

1 testimony and then we'll recess for lunch and then
 2 we'll come back after lunch. We have been working
 3 although not in this case all morning, so my staff is
 4 entitled to a luncheon recess, but we will come back
 5 and continue with the case for the rest of today and
 6 try to stay to the schedule for next few days as close
 7 as we can in this courtroom.
 8 When you recess now and come back from lunch you
 9 should not go to the old jury room on the third floor,
 10 but rather you should come back to the jury room here
 11 on this floor and consider this our courtroom for the
 12 rest of this trial until I direct you otherwise. At
 13 this time I need you to just formally call the case
 14 because this is now a video courtroom, ladies and
 15 gentlemen. We do not have a stenographer. That means
 16 you'll notice that I'll ask people to keep their voices
 17 up. The video courtroom is controlled by cameras and
 18 voice. That is, the cameras turn and are directed to
 19 the person who is speaking. I notice that as I speak
 20 the cameras turn to me and as individuals around the
 21 courtroom speak the cameras will then shift and direct
 22 themselves and record what is being said in that
 23 fashion. So, Mr. Urick for the record in this
 24 courtroom will you please formally call the case again.
 25 MR. URICK: Thank you. Good afternoon. Your

1 Waranowitz.
 2 THE CLERK: Spell your last name.
 3 MR. WARANOWITZ: W-A-R-A-N-O-W-I-T-Z.
 4 THE CLERK: State your business address for
 5 the record.
 6 MR. WARANOWITZ: 11710 Beltsville Drive,
 7 Beltsville, Maryland, 20705. AT&T Wireless Services.
 8 THE COURT: Mr. Urick, before you begin would
 9 you mind, do you by any chance have any blank or extra
 10 forms, the cell record sheets?
 11 MR. URICK: Yes, I do. One for the Court?
 12 THE COURT: Actually, how many do you have
 13 that are extras?
 14 MR. URICK: We have a whole pile.
 15 THE COURT: You have a whole pile. Ms.
 16 Gutierrez, would you like to utilize those in any
 17 fashion outside of just the Court?
 18 MS. GUTIERREZ: No, Your Honor.
 19 THE COURT: Well, I know that there are
 20 individuals that might want to see what's going on.
 21 MS. GUTIERREZ: Good suggestion, Judge, yes.
 22 THE COURT: But if you wouldn't mind giving
 23 Ms. Gutierrez a couple extra ones. Ladies and
 24 gentlemen, as you know there are a number of people
 25 that are interested in this case and unfortunately

1 Honor. This is State of Maryland versus Adnan Syed,
 2 cases 199103042-46. Kevin Urick and Kathleen Murphy
 3 for the State.
 4 MS. GUTIERREZ: Good morning, Your Honor.
 5 Cristina Gutierrez on behalf of Mr. Syed.
 6 THE COURT: Very well. Mr. Urick, I know
 7 that on the last date of this case on Friday we had Mr.
 8 Wilds on the witness stand, but I understand that you
 9 are going to call a witness out of order at this time
 10 and then resume with Mr. Wild's testimony after that,
 11 is that correct?
 12 MR. URICK: That's correct.
 13 THE COURT: And that is with agreement of Ms.
 14 Gutierrez, is that correct?
 15 MS. GUTIERREZ: Yes it is.
 16 THE COURT: Very well. That witness that
 17 you're going to call out of order at this time is?
 18 MR. URICK: Abe Waranowitz.
 19 THE CLERK: Raise your right hand please.
 20 ABRAHAM JOHN WARANOWITZ,
 21 a witness produced on call of the State, having first
 22 been duly sworn, was examined and testified as follows:
 23 THE CLERK: You may be seated. Please keep
 24 your voice up, state your name for the record.
 25 MR. WARANOWITZ: My name is Abraham John

1 although this is a bigger courtroom it doesn't afford
 2 individuals to see what it is that you are seeing and
 3 so I'm allowing the State and the Defense to hand out a
 4 copy of what you've been writing on so that they can
 5 follow along as we proceed.
 6 The Court is interested in seeing that individuals
 7 that are interested in seeing proceedings can do that
 8 and so that's just to accommodate those individuals.
 9 Thank you very much, Mr. Urick for your cooperation.
 10 Ms. Gutierrez, I think this may assist you in making
 11 sure that individuals are able to see what's going on.
 12 MS. GUTIERREZ: Thank you, Your Honor.
 13 THE COURT: Very well. At this time you may
 14 proceed with this witness.
 15 MR. URICK: Thank you, Your Honor.
 16 DIRECT EXAMINATION
 17 BY MR. URICK:
 18 Q Good afternoon.
 19 MR. WARANOWITZ:
 20 A Good afternoon.
 21 Q I'm going to ask you to keep your voice up so
 22 that the entire jury can hear you. I know there's a
 23 tendency sometimes for voices to drop in here it's a
 24 big room and they can fade out. Where are you
 25 employed?

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1 A I'm employed for AT&T Wireless Services.
 2 Q And what does that company do?
 3 A We create and sell phones, wireless cell
 4 phones.
 5 Q And how long have you been employed there?
 6 A Over four years.
 7 Q And what is your title there or position?
 8 A I am a radio frequency engineer, also known
 9 as RF engineer.
 10 Q And what does that mean, what do you do?
 11 A I design the network, I build it and I
 12 troubleshoot it.
 13 Q Lets go through those duties if you will.
 14 When you say design a network what do you do?
 15 A I identify areas where we need new coverage
 16 for cell phones, I design the towers, how high they
 17 are, where they're located, how many antennas, that
 18 sort of thing.
 19 Q And when you seek to optimize the network
 20 what are you doing?
 21 A I look for performance issues including
 22 dropped calls and call quality.
 23 Q And when you engage in troubleshooting what
 24 do you do?
 25 A I usually work with customer complaints if

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1 they have a problem in a certain area I try to identify
 2 what the problem is and correct the problem.
 3 Q Now, let me ask you about your education. Do
 4 you have any college degrees?
 5 A Yes, I have Bachelors of Science in
 6 electrical engineering from the University of Maryland.
 7 Q And when did you get that?
 8 A In 1992.
 9 Q And when you took employment with AT&T did
 10 you receive any training from the corporation?
 11 A AT&T continually trains us in wireless
 12 technologies.
 13 Q And about how much training have you had over
 14 the course of your employment there?
 15 A Many weeks worth.
 16 Q And have you reached the point where you're
 17 responsible for training any other people?
 18 A I train my co-workers in new techniques, new
 19 co-workers that come in.
 20 Q And have you ever had occasion to testify for
 21 AT&T Wireless before any zoning boards?
 22 A Yes.
 23 Q And how many times have you done that?
 24 A Probably about ten times.
 25 Q And when you testified did you represent the

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1 AT&T Wireless before the board?
 2 A Yes.
 3 Q What sorts of issues did your testimony
 4 cover?
 5 A Usually this dealt with areas where we wanted
 6 new cell sites, so it was my job to demonstrate that we
 7 needed a new cell site in this area and why we choose a
 8 certain building or tower to put the antennas up.
 9 Q Is there a specific part of the AT&T Wireless
 10 Network that you're responsible for?
 11 A Just the radio end of it.
 12 Q How about geographically?
 13 A I work in the Baltimore and Washington area
 14 only.
 15 Q At this time I'd offer the witness for his
 16 expertise and training in cell phone network design and
 17 functioning.
 18 MS. GUTIERREZ: I would object. He's only
 19 testified in regard to his expertise and training as to
 20 AT&T Wireless. There's been no establishment there is
 21 such an expertise or is such a field as cell phone
 22 wireless much less that this witness is a reputed
 23 expert.
 24 THE COURT: Mr. Urick, I need you to repeat
 25 the basic expertise that you're asking for. You said

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1 cell phone design --
 2 MR. URICK: Network design and functioning
 3 THE COURT: I'm sorry. Network design and
 4 functioning. When you say network are you talking
 5 about cellular network design and functioning, cellular
 6 phone network design and functioning?
 7 MR. URICK: Yes. It's actually wireless
 8 cellular phone network design and functioning.
 9 MS. GUTIERREZ: Judge, I would also note an
 10 objection there's no disclosure of designated in such
 11 an expertise or such an expert in that expertise.
 12 There's been no disclosure of any relevant basis for
 13 the expertise including no CV or resume or educational
 14 background, nothing else.
 15 THE COURT: Okay. Mr. Urick, prior to today
 16 did you indicate or disclose that you will be offering
 17 any expert in this area?
 18 MR. URICK: Yes, we disclosed Mr. Waranowitz.
 19 The Defense has subpoenaed him as their own witness.
 20 they have spoken to him, he's provided them
 21 documentation, he's provided them a copy of his resume.
 22 They have had full disclosure of him, they've had full
 23 access to him and they've even made him their own
 24 witness through subpoena.
 25 THE COURT: Before you do that, you can sit

1 down. Did you provide a summary of what this witness
2 would testify to? The opinion that he has rendered to
3 you?

4 MR. URICK: Yes, the particular -- what he
5 did was a test for us. We've provided the Defense.

6 THE COURT: The results of that test and a
7 complete explanation of what the test was that was
8 done?

9 MR. URICK: Yeah, they've had full discussion
10 with Mr. Waranowitz as to that.

11 THE COURT: Okay. Ms. Gutierrez, you
12 maintain --

13 MS. GUTIERREZ: They provided nothing by the
14 State's attorney. For the record they are obligated to
15 provide it to us whether or not we ever speak to this
16 witness and I suggest that it is not accurate. We
17 attempted to speak to him that was rendered difficult
18 by him. Whatever information we are free to get access
19 on our own in now way relieves them of their obligation
20 under the rules of evidence to disclose him as an
21 expert which I dispute.

22 They have not done, there's been no material
23 either orally or in writing establishing any opinion or
24 any test other than the map which we got non-colored
25 and the chart that's State's Exhibit 34 which indicates

1 BY MS. GUTIERREZ:

2 Q Mr. Waranowitz, the only experience that
3 you've had is with AT&T Wireless?

4 MR. WARANOWITZ:

5 A Correct.

6 Q And wireless as opposed to other phone
7 services that AT&T has with wired lines, correct?

8 A They are different, correct.

9 Q So, and so your only experience is with the
10 wireless service designed and maintained and serviced
11 by AT&T?

12 A Correct.

13 Q And that network services exclusively AT&T
14 Wireless subscribers?

15 A No, that would not be correct.

16 Q Okay. And have you had any experience -- did
17 you have any schooling in regard to the design,
18 building or troubleshooting of the AT&T Wireless in
19 your pursuit of your BS in electrical engineering?

20 A I did not have any training before I earned
21 my degree.

22 Q Okay. And so you had no schooling at
23 University of Maryland in the AT&T Wireless system?

24 A Correct.

25 Q Either in the design of it?

1 the result of information, but discloses no tests, no
2 protocol for any test, no documentation of any test and
3 we've received none of the information that Mr. Urick
4 contends that we have at all.

5 THE COURT: Thank you. One moment.
6 Objection is overruled. You may proceed with voir
7 dire. Are you done with the voir dire on the issue of
8 his expertise?

9 BY MR. URICK: If I could just continue
10 briefly.

11 Q Mr. Waranowitz, what training or does part of
12 your duties include interacting with other cell phone
13 networks?

14 MR. WARANOWITZ:

15 A What do you mean by other -- what do you mean
16 by other cell phone networks?

17 Q Produced by other companies?

18 A No.

19 Q Does AT&T share cell phone network capacity
20 with other corporations?

21 A Not that I'm aware of.

22 Q Okay. Now, I've finished my voir dire.

23 Thank you, Your Honor.

24 THE COURT: Any questions just on voir dire?

25 VOIR DIRE

1 A Correct.

2 Q The building of it?

3 A Correct.

4 Q Or the troubleshooting?

5 A Correct.

6 Q All of your experience is limited to the four
7 years that you've worked for the AT&T Wireless Service?

8 A Yes.

9 MS. GUTIERREZ: Nothing further, Your Honor.
10 I do renew my objection. His declared expertise is to
11 cell phone network, design and building or
12 troubleshooting.

13 THE COURT: Any other questions that the
14 State might want to inquire as to the number of hours
15 of training and expertise this witness may have had?

16 MS. GUTIERREZ: Objection.

17 BY MR. URICK:

18 Q How many hours of training have you had?

19 MS. GUTIERREZ: Could I have a ruling on my
20 objection?

21 THE COURT: Yes. Its overruled. The Court
22 is either prepared to ask the questions myself or have
23 someone else ask them and I am going to rule on it at
24 this point and I'm sustaining Ms. Gutierrez's
25 objection. I do not find that the witness has so far

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1 indicated any expertise. Now, if there's some
 2 expertise for specifically a particular phone, Mr.
 3 Urick if you want to tell me that there's a particular
 4 phone that he'll be asked about, but you have indicated
 5 a general expertise I believe. Are you restricting him
 6 to AT&T only?
 7 MR. URICK: I will restrict him to the AT&T
 8 Wireless Network in the Baltimore region.
 9 THE COURT: And your expertise as an AT&T
 10 Wireless Phone network, design and functioning expert,
 11 is that it?
 12 MR. URICK: Yes.
 13 THE COURT: At this point the Court's --
 14 MS. GUTIERREZ: I renew my objection on all
 15 the other grounds that have already been made on the
 16 declared expertise in regard to lack of disclosure of
 17 any as heard.
 18 THE COURT: All right. And at this juncton
 19 the Court is inclined to sustain the objection unless
 20 there's some additional questions that Counsel believes
 21 might assist the Court in hearing more about his
 22 background, but at this point I don't think I've heard
 23 enough. I'm not satisfied.
 24 MR. URICK: If I may have the Court's
 25 permission to continue?

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1 THE COURT: You may.
 2 BY MR. URICK:
 3 Q How many hours of specific training have you
 4 had from AT&T?
 5 MR. WARANOWITZ:
 6 A I don't know an exact hour, amount of hours.
 7 Q How many would you estimate, ballpark figure.
 8 MS. GUTIERREZ: Objection.
 9 THE COURT: Overruled.
 10 MR. WARANOWITZ: I would guess at least a
 11 months worth, eight hours a day, five days a week.
 12 BY MR. URICK:
 13 Q And what did that training consist of?
 14 MR. WARANOWITZ:
 15 A It consisted of a variety of classes from
 16 AT&T Wireless Services involving cell phone technology.
 17 Also classes provided by Erickson. Erickson creates
 18 the equipment and the phones that we use, plus training
 19 on how to use test equipment that we use to test and
 20 optimize the network with and training for design
 21 tools, engineering cad, that kind of thing.
 22 Q Now, in relation to the Baltimore region what
 23 specific duties have you performed?
 24 A I have worked on the actual launch of this
 25 network, we were launched about two or three years ago,

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1 so we designed the network from the ground up from
 2 scratch. We decided where to put cell sites on what
 3 buildings, water tanks and towers. We tested them, we
 4 drove them. In other words, what I mean by drive I
 5 mean testing them and we optimized them for
 6 performance.
 7 MS. GUTIERREZ: I'm sorry. I can't hear the
 8 witness.
 9 THE COURT: Can you repeat your last answer?
 10 You optimized them for performance?
 11 MR. WARANOWITZ: Yes. We try to minimize the
 12 amount of problems that there are in the network.
 13 BY MR. URICK:
 14 Q And how did you go about doing that?
 15 MR. WARANOWITZ:
 16 A Typically we use the test equipment and the
 17 training that we received.
 18 Q And about how many -- how much time would you
 19 have spent in the actual design of the network in the
 20 Baltimore region?
 21 A About 25% of my daily time goes into the
 22 design of the network.
 23 Q And have you been responsible for the design
 24 of the actual cell phone towers themselves?
 25 A Yes.

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1 Q And have you determined the optimal or best
 2 location to place those cell phone towers in the
 3 Baltimore region?
 4 A Yes.
 5 Q And did you supervise their construction?
 6 A Construction?
 7 Q Once they were put up did you test them --
 8 A Yes.
 9 Q For their performance?
 10 A Yes.
 11 Q And did you -- and you are familiar with the
 12 coverage area for each of these cell sites?
 13 A Yes.
 14 Q And much of this information would not be
 15 stuff that people outside AT&T Wireless would know?
 16 A That's correct.
 17 MS. GUTIERREZ: Objection.
 18 THE COURT: Overruled.
 19 MR. URICK:
 20 Q You may answer the question.
 21 MR. WARANOWITZ:
 22 A Yes.
 23 THE COURT: Any other questions, Mr. Urick?
 24 MR. URICK: If I may have the Court's
 25 indulgence --

1 THE COURT: Sure.
 2 MR. URICK: For just a second.
 3 THE COURT: Certainly.
 4 BY MR. URICK:
 5 Q And now that the cell phone system is up on
 6 the Baltimore region does part of your continuing
 7 duties include working out any problems that may arise
 8 to the operation of that system?
 9 MR. WARANOWITZ:
 10 A Yes.
 11 Q And what do you do in regards to that?
 12 A Typically we look at problems that involve
 13 interference and dropped calls. This involved us
 14 taking out drive test equipment in a vehicle and
 15 simulating what the customer sees and identifying the
 16 problems and correcting them.
 17 Q Operating of this test equipment, is that the
 18 sort of thing that's only done by AT&T for the purposes
 19 of testing it's network?
 20 A Yes.
 21 MR. URICK: At this time I would offer the
 22 witness for his expertise and training in the AT&T
 23 Wireless cell phone network design and function in the
 24 Baltimore Metropolitan region.
 25 THE COURT: Any additional voir dire

1 Q There is no way that a subscriber is required
 2 to by an AT&T phone, is there?
 3 A No.
 4 Q And you said that 25% of your time was
 5 devoted to the design of system?
 6 A Correct.
 7 Q And that still continues up to today, does it
 8 not?
 9 A Yes.
 10 Q And design on the system is a continual
 11 effort, is it not?
 12 A Yes, it is.
 13 Q The best optimal locations for towers as
 14 you've testified while once may exist in one location
 15 they alternately change and there would be another best
 16 optimal location, isn't that correct?
 17 A Yes.
 18 Q By coverage areas you are referring to the
 19 amount, the physical amount, the geographical amount of
 20 area that a cell tower is suppose to cover, is that
 21 correct?
 22 A Yes.
 23 THE COURT: One moment. Ms. Gutierrez, are
 24 you still on voir dire?
 25 MS. GUTIERREZ: Yes.

1 questions on the issue of whether or not this witness
 2 is an expert on the functioning of AT&T Wireless phone
 3 cellular network and design and functioning in the
 4 Baltimore Metropolitan area.
 5 VOIR DIRE EXAMINATION
 6 BY MS. GUTIERREZ:
 7 Q Mr. Waranowitz, one -- must one who is a
 8 subscriber to this network use equipment owned and sold
 9 by AT&T?
 10 MR. WARANOWITZ:
 11 A I'm sorry, could you ask that question again?
 12 Q Must a subscriber to this network use
 13 equipment that is owned and sold by AT&T?
 14 A Do you mean cell phones?
 15 Q Is that equipment sold by AT&T?
 16 A It is sold by AT&T.
 17 Q Must a subscriber use it equipment whatever
 18 it might be sold by AT&T?
 19 A No.
 20 Q No. So, anyone utilizing this network could
 21 use for instance cell phones designed, tested, operated
 22 an sold by some other entity than AT&T?
 23 A Correct?
 24 Q Is that correct?
 25 A Yes, that is correct.

1 THE COURT: Okay.
 2 MS. GUTIERREZ: I'm going through his list of
 3 --
 4 THE COURT: Expertise.
 5 MS. GUTIERREZ: Yes.
 6 THE COURT: Okay.
 7 BY MS. GUTIERREZ:
 8 Q Isn't that correct? And you were asked by
 9 Mr. Urick are you familiar with the coverage area of
 10 the cell sites of AT&T. is that correct?
 11 MR. WARANOWITZ:
 12 A Within the Baltimore/Washington market, yes.
 13 Q Is that correct?
 14 A Yes.
 15 Q All right. And by the coverage area you
 16 understood Mr. Urick to mean the designated
 17 geographical area that's suppose to be covered by the
 18 tower?
 19 A Yes.
 20 Q And by coverage you mean to include what
 21 geographical area would be included if that cell tower
 22 signal were signaled by someone trying to make a cell
 23 phone or wireless call to an area within what you call
 24 coverage area, isn't that correct?
 25 A I'm sorry, could you ask that again?

1 Q By coverage area you understood that to mean
 2 the geographical area that is suppose to be covered.
 3 that is the area that the cell site tower, the cell
 4 tower would broadcast the wireless call based on the
 5 design of the system, that's what you mean by coverage,
 6 is it not?
 7 A Yes.
 8 Q Each cell tower is suppose to cleanly
 9 broadcast a signal?
 10 A Ideally, yes.
 11 Q Okay. Ideally, by ideally you mean that
 12 doesn't always occur?
 13 A That is correct.
 14 Q And the coverage area of the cell sites only
 15 includes the cell towers owned and operated by AT&T?
 16 A Correct.
 17 Q And not any other cell tower?
 18 A Correct.
 19 Q Every other network has it's own tower, does
 20 it not?
 21 A That is correct.
 22 Q For mean so broadcasting the signals on it's
 23 network, correct?
 24 A Correct. Yes.
 25 Q Okay. And every other network would have

1 day, five days a week would be forty times four would
 2 be 160.
 3 Q And how is it that you arrived at that
 4 estimate, sir?
 5 A I've taken many classes from Erickson ranging
 6 from a week to two or three days each.
 7 Q Now, Erickson --
 8 THE COURT: Wait a minute. A week to --
 9 MR. WARANOWITZ: Anywhere from two or three
 10 days to a week in duration plus classes from AT&T
 11 Wireless Services.
 12 BY MS. GUTIERREZ:
 13 Q So, actually most of your class work has been
 14 from Erickson?
 15 MR. WARANOWITZ:
 16 A Yes, through AT&T, yes.
 17 Q My question is most of your class work has
 18 been as you just testified through Erickson?
 19 A Training, yes.
 20 Q All right. And Erickson is not AT&T, is it?
 21 A No it is not.
 22 Q Erickson is a separate corporation, is it
 23 not?
 24 A Yes.
 25 Q And Erickson doesn't own part of AT&T, does

1 different coverage areas for it's network, would it
 2 not?
 3 A Yes.
 4 Q Although those areas might well overlap or
 5 even be the same as AT&T's?
 6 A Yes.
 7 THE COURT: Ms. Gutierrez, at this point I'm
 8 going to interrupt you. The Court finds that the
 9 questions you're asking although appropriate are more
 10 in a sense of asking him of his opinion and for that
 11 reason I find that it's exceeding the voir dire and so
 12 at this point if you have any more questions about his
 13 background, training and expertise or education I'd be
 14 happy to allow those questions because I would like to
 15 render my opinion and instruct the jury as to how I
 16 find this witness testimony with Mr. Urick's motion
 17 that he be qualified as an expert.
 18 BY MS. GUTIERREZ: Thank you, Your Honor.
 19 Q Mr. Waranowitz, you were asked by Mr. Urick
 20 in his voir dire and you estimated that you had spent
 21 at least a month of hours, correct?
 22 MR. WARANOWITZ:
 23 A Yes.
 24 Q How many hours is that?
 25 A Eight days a week, five days, eight hours a

1 it?
 2 A I don't know.
 3 Q Erickson produces equipment separate from
 4 AT&T, does it not?
 5 A Yes.
 6 Q Erickson produces equipment that is utilized
 7 by networks other than AT&T, does it not?
 8 A Yes.
 9 Q And, sir again my question to you is how is
 10 it that you estimated at least a month of hours?
 11 A AT&T has provided me at least one month of
 12 hours worth of training.
 13 Q Well, one month worth is a very specific
 14 answer, would you agree?
 15 A I am estimating.
 16 Q And in a month -- and this is the first time
 17 that you've been asked this question, is it not?
 18 A I have not counted up my hours, that is
 19 correct.
 20 Q And so your estimate is based on your current
 21 recollection?
 22 A Yes.
 23 Q All right. Now, sir in regard to Erickson
 24 you said Erickson provided you with two to three days
 25 and sometimes up to a week of training, is that

1 correct?
 2 A Yes.
 3 Q How many times?
 4 A Five or six times.
 5 Q Five or six times. Of those five or six
 6 times how many was two or three days a week and how
 7 many were longer?
 8 A Most of them were two or three day classes
 9 I don't remember the exact details.
 10 Q You don't remember the exact number. Now, in
 11 regard to the classes that you've testified and you
 12 were asked about that you attended and that were
 13 provided from AT&T how many of those days of a month
 14 that you've now estimated for us would be those?
 15 A I can recall one class that lasted three
 16 days.
 17 Q One time and that was three days for eight
 18 hours?
 19 A Yes.
 20 Q Exactly.
 21 A Yes.
 22 Q And this month estimate that you've given,
 23 sir that would be five days a week?
 24 A Yes.
 25 Q Eight hours a day?

1 estimate it this morning?
 2 A Yes.
 3 Q But the bulk of the classes that you took
 4 that were in any way involved in cell phone technology
 5 as you've told us or equipment used or testing out the
 6 lines of the network were the bulk of those classes
 7 provided by Erickson?
 8 A They were provided through AT&T by Erickson.
 9 Q By Erickson meaning Erickson a company
 10 separate in part?
 11 A Yes.
 12 Q Taught by Erickson personnel?
 13 A Yes.
 14 Q And Erickson doesn't operate a cell phone
 15 network on it's own, does it?
 16 A I don't know that.
 17 MS. GUTIERREZ: I have no further questions
 18 on the voir dire, Judge. I would renew my objection as
 19 to the establishment of a network as to whether or not
 20 any of these questions certainly don't establish any
 21 expertise in specific AT&T technology and I renew and
 22 ask the Court to apply all other objections that I've
 23 made including the disclosure objection.
 24 THE COURT: First with regard to the
 25 disclosure objection, I'm overruling that objection.

1 A Yes.
 2 Q Okay. And that would of course exclude lunch
 3 time, would it not?
 4 A It's an estimate, yes.
 5 Q And so the answer is yes, it would exclude
 6 lunch time?
 7 A Yes.
 8 Q And it would exclude your travel time both to
 9 and from?
 10 A Yes.
 11 Q And this of course would be a month in which
 12 you worked every single day of the month out of the
 13 five working days a week, correct?
 14 A Yes.
 15 Q That of course would exclude vacation time
 16 you took?
 17 A Yes.
 18 Q Or any personal leave time?
 19 A Yes.
 20 Q Or any sick time?
 21 A Yes.
 22 Q Or any other time?
 23 A Yes.
 24 Q And although you've never been asked to
 25 estimate or gather that information you are able to

1 With regard to the expertise objection the Court will
 2 accept this witness as an expert in AT&T wireless
 3 network design and function with the limitation that
 4 this witness has expertise with regard to Erickson
 5 equipment unless any further expertise is shown by this
 6 Court that will be the limitation.
 7 MS. GUTIERREZ: I want to make sure I
 8 understood the limitation.
 9 THE COURT: Erickson equipment.
 10 MS. GUTIERREZ: Okay.
 11 THE COURT: I didn't hear about Motorola or
 12 any other type of equipment. This witness has not been
 13 qualified as such so to the extent that the witness has
 14 clearly indicated that limitation that will be the
 15 limitation that the witness will be able to testify.
 16 And, Counsel in cross if you want to go into it any
 17 further you'll be free to do that.
 18 MS. GUTIERREZ: Thank you.
 19 THE COURT: So that at the conclusion if I
 20 need to direct the witness and the jury into how to
 21 receive this expert's testimony I can do so. Mr.
 22 Urick, I am going to tell you that it is now one
 23 o'clock. I know I promised Ms. Gutierrez, is this
 24 going to cause you a problem with any other matter if
 25 we go a little longer?

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1 MS. GUTIERREZ: No, Your Honor. There's no
 2 phone conference today.
 3 THE COURT: All right.
 4 MS. GUTIERREZ: Because I was off yesterday.
 5 THE COURT: Very well. Are you going to have
 6 a problem if we go any further? Like for the next half
 7 an hour?
 8 MR. URICK: No, we wouldn't have a problem.
 9 THE COURT: Any members of the jury by show
 10 of hands are going to have any problems if we proceed
 11 for the next thirty minutes and then take a break for
 12 lunch from 1:30 to 2:30. Anybody have a problem, if
 13 you do please raise your hand. All right, then we will
 14 proceed.
 15 BY MR. URICK:
 16 Q Mr. Waranowitz, --
 17 THE COURT: I know my staff may have a
 18 problem, but you will get to eat 1:30 to 2:30. You may
 19 proceed.
 20 BY MR. URICK:
 21 Q What Erickson equipment is used in the AT&T
 22 network?
 23 MR. WARANOWITZ:
 24 A Well, we have Erickson radio based stations,
 25 that is the actual cell site, the radios, equipment and

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1 it's connection to the Erickson switch which is a big
 2 computer through which all the phone calls go.
 3 Q And what if any other equipment is
 4 incorporated into the system?
 5 A There are Erickson cell phones, cabling,
 6 antennas, that kind of thing.
 7 Q Does AT&T itself produce any of the
 8 technology that goes into the network?
 9 A None that I'm aware of in our current
 10 network.
 11 Q Do you purchase technology from any other
 12 companies?
 13 A Other markets, other cities use other
 14 equipment, yes.
 15 Q This time I would like you to explain what
 16 the network is, how it operates? I believe you have
 17 some demonstrative exhibits. I think for
 18 identification purposes I'm going to ask at this time
 19 that they be marked for identification as State's
 20 Exhibit 43.
 21 MS. GUTIERREZ: Your Honor, I'm going to
 22 object to the motion in limine and ask to approach the
 23 bench?
 24 THE COURT: Yes, I'll see you at the bench
 25 and may I also see the exhibits that you want to mark

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1 for identification purposes at this time. I need your
 2 assistance, Ms. Connelly.
 3 (Counsel approached the bench and following
 4 ensued.)
 5 MS. GUTIERREZ: Judge, giving the limitation
 6 on this witnesses' expertise although they're not going
 7 to show that to him now and obviously he can testify as
 8 to anything within that expertise level the cell phone
 9 listed on State's Exhibit 34 is manufactured by someone
 10 other than AT&T and other than Erickson.
 11 And so we would object to any questioning
 12 regarding the cell phone and as to how it performed or
 13 whatever it did. As this is not an expert in that
 14 equipment we obviously don't know the source of whether
 15 there were cell phones or others as to the dialed
 16 number column on State's Exhibit 34, but as to the cell
 17 phone, 253-9023 I would move in limine to preclude
 18 asking this question related to that cell phone and
 19 it's alleged performance. The cell phone i.e., since
 20 the purpose of State's Exhibit 34 is to establish the
 21 cell site and locations and their exact addresses.
 22 THE COURT: Thirty four or forty three?
 23 MS. GUTIERREZ: I think it's on 34.
 24 MR. MURPHY: Thirty four.
 25 MS. GUTIERREZ: I've never seen --

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1 THE COURT: Thirty four is this one?
 2 MS. GUTIERREZ: Yes.
 3 THE COURT: Okay.
 4 MS. GUTIERREZ: The purpose of that exhibit
 5 is to establish that the cell phone about which this
 6 witness has no expertise that the cell phone did
 7 something and operated in a certain way. Now,
 8 obviously given the number the expertise I'm not moving
 9 -- he can certainly testify as to that network, those
 10 towers, what if anything they should do, but I'm moving
 11 in limine to prevent any questioning to attempt to draw
 12 that expertise out to include --
 13 THE COURT: The operation of this phone.
 14 MS. GUTIERREZ: As this phone as to what it
 15 would do on his network since he's not been qualified
 16 in regard to a Nokia phone which is a separate
 17 production corporation other than Erickson and other
 18 than AT&T.
 19 MR. URICK: The cell phone information is
 20 already in evidence through State's Exhibit 34 and I
 21 believe we can through his explanation qualify him to
 22 be able to testify to when we want to.
 23 THE COURT: Wait a minute, back up. The cell
 24 phone information is already in evidence through
 25 Exhibit Number 34?

1 MR. URICK: Actually, it's in through I think
2 it's 31 or 33, the Defendant's cell phone records and
3 that was entered by way of stipulation.

4 THE COURT: May I see the exhibit?

5 MR. URICK: This is a duplicate of it.

6 THE COURT: I think we've got sort of --

7 MS. GUTIERREZ: You'll note that that --

8 THE COURT: Ms. Gutierrez's objection and
9 motion in limine is not to what the record says. Her
10 objection is to your witness interpreting the meaning
11 behind what is clearly indicated on the face of the
12 exhibit and that is when there's an item needed as a
13 number incoming duration and then L651C. The witness
14 can talk about these L651 tower and this a tower and
15 what the tower did and what these records from AT&T
16 mean. But he can not testify as to what the Nokia
17 phone did or did not do in rendering an opinion because
18 he is not qualified to render an opinion as to what
19 the Nokia did. Other than to validate that AT&T
20 Erickson's equipment registered this information and he
21 can't render an opinion as to what that means or to
22 assure the jury that there is some absolute that can be
23 drawn from the numbers that are appearing on here as it
24 relates Nokia equipment. He can talk absolutes as it
25 relates to Erickson equipment, but he can't talk about

1 thought better. There wasn't any disclosure of this
2 person as expert in Erickson. I understand I've lost
3 on that point, but now we're in the middle, they chose
4 to do it, they took the Court's hints and chose to do
5 it in a specific way.

6 Now, that they've lost a motion like to
7 continually to allow them, oh, well wait a minute we
8 can qualify him as another expert. Again, there's no
9 disclosure, there has to be some finality that the
10 Defendant should be able to count on, it's not fair
11 otherwise.

12 THE COURT: I understand your concerns, Ms.
13 Gutierrez. The only thing that I can tell you is that
14 had I not received as part of this file some indication
15 by way of stipulation that this testimony would be
16 admissible through the stipulation --

17 MS. GUTIERREZ: But, Judge the stipulation
18 has nothing to do with the witness. He would not have
19 been the correct person to bring in these records
20 anyway, he's not a custodian. We stipulated because a
21 custodian could clearly get in records from AT&T
22 Wireless. That is entirely different then allowing a
23 person who's not the custodian, who isn't qualified to
24 testify to these things, hasn't been offered, hasn't
25 been disclosed to now try to take these things

1 and she's objecting to his saying what the Nokia's
2 limitations are and receiving signals, how they receive
3 the signals, what they do with the signal because he's
4 not qualified to do so and I'm going to sustain her
5 objection as to that part of his testimony if that's
6 what you're going to ask him to do. Do you understand?

7 MR. URICK: I may ask the Court to revisit
8 this if I can lay a foundation.

9 THE COURT: Correct.

10 MR. URICK: Thank you.

11 THE COURT: I will -- if for some reason you
12 believe that he can do that then I will allow him to do
13 that if he has the expertise, but as we stand right now
14 he is an expert with regard to Erickson equipment. Not
15 Motorola, not Nokia, not anything else and he is an
16 expert who has already testified that he can testify as
17 to the network design and functioning of AT&T wireless
18 communication and Erickson equipment

19 MR. URICK: Thank you.

20 THE COURT: All right. Does that clarify?

21 MS. GUTIERREZ: That does, Judge except --

22 THE COURT: The motion in limine is granted -

23 MS. GUTIERREZ: Yes. And I would strenuously
24 object to the State's continual ability once they lose
25 a motion to continue to revisit it like well, now we've

1 somewhere else. Those are two entirely different
2 things. We don't challenge that we stipulated to that.
3 They mean whatever they mean. If it was important to
4 have those records explained, that was their job,
5 that's their burden, they sought the stipulation that
6 we agreed to. We should not now be nailed to things we
7 didn't stipulate to on which there was no disclosure
8 given that now they want to rethink the issue of
9 whether or not they should have sought a stipulation on
10 it.

11 THE COURT: I understand your objection. For
12 the record I find that the stipulation allows them to
13 bring in this witness. I find that the witness has
14 been disclosed to you. I find and I found that he
15 would be permitted to testify in the fashion that I
16 indicated as an expertise through the information
17 that's been provided to this Court. I do not believe
18 that this is a surprise witness, I do not believe that
19 you did not know what it was that they were going to
20 ask him to testify --

21 MS. GUTIERREZ: We never maintained
22 otherwise. It's just a surprise that they're trying to
23 declare him as an expert in a nonexistent expertise.

24 THE COURT: And I understand your concern,
25 but as I have done with you and I will continue to do

1 with you, I will do with the State. If at some point
 2 in time the testimony goes astray and starts going off
 3 on a tangent which is not within the calculation of
 4 this Court to allow testimony in I will sustain your
 5 objection. And I ask Mr. Urick to be mindful of the
 6 matter in which I have accepted this witness as an
 7 expert because if you start to go astray I will sustain
 8 any of Ms. Gutierrez's objections and I will instruct
 9 the jury accordingly.

10 MR. URICK: Thank you.

11 THE COURT: Anything further?

12 MS. GUTIERREZ: No, Your Honor.

13 THE COURT: Anything further?

14 MR. URICK: I would ask that this now be
 15 substituted for State's 31.

16 THE COURT: Well, where is --

17 MS. GUTIERREZ: Well, no lets find.

18 MR. URICK: Mr. White can't find it.

19 THE COURT: If you use an exhibit return it
 20 to the Clerk. Don't put it down on the table, return
 21 it to the Clerk.

22 MS. GUTIERREZ: Well, Judge I'm going to
 23 object to the substitution at least until I have an
 24 opportunity to review it with my copy of those records
 25 which I don't have with me now. I'll get them over

1 lunch.

2 THE COURT: I'm going to ask Mr. White. Mr.
 3 White, if you would just go through your pile one more
 4 time. I know we moved from one courtroom to another.

5 MR. URICK: I'm going to hold on to this.

6 THE COURT: And just make sure you don't have
 7 it. Was it ever marked?

8 MS. GUTIERREZ: It was asked about.

9 MR. WHITE: I don't know if I ever received.

10 THE COURT: Why don't we take a break at this
 11 point and take a lunch recess.

12 MS. GUTIERREZ: Judge, I would ask for an
 13 instruction that nobody should talk to this witness.

14 THE COURT: Absolutely not, absolutely not.
 15 You may step down.

16 (Counsel returned to the trial tables and the following
 17 ensued:)

18 THE COURT: Ladies and gentlemen, we're going
 19 to take a lunch and recess. We're going to do so,
 20 because we think it's an appropriate time. There's
 21 some matters that the Court has to take up with Counsel
 22 and that will be best served by having the jurors go to
 23 lunch at this time. We will come back after lunch.
 24 I'm going to ask that you leave your note pads face
 25 down on the chairs where you're sitting. Keep in mind

1 where that chair is because that's going to be your
 2 chair for the next week and so.

3 And I also advise you at this time that as you are
 4 departing do not discuss the testimony of this witness
 5 or any of the other witnesses who have testified in
 6 this case. Do not discuss the testimony of the
 7 witnesses or any other witnesses in this case. Do not
 8 discuss the testimony amongst yourselves. You have yet
 9 to hear all the witnesses or been instructed as to the
 10 law or heard closing arguments of Counsel and therefore
 11 it would be inappropriate to discuss this case amongst
 12 yourselves or with anyone else. And I'm going to ask
 13 that you go to lunch at this time and I note that it's
 14 a little bit after one, almost 1:15 and I ask that you
 15 return to the jury room no later than 2:15 at which
 16 time we will bring you back out and we'll continue with
 17 this case and ask that you would keep in mind what the
 18 scheduling is for this week and that's what pretty much
 19 we're going to try to follow the best we can.

20 This Court does have to go to a meeting in
 21 Annapolis and I have to be there by six o'clock. So
 22 that means we will be -- I think I put 4:30 or quarter
 23 of five as the day that I would end today and that's
 24 what I am going to do in order that I may then travel
 25 and be at my next meeting at six. So, at that point

1 we're going to recess now and I'll see you back -- go
 2 with Ms. Connelly, she'll take you around to the jury
 3 room. Keep your note pads face down. Mr. -- pronounce
 4 your last name.

5 MR. WARANOWITZ: Waranowitz.

6 THE COURT: I need to advise you that you are
 7 technically a witness on the witness stand, so during
 8 the break you can not discuss your testimony with Mr.
 9 Urick or Ms. Murphy, anyone from the State.

10 MR. WARANOWITZ: Okay.

11 THE COURT: You can't also discuss it with
 12 the Defense, Ms. Gutierrez. In fact, can't discuss it
 13 with anyone until you return. I ask you that you also
 14 go to lunch and return at about 2:15. I ask that when
 15 you return, you're welcome to just step right on into
 16 the courtroom and take your seat in the witness box,
 17 all right?

18 MR. WARANOWITZ: Thank you very much.

19 THE COURT: Thank you very much.

20 MR. URICK: My apologies to the Court. I
 21 actually have Exhibit 31. It was one of the exhibits -

22 THE COURT: Would you return it to Mr. White
 23 at this time.

24 MR. URICK: (inaudible).

25 THE COURT: Yeah, but at this time during the

1 break just return that to Mr. White, that way we know
 2 where they are and then you're welcome to retrieve
 3 those at the time we return. Anything further?
 4 MS. GUTIERREZ: Will the courtroom be locked?
 5 Can I leave my stuff?
 6 THE COURT: I don't know what Ms. Judge
 7 Gordy's preference is. If you're going to leave things
 8 here we will see that the courtroom is locked. Is that
 9 what you want to do?
 10 MS. GUTIERREZ: I would like to, yes.
 11 THE COURT: All right. Well then, do you
 12 know how this courtroom is locked? By what means?
 13 THE CLERK: I'll find out.
 14 THE COURT: Mr. White, do you have things
 15 that you needed to leave as well?
 16 MR. WHITE: Yes.
 17 THE COURT: All right. We will lock the
 18 courtroom then.
 19 MR. URICK: What time again are we resuming?
 20 MS. GUTIERREZ: 2:15.
 21 MR. URICK: Thank you.
 22 THE COURT: Court stands in recess then until
 23 2:15.
 24 THE CLERK: All rise.
 25 (At 1:15, a luncheon recess was taken.)

1 THE COURT: Ladies and gentlemen, my law
 2 clerk informs me that the juror number 11 and juror
 3 number 3 are missing. Until they arrive we can not
 4 bring --
 5 MS. GUTIERREZ: (inaudible) for seeking a
 6 bigger courtroom.
 7 THE COURT: That's true.
 8 MS. GUTIERREZ: They get lost.
 9 THE COURT: But until they arrive, we will
 10 not chance bringing Mr. Syed up. As soon as they
 11 arrive you'll let me know and then I just ask, direct
 12 you to call and when Mr. Syed has arrived we can
 13 proceed. All right? I'm going to recess until I'm
 14 advised that all the jurors are here. Court stands in
 15 recess.
 16 THE CLERK: All rise.
 17 (Brief recess)
 18 THE CLERK: All rise. Circuit Court
 19 Baltimore City, Part Nine is now in session. The
 20 honorable Wanda K. Heard presiding.
 21 THE COURT: You may be seated. We'll resume
 22 with the testimony. For the record please state your
 23 name, Mr. -- yeah.
 24 MR. WARANOWITZ: Abraham John Waranowitz.
 25 THE COURT: Waranowitz. Mr. Waranowitz and

1 Mr. Urick, you may continue.
 2 MR. URICK: Thank you, Your Honor.
 3 BY MR. URICK:
 4 Q Good afternoon, Mr. Waranowitz. What is
 5 analog radio technology in simple terms?
 6 MR. WARANOWITZ:
 7 A Analog radio technology is, in terms of cell
 8 phones?
 9 Q Yes.
 10 A Okay. Analog is one of the first generation
 11 types of cell phone in use. It uses a technology
 12 similar to FM radio that you would find in your homes
 13 and in your cars.
 14 Q What is digital radio technology?
 15 A Digital takes a computerized version of your
 16 voice and sends digital bits over the airwaves instead
 17 of -- instead of analog voice like an FM radio would.
 18 Q And does the AT&T Wireless network
 19 incorporate both of these radio technologies?
 20 A In some markets, yes.
 21 Q Does it in the Baltimore market?
 22 A No, it's pure digital.
 23 Q Now, when a person becomes a subscriber to
 24 the AT&T network, how is he or she granted access to
 25 the network?

1 A Well, I don't know much about the actual
 2 account set up, but from what I understand --
 3 MS. GUTIERREZ: Objection.
 4 THE COURT: Sustained.
 5 BY MR. URICK:
 6 Q In the Baltimore region must an AT&T
 7 subscriber use the AT&T network?
 8 MR. WARANOWITZ:
 9 A I'm sorry, could you say that again?
 10 Q In the Baltimore Metropolitan region must an
 11 AT&T subscriber use the AT&T network?
 12 MS. GUTIERREZ: Objection.
 13 THE COURT: Overruled. If you can answer it.
 14 MR. WARANOWITZ: No, they must not. They do
 15 not have to.
 16 BY MR. URICK:
 17 Q How does it come about that they do?
 18 MR. WARANOWITZ:
 19 A If they --
 20 MS. GUTIERREZ: Objection.
 21 THE COURT: Sustained. He just said they
 22 don't have to. If you could rephrase your question.
 23 BY MR. URICK:
 24 Q Under what circumstances might they use it?
 25 MS. GUTIERREZ: Objection.

1 THE COURT: Overruled.
 2 MR. WARANOWITZ: If they have an AT&T digital
 3 phone they will find our network and they will be able
 4 to communicate with it.
 5 BY MR. URICK:
 6 Q And is that use reported in the AT&T computer
 7 records?
 8 MR. WARANOWITZ:
 9 A Yes, it is.
 10 Q Now, I would like you if you could in simple
 11 terms explain how the network functions? And if it's
 12 helpful using your explanatory diagrams feel free with
 13 the Court's permission to step down and come over to
 14 the diagrams.
 15 THE COURT: You may walk over to the diagrams
 16 if you need it to assist you.
 17 MR. WARANOWITZ: Okay.
 18 THE COURT: Or you may remain where you are
 19 seated, it's up to you.
 20 MR. WARANOWITZ: Thank you. There are three
 21 basic parts to the network. The phone which we're all
 22 familiar with --
 23 MS. GUTIERREZ: Objection.
 24 THE COURT: Okay. Sir, you can't assume that
 25 everyone is familiar with anything.

1 MR. WARANOWITZ: I understand.
 2 THE COURT: So, if you are going to tell us
 3 something, just tell us and then if there's a question
 4 either Mr. Urick or Ms. Gutierrez will ask you. If you
 5 have an objection, Ms. Gutierrez to the form of Mr.
 6 Urick's last question --
 7 MS. GUTIERREZ: Yes.
 8 THE COURT: Sustained as to the form of the
 9 last question. You're going to have to be more
 10 specific and not open ended with regard to this witness
 11 at this time.
 12 BY MR. URICK:
 13 Q What are the principal components of the AT&T
 14 Wireless Network?
 15 MR. WARANOWITZ:
 16 A There are three parts. There are the phones,
 17 the cell sites and the switch.
 18 Q How do they interact?
 19 A The phone talks to the cell sites over the
 20 airwaves using FM radio technology, digital. The cell
 21 sites talk to the switch using what we call a T-1,
 22 which is a computer line. Your voice when you talk
 23 into the phone gets computerized, sent over the
 24 airwaves to the cell site and then sent directly to the
 25 switch. From the switch it gets sent to the other

1 parts of the phone network in America. If you're
 2 talking to another AT&T customer you would stay within
 3 the switch and be sent their phone. If you're talking
 4 to land line then our switch will talk to the land line
 5 system.
 6 Q Describe a cell site? What is mean by that?
 7 A A cell site is the radio interface to our
 8 phone network. It consists of antennas which are
 9 usually on top of buildings, water tanks or towers
 10 Q Why is an antenna put up on a tower?
 11 A We need the height so we can see all the
 12 phones in a certain coverage area.
 13 Q What is meant by a coverage area?
 14 A Coverage are is where the signal is strong
 15 enough to send and receive phone calls.
 16 Q And would the coverage area for a given cell
 17 site be dependant upon the design of the cell tower?
 18 A Yes.
 19 Q Do you have any examples of cell towers with
 20 you?
 21 A There are some photos in that exhibit.
 22 Q For the record I have the first photograph
 23 which has the designation L651 at the bottom right.
 24 Can you explain what does L refer to?
 25 A L refers to our Baltimore switch.

1 THE COURT: One moment. What's the exhibit
 2 number?
 3 MR. URICK: This is for identification
 4 State's Exhibit 43.
 5 (State's Exhibit No. 43 was
 6 marked for identification.)
 7 Should I -- should I make A, B and C for each
 8 individual page?
 9 THE COURT: Yes, please do.
 10 MR. URICK: That would be 43C.
 11 THE COURT: Okay. With regard to Exhibit
 12 43C. All right. Very well. Thank you.
 13 BY MR. URICK:
 14 Q The L designation again is?
 15 MR. WARANOWITZ:
 16 A The Baltimore switch.
 17 MS. GUTIERREZ: Mr. Urick, could I ask you to
 18 step on the other side?
 19 BY MR. URICK:
 20 Q And 651 is what?
 21 MR. WARANOWITZ:
 22 A This is what we call a Social Security
 23 building.
 24 Q And please describe how the cell tower or
 25 cell site was constructed on this building?

1 A On top of the building is the radio equipment
2 cabinet, that is the cell site. Then there are antenna
3 cables going to the small vertical dark lines that you
4 see on the roof.

5 Q Indicating where I have the red pointing
6 right now?

7 A Correct.

8 Q Now, I'm going to show you what's marked for
9 identification as 43B. What is this diagram?

10 A This diagram represents a typical cell site
11 in the AT&T Wireless Network. Actually each cell site
12 is comprised of three sides. We have an A, B and C
13 side to it, each points in an unique direction. Thirty
14 degrees, 150 degrees and 270 degrees based off of true
15 north.

16 Q And is the division of the A, B and C always
17 based on the true north division?

18 A Yes.

19 Q Now, --

20 THE COURT: Mr. Urick, there are clips above
21 you. If you look you can hold that page up.

22 MR. URICK: Thank you.

23 THE COURT: All right.

24 BY MR. URICK:

25 Q Who prepared this particular diagram for 43

1 MR. WARANOWITZ:

2 A Yes. It is a photo of L653.

3 Q And where is L653 located?

4 A It's located south of Route 40 near Cooks
5 Lane.

6 MS. GUTIERREZ: Near where?

7 MR. WARANOWITZ: Cooks Lane. I think the
8 address is Athol Avenue.

9 BY MR. URICK:

10 Q And on this -- this particular cell site is
11 set up as what?

12 MR. WARANOWITZ:

13 A I'm sorry. Could you rephrase that?

14 Q This particular cell site is what?

15 Physically it's what sort of structure?

16 A A tower.

17 Q And it's got three sort of cross sections.
18 What are each of these?

19 A Each set is a set of cellular antennas.

20 THE COURT: I'm sorry each set is what?

21 MR. WARANOWITZ: Each set is a set of
22 cellular antennas.

23 THE COURT: Cellular antennas?

24 MR. WARANOWITZ: Yes.

25 THE COURT: Okay.

1 degrees?

2 MR. WARANOWITZ:

3 A I did.

4 Q And does it fairly and accurately depict the
5 manner in which a typical AT&T cell site is divided up
6 into A, B and C sections?

7 A Yes, it does.

8 MR. URICK: I would move at this time into
9 evidence State's Exhibit 43B.

10 THE COURT: Any objection, Ms. Gutierrez?

11 MS. GUTIERREZ: Well, I would object based on
12 relevancy. Since this exhibit only establishes what a
13 typical site is.

14 THE COURT: All right. I'll allow it. It
15 may be admitted as an aid to the description and also
16 as a representation of a description of how each cell
17 site is divided.

18 (State's Exhibit No. 43B, previously
19 marked for identification, was received
20 into evidence.)

21 THE COURT: You may proceed.

22 BY MR. URICK:

23 Q I now show you what is marked for
24 identification as State's Exhibit 43D. Can you
25 identify that exhibit?

1 BY MR. URICK:

2 Q Now, what's been marked for identification as
3 State's Exhibit 43E. Can you identify this picture?

4 MR. WARANOWITZ:

5 A That is L654.

6 Q And where is that located?

7 A It is located near Route 40 and the beltway
8 695 on the western side.

9 Q And physically this structure is what?

10 A A water tank.

11 Q And what are the upright structures on the
12 top?

13 A Those would be AT&T wireless antennas.

14 Q I'm now showing you what's marked for
15 identification as State's Exhibit 43F. Can you
16 identify that structure?

17 A L689.

18 Q And where is that located?

19 A Can I look at the map? I don't remember the
20 exact streets. We call it Govins Manor. It is located
21 off of Windsor Mill Road just north of Lincoln Park.

22 Q And what is this structure on top of it?

23 Well, what type of structure is this?

24 A It is an apartment building I believe.

25 Q And what's this on top?

1 A That is our -- those are our antennas.
 2 Q And what parts of Baltimore City are covered
 3 by this cell site?
 4 A Lincoln Park to the south, to the west the
 5 roads getting close to Social Security and then to the
 6 north.
 7 Q I'm now showing you what's marked for
 8 identification as 43G. Can you identify that?
 9 A That is L698.
 10 Q And where is that located?
 11 A It's located near Route 40 and Rolling Road.
 12 Q Now, at this time I'm showing you what's been
 13 marked for identification purposes as State's Exhibit
 14 33.
 15 (State's Exhibit No. 33 was marked
 16 for identification.)
 17 Q Can you identify that exhibit?
 18 A This is a -- this is a coverage map of our
 19 cellular network.
 20 Q Who created this map?
 21 A I created it.
 22 Q How is it created?
 23 A It is done using a computer aided design
 24 tool.
 25 Q And does it show the computer records of AT&T

1 for these cell site areas?
 2 A Yes.
 3 Q And is the coverage area generated from those
 4 computer records?
 5 A Yes, it is.
 6 Q And is part of the regular business of AT&T
 7 to maintain such records of cell site coverage?
 8 A Yes.
 9 Q And is it necessary for the business of AT&T
 10 Wireless to have this information?
 11 A Yes, it is.
 12 Q Does this particular map fairly and
 13 accurately represent the computer records of the
 14 coverage areas for these individual sites?
 15 A It is accurate enough to do our job, yes.
 16 Q Now, it's divided into --
 17 MS. GUTIERREZ: I'm sorry. I couldn't hear
 18 the witness's answer.
 19 MR. WARANOWITZ: It is accurate enough to do
 20 our job.
 21 MS. GUTIERREZ: Enough to do?
 22 MR. WARANOWITZ: Our job.
 23 BY MR. URICK:
 24 Q Now, underneath it -- please describe what is
 25 the underlay?

1 MR. WARANOWITZ:
 2 A Underneath is a USGS map that I printed out
 3 enlarged. It depicts roads, terrains and building.
 4 Q And does the overlay line up with the US
 5 geological map underneath?
 6 A Yes.
 7 Q Now, just focus on one. There's a number
 8 here 689. What is that?
 9 A That is our cell site, L689 also known as
 10 Govins Manor.
 11 Q And that would represent the cell site that's
 12 pictured in State's Exhibit for identification 43?
 13 A No, it's the one above.
 14 Q I'm sorry. I'm looking at the wrong one.
 15 Forty three F, is that correct?
 16 A Yes.
 17 Q Now, that number is surrounded by three
 18 covered areas. There's sort of a pale green on the
 19 top, a brown below and then sort of a purplish on the
 20 left.
 21 A Correct.
 22 Q What are those three colored areas?
 23 A Each of those colored areas represents A, B
 24 and C of the diagram that I -- that I exhibited
 25 earlier.

1 Q So, taking State's Exhibit 43B which is now
 2 in evidence, the green up there would correspond with
 3 the A?
 4 A Yes.
 5 Q So, that would be designated as what?
 6 A Sector A.
 7 Q And how would it be printed up?
 8 A What do you mean?
 9 Q To designate it in the computer records.
 10 A We call it L689A. A for sector A.
 11 Q Now, the sort of brownish area here, that
 12 would correspond to what?
 13 A L689B.
 14 Q That would correspond to the B sector on the
 15 State's 43B, is that correct?
 16 A Correct.
 17 Q And the are to the left, sort of purplish
 18 area, that would be designated as what?
 19 A L689C.
 20 Q Again, I assume that would be the one sort of
 21 to the west of the cell site, is that correct?
 22 A Correct.
 23 Q And for -- may I approach the witness at this
 24 time, Your Honor?
 25 THE COURT: Yes, you may.

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1 BY MR. URICK:
 2 Q I give you a copy of what's been marked for
 3 identification as State's 40 -- 34.
 4 (State's Exhibit No. 34 was marked
 5 for identification.)
 6 Q For each of these numbers on the map, 651,
 7 698, 654, 653, 607, would the colored areas around them
 8 similarly correspond to the --
 9 MR. WARANOWITZ:
 10 A Yes.
 11 Q A, B and C designations sort of perfect?
 12 A Yes.
 13 Q Ideal setting. When you have a coverage,
 14 when you determine a coverage area, what factors
 15 influence coverage?
 16 A Buildings, terrain and sometimes trees.
 17 Q Now, when you have a cell site that's got the
 18 three antenna on it back in January of 1999 -- does
 19 technology -- when a cell phone initiates a call what
 20 determines which sector transmits that call into the
 21 system?
 22 A The phone determines which sector it
 23 originates a call on.
 24 Q How so?
 25 A It picks the strongest signal that it sees

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1 and then it talks to that cell site. After that you
 2 can make a phone call.
 3 Q Now, say you're in this sector, this would be
 4 the B sector, is that correct?
 5 A Yes.
 6 Q In January of 1999 did technology exist such
 7 that in the B cell antenna was occupied with another
 8 call it would switch the call to the C or A side?
 9 A No.
 10 Q Does that technology exist today?
 11 A No, we do not have that enabled.
 12 Q So -- now, if you're in a particular cell
 13 site, you say the factors that determine coverage again
 14 are?
 15 A Signal strength, the strongest signal,
 16 terrain.
 17 Q And the radio waves are operated on line of
 18 sight.
 19 THE COURT: I'm sorry. The radio waves?
 20 MR. URICK: Operate on line of sight.
 21 MR. WARANOWITZ: To an extent, yes.
 22 BY MR. URICK:
 23 Q What is meant by that?
 24 MR. WARANOWITZ:
 25 A Large objects will tend to create shadows

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1 that make it difficult to make a phone call.
 2 Q And the reason why you build a tower to put
 3 up the antennas higher is what?
 4 A To eliminate the number off objects between
 5 your phone and the cell site.
 6 Q Does that also determine the radius that the
 7 radio waves can spread out at?
 8 A Yes, it does.
 9 Q Is that determined solely by the design of
 10 the cell towers? Taking into account the terrain.
 11 A I'm sorry, could you say that again?
 12 Q And is that determined solely by the design
 13 of the cell tower taking into account particular
 14 features like terrain that might be in that area?
 15 A There are other factors.
 16 Q What might those be?
 17 A Neighboring cell sites, neighboring cell
 18 sites.
 19 Q Now, last fall we asked you to take a test of
 20 the system. Can you explain what the test was that we
 21 asked you to do?
 22 A I was asked to visit a number of places in
 23 the area located on this map and take readings and make
 24 phone calls to fins out what cell site I would
 25 originate at certain locations.

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1 Q And --
 2 MS. GUTIERREZ: I'd like a copy to follow the
 3 testimony, Mr. Urick.
 4 MR. URICK: Your investigator picked up
 5 copies.
 6 MS. GUTIERREZ: I don't have a copy of it. I
 7 haven't seen it. I'd like a copy.
 8 THE COURT: Counsel, may I see you at the
 9 bench? Ms. Gutierrez, Mr. Syed, Mr. Urick.
 10 (Counsel and Defendant approached the bench
 11 and following ensued:)
 12 THE COURT: Okay. Is there a problem?
 13 MR. URICK: We've provided copies of this
 14 previously to the Defense and she's saying no.
 15 THE COURT: Well, first of all I would like
 16 to know what it is you have.
 17 MR. URICK: They're marked for identification
 18 --
 19 THE COURT: May I see what you have?
 20 MR. URICK: They're marked for identification
 21 State's 44 and 45.
 22 THE COURT: Okay. This is a map. This is
 23 the map that the witness is going to testify from?
 24 MR. URICK: Yeah, he created it.
 25 THE COURT: Forty four and 45. Okay. I note

1 that there are markings on it. All right. And you're
2 saying you do not have another copy of this?

3 MR. URICK: Not with us, but we've previously
4 provided it to the Defense.

5 THE COURT: Okay. But is there -- when you
6 say not with us, is somebody that you -- is your office
7 in this building?

8 MR. URICK: I can go make a copy if the Court
9 would --

10 THE COURT: Okay. I would make a copy
11 myself, but this appears to be in color copy. Those
12 items on here are in color. Will they have some
13 significance to the testimony of this witness?

14 MR. URICK: I have no -- I don't believe so.

15 THE COURT: The circles are color coded.

16 MR. URICK: I think that's just -- that they
17 printed out that way to differentiate it so it can be
18 visible, so it does have the significance.

19 THE COURT: Well, differentiate for the
20 purposes of this witness testifying or differentiate it
21 for the purposes of his just looking pretty? In other
22 words, is he going to use the colors in his testimony?

23 MR. URICK: I think only to identify the
24 geographic areas on the map that are important.

25 THE COURT: I'll ask the question again. Are

1 the colors significant so that if I have a black and
2 white copy made of this that Ms. Gutierrez is not going
3 to be able to follow the testimony or do you need a
4 color copy made?

5 MR. URICK: I do not believe there will be a
6 problem following a black and white copy of this.

7 THE COURT: Okay. But the testimony is not
8 relative to the colors?

9 MR. URICK: If it is it can also be
10 designated by the line of numbers that follow.

11 THE COURT: By the numbers that are on there.

12 MR. URICK: That are following the line.

13 THE COURT: All right. Then -- so that
14 Counsel can have something in front of her, I'd ask
15 that you make copies.

16 MS. GUTIERREZ: Thank you, Judge. But I'd
17 like the record to reflect what Mr. Urick just told me
18 is that my investigator picked up these copies. They
19 have never been provided to me, the arrangements to get
20 discovery were very explicit. An investigator never
21 picked up anything from Mr. Urick as a result of him
22 notifying us that he had information for us either I or
23 one of my law clerks, specifically Mr. Lewis or Mr.
24 Perthemis were the only people allowed to pick them up.
25 He never mailed them, he never delivered them to us.

1 One of us had to go pick up upon his designation.

2 These have never been provided, I do not have an
3 investigator in my office. I hire outside investigators
4 who do not such tasks as going to a prosecutor's office
5 to pick up anything. I've not seen these.

6 THE COURT: You've never see these?

7 MS. GUTIERREZ: No.

8 THE COURT: Have you been provided with the
9 report?

10 MS. GUTIERREZ: No, Judge. That was the
11 whole, you know the illusion this morning. The only
12 thing is that we got designation of Abe Waranowitz and
13 we got a half a page designation of a list of cell
14 sites that would be triggered at a certain address. We
15 sent numerous requests in writing for any report, for
16 any maps, for any documents that this witness used. We
17 got no response other than saying we've given all that
18 we're going to give, period.

19 THE COURT: Ms. Gutierrez, if you would pause
20 right here. Ms. Murphy or Mr. Urick.

21 MR. URICK: Ms. Murphy ---

22 THE COURT: Show me what you gave to the
23 Defense in discovery relative to this witness?

24 MS. MURPHY: Your Honor, I was present --

25 THE COURT: No, no. My question is show me.

1 MS. MURPHY: I need to give you some
2 background. I was present in the conference room of my
3 office when Ms. Gutierrez, her investigator, Mr. Dru
4 Davis and her associate who's present today all came to
5 my office and photocopied numerous exhibits and they
6 were also given an opportunity to view these and
7 photocopy them if they wanted to, I don't know if they
8 did.

9 THE COURT: Can you --

10 MS. MURPHY: I specifically recall, Your
11 Honor that Mr. Davis examined these because he
12 specifically asked me what these numbers meant and I
13 told him I could not explain that, that they would have
14 to ask the expert.

15 THE COURT: Okay. The person that came to
16 your office was whom?

17 MS. MURPHY: Ms. Gutierrez, Mr. Dru Davis,
18 her investigator and her associate, I don't remember
19 his name, who is present today.

20 THE COURT: They came to your office?

21 MS. GUTIERREZ: He's my law clerk.

22 MS. MURPHY: Yes. And --

23 THE COURT: When did they come to your
24 office?

25 MS. MURPHY: Oh, this was back --

1 MR. URICK: Just prior before the last trial
2 date when they made a request to see exhibits and
3 potential exhibits.
4 MS. MURPHY: Yes. We spent upwards of an
5 hour in the conference room of my office and they were
6 given a photocopy machine.
7 THE COURT: So, you gave them a copy of this,
8 right?
9 MS. MURPHY: I gave them everything they
10 wanted and they copied --
11 THE COURT: No, that's not what I asked you.
12 MS. MURPHY: Your Honor, whether they copied
13 it or not was up to them at that point in time. They
14 were given access to these.
15 THE COURT: You gave them a copy -- you gave
16 them a copy of Exhibits 44 and 45?
17 MS. MURPHY: Yes.
18 THE COURT: Did you tell them what they were?
19 MS. MURPHY: I explained that they were
20 produced by the AT&T representative and that I was
21 asked to explain the numbers and I said I couldn't.
22 That really he would have to explain it for them.
23 THE COURT: Have you received a report from
24 this expert as to what the expert is going to testify
25 to?

1 MS. MURPHY: Has he written a report?
2 MR. URICK: No written report.
3 MS. MURPHY: He has disclosed notes taken
4 during these.
5 THE COURT: I'm not going to deal with two
6 people at one time. So, you decide which one's going
7 to talk and then that will be the person who can answer
8 my question. Is it going to be you, Ms. Murphy or Mr.
9 Urick?
10 MS. MURPHY: To the best of my ability. I
11 mean I was present for this and that's what I'm
12 addressing this, Your Honor.
13 THE COURT: Okay. So, my question is have
14 you given the Defense a copy of what it is or a summary
15 of what it is that this witness is going to testify to?
16 MS. MURPHY: Yes, they've been given a
17 disclosure based on my notes from when Mr. Waranowitz
18 made these.
19 THE COURT: Okay. Now, I first asked you to
20 show me what it is that you gave the Defense?
21 MS. MURPHY: I would have to ask Mr. Urick
22 for that.
23 THE COURT: That's fine, that's fine.
24 MR. URICK: I'd have to go down to our office
25 and get a copy of the discovery.

1 THE COURT: Okay. Do that.
2 MR. URICK: Can I take those along at this
3 time to make a xerox?
4 THE COURT: Yes, would you do that as well.
5 You may have a seat, Ms. Gutierrez.
6 (Counsel and Defendant returned to the trial
7 tables and the following ensued:)
8 MR. URICK: Court's permission?
9 THE COURT: Yes. Ladies and gentlemen, we're
10 going to stay put. Mr. Urick is going to retrieve some
11 things for the Court. If you want to stand up, stretch
12 your legs, if you would like some water from the water
13 cooler feel free to walk over and get that. Take a
14 moment to retrieve the items that I asked for and then
15 we'll continue in just a moment. We're all going to
16 stay in the Court, we're not leaving, we're not
17 recessing, but you're welcome to stand, stretch your
18 legs, the water cooler is there. Are there cups there
19 on the side?
20 JUROR: No, Your Honor.
21 THE COURT: No. Would you go and see if we
22 can't receive some cups for us? Counsel, as soon as
23 you have the items that I've requested would you bring
24 them up for me.
25 (Counsel approached the bench and the

1 following ensued:)
2 MR. URICK: This is the --
3 THE COURT: Amended discovery dated October
4 12th, 1999 and the number which relates to the items
5 that you are indicating would be -- lets see. An oral
6 statement, A. Waranowitz of AT&T reported the
7 following, cell phone trigger cell site, okay. Okay.
8 Okay.
9 MS. GUTIERREZ: Judge, I have that. I
10 brought that up with me. I will tell you this is the
11 only disclosure that we get regarding Mr. Waranowitz
12 and in fact --
13 THE COURT: One second before you respond I
14 just want to make sure. You gave the Defense this?
15 MS. MURPHY: Yes.
16 THE COURT: Item which is the amended
17 disclosure.
18 MS. MURPHY: Correct.
19 THE COURT: Anything else? You said you were
20 present when copies of State's Exhibits 44 and 45 were
21 made?
22 MS. MURPHY: Whether they made the copies was
23 up to them. They were given the opportunity to inspect
24 and copy them as provided for in the rules, Your Honor.
25 THE COURT: Okay.

1 MS. MURPHY: And I remember a specific
 2 discussion about these.
 3 THE COURT: Because they asked you about
 4 them?
 5 MS. MURPHY: Exactly.
 6 THE COURT: When you say they, who is they?
 7 MS. MURPHY: It was a conversation with
 8 either Mr. Davis or I think it's Mr. Fisher who's
 9 present here today, one of the two.
 10 THE COURT: Mr. Lewis, the blond hair
 11 gentlemen?
 12 MS. MURPHY: I'm sorry, Your Honor, Mr.
 13 Lewis, I apologize. One of them asked me specifically
 14 about these maps. These were the only maps generated
 15 by the witness of this nature.
 16 THE COURT: And at the time that you were
 17 asked about them you explained that these are maps that
 18 Mr. Abe Waranowitz would be the one that could explain?
 19 MS. MURPHY: All right. And for the record
 20 I'm just giving you these as the xerox copies of the
 21 exhibits.
 22 MS. GUTIERREZ: Thank you, Judge.
 23 THE COURT: That you did not have before.
 24 MS. GUTIERREZ: For the record --
 25 THE COURT: And I ask that the witness refer

1 so all it was, was a series of colors that were
 2 identified by numbers and we were unable to get any
 3 information from Mr. Waranowitz to explain it. The
 4 only other discovery we had from Mr. Waranowitz refers
 5 to the cell sites which at that point we had figured
 6 out were in fact the large number on the colored
 7 overlay unattached to any map. I will note just for my
 8 own familiarity with the geological survey map --
 9 THE COURT: One moment. Ladies and gentlemen
 10 of the jury, at this time I'm going to have to ask you
 11 not to speak. What is occurring at this time is you
 12 have a microphone in front of you and as I indicated to
 13 you before that when you speak in this room because
 14 it's a video courtroom, the audio goes to the person
 15 who's speaking the loudest. So, if your voices happen
 16 to exceed ours then the recording device will switch to
 17 you and not us. So, at this time I'm going to have to
 18 ask you not to talk, we will be with you shortly.
 19 Thank you.
 20 MS. GUTIERREZ: That I believe just from my
 21 familiarity with geological survey map which is, you
 22 know obtainable from all kinds of sources that because
 23 of markings of Arbutus that it appears to be a very
 24 tiny portion of that map. The Arbutus section of
 25 Baltimore were to appear on the lower right hand --

1 to the items when he testifies by the numbers and not
 2 by the colors since I see that this copy does not
 3 provide the colors in the xerox fashion. So, the
 4 record will be clear as to what the witness is
 5 referring to. All right. Now, Ms. Gutierrez I'll hear
 6 from you.
 7 MS. GUTIERREZ: For the record, Judge. We
 8 were not provided copies of these. I had no
 9 discussion, there's nothing in these exhibits that
 10 identified them in any way. Mr. Waranowitz's name or
 11 initials or anything do not appear to establish that he
 12 made them. What we were provided at the evidence room
 13 about which we had a great number of questions and as a
 14 result of those questions which Ms. Murphy was not able
 15 to answer any of those questions, we were referred to
 16 Mr. Waranowitz who I spent about a month tracking down
 17 who did not want to speak to us. If was through his
 18 supervisor that we were provided a copy of the overlay
 19 of the map. The colored portions on which are written
 20 those large numbers, the six, the cell site numbers.
 21 THE COURT: Right.
 22 MS. GUTIERREZ: Appear on --
 23 THE COURT: L something.
 24 MS. GUTIERREZ: The overlay, but not the
 25 underlying map to which the attempt is to identify it,

1 THE COURT: Right hand.
 2 MS. GUTIERREZ: The lowest end of it, but of
 3 course there's nothing other than numbers which I will
 4 note do not correspond to any other numbered system
 5 that we've been given do not correspond. There's a
 6 pair of circles as you noted on the original appear in
 7 both blue and red. The only numbers that we were given
 8 are the addresses that appear on the front of the
 9 disclosure that signifies a specific address or
 10 location. Some of them specific addresses like 1208
 11 Macado and then just as identified as trigger and
 12 that's all that it says. It says 1208 Macado, north on
 13 Johnny Cake triggers L654A or L -- or 651B without an
 14 L, but there are no numbers that have been provided to
 15 us for instance, that would help us locate this
 16 particular area. The significance of which, Judge I
 17 can't tell you. All I can tell you is, well, I know
 18 where Arbutus is and I know Arbutus is at the bottom of
 19 that map opposite the top end of the map that has just
 20 been located as including Lincoln Park. I don't know
 21 what the significance is, I don't know what the
 22 significance of these numbers are. Clearly they have
 23 some significance particularly in light of the fact
 24 that on the original the dots that correspond roughly
 25 to the track of these three digit numbers from 854 to

1 930 something and then there's two hand written in
 2 identifications to the cell site, L65 -- I think 55B
 3 and L608C appear handwritten in. And again, there's no
 4 notation where these came from, who made the notations,
 5 who made the handwriting, that they are related to Mr.
 6 Waranowitz. I did attend together with my investigator
 7 and Mr. Lewis a session that we are -- that they are
 8 required to afford under the rules to -- I don't know
 9 the date of that session although I'm sure I can
 10 calculate that date by my letters, but it occurred
 11 before this.

12 THE COURT: This meaning --

13 MS. GUTIERREZ: Meaning the October 9th
 14 disclosure, the amended disclosure that the Court read
 15 that essentially said that Mr. Waranowitz reported the
 16 following an then just a list of addresses and located
 17 with the cell site. But at that session which took I
 18 believe the bulk of a day or at least a half a day with
 19 the three of us, we were allowed to use the xerox
 20 machine, but limited only when someone else was not
 21 using it and that meant that it was stop and go. We
 22 were not allowed just to freely make copies. We made
 23 numerous requests, and after that meeting we made
 24 numerous requests in writing concerning every bit that
 25 we did that allowing us to view an unidentified huge

1 in a position after consultation with Mr. Syed to say,
 2 well, I don't think this is important enough to waste
 3 our time on. But absent knowledge on which to base
 4 that decision, then I must request adequate time to
 5 review this information together with the limited
 6 information that we have to see and to seek an
 7 opportunity to force Mr. Waranowitz -- well, I don't
 8 know -- to speak to us to explain the significance of
 9 what if any markings, who made the markings and what
 10 significance they have to his testimony. Particularly
 11 in light of the fact that he's now been qualified as an
 12 expert.

13 THE COURT: Okay. With regard to Ms.
 14 Gutierrez's objection first the chart that's on the
 15 board with the overlay, the map, it is from what I
 16 understand a street map, is it not?

17 MS. GUTIERREZ: Underneath.

18 THE COURT: Underneath.

19 MS. GUTIERREZ: It's a US geological street
 20 map, yes.

21 THE COURT: And the US geological street map
 22 is not the same item that is being marked as State's
 23 44, 45, correct?

24 MR. URICK: Correct.

25 THE COURT: Okay. How does what's marked as

1 amount of material and expect that to meet disclosure
 2 obligations in no way meets the disclosure obligation
 3 imposed on the State under the rules or under due
 4 process or under Brady. Judge, frankly I'm at a lost.
 5 I can tell you it's important that I look at this in
 6 light of anything else, given that we got no other
 7 disclosure from this person whom you've now allowed to
 8 identify as an expert, the error of that and the
 9 violation of due process is compounded by now being
 10 utilized. I don't know, I guess maybe a proffer might
 11 help us to decide is it worth it to waste time to study
 12 something that we've never seen before, has not been
 13 provided to us before. If it was buried in a list of
 14 literally thousands of pages of documents and now we're
 15 told is belongs to Mr. Waranowitz and it's going to be
 16 admitted falls a trifle short of what disclosure is
 17 mean to do and frankly, Judge I can't tell. And since
 18 I can't tell whether it's significant, whether these
 19 markings are significant, whether the handwriting is
 20 significant. In light of the limited disclosure I
 21 can't tell if it is necessary for me to review it with
 22 my staff, with Mr. Syed, to compare it with what we
 23 have in order to meet my obligation to him. If there
 24 was some specific proffer as to what this map meant,
 25 what this witness was going to say perhaps I would be

1 State's 44 and 45 relate to the map that he's already
 2 identified, that he blew up and then placed his overlay
 3 over?

4 MR. URICK: It has no direct relation other
 5 than he can show on the other map where this particular
 6 site was.

7 THE COURT: Okay.

8 MR. URICK: And explain, he can correlate
 9 this location on the larger map.

10 THE COURT: The numbers that appear on your
 11 State's Exhibit 44 and 45, numbers like 860, 854, 911,
 12 926, those numbers correspond to what?

13 MR. URICK: We believe it's a global
 14 position, satellite information system that allowed him
 15 to place his location when he took a reading and that's
 16 what we believe he will say those are, but these are
 17 generated from the global position.

18 THE COURT: Okay. And the materials --

19 MS. MURPHY: I'm sorry, Your Honor.

20 THE COURT: The materials that were used y
 21 this witness to make this calculation are they
 22 materials or information or notes that were disclosed
 23 to the Defense?

24 MR. URICK: If I recall correctly he actually
 25 printed this out at the time that he was -- we were

1 recording this. So, this was I believe simultaneously
2 printed up with the oral report that he gave us as to
3 the location. These were the global position satellite
4 was only briefly that day, these were the only two
5 corresponding maps that he was able to print out, but
6 they correspond and I believe were printed out at the
7 same time that he gave us orally what his reading was
8 at each location.

9 THE COURT: So, the 44 and 45 represents the
10 data that was used to make up your amended State's
11 disclosure?

12 MR. URICK: Part of it, yes.

13 THE COURT: When you say part of it, yes,
14 what is the other part?

15 MR. URICK: He had equipment to read the
16 system to tell which cell site the signal was coming
17 from.

18 THE COURT: No, I understand that, okay.
19 That's -- that's his internal system?

20 MR. URICK: Yeah. That's how he got the
21 numbers that he printed out, L6 --

22 THE COURT: I understand -- I understand, but
23 the readings themselves are what appears in 44 and 45?

24 MR. URICK: Yes.

25 THE COURT: Very well. Your objection is

1 proceed.

2 BY MR. URICK:

3 Q Just to reiterate, what was the test we asked
4 you to do?

5 MR. WARANOWITZ:

6 A You asked me to visit a number of locations
7 on the map and take readings as to what cell site a
8 call would originate from.

9 Q Did we ask you to go to Gelston Park?

10 A Yes.

11 Q And can you find that site on this large
12 overlay map?

13 A Yes.

14 MR. URICK: With the Court's permission I'd
15 like him to approach.

16 THE COURT: Yes, you may approach.

17 BY MR. URICK:

18 Q With this laser pen you just press down.

19 THE COURT: If any of the jurors can not see
20 please raise your hand so I know you can not see. Mr.
21 Syed, if at any time you can not see let me know that
22 as well.

23 BY MR. URICK:

24 Q Now, according to that overlay map that site
25 is in -- thank you, that location is within the cell

1 overruled. It's noted for the record. You may
2 proceed.

3 MR. URICK: Thank you.

4 THE COURT: These are copies -- these are
5 copies.

6 MS. GUTIERREZ: May I have a continuing
7 objection?

8 THE COURT: Yes, you may.

9 (Counsel and Defendant returned to the trial
10 tables and the following ensued:)

11 THE COURT: As Counsel goes back, let the
12 record reflect that the information contained on 44 and
13 45 I find is the data under the rules 4-263. The oral
14 report and the conclusion would be required. The data
15 was additional information and I find that is part of
16 the basis of the overruling of the objection. The
17 continue objection, Ms. Gutierrez is noted. You may
18 proceed, Mr. Urick.

19 MR. URICK: Thank you.

20 THE COURT: And I'd ask the witness to listen
21 to the question and as the question is asked, if you
22 can not answer it say, I can't answer the question,
23 don't ask him a question back. Okay?

24 MR. WARANOWITZ: I understand.

25 THE COURT: All right. Very well. You may

1 site covering from 698, is that correct?

2 MR. WARANOWITZ:

3 A Yes.

4 Q What if anything did you discover when you
5 reached that particular location?

6 A I discovered that the phones, 654C were
7 stronger.

8 Q And is there a particular geographical
9 location -- feature there that caused that?

10 A Yes, there is a small hill there that shadows
11 698.

12 Q And if I may approach the witness I'm going
13 to show you what's been marked for identification as
14 State's Exhibit 44.

15 (State's Exhibit's No. 44 was
16 marked for identification.)

17 Q Have you seen that before?

18 A Yes.

19 Q What is that?

20 A This is a -- this a drawing, rather a map of
21 the locations I drove and the cell sites that I
22 measured.

23 Q And how is that map generated? From what
24 data?

25 A This was generated from an Erickson test

1 phone while driving around in this neighborhood.
 2 Q Was this generated the day we had you doing
 3 the test?
 4 A Yes, it was.
 5 Q And what system did it use to generate this
 6 data from? What is the global tracking satellite?
 7 MS. GUTIERREZ: Objection.
 8 THE COURT: Overruled. You may tell us what
 9 the global tracking satellite is.
 10 MR. WARANOWITZ: GPS?
 11 MR. URICK: Yes.
 12 MR. WARANOWITZ: Global positioning system.
 13 BY MR. URICK:
 14 Q Please explain what that is.
 15 MR. WARANOWITZ:
 16 A I can't answer that.
 17 Q How do you use it?
 18 A We use it to specify -- we used it to find
 19 out where we are when we're driving around.
 20 Q Is that map generated from that data?
 21 A Yes.
 22 THE COURT: I'm going to sustain the
 23 objection in that Ms. Gutierrez objected to his
 24 description of the satellite and is it your testimony
 25 that you don't know what the satellite is, is that

1 THE COURT: When an expert testifies you note
 2 that, ladies and gentlemen I limited him as to what
 3 portion of his testimony you should consider as expert
 4 testimony. As he testifies if he's asked a question
 5 where he is responding not as an expert, but as a lay
 6 person I will let you know. Ms. Gutierrez, you have a
 7 continuing objection to anything that is not expert
 8 testimony, but rather that of a lay person. If it is
 9 as his expert testimony I will not qualify it, if it is
 10 as a lay person I will qualify it. Your next witness.
 11 Your next question, Mr. Urick.
 12 BY MR. URICK:
 13 Q Now, the letters on that exhibit is written
 14 in 654C. How did that get on the exhibit?
 15 MR. WARANOWITZ:
 16 A I wrote that on there.
 17 Q And does that fairly and accurately record
 18 the tests on that date?
 19 A Yes, it does.
 20 MR. URICK: Would offer State's Exhibit 44,
 21 the exhibit at this time.
 22 MS. GUTIERREZ: Objection.
 23 THE COURT: Have all the notations on the
 24 exhibit been identified?
 25 BY MR. URICK:

1 correct?
 2 MR. WARANOWITZ: I'm not an expert in that
 3 area.
 4 THE COURT: I didn't ask if you were an
 5 expert in the area, I asked if you knew what the
 6 satellite was? Do you know what it is?
 7 MR. WARANOWITZ: Yes.
 8 THE COURT: Okay. What -- as it relates to
 9 what that item is can you tell or answer the question?
 10 MR. WARANOWITZ: We use the GPS system to
 11 pinpoint our location when we test our network.
 12 THE COURT: And you use that as part of your
 13 job, is that correct?
 14 MR. WARANOWITZ: That is correct?
 15 THE COURT: Ladies and gentlemen of the jury,
 16 this is not an expert with regard to the satellite,
 17 he's not been offered as an expert, so with regard to
 18 his testimony as to what the item is that is the
 19 satellite you consider him as a lay person as you would
 20 and, ladies and gentlemen you are as to what a
 21 satellite is. You may use your own -- that portion of
 22 his testimony should be considered as a lay person and
 23 that portion of Ms. Gutierrez's objection is therefore
 24 sustained.
 25 MS. GUTIERREZ: Thank you, Your Honor.

1 Q May I have a moment. The printed out three
 2 digit numbers, do you know what those are?
 3 MR. WARANOWITZ:
 4 A Those are the frequencies we use.
 5 Q Explain what you mean by that.
 6 A We have a range of frequencies much like
 7 radio and television channels that we use. We record
 8 those channels and how strong their signal strength is
 9 and relate it to the GPS location. That frequency, it
 10 can be identified specifically to a cell site.
 11 Q And those numbers are printouts of what
 12 frequency is being used at any given -- at that
 13 particular location?
 14 A Yes.
 15 MR. URICK: Would offer the exhibit at this
 16 time.
 17 MS. GUTIERREZ: Same objection.
 18 THE COURT: It's just --
 19 MS. GUTIERREZ: Your Honor, I note that all
 20 handwritten items on the map have been identified.
 21 THE COURT: For that reason it will
 22 sustained.
 23 BY MR. URICK:
 24 Q There's some circles drawn on there, who drew
 25 those?

1 MR. WARANOWITZ:
 2 A The circle that I have drawn around Gelston
 3 Park and parts of Rolling Road indicates that the cell
 4 phone that we were using to test saw L654C as it's
 5 strongest cell site at those locations.
 6 Q I'm sorry. Can you give me that last
 7 sentence again?
 8 MS. GUTIERREZ: Objection.
 9 THE COURT: Sir, can you repeat the end of
 10 your answer for Counsel?
 11 MR. WARANOWITZ: Yes. The --
 12 THE COURT: It's overruled. Go ahead.
 13 MR. WARANOWITZ: The frequencies that I have
 14 circled on this map around Gelston Park and Rolling
 15 Road indicate where the phone has picked up L654C as
 16 it's strongest cell site.
 17 BY MR. URICK:
 18 Q Are there any other handwritten notations on
 19 the map?
 20 MR. WARANOWITZ:
 21 A I don't see any, no.
 22 MR. URICK: At this time I would offer
 23 State's Exhibit 44.
 24 MS. GUTIERREZ: Objection. Same basis and I
 25 would note that there is some handwriting that has not

1 THE COURT: You identified them today? No,
 2 look at me. Did you identify them today?
 3 MR. WARANOWITZ: I've identified the
 4 frequencies on here, yes.
 5 THE COURT: Okay. I didn't ask you about
 6 frequencies, I asked you about numbers. Did you
 7 identify the numbers?
 8 MR. WARANOWITZ: Yes.
 9 THE COURT: Okay. Very well. With regard to
 10 the objection as this juncture it's sustained. There
 11 are items on that exhibit that have not been
 12 identified. The witness has not been asked to identify
 13 them and therefore this item is not in evidence. The
 14 witness has not been asked to identify them and
 15 therefore this item is not in evidence yet.
 16 BY MR. URICK:
 17 Q The colored markings, are those handwritten
 18 in?
 19 MR. WARANOWITZ:
 20 A No, they are computer drawn.
 21 Q And what do they signify?
 22 A They signify the signal strength that the
 23 phone sees at that position.
 24 Q And how does it signify it?
 25 A The different colors indicate different

1 been identified.
 2 THE COURT: May I see the exhibit please?
 3 Mr. Clerk, would you pass it to me please? Thank you.
 4 Mr. Waranowitz, I notice there are other colored
 5 markings on that, have you identified those for the
 6 record?
 7 MR. WARANOWITZ: No.
 8 THE COURT: I notice there are a series of
 9 numbers that go vertical across the top of the page,
 10 from top to bottom. Have you identified those numbers
 11 either? Just yes or no.
 12 MR. WARANOWITZ: Yes.
 13 THE COURT: Okay. And the numbers that go
 14 across the middle of the page?
 15 MS. GUTIERREZ: Objection.
 16
 17 THE COURT: I understand, Counsel. My -- my
 18 problem is --
 19 MS. GUTIERREZ: I do understand, but I'm --
 20 THE COURT: You're noting the objection for
 21 the record.
 22 MS. GUTIERREZ: Thank you.
 23 THE COURT: Have those numbers been
 24 identified by you?
 25 MR. WARANOWITZ: Yes.

1 signal strengths. Generally, blue stands for neg,
 2 85DB, red stands for neg., 75 and yellow for -- I'm
 3 sorry, neg 105 and less.
 4 Q And do the colors match up with the
 5 particular three digit numbers beside them?
 6 A Yes.
 7 Q Are there any other computer generated
 8 notations like that on the document as opposed to
 9 handwritten?
 10 A Just the under -- just the underlaying map.
 11 Q There was some reference to some numbers
 12 running across the top, is that correct?
 13 A Which -- which numbers?
 14 Q And all the computer generated numbers,
 15 colors, etcetera are -- first of there's a line of them
 16 running almost through -- up -- through the center of
 17 the page running from the bottom to the top. Do you
 18 know what they are following?
 19 A The numbers following Rolling Road indicate
 20 the frequencies.
 21 Q And that's driving up Rolling Road, is that
 22 correct?
 23 A Down, yes.
 24 Q And then the circle of ones that go off to
 25 the left, those go around what geographical feature?

1 A There's a hill in the middle of that circle.

2 Q And those numbers follow Rolling Road and
3 then the path followed around the surf of the hill,
4 correct?

5 A Yes.

6 MR. URICK: Would offer the exhibit at this
7 time.

8 MS. GUTIERREZ: Same objection.

9 THE COURT: Overruled at this time. Let the
10 exhibit be admitted. I believe that's Exhibit Number
11 44.

12 (State's Exhibit No. 44, previously
13 marked for identification, was
14 received into evidence.)

15 BY MR. URICK:

16 Q If you could pass it to the Clerk at this
17 time I would appreciate it. Now, I'd like you to look
18 at what's been marked for identification as State's
19 Exhibit 34. Now, have I shown you this exhibit before?

20 MR. WARANOWITZ:

21 A Yes.

22 Q Now, in the far right are a list of
23 addresses. Have you had a chance to examine the
24 exhibit to check those addresses against the cell sites
25 that are listed in the column to directly left from the

1 Urick with regard to this witness, if you're going to

2 discuss tests you're going to have to tell us what it
3 is that you're talking about. At this point I don't
4 know what kind of test was conducted and I don't know
5 anything that your Exhibit Number 34 has an relevance
6 regarding any tests. So, if you would clarify it and
7 we'd appreciate it and at this point Ms. Gutierrez's
8 objection is sustained.

9 BY MR. URICK:

10 Q It took you to Gelston -- a location at
11 Gelston Park?

12 MR. WARANOWITZ:

13 A Yes.

14 Q What test did you perform there?

15 A I originated a phone call.

16 Q And did that origination go through a cell
17 site?

18 A Yes.

19 Q And what was that cell site?

20 A L654C.

21 Q The address for that cell site is located is
22 what?

23 A On Dorchester Road.

24 Q Now, following that we took you secondly to -
25 - well, my next question would be we took you to

1 computer generated business records of the Defendant?

2 A Yes.

3 Q And are those addresses accurate for those
4 cell sites?

5 A Yes.

6 Q Now, when you were at Gelston Park you said
7 you used an Erickson phone. Does the brand of the
8 phone make any difference in terms of the functioning
9 of the network?

10 MS. GUTIERREZ: Objection.

11 THE COURT: Sustained.

12 BY MR. URICK:

13 Q Now, when you are at Gelston Park I'd like
14 you to look on the copy of the exhibit that I gave you,
15 look at lines 20 and 21. Is that cell site and cell
16 site address designation 654C 824 Dorchester consistent
17 with your test at your location you were at there?

18 MR. WARANOWITZ:

19 A Yes.

20 MS. GUTIERREZ: Objection. He testified and
21 he tested to determine an address. They either exist
22 or they don't, so the question is improper to suggest
23 that it's consist --

24 THE COURT: You don't -- that's fine. It's
25 going to be sustained and, Counsel at this point, Mr.

1 Christie Vincent's address at the 4700 block of Gateway
2 Terrace. Can you find that location on that map?

3 A Yes.

4 Q Could you please find that?

5 THE COURT: Ladies and gentlemen, if you can
6 not see what is being done please raise your hand. All
7 right. Ladies and gentlemen of the jury can not see.
8 Okay. You're pointing to a location on the map.
9 Counsel, all right. You may proceed.

10 MR. URICK: At this time with the Court's
11 permission I'm going to approach and show the witness
12 what's been marked for identification as State's
13 Exhibit 45.

14 (State's Exhibit No. 45 was marked
15 for identification.)

16 THE COURT: Yes you may. Exhibit 45.

17 BY MR. URICK:

18 Q Can you identify that?

19 MR. WARANOWITZ:

20 A Yes.

21 Q And what is that?

22 A This is another drawing or computer generated
23 graphic of the drove that I did on the day of the test.

24 Q And the geographical location that that map
25 represents is what?

1 A That would be the address that you gave me.
 2 Q Now, when you got to the 470 block of Gateway
 3 Terrace what if anything did you discover about the
 4 functioning of the AT&T Wireless network at that
 5 location where you initiated calls?
 6 A I found that there were two cell sites very
 7 strong in that area.
 8 Q And affect did that have on your phone?
 9 A Depending on where you were located on that
 10 road you could originate a call on one of two cell
 11 sites.
 12 Q Now, if you look on 6, lines 14, 15 and 16.
 13 There you'll see three calls. One through cell site
 14 16, 655A, the other two L608C. Were those the cell
 15 sites that you picked up in your test when you went to
 16 the 2700 block of Gateway Terrace?
 17 A Yes.
 18 Q If I may approach the Clerk at this time, I
 19 need State's Exhibit 9. It's one of the big photo
 20 arrays. I'm now showing you what's been marked for
 21 identification or in evidence as State's Exhibit 9. I
 22 would like you to look at the top left photograph and
 23 then the others as well. Can you identify that
 24 location?
 25 A This was the location I was taken to where I

1 Q And where is 651C, 653C, pardon me?
 2 A It would be this orange area here.
 3 Q Okay. You may return to the stand at this
 4 time. Now, what do mean by the term originated?
 5 A It means that the phone call, I mean that the
 6 wireless phone has begun to make a call or receive a
 7 call.
 8 Q Do you have an AT&T wireless phone yourself?
 9 A Yes.
 10 Q And do you get billing notices from that?
 11 A Yes.
 12 Q I'd like you to look at lines 18 and 19 on
 13 this. What do those two lines show?
 14 MS. GUTIERREZ: Objection.
 15 THE COURT: Overruled. This response then
 16 would be as a lay person that's responding to a
 17 question that one might be able to answer based on
 18 their records receiving cellular phone information.
 19 You may proceed.
 20 MR. WARANOWITZ: This means that the customer
 21 has dialed his voice mailbox.
 22 BY MR. URICK:
 23 Q Why does it take two lines, if you know?
 24 MR. WARANOWITZ:
 25 A I don't know.

1 was told a body was buried.
 2 Q Already designated on this map by a B.
 3 You've had a chance to look at the map and see that?
 4 A Yes.
 5 Q When you got to that site and you can hand
 6 the exhibit back to the Clerk at this time, what test
 7 did you perform?
 8 A I originated a phone call.
 9 Q And what cell site did you find that that
 10 sight went through?
 11 A L689B.
 12 Q I would like if you look at lines 10 and 11
 13 on the State's Exhibit 34, you've got cell sites 689,
 14 L689B, address 2122 Windsor Park Lane. Is that the
 15 same cell site that a phone call initiated there went
 16 through?
 17 A Yes.
 18 Q Now, if the witness may approach the exhibit,
 19 that's been marked overhead exhibit at this time.
 20 THE COURT: Yes you may.
 21 BY MR. URICK:
 22 Q Can you find cell site 653 please? Now,
 23 where is 653A of the three colored zones there?
 24 MR. WARANOWITZ:
 25 A It would start in the brown area.

1 Q However, the records for those do indicate
 2 the exact same time and the exact same duration of the
 3 call?
 4 A Yes.
 5 Q Now, if there were testimony that someone
 6 were in a car traveling westbound on Edmondson Avenue,
 7 and that two calls were made on an AT&T Wireless
 8 subscriber phone and you found cell records that had
 9 first 653A and then a moment, minute or two later a
 10 call originating 653C, would that functioning of the
 11 network be consistent with the testimony?
 12 MS. GUTIERREZ: Objection.
 13 THE COURT: You may answer as only it relates
 14 to an Erickson piece of equipment cell phone.
 15 MR. WARANOWITZ: Yes that would be
 16 consistent.
 17 BY MR. URICK:
 18 Q Now, if there were testimony that two people
 19 in Lincoln Park at the burial site and that two
 20 incoming calls were received on a cell phone, they're
 21 an AT&T subscriber cell phone there, cell phone records
 22 with two calls that were -- went through that
 23 particular cell site location, would the -- that
 24 functioning of the AT&T network be consistent with the
 25 testimony?

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1 MS. GUTIERREZ: Objection.
 2 THE COURT: You may answer only as it relates
 3 to an Erickson piece of equipment.
 4 MR. WARANOWITZ: Yes.
 5 BY MR. URICK:
 6 Q Now, if there were testimony that at the 2700
 7 block of Gateway Terrace two people were visiting other
 8 people and two or three incoming calls were received on
 9 a AT&T wireless subscriber phone at that location and
 10 the cell phone records indicated the cell sites you
 11 listed for the 655A and 608C, would that functioning of
 12 the AT&T network be consistent with the testimony?
 13 MR. WARANOWITZ:
 14 A Yes.
 15 MS. GUTIERREZ: Objection.
 16 THE COURT: Again, ladies and gentlemen as
 17 only as it relates to the Erickson phone and you're
 18 answering that question in that fashion, is that
 19 correct, sir?
 20 MR. WARANOWITZ: Yes.
 21 THE COURT: Very well. You may continue.
 22 And for the record your objections are overruled only
 23 as it relates to the equipment for which he's been
 24 qualified to testify.
 25 BY MR. URICK:

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1 Q Now, if there was testimony that someone had
 2 dropped someone off at school to go to track practice
 3 and the person who had the car went to Gelston Park,
 4 parked for a while and then went back to pick the
 5 person up, if you found -- and they called at Gelston
 6 Park, one or more incoming calls were received by the
 7 AT&T wireless subscriber telephone and then you found
 8 cell phone records that had calls from the L654C cell
 9 site, would that functioning of the AT&T network be
 10 consistent with the testimony?
 11 MR. WARANOWITZ:
 12 A Yes.
 13 MS. GUTIERREZ: Objection.
 14 THE COURT: Sustained only as to the
 15 equipment being for Erickson may you answer and your
 16 answer is?
 17 MR. WARANOWITZ: Yes.
 18 THE COURT: You may proceed.
 19 BY MR. URICK:
 20 Q Now, in terms of the coverage and the
 21 functioning of the network, is it the design of the
 22 cell tower that is the operative factor or is it the
 23 cell phone?
 24 MR. WARANOWITZ:
 25 A Cell tower.

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1 Q Why?
 2 A Because the cell tower provides the coverage
 3 in that area.
 4 Q Now, based on your knowledge of the AT&T
 5 wireless network system, does the particular model or
 6 manufacturer of a cell phone, brand of a cell phone
 7 have any affect on the functioning of the network?
 8 MS. GUTIERREZ: Objection.
 9 THE COURT: I'm going to sustain it, but you
 10 can reword it.
 11 BY MR. URICK:
 12 Q What affect if any does a brand of a cell
 13 phone -- what if any affect does a brands of cell
 14 phones have on the functioning of the AT&T wireless
 15 network.
 16 MS. GUTIERREZ: Objection.
 17 THE COURT: Overruled. If you know.
 18 MR. WARANOWITZ: It depends on the quality of
 19 the phone.
 20 BY MR. URICK:
 21 Q How might that affect it?
 22 MS. GUTIERREZ: Objection.
 23 THE COURT: Overruled. And again, if you
 24 know?
 25 MR. WARANOWITZ: For performance.

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1 BY MR. URICK:
 2 Q And how so?
 3 MS. GUTIERREZ: Objection.
 4 THE COURT: At this point I'm going to
 5 sustain and, Mr. Urick unless you are prepared to lay a
 6 foundation for this witness's basis of knowledge as to
 7 other equipment other than Erickson phones and how they
 8 relate to your question this entire line of questioning
 9 will be sustained.
 10 BY MR. URICK:
 11 Q Your AT&T wireless cell phone is what brand?
 12 MR. WARANOWITZ:
 13 A I use a Motorola phone.
 14 Q Have you used other cell phones with the
 15 network?
 16 A Yes.
 17 MS. GUTIERREZ: Objection.
 18 THE COURT: Overruled.
 19 BY MR. URICK:
 20 Q What other cell phones have you used?
 21 MR. WARANOWITZ:
 22 A Erickson.
 23 MS. GUTIERREZ: May I continue my objection?
 24 THE COURT: Yes, you may.
 25 MR. WARANOWITZ: Erickson, Nokia.

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1 BY MR. URICK:
 2 Q Are you -- in your experience -- well, how
 3 have you used those phones?
 4 MS. GUTIERREZ: Objection.
 5 THE COURT: Question is too general, it's
 6 sustained.
 7 BY MR. URICK:
 8 Q Are you familiar -- do you have any knowledge
 9 of the technology that's used in those phones?
 10 THE COURT: In what phones?
 11 MR. URICK: The Erickson, Nokia and Motorola.
 12 THE COURT: Overruled. Do you, yes or no?
 13 MR. WARANOWITZ: Could you rephrase the
 14 question please?
 15 BY MR. URICK:
 16 Q Do you have any knowledge as to the radio
 17 technology that's used by the Nokia, the Erickson, the
 18 Motorola phones?
 19 MS. GUTIERREZ: Objection.
 20 THE COURT: Overruled. Yes or no? Do you or
 21 don't you?
 22 MR. WARANOWITZ: I have limited knowledge,
 23 yes.
 24 BY MR. URICK:
 25 Q If an owner of any of those three types of

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1 phones had an adequately performing phone would it have
 2 made any difference in the functioning of the AT&T
 3 network as you described for an Erickson phone?
 4 MS. GUTIERREZ: Objection.
 5 THE COURT: The objection is sustained and
 6 you may not answer that question.
 7 MR. URICK: May I have the Court's
 8 indulgence?
 9 THE COURT: Yes, you may.
 10 BY MR. URICK:
 11 Q Are you familiar with the performance of the
 12 Motorola, the Erickson and the Nokia cell phones?
 13 MS. GUTIERREZ: Objection.
 14 THE COURT: Overruled. Yes or no?
 15 MR. WARANOWITZ: Yes.
 16 BY MR. URICK:
 17 Q Is there any difference in the performance of
 18 those three?
 19 MS. GUTIERREZ: Objection. You may answer.
 20 MR. WARANOWITZ: Yes.
 21 BY MR. URICK:
 22 Q What is the difference?
 23 MS. GUTIERREZ: Objection.
 24 THE COURT: Sustained.
 25 MR. WARANOWITZ: There are --

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1 THE COURT: No, you can not answer the
 2 question unless the -- again, Mr. Urick this witness is
 3 not qualified with regard to the technology of the
 4 Motorola or the Nokia. You have not asked questions to
 5 qualify him as an expert in such and he will not be
 6 permitted to testify as an expert in such, until such
 7 time you are able to qualify him. Ladies and
 8 gentlemen, as you heard at the beginning, he is an
 9 expert as it relates to Erickson equipment, not
 10 Motorola or Nokia and so therefore he can not testify
 11 unless we can qualify him as such and there is a
 12 standing objection which is sustained. Your next
 13 question, Mr. Urick.
 14 BY MR. URICK:
 15 Q Are Nokia phones, cell phones used by
 16 subscribers in the AT&T wireless network?
 17 MS. GUTIERREZ: Objection.
 18 THE COURT: Overruled. You may answer that.
 19 MR. WARANOWITZ: Yes.
 20 BY MR. URICK:
 21 Q Are you -- have you had occasion to test the
 22 network for it's performance for those phones?
 23 MS. GUTIERREZ: Objection.
 24 THE COURT: Overruled. You may answer that.
 25 MR. WARANOWITZ: Yes.

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1 BY MR. URICK:
 2 Q What sorts of tests have you run of those
 3 phones?
 4 MS. GUTIERREZ: Objection.
 5 THE COURT: Sustained.
 6 BY MR. URICK:
 7 Q What if any training have you had in that
 8 type of telephone?
 9 MS. GUTIERREZ: Objection.
 10 THE COURT: The Nokia telephone?
 11 MR. URICK: Yes.
 12 THE COURT: You may answer that question.
 13 What type of training have you had with regard to Nokia
 14 telephones?
 15 MR. WARANOWITZ: None.
 16 THE COURT: None. I'm sorry, I couldn't hear
 17 you.
 18 MR. WARANOWITZ: None.
 19 THE COURT: Very well.
 20 BY MR. URICK:
 21 Q What sort of experience have you had in on
 22 the job testing and use of those phones?
 23 MS. GUTIERREZ: Objection.
 24 THE COURT: Overruled. What kind of on the
 25 job training have you had?

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1 MR. WARANOWITZ: I use them for my personal
 2 phone.
 3 BY MR. URICK:
 4 Q Have you --
 5 MS. GUTIERREZ: Objection, move to strike.
 6 THE COURT: No, he can answer that he uses it
 7 for his personal phone.
 8 MS. GUTIERREZ: That doesn't qualify as on
 9 the job training.
 10 THE COURT: Well, the answer stands and the
 11 jury can consider it for what it's worth that he has a
 12 personal phone that's a Nokia. Your next question.
 13 BY MR. URICK:
 14 Q How does that personal phone relate to your
 15 job?
 16 MS. GUTIERREZ: Objection.
 17 THE COURT: Overruled. Does it relate to
 18 your job?
 19 MR. WARANOWITZ: Yes, it does.
 20 BY MR. URICK:
 21 Q How?
 22 MR. WARANOWITZ:
 23 A AT&T gave engineers Nokia phones to use for
 24 personal and for business related.
 25 Q And have you had occasion to use the testing

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1 abilities of the AT&T network to test the performance
 2 of Nokia phones?
 3 MS. GUTIERREZ: The testing abilities?
 4 THE COURT: I could not hear the question.
 5 If you could repeat it.
 6 BY MR. URICK:
 7 Q Have you had occasion to test the performance
 8 of Nokia phones on the AT&T network?
 9 MS. GUTIERREZ: Objection.
 10 THE COURT: Overruled. Have you had an
 11 occasion to test the Nokia phones on the AT&T system?
 12 MR. WARANOWITZ: Yes.
 13 MR. URICK: At this time would offer the
 14 witness for his expertise in the Nokia phone on the
 15 AT&T network.
 16 THE COURT: To generally or the performance
 17 of the Nokia telephone on the AT&T system?
 18 MR. URICK: The performance.
 19 THE COURT: Any voir dire on this witness's
 20 expertise?
 21 MS. GUTIERREZ: No, voir dire, Judge. I'd
 22 like to be heard on it.
 23 THE COURT: All right.
 24 MS. GUTIERREZ: I don't have any further voir
 25 dire.

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1 THE COURT: Okay.
 2 MS. GUTIERREZ: All he's testified is that he
 3 was given it for both personal and business use. No
 4 training on it, no expertise, no basis of expertise
 5 established. We would object.
 6 THE COURT: Very well. May I see Counsel at
 7 the bench on this objection.
 8 (Counsel and Defendant approached the bench
 9 and following ensued:)
 10 THE COURT: All right. First of all, for the
 11 record the Court has allowed the leading nature of Mr.
 12 Urick's questions because the Court finds that these
 13 are foundation questions in an attempt to make sure
 14 that the witness does not provide an opinion prior to
 15 being qualified as an expert and in search for whether
 16 or not he is an expert in a particular area. Such to
 17 the extent that the objections were overruled and the
 18 objection was related to their leading nature.
 19 However, I gather that the objection of more is to some
 20 substance and for that the objections will continue to
 21 be reflected in the record. With regard to this
 22 particular witness's testimony.
 23 First, the Court is concerned that this witness if
 24 he did not conduct these tests using the telephone
 25 similar to the Defendant's telephone that he was the

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1 alleged originator of cellular phone 4432539023, that
 2 the -- no further questions be requested of this
 3 witness on this issue. Because obviously from the
 4 witness's testimony the phones perform in a different
 5 fashion and so if you have tests that were run, in just
 6 a few moments I'm going to allow Defense to question
 7 this witness. The same phone wasn't utilized, the same
 8 type of phone wasn't utilized. This witness will be
 9 permitted on cross to talk about the differences and
 10 the types of phones that could be used and the
 11 readings.
 12 At this point the State is attempting to bolster
 13 this witness's testimony and expand it beyond it's
 14 expertise and I've yet to heard any -- hear any
 15 foundation that would allow it to do so.
 16 MR. URICK: He is the person that used the
 17 Nokia and he's had occasion to test it's performance.
 18 THE COURT: But this test did not include the
 19 use of a Nokia did it?
 20 MS. GUTIERREZ: Judge, for the record --
 21 THE COURT: Wait a minute, Ms. Gutierrez.
 22 His test did not include the use of the Nokia, did it?
 23 MR. URICK: However, the cell phone does not
 24 originate the signals, the cell tower so the particular
 25 cell phone makes no difference in the given location.

1 THE COURT: Didn't you just testify that
2 different phones perform differently on the AT&T
3 system. That was his testimony.

4 MR. URICK: I don't believe it was testimony
5 as to the difference in terms of the frequency or
6 signal that would be picked up and used at a given
7 location.

8 THE COURT: Does this witness know the answer
9 to that question or are you guessing.

10 MR. URICK: I would have not asked him --
11 that is a question I'd like to ask him.

12 THE COURT: Which means, Mr. Urick that
13 you're guessing because he's testified clearly on your
14 question that those different phones perform
15 differently.

16 MR. URICK: But he's not been allowed to
17 explain what he meant by that.

18 THE COURT: That's true. Ms. Gutierrez.

19 MS. GUTIERREZ: The only thing that I want to
20 make sure that the record reflects. We're not talking
21 about tests in the plural, we're not talking about
22 tests meaning some scientific protocol that's been
23 followed to achieve a certain result. The test is
24 making a phone call or causing a phone call to be made,
25 it's that simple. There isn't any mystery here, there

1 MR. URICK: Thank you.

2 (Counsel and Defendant returned to the trial
3 tables and the following ensued:)

4 THE COURT: Ladies and gentlemen, we're going
5 to ask that you go with Ms. Connelly around to the jury
6 room and I'd ask that you leave your note pads face
7 down. I ask that you not discuss the testimony that
8 you've heard so far with anyone either amongst
9 yourselves or anyone else and I will see you back in
10 this courtroom in a very few minutes.

11 (The jury was excused from the courtroom.)

12 THE COURT: All right. Mr. Urick, if you
13 would like to voir dire this witness on the issue of
14 whether or not he knows the difference in the
15 performance rate of these phones feel free to do so.

16 MS. GUTIERREZ: My continuing objection.

17 THE COURT: I understand, Ms. Gutierrez.

18 BY MR. URICK:

19 Q What radio technology does cell phones use?

20 MS. GUTIERREZ: We can't hear the question.

21 BY MR. URICK:

22 Q What radio technology do cell phones use?

23 MS. GUTIERREZ: Objection.

24 THE COURT: Do you know what radio
25 technology?

1 isn't any magic to it. That's what he did and he's
2 clearly said the performance, i.e., the ability of the
3 phone to make a call and be heard and the ability of
4 the phone to receive a call and be heard is different.
5 There isn't any magic about interpreting that.

6 THE COURT: Different depending on the type
7 of phone.

8 MS. GUTIERREZ: Yes.

9 THE COURT: He said that. And so to the
10 extent that Ms. Gutierrez is objection as to this
11 witness as being able to talk about the Nokia for which
12 he has said he has no training other than his own
13 personal use of the phone the objection is sustained.
14 And I'm not going to allow the witness to go into
15 anything further, he is not an expert, he has a Nokia
16 phone like any other person and he did not use the
17 Nokia phone when he was conducting the test for which
18 the State wishes to offer him as evidence his
19 testimony. And he has testified that the different
20 phones perform differently on the system, that's what
21 he said.

22 MR. URICK: But he wasn't allowed to explain
23 what he meant by that.

24 THE COURT: All right. Why don't you all
25 step back.

1 MR. WARANOWITZ: Yes.

2 BY MR. URICK:

3 Q And what is that technology?

4 MR. WARANOWITZ:

5 A We call it TDMA.

6 Q And what education have you had in that
7 technology?

8 A AT&T wireless training and Erickson training.

9 Q And your educational degree was in what
10 again?

11 A Electrical engineering.

12 Q And what if any classes did you have in radio
13 technology in that program?

14 A Electromagnetic eave propagation.

15 Q Have long have you been employed by the AT&T
16 network?

17 A Four years.

18 Q What tests are -- what performance tests are
19 run on cell phones on that network?

20 MS. GUTIERREZ: Objection.

21 THE COURT: Overruled. If you know.

22 MR. WARANOWITZ: Signal strength, dropped
23 calls, bit error rate.

24 MS. GUTIERREZ: Can't hear the witness.

25 MR. WARANOWITZ: There are three areas that

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1 we test for. One is signal strength, one is bit error
 2 rate and one is dropped calls.
 3 MS. GUTIERREZ: I still can't hear the
 4 witness. I didn't get the second.
 5 MR. WARANOWITZ: Bit error rate.
 6 MS. GUTIERREZ: Bit error?
 7 THE COURT: Spell it.
 8 MR. WARANOWITZ: Bit, error, E-R-R-O-R,
 9 R-A-T-E. Bit error rate.
 10 BY MR. URICK:
 11 Q Have you personally conducted those types of
 12 tests on cell phones on the network?
 13 MR. WARANOWITZ:
 14 A Yes.
 15 Q Have you performed those sorts of tests on
 16 Nokia phones?
 17 A Yes.
 18 Q What is the business purpose of performing
 19 those sorts of tests?
 20 A To identify and locate bad phones.
 21 Q Bad to mean by that?
 22 A Malfunctioning.
 23 Q And how often do you run tests like that on
 24 Nokia phones?
 25 A Daily.

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1 Q About how many Nokia phones have you tested
 2 in your four years with the AT&T wireless network on
 3 those types of performance tests?
 4 A If I may elaborate.
 5 Q Please do.
 6 A We monitor poor performing phones
 7 statistically and we -- this is automated, it's not
 8 something that's tested with a -- as you would think as
 9 a test, it is monitored automatically by the switch and
 10 it is listed for us.
 11 Q When you say it's monitored by the switch,
 12 what does that do?
 13 A That tells us how may dropped calls a certain
 14 phone has for example. That is flagged for us and then
 15 we try to identify if it's a bad phone or poor
 16 performing phone.
 17 Q Does the system perform this function
 18 regardless of the brand of phone?
 19 A Yes.
 20 Q And then what do you do as a result of
 21 information -- of that information that you receive?
 22 A We pass that information on to another group
 23 called customer care.
 24 Q Now, is there any difference in the
 25 functioning of the Nokia phone as opposed to the

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1 Erickson phone on the AT&T network?
 2 MS. GUTIERREZ: Objection. No basis
 3 established.
 4 THE COURT: Well, that's the whole point, Ms.
 5 Gutierrez. I'm trying to determine whether he has a
 6 basis of knowledge for which he can testify. Do you
 7 know --
 8 MR. WARANOWITZ: Yes.
 9 THE COURT: The difference between the
 10 Erickson and the Nokia?
 11 MR. WARANOWITZ: Yes. They use the same
 12 standards to communicate with our network.
 13 THE COURT: You said they use the same
 14 standards. Are they or do those two phones perform
 15 differently on your network?
 16 MR. WARANOWITZ: They perform differently,
 17 but they use the same standards, yes.
 18 THE COURT: Okay. They perform differently.
 19 MR. WARANOWITZ: Yes.
 20 THE COURT: So, if you were to originate a
 21 call in one place on a Nokia the ratings, the frequency
 22 and those results that you have tallied for the State
 23 would differ if you used a Nokia phone versus an
 24 Erickson phone, is that correct?
 25 MR. WARANOWITZ: Sometimes, yes.

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1 THE COURT: Okay. Depending on where you
 2 were, isn't that right?
 3 MR. WARANOWITZ: No.
 4 THE COURT: Depending on what?
 5 MR. WARANOWITZ: Depending on the quality of
 6 the phone.
 7 THE COURT: Depending on the quality of the
 8 phone. So, you would need to need know not only the
 9 maker of the phone or the manufacturer of the phone,
 10 but you would have to know the serial number or -- what
 11 do call it. The --
 12 MR. WARANOWITZ: The serial number.
 13 THE COURT: Is it the serial number?
 14 MR. WARANOWITZ: Yes.
 15 THE COURT: The serial number of the phone to
 16 compare it to a like model in another manufacturer.
 17 MR. WARANOWITZ: Correct.
 18 MR. URICK: If I could follow up on his
 19 response. You said --
 20 MS. GUTIERREZ: Objection.
 21 THE COURT: Overruled. At this point I'm
 22 going to allow the State to ask whatever questions it
 23 would like and then I'm going to allow the Defense to
 24 ask whatever questions it would like in light of the
 25 Court's questions. You may proceed, Mr. Urick.

1 BY MR. URICK:

2 Q Now, you said it depended on the quality of
3 the phone. Will you explain what you meant by that?

4 MR. WARANOWITZ:

5 A We have seen -- I have seen in my experience
6 a couple of poor performing phones.

7 Q Does the brand of the phone have any
8 relationship to that? That is could an Erickson be as
9 likely to be poor performing as a Nokia?

10 A Yes.

11 MR. URICK: No further questions.

12 THE COURT: Ms. Gutierrez?

13 MS. GUTIERREZ: I have no other questions.

14 THE COURT: Now, Counsel -- sir, I'm going to
15 ask you to step out in the hallway for just a moment.
16 I'd ask that you not discuss your testimony with
17 anyone.

18 Now, Counsel first of all, Mr. Urick with regard
19 to your testing of this particular scenario, Ms.
20 Gutierrez's objection is sustained. He will not be
21 able to talk about the results of any test and draw any
22 conclusions. If you want to continue to march him
23 through the different places on that map where he
24 originated calls with his Erickson I will continue to
25 advise the jury that as it relates to the Erickson

1 phone he used they can consider the responses or the
2 cell site information for what it's worth.

3 Ms. Gutierrez, on cross you will have open leeway
4 with regard to this witness on the relevance if any
5 with of this whole test that was conducted by the
6 State. You will also have the ability if you choose to
7 ask the questions that the Court asked during this voir
8 fire to qualify this expert because I find that the use
9 of this expert by the State is misleading and I also
10 find that this expert has expertise with regard to
11 other phones including the Nokia and Motorola and
12 Erickson. But the issue that I believe needs to be
13 addressed in order for clarification with this jury is
14 that the model of the phone is relevant and this
15 witness did not conduct a test with the model.

16 And so to the extent that the State is misleading
17 the jury at this point, the Defense is going to have a
18 lot of leeway. Do you understand me, Ms. Gutierrez?

19 MS. GUTIERREZ: Certainly do, Judge.

20 THE COURT: And the State needs to be advised
21 that the Court is not happy at all with the way in
22 which this witness is being utilized. It is not happy
23 with the attempt to mislead because that's precisely
24 what you have done. You have mislead this jury and to
25 the extent that this Court can clarify as long as he's

1 being questioned by the State I will do so to ensure
2 that that jury is not in anyway mislead about the test
3 that was conducted by this witness or the results
4 therein. And the Defense will have wide leeway and I
5 also will ask at this juncture, Ms. Gutierrez if at any
6 point in time during your questioning you decide you
7 want to qualify him as an expert to use him in anyway
8 you believe is appropriate, feel free to do so.

9 MS. GUTIERREZ: Thank you, Judge.

10 THE COURT: Very well. I'm going to ask that
11 the witness return. Is there any question, Mr. Urick
12 about what I've just said?

13 MR. URICK: No, thank you, Your Honor.

14 THE COURT: Any question, Ms. Gutierrez?

15 MS. GUTIERREZ: No, Judge, but could I have a
16 bathroom break?

17 THE COURT: You may have a bathroom break
18 before we bring the witness back in.

19 MR. URICK: Your Honor, if I may remind the
20 Court the purpose of bringing this witness in today was
21 because he's unavailable tomorrow through Saturday.

22 THE COURT: I understand that, but what can I
23 say. We are doing the best we can today and Ms.

24 Connelly, will you please have my secretary call to
25 Annapolis and advice Judge Harrington that I will not

1 be able to meet my obligations in Annapolis and you may
2 continue.

3 MS. GUTIERREZ: Well, Judge based on your
4 schedule I've made plans for this evening which I
5 normally don't do with my children and others because I
6 counted on being able to leave by five.

7 THE COURT: Well, we will end by five. We
8 will stop by five, but please advise Ms. -- Judge
9 Harrington that I will not be available. And, Ms.
10 Gutierrez if you would while you're out you may go
11 around to Judge Gordy's secretary if you need to make a
12 phone call with regard to children, please feel free to
13 do that as well. Harrington, H-A-R-R-I-N-G-T-O-N. Can
14 you call her back, ask her if Judge Harrington would e-
15 mail me any information. Ms. Gutierrez, do you still
16 have scheduling difficulties?

17 MS. GUTIERREZ: Well, Judge as long as I can
18 leave by five I can get to where --

19 THE COURT: All right. Very well. Also
20 before the jury comes back I received to questions from
21 my law clerk handed to her by the jury and they both
22 say please ask the State's lawyer to speak louder and
23 clearer and also can they speak louder and clearer.

24 Please, we are having a hard time hearing. So, I'm
25 going to ask Counsel, if you lean forward I know the

1 mics are either above you or they I know definitely in
 2 front of you. I need you to speak louder, perhaps
 3 slower and annunciate so that the jurors can hear what
 4 it is that you're saying. Mr. Clerk, would you put
 5 these in the court file please? I'm just going to
 6 remind that you you're still under oath and as you
 7 speak, if you could keep your voices up, your voice up,
 8 the attorneys will try to do the same.

9 (The jury returned to the courtroom.)

10 THE COURT: All right, ladies and gentlemen,
 11 we are going to continue. I've asked the attorneys to
 12 keep their voices up, to speak louder so that all the
 13 witnesses, the witness and all the jurors can hear what
 14 is being said. Mr. Urick, witness with you.

15 BY MR. URICK: Thank you, Your Honor.

16 Q Mr. Waranowitz, what if any difficulties are
 17 there in Lincoln Park in terms of reception for the
 18 cell phone network?

19 MS. GUTIERREZ: Objection.

20 THE COURT: Sustained. As any cell phone
 21 network or as it relates to AT&T cell phone network?

22 BY MR. URICK:

23 Q What if any reception problems as the AT&T
 24 wireless network experience in the Lincoln Park region?

25 THE COURT: You may answer the question.

1 THE COURT: Yes. Any objection?

2 MS. GUTIERREZ: Let me see the other exhibit
 3 we were looking for. I think it's 31.

4 THE COURT: Thirty one?

5 MS. GUTIERREZ: Yes. To see if (inaudible).

6 THE COURT: That is the cell phone records,
 7 30?

8 MS. GUTIERREZ: It's three pages.

9 THE COURT: Yes.

10 MS. GUTIERREZ: I think that's 31.

11 THE COURT: This was the exhibit that we were
 12 locating -- looking for earlier. I believe that may be
 13 it right there on the corner, Ms. Gutierrez.

14 MS. GUTIERREZ: Yes, I think you're right,
 15 Judge. Yes.

16 THE COURT: What number is that anyway?

17 MS. GUTIERREZ: It's 31.

18 THE COURT: It is 31?

19 MS. GUTIERREZ: Yes.

20 THE COURT: All right. Very well. One
 21 moment.

22 MS. GUTIERREZ: Judge, no and I would argue
 23 that the column in the addresses have not been
 24 established by the evidence or as to any (inaudible) on
 25 31A which list and we don't object and I would object

1 MR. WARANOWITZ: The signal strength in
 2 Lincoln Park particularly down where the river and the
 3 roads runs through is very weak.

4 BY MR. URICK:

5 Q And what is -- what are the factors that
 6 affect reception in that area?

7 MR. WARANOWITZ:

8 A In this case it is terrain and trees.

9 Q And how do trees affect it?

10 A The leaves tend to shadow the area more
 11 making weaker coverage.

12 Q So, in terms of that factor would the time of
 13 year have an affect on reception of that area?

14 A Yes.

15 Q And what affect would that have?

16 A It is was -- if the call was made in the
 17 middle of winter it would be easier to make a call
 18 because the signal strength would be greater. In the
 19 summer it would be more difficult because the signal
 20 strength would be weaker.

21 MR. URICK: At this time I'd offer into
 22 evidence State's Exhibit 34.

23 MS. GUTIERREZ: Is 34 the --

24 THE COURT: The chart.

25 MS. GUTIERREZ: The chart.

1 to 34 as it is. The objection --

2 THE COURT: If that's 31, 34 is going to be
 3 the chart.

4 MS. GUTIERREZ: Right.

5 THE COURT: With the addresses as the last
 6 column.

7 MS. GUTIERREZ: Right, 31 is in and it does
 8 establish a series of numbers that appear to correspond
 9 to --

10 THE COURT: Without addresses.

11 MS. GUTIERREZ: One column, but there's no
 12 indication that addresses and as I said the addresses
 13 given their location of all the towers has not been
 14 established, so I would object.

15 THE COURT: At this time the objection is
 16 sustained as it relates to Exhibit 34 which includes
 17 addresses at the end.

18 BY MR. URICK:

19 Q If I may ask the witness again? Did you have
 20 a chance to check those cell sites against the
 21 addresses listed on the exhibit?

22 MR. WARANOWITZ:

23 A Yes, I did.

24 Q And are those accurate addresses for those
 25 cell sites?

1 A Yes.
 2 THE COURT: The objection is sustained.
 3 MR. URICK: May we approach?
 4 THE COURT: Yes, you may.
 5 (Counsel approached the bench and following
 6 ensued:)
 7 THE COURT: You want to know why it's
 8 sustained?
 9 MR. URICK: I'd like a clarification of the
 10 objection.
 11 THE COURT: Ms. Gutierrez, you want to tell
 12 him why it's sustained?
 13 MS. GUTIERREZ: Do I have to, Judge?
 14 THE COURT: Yes.
 15 MS. GUTIERREZ: Well, I think that just
 16 saying addresses are accurate does not establish or
 17 meet the burden of establishes that these -- what in
 18 fact these addresses are, what they relate to. There
 19 are 34 separate entries listed and they're not 34
 20 separate addresses, many of them are repeated.
 21 Repeating or just saying that he looked at the cell
 22 site and are these addresses accurate tells us nothing
 23 and in no way establishes that column.
 24 THE COURT: Mr. Urick, your witness said upon
 25 your questions that these addresses fall in the shaded

1 THE COURT: Okay. So, you're saying Govins
 2 Manor is located at 2121 Windgard Lane?
 3 MR. URICK: Yes, that is the address --
 4 THE COURT: Of the tower.
 5 MR. URICK: Of the tower or whatever
 6 structure that particular cell site.
 7 THE COURT: And this particular cell tower is
 8 at L688A is at Routes 29 and I175.
 9 MR. URICK: Yes.
 10 MS. GUTIERREZ: Well, Judge --
 11 THE COURT: Isn't it interesting, Mr. Urick
 12 that I've been listening closely to the testimony and I
 13 did not know that.
 14 MR. URICK: I'm sorry, I was focusing on
 15 other question.
 16 THE COURT: Okay. I'm just letting you know,
 17 you have an exhibit that L -- with regard to a picture
 18 of L689 Govins Manor and it's marked as 43F, but no
 19 address has ever been given for that tower.
 20 MS. GUTIERREZ: And, Judge we'd object to --
 21 THE COURT: And that's why the Court
 22 abstained the objection because right now there is no
 23 testimony in evidence that would allow for the
 24 admissibility of 34.
 25 MS. GUTIERREZ: And, Judge I would object to

1 area noted by the tower or any tower in either C or A
 2 as it relates or B as it relates, but if you look at
 3 your chart so are a lot of other addresses in the
 4 shaded area noted C and B and A. The phone that was
 5 being tested is not as you related it the phone that
 6 was actually making these calls, so can you tell me how
 7 you got the addresses that are listed in the last
 8 column because there's been no testimony from any
 9 witnesses how these addresses were derived.
 10 MR. URICK: These are the business records of
 11 the AT&T company. These are generated from the
 12 computer based on these cell sites, this is the address
 13 where that cell tower is located at that cell site.
 14 THE COURT: Okay. You're saying cell site L8
 15 -- excuse me. Cell site L68 --
 16 MS. GUTIERREZ: What one are you asking?
 17 THE COURT: I'm just looking, I picked one
 18 randomly.
 19 MS. GUTIERREZ: Okay.
 20 THE COURT: Twenty two.
 21 MS. GUTIERREZ: Twenty two.
 22 THE COURT: L689A, that tower or whatever
 23 that is, that cell site is, according to my note, wait
 24 I'll tell you what it is. It's Govins Manor.
 25 MS. GUTIERREZ: Right.

1 this witness being allowed -- he's not been classified
 2 as a custodian, he is not a custodian. We would
 3 maintain this witness didn't check the actual existence
 4 or the actual address whether or not it exists in any
 5 record or in actuality much less. And if he checked it
 6 in the business records he's not entitled to testify to
 7 that, he's not a custodian of business records, he
 8 hasn't been disclosed as a custodian of business
 9 records and we would object to any of that coming in
 10 through this witness.
 11 THE COURT: If this witness can testify that
 12 he knows the address of the different cell towers the
 13 Court will allow it. And there was other questions
 14 that the Court asked that the State inquire at this
 15 time.
 16 MR. URICK: Thank you.
 17 THE COURT: No, this is my copy.
 18 MR. URICK: Sorry.
 19 THE COURT: That's all right.
 20 (Counsel returned to the trial tables and the following
 21 ensued:)
 22 THE COURT: For the record the objection is
 23 sustained. Your next question.
 24 BY MR. URICK:
 25 Q Mr. Waranowitz, are you familiar with the

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1 addresses of the cell sites in the Baltimore
 2 Metropolitan region?
 3 MS. GUTIERREZ: Objection.
 4 THE COURT: Overruled. Are you familiar with
 5 them, yes or no?
 6 MR. WARANOWITZ: No.
 7 MS. GUTIERREZ: May we approach the bench?
 8 THE COURT: Do you have an objection to the
 9 exhibit?
 10 MS. GUTIERREZ: Yes, I do.
 11 THE COURT: What is the exhibit number.
 12 MR. URICK: For identification.
 13 MS. GUTIERREZ: Forty six.
 14 MR. URICK: Forty --
 15 MS. MURPHY: Thirty two.
 16 MR. URICK: I'm sorry, I've marked it wrong.
 17 That should be for identification State's 32.
 18 (State's Exhibit No. 32 was
 19 marked for identification.)
 20 THE COURT: Thirty two, and if you'd bring it
 21 up please so the Court can see it.
 22 (Counsel approached the bench and following
 23 ensued:)
 24 THE COURT: And the objection?
 25 MS. GUTIERREZ: Well, Judge it's an unmarked

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1 exhibit if multi pages. What I believe it to be and I
 2 will note I personally never seen it. Mr. Lewis tells
 3 me that he believes that we made a copy of it, that we
 4 did not receive it from the State. The only
 5 identification and he doesn't recollect the writing at
 6 the top and other then the handwriting the only list is
 7 it's not to AT&T. I think it's a site name and then
 8 address, a list of addresses in a column that then has
 9 a designation of a state, and a column that has a
 10 designation that just believe says site number one. I
 11 haven't looked through it all. I think it's likely it
 12 would correspond at least as to the Maryland sites --
 13 to the sites although it is certainly more inclusive.
 14 So one, I would object, it's never been disclosed
 15 to us or identified in regard to this witness and this
 16 witness has said he has no familiarity with cell site
 17 addresses. Although, he's presented himself and been
 18 presented as an expert for the Baltimore/Washington
 19 network as somebody who designed, located, selected and
 20 continues to select such things as cell sites for the
 21 entire AT&T wireless network covering all of Maryland.
 22 In an attempt to show this witness something that's
 23 never been disclosed before us as a way to have him
 24 read off or identify or to trigger something in his
 25 memory when he has already testified he's not familiar

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1 with the addresses.
 2 So, substituting his lack of knowledge by saying,
 3 here read this exhibit which lists addresses. We have
 4 no way and this has not been established as coming from
 5 records of AT&T certified as coming from records,
 6 coming in under any business records exceptions, he's
 7 not the custodian of records. He's already testified
 8 to his lack of unfamiliarity, so for all those reasons
 9 I believe it's unfair to even create in front of this
 10 jury, again a subsequent misleading question to
 11 suggest, oh, well he just forgot, we're going to show
 12 him the list and then he's going to recognize the list
 13 is unfair.
 14 THE COURT: I'll allow the State to use this
 15 exhibit if the witness can identify that he has seen it
 16 before, he's familiar with it and he can use it to
 17 refresh his recollection as to the address. I would
 18 indicate that he has already the towers and he's
 19 already what they looked --
 20 MS. GUTIERREZ: Some towers.
 21 THE COURT: No, he's identified all the
 22 towers that appear on State's Exhibit Number 34, he's
 23 identified them and they've been marked in photographs
 24 as --
 25 MS. GUTIERREZ: I would beg to differ with

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1 the Court's interpretation.
 2 THE COURT: If I may -- if I may. Exhibits
 3 Number 43C, D, E, F, G. He's identified C, the Social
 4 Security building has ten cables, etcetera, 43B, 43D
 5 and given the location of the Social Security building,
 6 Cooks on Athol Street, Goldings Manor location, Route
 7 40 and Rolling Road, etcetera. And so to the extent
 8 that that document is able to refresh his recollection
 9 as to a specific address, if it does we will allow it,
 10 if it does not it will not be allowed.
 11 MS. GUTIERREZ: Well, Judge my notation is
 12 this is not a witness that said, well I know but I
 13 can't remember or that's at all been established that
 14 it is his recollection that is impaired. He was asked
 15 if he was familiar with the addresses for the cell
 16 sites and he answered, no. Not that he couldn't
 17 remember what they were, he's testified that he's not
 18 familiar with all the addresses, and so I believe it's
 19 improper to allow the State to attempt to refresh a
 20 recollection who's impairment has not been established.
 21 THE COURT: I understand that. It's
 22 overruled and I note your objection for the record.
 23 MS. GUTIERREZ: Thank you.
 24 MR. URICK: I would also note for the record
 25 that all these addresses are already in evidence

1 pursuant to the court order when this -- when Ms.
 2 Gutierrez was cross examining the previous witness,
 3 that you moved it into evidence because --
 4 THE COURT: I moved into evidence the cell
 5 sites.
 6 MR. URICK: The addresses.
 7 THE COURT: Not -- no, the cell site, not the
 8 address, the cell site not the address. She referred
 9 to each one I believe only by cell site number.
 10 MS. GUTIERREZ: Who's the she?
 11 THE COURT: Ms. Gutierrez. If I may have one
 12 moment.
 13 MR. URICK: She also read off the addresses
 14 and you moved that in at the time.
 15 THE COURT: Give me one moment, one moment.
 16 She did not do it as to all. She did it as to --
 17 MS. GUTIERREZ: I missed -- during what
 18 witness?
 19 THE COURT: One moment. During Jay Wild's
 20 testimony.
 21 MS. GUTIERREZ: Right, right.
 22 THE COURT: The remember of lines, Ms.
 23 Gutierrez that at the time you made the inquiry as to
 24 the cell site --
 25 MS. GUTIERREZ: Right.

1 then attempt to move the exhibit in you're welcome to
 2 do that.
 3 MR. URICK: Thank you.
 4 THE COURT: You may proceed.
 5 (Counsel returned to the trial tables and
 6 the following ensued:)
 7 MR. URICK: If I may approach the witness at
 8 this time to show him what's been marked for
 9 identification as State's Exhibit --
 10 MS. GUTIERREZ: Objection, may I note my
 11 continuing objection?
 12 THE COURT: Yes you may.
 13 MS. GUTIERREZ: Thank you.
 14 BY MR. URICK:
 15 Q Please take a few moments and examine that.
 16 Have you had a chance to examine the exhibit?
 17 MR. WARANOWITZ:
 18 A Yes.
 19 Q Can you identify that?
 20 A This is a listing of our cell sites in the
 21 Baltimore/Washington market, the site name, the
 22 address, the street address I might add and the state
 23 that the cell site is located in.
 24 Q And is that document generated from the
 25 computer records of the AT&T Wireless Corporation?

1 THE COURT: You indicated a particular line
 2 and I then indicated that if you were going to ask
 3 about the cell site by reading it into the record that
 4 you would then put it into evidence.
 5 MS. GUTIERREZ: The cell site itself, yes.
 6 THE COURT: I do not recall, my recollection
 7 does not include your giving the address and I have --
 8 you did not do it as to all. You did it as to lines --
 9 one moment, line 23, I stand corrected, you did give
 10 the address.
 11 MS. GUTIERREZ: As to that line.
 12 THE COURT: As to line --
 13 MS. GUTIERREZ: I think I did it to about
 14 five --
 15 THE COURT: As to line 23, as to line 24, as
 16 to line 22, as to line 23, as to line 26 and line 27,
 17 as to line 25, 27 again, line 12, line 13, in that
 18 order and you did refer to all of those which I just
 19 read to you happen to be 1500 Woodlawn Drive.
 20 MS. GUTIERREZ: Woodlawn Drive, yes.
 21 THE COURT: And those are the addresses only
 22 that are in evidence at this time with those cell sites
 23 and those only. Now, I made add if you want to redact
 24 your exhibit and remove the addresses for those that
 25 are not in evidence by use of a black magic marker and

1 A It is in our database for AT&T Wireless, yes.
 2 MS. GUTIERREZ: Objection.
 3 THE COURT: Overruled.
 4 BY MR. URICK:
 5 Q And is it the normal part -- is that data put
 6 in that database by people who have personal knowledge
 7 of that information at the time that it's put into the
 8 database or by people who have that information?
 9 MS. GUTIERREZ: Objection. Objection.
 10 THE COURT: Sustained. Do you know how this
 11 information is placed in this document?
 12 MR. WARANOWITZ: Yes, I do.
 13 THE COURT: You do?
 14 MR. WARANOWITZ: Yes.
 15 THE COURT: You may answer the question.
 16 MR. WARANOWITZ: This information is put in
 17 place or put in the database by what we call site
 18 acquisition coordinators. They are the people that
 19 look for cell sites.
 20 BY MR. URICK:
 21 Q And is this information collected as part of
 22 the normal business of the AT&T Wireless Corporation?
 23 MS. GUTIERREZ: Objection.
 24 THE COURT: Overruled.
 25 MR. WARANOWITZ: Yes.

1 BY MR. URICK:
 2 Q And is it necessary for the functioning of
 3 the AT&T Wireless Corporation that this data be kept?
 4 MR. WARANOWITZ:
 5 A Yes.
 6 MR. URICK: I'd offer the business records,
 7 State's Exhibit 32.
 8 MS. GUTIERREZ: Objection.
 9 THE COURT: One moment. The objection is
 10 sustained.
 11 BY MR. URICK:
 12 Q Do you use those records?
 13 MS. GUTIERREZ: Objection.
 14 THE COURT: Overruled.
 15 MR. WARANOWITZ: I use the cell site name and
 16 the cell site -- I don't use the street address often.
 17 BY MR. URICK:
 18 Q Are you familiar with that information
 19 though?
 20 MR. WARANOWITZ:
 21 A Yes.
 22 Q Now, if you look at State's -- your copy of
 23 State's Exhibit 34. Now, if you look at line 3, do you
 24 recall the address for cell site L698B?
 25 MS. GUTIERREZ: Objection.

1 THE COURT: Overruled.
 2 MR. WARANOWITZ: Can you rephrase the
 3 question please?
 4 BY MR. URICK:
 5 Q Do you remember the street address for cell
 6 site L698B?
 7 MR. WARANOWITZ:
 8 A No.
 9 Q Would examining State's Exhibit 32 for
 10 identification help your refresh your recollection?
 11 A Yes.
 12 Q Please examine it at this time.
 13 MS. GUTIERREZ: I would note my continuing
 14 objection based on --
 15 THE COURT: I understand.
 16 MS. GUTIERREZ: Previous --
 17 THE COURT: And just for the record, the
 18 witness may use this exhibit to refresh his
 19 recollection and respond to the addresses that Counsel
 20 is inquiring about. The exhibit is not admitted as
 21 evidence, however.
 22 BY MR. URICK:
 23 Q Have you had a chance to look at the
 24 document?
 25 MR. WARANOWITZ:

1 A Yes.
 2 Q And is your memory refreshed?
 3 A Yes.
 4 Q What is the address for that cell site?
 5 A 2040 Powers Lane.
 6 Q Now, if you would go down to line 14 and 15,
 7 do you remember the address for cell site L608C?
 8 A It would 3600 Georgette Road.
 9 Q Now, line 16, do you remember the address for
 10 L655?
 11 MS. GUTIERREZ: I would note for the record
 12 that the witness is merely reading from the list that
 13 is not into evidence.
 14 THE COURT: Very well. Let the record
 15 reflect that the observation is made, however, the
 16 witness is directed that he may use the exhibit to
 17 refresh is recollection as to any specific address and
 18 then I'd ask that he not read it, but just look away
 19 from the exhibit. And Counsel has seen the exhibit,
 20 it's been marked for identification purposes and may be
 21 used to refresh his recollection as to a specific
 22 address. You may continue.
 23 BY MR. URICK:
 24 Q Do you remember the address for L655?
 25 MR. WARANOWITZ:

1 A It is located on Walker Road near UMBC.
 2 Q And do you remember the address for L654?
 3 A It would be Dorchester Road.
 4 Q Do you remember the specific street address?
 5 You may look at the document to refresh your memory.
 6 A 824.
 7 Q Do you remember the street address for L652?
 8 Look down at line 30 and 31, 30 pardon me, 29 and 30.
 9 A 714 Poplar.
 10 MS. GUTIERREZ: Again, for the record the
 11 witness is referring to the list.
 12 THE COURT: Referring to Exhibit Number, I
 13 believe it's 15, is that right? The exhibit number,
 14 sir is?
 15 MR. WARANOWITZ: Thirty two and --
 16 THE COURT: The one in your left hand, the
 17 exhibit number at the bottom?
 18 MR. WARANOWITZ: Thirty two.
 19 THE COURT: Forty two.
 20 MR. WARANOWITZ: Thirty two.
 21 THE COURT: Thirty two. All right. Very
 22 well.
 23 BY MR. URICK:
 24 Q Do you remember the street address for L688?
 25 MR. WARANOWITZ:

1 A This cite has no street address. It is
 2 located at the intersection of 29 and 70.
 3 Q And do you recall the street address for
 4 L654?
 5 A That would be the 824 Dorchester Water Tank.
 6 Q And do you recall the street address for
 7 L602?
 8 A We call that Central Savings.
 9 THE COURT: I'm sorry, I can't hear you.
 10 MR. WARANOWITZ: We call that Central Savings
 11 and it is located on 201 North Charles Street.
 12 BY MR. URICK:
 13 Q Now, these street addresses are what?
 14 MR. WARANOWITZ:
 15 A These street addresses are where the owner of
 16 the property that we rent space for, for the cell site
 17 resides.
 18 Q And you have placed what at these street
 19 addresses?
 20 A Cell sites.
 21 Q And the information in the final column for
 22 the address for each of those then, that is the address
 23 for the particular cell site that's listed in the
 24 column just before it --
 25 MS. GUTIERREZ: Objection. Form of the

1 marked for identification, was
 2 received into evidence.)
 3 THE COURT: I note that it is now five
 4 o'clock, Ms. Gutierrez. How long do you expect to be
 5 on cross?
 6 MS. GUTIERREZ: A while.
 7 THE COURT: A while meaning at least an hour?
 8 MS. GUTIERREZ: I would think so, Judge.
 9 THE COURT: Very well. Ladies and gentlemen,
 10 I promised that we'd end at 4:30 today, but as you can
 11 we're well after five. I try, it's the best thing I
 12 can tell you is I try and so at this juncture I'm going
 13 to recess you for today. I also must advise you that
 14 tomorrow, on tomorrow I'm going to change our schedule
 15 a little bit. I know that we've had some problems with
 16 this witness. Mr. Urick, do you think that if we got
 17 started earlier in the morning that would assist you in
 18 any way with this witness?
 19 MR. URICK: Can we approach?
 20 THE COURT: Yes. One minute, ladies and
 21 gentlemen. And what I'm talking about doing is rather
 22 than having you go to the jury assembly first we may
 23 ask that the jurors come here first in the morning and
 24 be paid at a later time as a group.
 25 (Counsel approached the bench and following

1 question.
 2 THE COURT: Overruled.
 3 MR. WARANOWITZ: Please restate the question.
 4 MR. URICK: The -- you've got the cell site
 5 in the second to last column and then the address and
 6 the address is the -- the address is for the cell site
 7 in the column before it.
 8 MR. WARANOWITZ:
 9 A Yes.
 10 MR. URICK: Would offer into evidence State's
 11 Exhibit 34.
 12 THE COURT: Any objection at this time?
 13 MS. GUTIERREZ: If I may have a minute, Your
 14 Honor.
 15 THE COURT: Certainly.
 16 MS. GUTIERREZ: Yes, Your Honor we would
 17 object on the same basis.
 18 THE COURT: With regard to the addresses?
 19 MS. GUTIERREZ: Yes.
 20 THE COURT: Very well. The objection will be
 21 admitted.
 22 MR. URICK: I'd like to give the exhibit to
 23 the Clerk at this time to mark it into evidence.
 24 THE COURT: Very well.
 25 (State's Exhibit No. 34, previously

1 ensued.)
 2 MR. URICK: I believe he's schedule to fly to
 3 Seattle first thing in the morning. I don't know of
 4 his exact time of departure, that's why I asked to
 5 approach.
 6 THE COURT: Well, you can ask him the one
 7 question, what time does his plane leave.
 8 MR. URICK: From here?
 9 THE COURT: Just turn around and lean over
 10 and ask him.
 11 MR. URICK: 9:45.
 12 THE COURT: Well, what would you like me to,
 13 Mr. Urick?
 14 MR. URICK: I don't -- let me ask you. Are
 15 we going to accommodate the juror who's leaving Friday
 16 morning?
 17 THE COURT: Well, I don't know how that helps
 18 if today is Monday and tomorrow --
 19 MS. GUTIERREZ: Today is Tuesday.
 20 THE COURT: Is today Tuesday?
 21 MS. GUTIERREZ: Yes.
 22 THE COURT: I'm sorry. Ladies and gentlemen,
 23 yesterday is a blur.
 24 MS. GUTIERREZ: You missed us. That's what
 25 that is.