarah Koenig

That's Adnan's guidance counselor, Betty Stuckey, reading from a college recommendation she wrote for him. Which, incidentally, she printed out for Adnan on January 13, the same day Hae disappeared. She was the last defense witness at trial.

Betty Stuckey

...He participated in building a solar vehicle that won 6th place in national competition in Topeka, Kansas last spring. Furthermore, he worked diligently on a project sponsored by the National Honor Society... (fade out)

Sarah Koenig

When Rabia Chaudry first told me about Adnan's case, she told me she thought Christina had bungled it, on purpose even, so she could make money off the appeal. That was the only way Rabia could account for screwing up the Asia thing. And, she said, she thought Christina's defense, the witnesses she brought, were laughably weak.

I do not agree with Rabia's assessment of Christina. I do not believe Christina threw this case, on purpose. Because, from reading the transcripts and watching the trial videos you can see her scrapping on Adnan's behalf at every opportunity. Sometimes in long and rather beautifully constructed extemporaneous paragraphs. She made a thousand strategic decisions about what to pursue when, she had four clerks plus an associate, so five people working on the case. It's not like she did some sloppy rush job.

Julie Remy

You know, I know that losing the case, she was sick over it. I don't think she ever got over that case.

Sarah Koenig

This is Julie Remy again, who worked for Christina at the time of Adnan's trial.

Julie Remy

And I can tell you, the physical effects and the depression that I saw first hand. She was, I think she went into a deep depression after that case and I don't think she ever really bounced back. She really was impacted by the loss of that case.

Sarah Koenig

People who worked with Christina back then, they all said that same thing, that she was tireless and she cared a lot about her cases, including Adnan's. She was always going, going, a hundred miles an hour. One guy said she'd sort of fly into the office in the morning, sunglasses on, hair flying, barking orders. She smoked and she cursed and she fiercely mentored her clerks. She could be a giant pain in the ass but, also she was a giant in the profession. Not just in Maryland, but nationally. She did the first, or at least one of the first DNA cases in Maryland. To figure out how to

explain it to a jury, I heard a story that she went to a grade school and practiced. Each time a kid said he or she didn't understand the science, she started over. Christina did one of the first cases in Maryland that used Luminol to track blood spatter. About six people told me she was brilliant, not in a hyperbolic way either. Despite her stellar reputation though, it does seem as if something not right was happening with Christina around this time.

Shamim Rahman

Everyone said, she's the best, she's the best. We were begging her to take our case.

Sarah Koenig

That's Shamim, Adnan's mother. She and her husband consulted with friends and leaders at the mosque about who to hire. Everyone said Christina sounded great. They felt like they were lucky to get her.

Shamim Rahman

Whatever she asked for, you know, we'll just go and get it before we lose her, because we were afraid if we lose her we don't have like a nice attorney.

Sarah Koenig

Shamim said Christina's bedside manner, at least with them, lacked a certain delicacy. She said, they were both intimidated by her and that they could never get her to talk to them about Adnan's case or what was going on. And, Shamim says she thought Christina had lost some of her magic in the courtroom by the second trial. That she seemed sort of agitated.

Shamim Rahman

So, and all the time she would be smoking, in and out, she was a very nervous kind of person. Before, she wasn't like that, the first trial.

Sarah Koenig

Christina initially asked for \$50,000 to represent Adnan, that fee would more than double by the end of the second trial. Members of the mosque had donated lots of money to help pay her, but Shamim says that toward the end of the second trial, Christina had begun to bully them about money. If they managed to get Christina on the phone or in a meeting, Shamim said the only topic would be money. Money, money, Shamim said. At one point, Shamim says, Christina told Adnan's parents she needed them to bring \$10,000 cash to the courthouse to pay for a jury expert.

Shamim Rahman

So, it was kind of, you know, strange. But when I told my friend, she said "oh no don't worry, she's doing her job you know."

Sarah Koenig

That's weird, that's strange.

Shamim Rahman

It was weird to me because--

Sarah Koenig

How could you even fit \$10,000 in your pocket?

Shamim Rahman

And plus she said, bring it cash. I mean usually, they are supposed to take the check but she said no bring it cash, oh wait a minute--

Sarah Koenig

Was that the only time that she asked you for cash?

Shamim Rahman

Yes. Yeah, she asked for cash. Yes.

Sarah Koenig

Weird.

Shamim Rahman

Yes.

Sarah Koenig

But evidently she never hired the expert. Shamim says there came another time toward the end when Christina insisted Adnan's parents owed her money and that she could take their house if they didn't pay up. They said they *had* paid her for everything, they were so scared they'd transferred their house into their oldest son's name. I bring all this up because Adnan's parents were not the only ones who had dealings like this with Christina. I spoke to another couple, Ron and Sue Witman and to hear them tell it, on the heels of Adnan's conviction in early 2000, Christina began to go downhill pretty fast. The Witmans hired Christina to defend their fifteen year old son in what might be the worst and saddest case I've ever heard. Their son Zach was accused and ultimately convicted of killing their younger son Greg who was thirteen. It's just a terrible, gruesome, confounding case, and so the parents, I can't even begin to imagine but anyway, they seek out Christina because she's been recommended to them and they'd read about her defense work in the paper. At first she was great, they said. She successfully argued a couple of important pretrial motions. Ron Witman said she was magnificent in the courtroom. But then as time when on things started to get weird. This is around the same time she was working on Adnan's case. She'd be late, *really* late, filing briefs with the court. The Witman's case was in Pennsylvania, they live right on the border with Maryland, so that meant the briefs had to be filed in the courthouse in Harrisburg. They'd check in for weeks in advance with Christina they said, asking, "How's it going, when can we review the brief?" No brief. Day of even, no brief. Twice Ron had to go wait for the brief in person at Christina's office in Baltimore and then race the eighty miles to Harrisburg, meeting up with Sue along I83 so they could get it stamped by 4:30pm at the court. Ron said one of them would have to run in while the other waited, they didn't even have time to park the car.

The Witmans talk about many of the same things Shamim told me, that they couldn't get a hold of Christina or saw that things weren't getting done, but when they asked people who knew her they were told, "don't push it, it'll be fine." Here's Sue Witman.

Sue Witman

And they would say to me, "This is how Tina works. Don't tell Tina what to do, this is what she does, she's very good at it, don't worry about it." So, someone that has worked with Tina for years tells you that this is just her way, then you think that this is just her way.

Sarah Koenig

Ron says it got worse and worse. Adnan's trial ended in late February 2000. By the end of that same year Christina had been hospitalised at length. She had diabetes, she had MS, she got very, very sick. Her law clerks told me they'd bring files to her in the hospital. One of them told me Christina would sneak cigarettes in the bathroom. In other words, she was still at it and maybe she shouldn't have been. Ron Witman says it should have been clear to everyone around her that Christina couldn't keep up with her cases but no one cried uncle.

Ron Witman

Ultimately in January 2001 if I have my years correct, we had a brief due at the Supreme Court of the United States in ten days and she had told us that she had a University of Baltimore law professor who she had worked with many times before, doing the drafts. And finally, I called him and he said, "I haven't talked to Tina about your son's case for a year and a half or two years."

Sarah Koenig

The Witmans say Christina asked for an additional \$65,000 for work she had to know full well she couldn't do, that they gave her \$25,000 for an expert but Christina never paid the guy so he came to them for the money. They said that happened with a second expert too for a few thousand dollars. If she was too sick, why didn't she tell them? Why did she leave them hanging?

Christina's career had collapsed by the spring of 2001, a year after Adnan's trial ended. According to newspaper stories in the Baltimore Sun, written by me, Christina had gotten in trouble with the Attorney Grievance Commission of Maryland. Clients were complaining that she'd taken their money and had not done the work she promised or not used it the way she said she would. The State fund that compensates people when their lawyers misuse their money paid out a total of \$282,328 on twenty eight claims against Christina. The largest payout was to the Witmans.

The Witmans feel as though she was lying to them, trying to get as much money out of them as she could. A more generous assessment would be that Christina was in denial about how sick she was, and people who worked with her told me she was never much interested in the business side of things, it wasn't her forte. One former law partner of Christina's told the Witmans that Christina had been slipping for a while, the past five years even.

There have been a lot of news stories this week that Adnan's gotten an appeal. That's not quite true. He had an initial appeal which was denied and he had a hearing for post conviction relief, also denied. But he appealed that denial to a higher court, The Maryland Court of Special Appeals and recently that court ordered the State to respond to one aspect of Adnan's petition by January 14, so it is still alive, by a thread. Adnan's petition is based on a claim of ineffective assistance of counsel, meaning Christina Gutierrez screwed up. The brunt of the claim is about Asia McClain, that she might have provided an alibi for Adnan at trial if Christina had talked to her. But the part of the petition that the higher court wants the State to answer is actually about a different complaint. Namely that Adnan had asked Christina to seek a plea deal, twice he'd asked and Christina never did it. Prosecutors in Adnan's case said they never made an offer but Christina also didn't seek one. Even though Adnan says he'd asked her to, once before his first trial and once before the second. When I first read his petition I told Adnan I found it hard to believe that he'd asked for a deal. He's been so unshakable for fifteen years that he's innocent, that he had nothing to do with Hae's death. And it also seemed to me as if he trusted back then that the system would sort all this out and he'd go home. But Adnan told me there were times when he was really scared. He was trying to be brave for his family but then he'd hear stories or watch guys he knew get fifty year, seventy year, life sentences and it would hit him, "I could be in prison for the rest of my life."

Adnan Syed

I think it's so difficult to understand these things not ever having been in that situation. I would always think before I ever came to jail that a person would only plead guilty to something because they did it. No way would a person ever plead guilty to something.

Once you come into this whole system, one thing that you really learn is that no one really beats cases and when it comes to first degree murder cases, it's almost impossible. I can think in all the years I've been in prison I can probably think of a handful of people who ever beat a first degree murder case, simply because the odds are just so stacked against you. So there are people that I've met and I know and I'm so jealous of them, and not in a bad way, in a good way because when we were over in the jail, over city jail, their lawyer advised them, "Look man, you should take a deal of life suspended for thirty years, life suspended for twenty years whether you did it or not. Because the way the elements of the case are, you don't have a strong alibi, you have someone coming to court saying that you did it whether you did it or not. You're going to go in front of a jury and twelve people are going to convict you because they have never sat in your shoes before." So it's really a choice of you having a life sentence versus the choice of you having (inaudible), because now I still communicate with some of these guys, they're actually getting ready to go home, fifteen, sixteen years later.

Sarah Koenig

Adnan says when he's seen younger guys come in on parole violations or for whatever reason, he tells them, "Take the deal. Regardless of whether you did it, take the deal."

Because Adnan has maintained his innocence he's got no hope of getting out, or very little hope. That's how the system works. He understands that now. Technically Adnan is eligible for parole but the chances of getting it are so slim for anyone with a life sentence for first degree murder, but especially if you don't show remorse. Because, you know, what if he's a psychopath right? Next time, on Serial.

Serial is produced by Julie Snyder, Dana Chivvis and me. Emily Condon is our production and operations manager. Ira Glass is our editorial advisor. Research and fact checking by Michelle Harris. Administrative support from Elise Bergerson. Our score is by Mark Phillips who also mixed the episode. Our theme song is by Nick Thorburn, who provided additional scoring. Special thanks to John B. Minor, Terry O'Conner from Purdue University, Scott Calvert, Craig Timberg, Meredith Cohen, Lisa Pollack, Chuck Salter, Blake Morrison, David Cohen and Natasha Lesser. Our website where you can listen to all our episodes and find photos, letters, and other documents from the case, *and* sign up for our weekly emails, SerialPodcast.org. Support for Serial comes from NYT

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