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February 25, 2016

HAND-DELIVERED
The Honorable Judge Martin P. Welch
Courthouse East-Room 247
111 North Calvert St.
Baltimore, MD 21202

Dear Judge Welch,

I am writing in response to Mr. Vignarajah's letter to the Court dated February 23, 2015 to correct an inaccurate statement and to give the Court the larger context for the last paragraph of the letter.

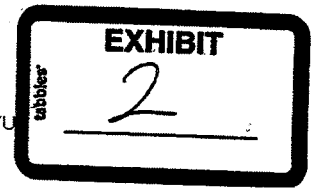
After the hearing in the above case concluded, I was informed that during the hearing, the State had contended that I had been part of a general "defense team" for Mr. Syed that had represented Mr. Syed before Ms. Gutierrez entered the case; that this "team" had conducted an early investigation of the case; and that the "team" had some role in assessing or possibly assessing Ms. McLain's alibi defense and rejecting or possibly rejecting it for tactical reasons.

None of these assertions are true. I was retained by Mr. Syed's family *after* Ms. Gutierrez entered the case and *solely for the purpose* of responding to the State's motion to disqualify her as counsel, and accordingly I entered my appearance after Ms. Gutierrez entered hers.

After I received the above information, I called both counsel in the case (Mr. Vignarajah and Mr. C. Justin Brown), asking them if the State had made the representations in the second paragraph above. I reached Mr. Brown first and he confirmed the State had. I then reached Mr. Vignarajah. I told Mr. Vignarajah that if he had made these representations, I thought the State had a duty to correct the record. I asked to see a copy of any corrective letter before it was sent. (In fact, I did not.) I asked both counsel to supply me with excerpts from the hearing tape of any part of the hearing in which my name was mentioned.

Thus, the assertion in Mr. Vignarajah's letter (first paragraph) is inaccurate: I was not initially "contacted by Mr. Syed's present counsel." I initiated the contact with both counsel because of my fears that my role in the Syed case had been misrepresented. Mr. Syed's counsel then confirmed what I had been told.

Subsequently, Mr. Vignarajah read to me over the phone an excerpt from his closing argument that referred to me. I obtained access to the full record through Mr. Brown.



As noted above, I entered my appearance in the Syed case after Ms. Gutierrez had entered hers and solely on the motion to disqualify. The disqualification motion was heard by Judge David B. Mitchell on July 9, 1999. At the July 9th hearing, Ms. Gutierrez introduced me by saying: "Your Honor, in response to this motion, we've been advised and families [sic.] retain Mr. Miliman [sic.] to represent Adnan for the purpose of responding to the motion." Transcript at 2. I said later in the hearing: "I am not representing this Defendant beyond today. I'm here for a single purpose." T. at 11. My role was wholly limited to that single purpose.

The State did not contact me before or during the recent hearing (or at any other time), to seek to ascertain what my actual role was.

In its opening statement, the State said:

> ...[I]t is important to remember, your honor, that Ms. Gutierrez didn't join the defense team of Mr. Syed until weeks after he had been in custody. ...Mr. Flore and Mr. Millemann and Professor Colbert participated in the early investigation, the early days of thinking about how to martial a defense. The trial was a long way off, there was [sic.] plenty of other things to focus on, but an alibi was among those considerations. The State also respectfully submits, Your Honor, now that we are back here, the Asia McClain's affidavits. The information that Mr. Syed would have had, the information that defense counsel would have had, raised a number of warning signs, raised a number of red flags, that would have suggested that not only was Ms. McClain a bad tactical option, but perhaps would open the door to a strategy that would perhaps undercut advantages that the defense possessed going into their first trial and going into their second trial.

Feb 2, 2016 at 10:26:11 a.m.

I was not part of any such "early investigation," was no part of "thinking about how to martial a defense," and did not make or participate in any "tactical" decision not to pursue the McClain alibi. I was not in the case for my limited purpose at this point.

In its closing argument, the State pursued the same themes, suggesting that I, as one of "defense counsel" and "other counsel," was involved in making a judgment not to call Ms. McLain or for some other reason had missed or decided against calling Ms. McClain based on an evaluation of "a wide range of legal options and factual defenses."

> State: There is something tempting about the idea that there was this witness that was forgotten, that was neglected, that was overlooked. That, notwithstanding the herculean efforts of Ms. Gutierrez, and Mr. Flore, and Mr. Colbert, and Mr. Millemann and Mr. Dorsey, and all of the appellate counsel, that it was sometime in 2010 that Asian McClain surfaced. That this diamond in the rough had been mined out of some dark cave. It's just not what happened. Asian McClain was a suggestion. It was an offer. It was an offer at a time when defense counsel had limited information, had a wide range of legal options and factual defenses, and a lot to do. And,

just like Ms. Gutierrez, the other counsel also had a lot to do. And limited information. And plenty of potential defenses to evaluate. And they did that."

Feb. 9, 2016 at 12:05.20.

I never evaluated the potential defenses in the case, or undertook to do this, or assessed the possible validity of the McClain alibi defense.

Later in the argument, the State says, referring to two letters from Ms. McClain:

> So if we look at the letter, the first letter... Court's indulgence... The March 1st handwritten letter contains a number of references that lead an ordinary reader to think, "I'm not sure this is gonna be that helpful."
> "It's late." [Apparently quoting from Ms. McClain's letter.]
> That's not a big deal. But it does, in connection with the next letter, which was written the very next morning, purportedly in second period, [make one] think, "how much could've changed between the time when Ms. McClain came home and hand-wrote a letter at home, and second period or first period in class the next day that would've justified a second letter?"
> So if you get these letters, and you're Mr. Flohr or you're Mr. Colbert... or you're Mr. Millemann or you're Ms. Gutierrez, you have to wonder about what's happening here.

Feb. 9, 2016 at 2:23 p.m.

Again, I was not in the case at this time, never received, knew about or thought about the two McClain letters, and therefore had nothing to say to Ms. Gutierrez or any other lawyer about the letters or about whatever the issues are in this respect.

In sum, my role in this case was limited to the disqualification motion. I will leave to counsel and the Court whether the last paragraph of the February 23rd letter adequately corrects the record in these respects. Having called these issues to the attention of counsel and the Court, I intend to have no further role in this matter unless the Court indicates to the contrary.

Thank you.

Very truly yours,

Michael Millemann

cc: C. Justin Brown, Esq., Counsel of Adnan Syed
Thiruvendran Vignarajah, Deputy Attorney General